

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 806 of 2013

Arising Out of PS. Case No.-5 Year-2010 Thana- Dumaria District- Gaya

Suresh Chaudhary, son of Late Saryu Chaudhary, resident of village-
Manjhauli Tola Chatakpur, P.S.- Dumaria, District- Gaya.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
Criminal Appeal (DB) No. 721 of 2013

Arising Out of PS. Case No.-5 Year-2010 Thana- Dumaria District- Gaya

Ajay Chaudhary, son of Rameshwar Chaudhary, resident of village- Chhotki
Pankara, P.S.- Dumaria, District- Gaya.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
Criminal Appeal (DB) No. 772 of 2013

Arising Out of PS. Case No.-5 Year-2010 Thana- Dumaria District- Gaya

Prabhu Chaudhary, son of Babu Ram Chaudhary, resident of village- Chhotki
Pankara, P.S.- Dumaria, District- Gaya.

... .. Appellant

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 802 of 2013

Arising Out of PS. Case No.-5 Year-2010 Thana- Dumariya District- Gaya

Babulal Chaudhary, son of Late Sahdeo Chaudhary, resident of village-
Pankara, P.S.- Dumaria, District- Gaya.

... .. Appellant

Versus



The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 806 of 2013)

(In Criminal Appeal (DB) No. 721 of 2013)

(In Criminal Appeal (DB) No. 772 of 2013)

(In Criminal Appeal (DB) No. 802 of 2013)

For the Appellant/s : Sri Vikram Deo Singh, Advocate
Sri Ashok Kumar Sinha, Advocate
Sri Sudhir Kumar Sinha, Advocate

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 19-02-2019

All the four appellants in aforesaid four appeals were tried together, convicted and sentenced by a common judgment of the trial court and as such, all the aforesaid four appeals were taken-up together for hearing and are being disposed of by this common judgment.

2. All the appellants by judgment dated 18-06-2013 were convicted for commission of offence under Section 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'). By order dated 27-06-2013, all the appellants were sentenced under Section 302/34 of the I.P.C. to undergo imprisonment for life and to pay fine of Rs. 10,000/- (ten thousand) each. In default



of payment of fine, they were directed to further undergo imprisonment for one year. The appellants were convicted and sentenced by Sri Anil Kumar, learned Adhoc Additional District & Sessions Judge 1st, Gaya (hereinafter referred to as the 'Trial Judge') in Sessions Trial No. 123 of 2011/452 of 2011 (arising out of Dumaria P.S. Case No. 5 of 2010).

3. Short fact of the case is that on 25-02-2010 at 07:00 hrs. (in the morning), Sub-inspector of Police of Dumaria Police Station namely Heshamuddin Khan (P.W.9) recorded *fardbeyan* of Md. Shamshad Khan (P.W.4), resident of village Khaira, P.S. Dumaria, District- Gaya. The *fardbeyan* was recorded near the dead body of Shahdab Khan (younger brother of the informant) at the place of occurrence i.e. village Pankara. In the *fardbeyan*, the informant stated that his brother Shahdab Khan @ Shada Khan on preceding date i.e. 24-02-2010 had withdrawn Rs. 30,000/- (thirty thousand) from Punjab National Bank, Dumaria and thereafter, he went to his tobacco shop (खैनी दुकान) in Majhauri market. In the evening, the informant went to the shop of his brother and asked him that after closing the shop, he may go to Chhotki Pankara for arranging labourers, since construction work of his house was to commence from the next date. After saying all these things, the informant went to the market. When at about 08:30 hrs. in the



night he came to his house from the market, he was informed by his parents that Shado (deceased) had not returned. Thereafter, the informant with his co-villager Meraj Khan (P.W.2) came out from his house in search of his younger brother and reached Chhotki Pankara. In course of search, when the informant with another reached near the house of Prabhu Chaudhary {appellant in Cr. Appeal (DB) No. 772 of 2013}, he heard some *hulla*, then hurriedly proceeded there and they heard that “भाई, पैसवा छीन ले लियो हे, पहचान लेलकउ जल्दी काट दे। ” (we have already snatched money and we have been identified, so the victim should be killed). Thereafter, the informant flashed the torch light, then he saw (1) Suresh Chaudhary {appellant in Cr. Appeal (DB) No. 806 of 2013}, S/o Late Saryug Chaudhary, resident of Manjhauri, Tola Chatakpur and (2) Babulal Chaudhary {appellant in Cr. Appeal (DB) No. 802 of 2013} S/o Late Sahdeo Chaudhary, resident of Chhotki Pankara, both had caught his brother and Suresh Chaudhary {appellant in Cr. Appeal (DB) No. 806 of 2013} by means of *fasuli* was cutting the neck of his brother. (3) Prabhu Chaudhary {appellant in Cr. Appeal (DB) No. 772 of 2013} S/o Baburam Chaudhary and (4) Ajay Chaudhary @ Gudda Chaudhary {appellant in Cr. Appeal (DB) No. 721 of 2013} S/o Rameshwar Chaudhary, both resident of Chhotki Pankara, P.S.



Dumaria, District- Gaya had caught hands and legs of the brother of the informant. After noticing the torch light, some of the accused persons proceeded towards the light and inquired as to who had flashed the torch light. The informant and another were frightened and thereafter, the informant along with P.W.2 fled towards the village by raising alarm and informed the villagers that the accused persons were in the process of killing his brother. On the alarm being raised by the informant, number of villagers assembled there and the informant with villagers reached to the house of Prabhu Chaudhary {appellant in Cr. Appeal (DB) No. 772 of 2013}, but none was found there. Again, while in searching on the southern side of the house of Prabhu Chaudhary, in a field, he found the dead body of his brother, which was lying in pool of blood. The accused persons had cut the neck of his brother and stabbed in stomach. The informant claimed that in a deep rooted conspiracy, with a view to loot the money from the deceased, all aforesaid four accused persons had committed the crime and killed his brother. The informant further claimed that with the help of villagers, the accused Babulal Chaudhary {appellant in Cr. Appeal (DB) No. 802 of 2013}, Prabhu Chaudhary {appellant in Cr. Appeal (DB) No. 772 of 2013} and Ajay Chaudhary @ Gudda Chaudhary {appellant in Cr. Appeal (DB) No. 721 of 2013} were



apprehended and they were handed over to the police. The said *fardbeyan* was read over to him and after finding it correct, the informant, in presence of Md. Hizbul Rahman (P.W.3), put his signature and Md. Hizbul Rahman (P.W.3) also signed on the *fardbeyan*.

4. On the basis of said *fardbeyan*, on the same date i.e. on 25-02-2010 at 13.00 hrs. (1:00 PM), a formal F.I.R., vide Dumaria P.S. Case No. 5 of 2010, was registered for offence under Sections 302, 394, 120(B)/34 of the I.P.C. against all the four appellants. During investigation, accusation was found true and thereafter on 28-04-2010, chargesheet was submitted against all the four appellants and on 13-03-2011, learned Sub-Divisional Judicial Magistrate, Sherghati (Gaya) took cognizance of the offence. On 13-10-2011, the case was committed to the court of sessions and it was numbered as Sessions Trial No. 123 of 2011. On 31-01-2012, charge was jointly framed under Sections 302/34 & 120(B) of the I.P.C. against all the appellants.

5. To prove its case on behalf of the prosecution, altogether nine witnesses were examined. Out of nine witnesses, P.W.4 Md. Shamshad Khan (elder brother of the deceased) is informant of the case and he has claimed to be eye-witness to the occurrence. P.W.1 Md. Naushad (another brother of the deceased),



P.W.2 Meraj Khan (co-villager) and P.W. 3 Md. Hizbul Rahman (co-villager) have also come forward to be eye-witnesses to the occurrence, whereas P.W.5 Aftab @ Munan Khan (another brother of the deceased), though in sum and substance was a hearsay witness, but during the trial, he too claimed as eye-witness. So far as P.W.3 Md. Hizbul Rahman is concerned, he had claimed that immediately after the occurrence, he saw the accused persons fleeing away. P.W.7 Shahid Khan is a formal witness, who has proved the inquest report. P.W.6 Dr. Arvind Kumar on 25-02-2010 was posted as Professor, Forensic Science and Medicine, A.N. Magadh Medical College, Gaya, who conducted *post-mortem* on the dead body of the deceased, and P.W.9 Heshamuddin Khan Sub-inspector of Police of Dumaria Police Station is the investigating officer, whereas P.W.8 Malo Devi, since did not support the case, was declared hostile.

6. After conclusion of prosecution evidence, incriminating substances and evidences were put to the appellants and they were questioned and their statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') was recorded on 19-02-2013, in which, they claimed to be innocent. However, no defence witness was examined in the case.



7. During the trial, altogether five documents were got exhibited. Those are Ext.1 i.e. signature of informant on the *fardbeyan*, which was proved by the informant himself and he also proved signature of Md. Hizbul Rahman on the *fardbeyan*, which was marked as Ext.1/1. *Post-mortem* report was marked as Ext.2, which was proved by Dr. Arvind Kumar (P.W.6). Ext.3 – inquest report, Ext.4 – *fardbeyan*, Ext.4/1 – endorsement on the *fardbeyan* & signature of S.H.O. namely Vindhyachal Prasad and Ext.5 – formal F.I.R. and signature of S.H.O. on the F.I.R. All those exhibits were proved by P.W.9 (Investigating officer).

8. Sri Vikramdeo Singh, learned counsel assisted by Sri Ashok Kumar Sinha, learned counsel for the appellants, after placing entire evidence, has argued that though it was a case of clean acquittal, the learned Trial Judge has erroneously passed the judgment of conviction and sentence. He submits that during the trial, the prosecution has miserably failed to establish even place of occurrence. He submits that right from the very beginning, it is case of the prosecution that firstly, assault was given on the brother of the informant near the house of appellant Prabhu Chaudhary {in Cr. Appeal (DB) No. 772 of 2013} and witnesses had said that near the house and also wall of the house of Prabhu Chaudhary, they had noticed blood mark. During investigation, at



the time of inspection, the investigating officer had not at all noticed any blood mark. He further submits that it is case of the prosecution that after assault, the injured was carried to the field of one Ganesh Mahto, which was a plain field, no blood was noticed. Sri Vikramdeo Singh has further argued that as per *post-mortem* report, the deceased had received multiple incised injuries on his person. If it was a case of prosecution that after being assaulted near the house of one of the appellants, the injured was carried to the field and his dead body was thrown in the field, there was every possibility of noticing blood mark, since there was possibility of percolating of blood while carrying the deceased from the place of occurrence to the place, where dead body was thrown. The investigating officer in categorical term has stated that he had not at all noticed any blood mark nor any seizure list was prepared by the investigating officer. He further submits that it is case of the prosecution that immediately after the occurrence on chase, out of four appellants, three appellants were apprehended, but the investigating officer in his evidence has stated that he has not noticed any blood mark on the wearing of either of the apprehended appellants. In normal course, there was every possibility to notice some blood mark either on the cloth or on the person of accused, who were shown to be apprehended by



the prosecution immediately after the occurrence. Non-finding of the blood mark on the person of either of the three appellants makes it clear that the appellants were apprehended from some other place and they were shown, as if, they were apprehended while fleeing away after the occurrence.

9. Learned counsel for the appellants has also highlighted that the story developed by the prosecution appears to be unbelievable. He submits that informant in his evidence has stated that he came out from his house with P.W.2 Meraj Khan in search of his brother, who had not returned back to his house till 8 or 8:30 in the night and while moving in search, he heard some sound and thereafter, he claimed that he had seen all the four appellants were killing his brother. Thereafter, the informant flashed the torch-light and in the torch light, he noticed that the appellant Suresh Chaudhary {in Cr. Appeal (DB) No. 806 of 2013} was cutting neck of the brother of the informant and thereafter, accused persons inquired as to who had flashed the torch and on chase, the informant returned back to the village, collected villagers and thereafter, again they arrived in search of his brother and informant had stated that while on second round, the informant arrived at the place of occurrence, he again noticed that the appellants were assaulting the deceased. It has been



argued that it is completely improbable that in a case, in such a situation, the accused, who were noticed by the witnesses, will wait for second arrival of the villagers for final killing of the brother of the informant.

10. Sri Vikramdeo Singh, learned counsel for the appellants submits that in the case, source of identification has not been brought on record. It is case of the prosecution that informant could identify the accused persons while he flashed the torch light, however in the evidence, the investigating officer in clear cut term has stated that no torch-light was ever placed or shown by either of the witnesses during investigation. It has been argued that law is settled on the point that in case of non-production of source of identification, the prosecution case comes into the cloud of doubt. On aforesaid grounds, it has been argued that the judgment of conviction and sentence is liable to be set aside.

11. Sri Ajay Mishra, learned Addl. Public Prosecutor, opposing the appeals, has argued that in the case, informant is the actual eye-witness, who had seen the occurrence and in the occurrence, he had seen that all the four appellants were involved in assaulting the brother of the informant and the oral evidence has been corroborated by the medical evidence. The medical



evidence also states that on the person of the deceased, there were multiple incised injuries and as such, the judgment of conviction and sentence may not be interfered with.

12. Besides hearing learned counsel for the parties, we have minutely examined entire evidences i.e. oral and documentary evidences. At the very outset, after going through the entire evidence, we are of the opinion that the prosecution has miserably failed to establish its case, however before proceeding, it would be necessary to firstly discuss the evidence of the informant, who was examined as P.W.4.

13. P.W.4 Md. Shamshad Khan (informant) in his evidence has stated that occurrence had taken place on 24-02-2010 in between 8 and 8:30 PM. On the date of occurrence, in the evening, at 7:00 PM, the informant was inside his house. The informant further stated that his mother told that Shado @ Shadab Khan (deceased) had gone for bringing labourer, who had not returned till then and asked the informant to go and search for him. At this juncture, it would be necessary to indicate that in the *fardbeyan*, the informant has given a picture that in the evening, he had gone to the tobacco shop of his deceased brother. He had stated in the *fardbeyan* that deceased brother had withdrawn Rs. 30,000/- from Punjab National Bank and thereafter, he was



staying at his shop. Then the informant went there and asked his deceased brother that after closing the shop, he may go to the Chhotki Pankara for hiring labourer and thereafter, the informant went to market. However, while deposing before the trial court, he has stated in his examination- in-chief that at 7:00 in the night, he was in the house and his mother asked him to go and search for his brother, who had gone in search of labourer. This change in the stand of the informant *prima facie* creates serious doubt on the prosecution case. Thereafter, the informant deposed that he alongwith Meraj Khan (P.W.2) went in search of his brother and while he reached near the house of Prabhu Chaudhary {appellant in Cr. Appeal (DB) No. 772 of 2013} in the village Chhotki Pankara, he heard some *hulla* and he went nearer, then he saw that Prabhu Chaudhary, Ajay Chaudhary, Suresh Chaudhary and Babulal Chaudhary (all appellants) had caught hold of his brother and Suresh Chaudhary by means of *fasuli* was cutting the neck of his brother and Babulal Chaudhary was inflicting knife. He further stated that Prabhu Chaudhary had pushed head of the deceased, Ajay Chaudhary had caught hold of legs of the deceased and also carrying knife. He saw all those things while he flashed torch light. Then the accused persons said that they had already taken money and they should cut the deceased. However, the accused



persons, after seeing the informant, proceeded towards the informant to assault him, then the informant went to his village side. In the village, he raised *hulla*, then villagers assembled there and thereafter with the villagers, they again came back to the place of occurrence. Thereafter, reached near the house of Prabhu Chaudhary {appellant in Cr. Appeal (DB) No. 772 of 2013}, but he did not find anyone there, but he noticed blood mark on the floor as well as on the wall. Subsequently, they proceeded to southern side of house of Prabhu Chaudhary and in the field about 180 yards away, he saw the dead body, which was lying in the pool of blood. On noticing the arrival of the informant and villagers, all the four accused persons started fleeing away. They were chased and on chase, out of four appellants, three appellants could be apprehended, however one accused managed to flee away. The accused Suresh Chaudhary {appellant in Cr. Appeal (DB) No. 806 of 2013}, who was resident of different village, had managed to flee away. In paragraph-7 of his examination-in-chief, P.W.4 has stated that immediately thereafter, villagers through telephone informed the police station and after getting information, police arrived in the morning at 5:30. Thereafter, *fardbeyan* was recorded, which was marked as Ext.1. He also proved signature of Md. Hizbul Rahman, which was marked as



Ext. 1/1. In paragraph 12 of his evidence, he stated that his brother was killed at the time of loot of money. On being cross-examined, in paragraph-14, he stated that from the possession of three accused persons, who were arrested, no *fasuli* was recovered. In paragraph-15 of cross-examination, he stated that he had shown the torch to Darogaji and said that through the said torch light, he had identified the accused persons. In paragraph-43 of his cross-examination, he stated that he and others were present near the dead body of Shadab Khan and after one and half hour, chowkidar arrived and thereafter in paragraph-44, he stated that all the three apprehended accused persons were handed over to chowkidar, who kept all the apprehended accused with him. His attention was drawn to the previous statement to many fact, which was stated in his evidence, but on examination of the evidence of investigating officer (P.W.9), it was noticed that the informant had stated many fact, which he had never stated during investigation under Section 161 of the Cr.P.C. On examination of the evidence of informant (P.W.4), it is evident that there are serious contradictions in between the fact disclosed in the *fardbeyan* as well as evidence before the court and also during the trial, he stated many fact, which he had not stated during investigation before the



investigating officer and as such, it would not be safe to proceed only on the basis of evidence of P.W.4.

14. Another important witness in the case is P.W.2 Meraj Khan, regarding whom, the informant had stated that he had gone with him in search of the deceased. He too in his evidence, had tried to depose almost in similar manner like P.W.4, however during cross-examination, his attention was drawn to his previous statement. Those facts have been noticed in paragraphs 49, 50 and 51. This contradiction was corroborated in the evidence of P.W.9 (investigating officer), particularly in paragraphs 38, 39, 40 and 41 of his evidence. Meaning thereby that many facts this witness had developed during the trial. It is a peculiar thing that in paragraph-16 of his cross-examination, this witness has come out with a case, as if, while on second occasion, he alongwith villagers came to the place of occurrence, the accused persons had removed the blood mark, which had fallen at the place of occurrence. It appears that this witness has completely exaggerated the case to establish the prosecution case by hook and crook. The fact regarding removal of blood mark was not found by the investigating officer. The investigating officer/ P.W.9 in his evidence has stated that he had neither found any blood mark nor



he noticed any mark of disappearance of any blood mark from the place of occurrence.

15. The evidence of P.W.1 Md. Naushad, as eye-witness, may not be believed due to the simple reason that the informant in his evidence has not whispered that P.W.1/Md. Naushad had accompanied him at the time of first search of the deceased. Moreover, P.W.1 is the own brother of the deceased. The evidence of P.W.1 may not be relied upon, in view of his own admission, which has come in paragraph-11 of his cross-examination. In paragraph-11 of his cross-examination, he has stated that deceased Shadab Khan was his elder brother. He was present at his house alongwith Shadab Khan 10 minutes preceding to the occurrence, but he had not stated so in his statement under Section 161 of the Cr.P.C. to the investigating officer, as evident from paragraph – 33 of cross-examination of the I.O. (P.W.9). In paragraph-37 of the evidence of P.W.9/ investigating officer, the fact has come that this witness before investigating officer during investigation has stated that on the date of occurrence in the night at 11:30, he had come out from his house in search of his brother Shadab Khan @ Shado Khan (deceased). However, during evidence, this witness suppressed this fact. If this was the stand of the P.W.1 that till 11:30 hrs. in the night on the date of occurrence,



he was searching his deceased brother, then certainly entire prosecution case may not be believed, otherwise also circumstances suggest that the actual occurrence had not taken place, as alleged by the prosecution.

16. P.W.3 Md. Hizbul Rahman, though had claimed to be eye-witness to the occurrence, during his evidence, he tried to develop a case that while he went to the place of occurrence alongwith informant and villagers, he saw accused persons fleeing away.

17. P.W.5 Aftab @ Munan Khan, though during investigation has claimed to be hearsay witness, during the trial, he tried to develop the story, as if, he was also eye-witness to the occurrence. His credibility comes into question only on examination of paragraph-57 of the cross-examination of the investigating officer/P.W.9. In paragraph-57, the investigating officer has stated that during investigation, this witness had stated before him that on the date of occurrence, he had gone out of his house and after the occurrence, he heard and saw the dead body of his brother and he stated that he was not knowing as to who had committed the crime. Attention of this witness was drawn to this witness in paragraph-29 of the evidence of P.W.5. Moreover, P.W.5 in paragraph-2 of his examination-in-chief himself has



stated that he got an information regarding the murder of his brother from P.W.4 (Md. Shamshad Khan), who is elder brother of the P.W.5.

18. P.W.7 Shahid Khan is the formal witness. Though, he had proved his signature on the inquest report, but entire inquest report was marked as Ext.3.

19. P.W.6 Dr. Arvind Kumar on 25-02-2010 was posted as Professor, Forensic Science and Medicine, A.N. Magadh Medical College, Gaya and on the same date at 3:00 PM, he conducted *post-mortem* on the dead body of the deceased and noticed following facts:

“1. Incised wound $3\frac{1}{2}$ ” x $\frac{1}{4}$ ” trachea deep in front of neck extending to the sides at the level of thyroid with gaping & tailing at right margin.

2. Incised wound of $\frac{3}{4}$ ” x $\frac{1}{4}$ ” bone deep at right lower chest wall over 7th space spindle shaped and oblique.

3. Incised wound $1\frac{1}{2}$ ” x $\frac{1}{4}$ ” bone deep at right palm over hypothenar eminence.

4. Incised wound $\frac{1}{4}$ ” x $\frac{1}{4}$ ” bone deep at dorsal of right hand near base of thumb.

5. Stab wound 2” x $\frac{1}{4}$ ”x abdominal cavity deep at epigastrium oblique. Blood and clot present in chest and abdominal cavity. Liver, right lung, sharply cut.

6. Abdominal ranging from 1” x 1” to 3” x 1” present involving left scapular region, chest, lower back both sides at the level of T12 vertebra and forehead on both sides.

Time since death- within 24 hours.

Cause of death- Shock and haemorrhage by injury to chest and abdomen. Injury no. 1 to 5 were caused by sharp cutting weapon, whereas injury no. 6 caused by hard & blunt substance.”

20. This witness proved the *post-mortem* report, which was in his writing and signature, and it was marked as Ext.2. On



examination of evidence of this witness as well as *post-mortem* report, it is evident that on the person of the deceased, there were multiple incised injuries and accordingly, in view of such injury, there was every possibility to notice huge quantity of blood at the place of occurrence or even while carrying the dead body or injured from the place of occurrence to the field, where the dead body was thrown, there was possibility of noticing blood mark, which was not noticed there nor at the place, where the dead body was found, any blood mark was noticed by the investigating officer.

21. The investigating officer/P.W.9 Heshamuddin Khan on 25-02-2010 was posted as Sub-inspector of Police in Dumaria Police Station. He during evidence has proved *fardbeyan*, which was marked as Ext.4, formal F.I.R. marked as Ext.5 and endorsement of the officer incharge on the *fardbeyan* marked as Ext.4/1. In his evidence, in categorical term, he has stated that in the morning at about 5:30 AM, he telephonically received an information regarding murder of someone in the village Pankara, thereafter he rushed to the place of occurrence. He was handed over charge of investigation. He investigated the case and in paragraph-47 of his cross-examination, in categorical term, he has stated that during investigation, no torch was ever produced by



any of the witnesses. In his evidence, he stated that during investigation, he inspected the place of occurrence, however he had not noticed any blood mark at the first place of occurrence, where it was alleged that deceased was assaulted. Then, he visited the place, where the dead body was found that was the field of Ganesh Mahto, son of Raghunandan Mahto. It was vacant plot, where dead body of deceased was found. In paragraph-9 of his examination-in-chief, he stated that villagers handed over three accused, who were earlier apprehended by them, and formally, they were arrested. The accused persons were Babulal Chaudhary, Prabhu Chaudhary and Ajay Chaudhary (all appellants). He examined the apprehended persons, who claimed to be innocent. In paragraph-12 of his evidence, he stated that on the same date, he arrested appellant Suresh Chaudhary {in Cr. Appeal (DB) No. 806 of 2013} from his house situated in village Manjhauri Tola, Chatakpur. It is pertinent to mention that had it been a case of involvement of appellant-Suresh Chaudhary {appellant in Cr. Appeal (DB) No. 806 of 2013}, in normal course, he would not have remained in his own house inviting police to come and arrest him. In paragraph-18 of his cross-examination, he stated that in the ploughed field, where dead body was found, he had not found any blood. In paragraph-20 of his cross-examination, he further



stated that the accused persons, who were apprehended, from whom neither knife nor *fasuli* was recovered. In paragraph-21 of his cross-examination, he stated that the apprehended accused persons had worn cloth, however on their cloth, he had not noticed any mark of blood. Again in paragraph-22, he reiterated that from apprehended accused persons, he did not recover any concealed knife or *fasuli*. In paragraph-23, he clarified that near the house of Prabhu Chaudhary {appellant in Cr. Appeal (DB) No. 772 of 2013}, he had not noticed any blood mark. In paragraph-24, he clarified that he had not noticed any mark near the house of Prabhu Chaudhary indicating that blood mark was removed or it was washed out. In paragraph-25, he stated that he had not noticed any blood mark on the wall of the house of Prabhu Chaudhary. In paragraph-26, it has come that on 25-02-2010 in the morning at 5:30, he got telephonic information and he stated that earlier, he had not sent any chowkidar to village Pankara. In paragraph-29 of his cross-examination, he stated that regarding the occurrence in the night, he had not received any information and this was the reason that there was no question of deputing any chowkidar. The distance from the village Khaira i.e. village of the informant's side and Dumaria Police Station was described by him in paragraph-31 as 1-1½ kilometer.



22. After examination of entire evidence, it is difficult to believe that once the prosecution side had seen the occurrence of brutal murder of the deceased in the night at about 8:30 PM and distance of police station from the village of informant was only 1½ kilometer, as stated by the investigating officer that it was connected with road, there was no reason immediately not to inform the police and this is the reason that the investigating officer has stated that only in the morning, he was informed telephonically regarding the occurrence. Fact remains that though informant had claimed to identify the appellants in the torch-light, but source of identification was never produced either during investigation or during trial of the case and non-production of such source of identification, in view of facts and circumstances of the present case, was fatal to the prosecution case.

23. Moreover, the evidences, as discussed above, are sufficient to show that the prosecution has miserably failed to establish its case and as such, it is a fit case for interference with the judgment of conviction and sentence.

24. Accordingly, the judgment of conviction and sentence dated 18-06-2013 and 27-06-2013 respectively passed in Sessions Trial No. 123 of 2011/452 of 2011 (arising out of Dumaria P.S. Case No. 5 of 2010) by Sri Anil Kumar, learned Adhoc Additional



District & Sessions Judge 1st, Gaya is, hereby, set aside and all the aforesaid four appeals are allowed.

25. The appellant Suresh Chaudhary {in Cr. Appeal (DB) No. 806 of 2013} is inside jail and since the judgment of conviction and sentence has been set aside, he is directed to be released forthwith, if not required in any other case. Other appellants, who are on bail, are discharged from the liability of their bail-bonds.

(Rakesh Kumar, J.)

(Prakash Chandra Jaiswal, J.)

Anay

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.02.2019
Transmission Date	28.02.2019

