

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 445 of 2009**

=====

Hare Ram Singh

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 65 of 2013

Arising Out of PS. Case No.-19 Year-2006 Thana- SHEIKHOPUR SARAI District-
Sheikhpura

=====

Hare Ram Singh, Son of Late Upendra Singh, Resident of Village - Nimi,
P.S. - Shekhopur Sarai, District - Sheikhpura.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 445 of 2009)

For the Appellant/s : Smt. Rina Sinha, Amicus Curiae

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

(In CRIMINAL APPEAL (DB) No. 65 of 2013)

For the Appellant/s : None

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

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 23-07-2019

The sole appellant was convicted and sentenced by the
common judgment. Judgment of conviction was passed on 8th



May, 2008 and he was convicted for offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.') and by order dated 12-05-2008, he was sentenced to undergo imprisonment for life. The judgment of conviction and sentence was passed by Sri Vijay Kant Mishra, earned Addl. Sessions Judge, F.T.C.-Vth, Sheikhpura (hereinafter referred to as 'Trial Judge') in Sessions Case No. 210 of 2007/Trial No. 78 of 2008 (arising out of Shekhopur Sarai P.S. Case No. 19 of 2006).

2. On perusal, it appears that after conviction, there was none to do *pairvi* on behalf of the appellant and he was in custody, thereafter, a letter under the signature of the appellant was received, which was certified and forwarded by the Jail Superintendent, Bhagalpur on 01-04-2009. Accordingly, the matter was listed before a Division Bench and on 19-05-2009, Smt. Rina Sinha, learned Advocate, who was present in Court, was appointed as *Amicus Curiae* and it was directed for listing this appeal for hearing on limitation matter. Thereafter, by order dated 17-07-2009, the delay in preferring the appeal was condoned. By order dated 25-07-2009, the appeal was admitted and lower court record was called for. Despite the fact that the present appeal, which was sent from jail, was admitted, subsequently in the year



2013, one another appeal, vide Cr.Appeal (DB) No. 65 of 2013, was filed on behalf of same appellant against same impugned judgment from the office of one Sri Dhirendra Nath Jha, learned counsel alongwith an interlocutory application i.e. I.A. No. 181 of 2013 under Section 5 of the Limitation Act, 1963 for condoning delay in filing appeal. The Registry in this appeal failed to point out that earlier an appeal i.e. Cr.Appeal (DB) No. 445/2009, filed against the same judgment of conviction and sentence, was already admitted as 'Jail Appeal'. Subsequently, the appeal i.e. Cr.Appeal (DB) No. 65 of 2013 was listed on 05-02-2013 and a coordinate Bench of this Court condoned the delay in filing the appeal, which was of 4 years & 9 months (*though in limitation petition, delay of 4 years 8 months has been written*) and directed for summoning lower court record. Only thereafter, the fact has come to fore that appeal filed on behalf of the appellant from jail has already been admitted. Accordingly, both the appeals have been listed under the heading "For Hearing", however; Sri Dhirendra Nath Jha, learned counsel, who had filed Cr.Appeal (DB) No. 65 of 2013, did not appear.

3. The case has been initiated on the basis of *fardebayan* of one Umesh Singh (P.W.2), who was Chowkidar of village Nimi,



which was recorded by Sub-Inspector of Police-cum-officer incharge Rajdeo Prasad, Shekhopur Sarai Police Station (Sheikhpura). The said *fardebayan* was recorded on 06-07-2006 at 14.30 hrs. (2:30 PM) at Dabaria khanda, Nimi. In the *fardebayan*, the informant disclosed that he was chowkidar of the village Nimi, which is within the Shekhopur Sarai Police Station and he was allotted Beet No. - 4/5. He, in his *fardebayan*, stated that on the same date i.e. on 06-07-2006 at about 12.30 PM, he got an information that in the village, one of the villagers namely Hare Ram Singh had murdered his father Upendra Singh about 2 km away from the north-east side of the village near 'Nigar Khanda' in the maize field by giving हसुआ (sickle) blow on stomach, chest and head. After getting information, with a view to get it verified, he went to eastern *bathan* near dabaria khanda, where there was forest of seisum and toddy trees. On his arrival, he saw the dead body of Upendra, which was on a cot and on his person/body, there were injuries. He further stated that at that very time, villagers namely; 1. Sachita Singh, 2. Madan Singh, 3. Bum Singh, 4. Ram Pravesh Singh, 5. Kundan Singh, 6. Bipin Singh, 7. Ramji Singh, 8. Shiv Shankar Singh, 9. Mintu Singh, 10. Shiv Kumar Singh, all residents of village Nimi, Police Station



Shekhopur Sarai, District – Sheikhpura and about 40 unknown persons were collecting woods, kerosene oil etc. The informant in his *fardbeyan* further stated that he tried to prevent them and asked not to burn the dead body, since he had already given information to officer incharge of the police station and he was coming, however; those persons did not accede to the request of the informant and forcibly putting the dead body on woods after sprinkling kerosene oil set it on fire. Even, those accused persons had threatened the informant. Thereafter, the informant started waiting for the arrival of the police, however; the accused persons continued to burn the dead body. The dead body had already been burnt and about 2:15 PM, police on vehicle arrived and after noticing the police party, all the accused persons scattered and fled away. The reason for the occurrence was assigned by the informant that in the preceding night, in between the deceased Upendra Singh and his son appellant Hare Ram Singh, there was some dispute for work as well as partition of the land. Due to the said reason, the deceased was done to death by Hare Ram Singh (appellant) by inflicting blow of *Hasua* (sickle). The informant claimed that aforesaid accused persons with common object, with a view to get escape from the charges, had disappeared the



evidence by way of burning the deceased to ashes. The *fardbeyan* was read over to him and after finding it correct, he put his signature on the *fardbeyan*.

4. On the basis of *fardbeyan* of the Chowkidar, on the same date i.e. on 06-07-2006 at 20.00 hrs. (8:00 PM), a formal F.I.R., vide Shekhopur Sarai P.S. Case No. 19 of 2006 was registered for offence under Sections 302, 201, 34 of the I.P.C. against:

- (i) Hare Ram Singh (appellant),
- (ii) Sachita Singh
- (iii) Madan Singh
- (iv) Bum Singh
- (v) Ram Pravesh Singh
- (vi) Kundan Singh
- (vii) Bipin Singh,
- (viii) Ramji Singh,
- (ix) Shiv Shankar Singh,
- (x) Mintu Singh, and
- (xi) Shiv Kumar Singh.

5. After registering F.I.R., police investigated the case. It has come that on the very next date appellant was arrested. Police thereafter, on 02-10-2006 submitted chargesheet only against appellant keeping investigation pending against other ten F.I.R. named accused persons. Thereafter, on 16-10-2006 learned A.C.J.M., Sheikhpura took cognizance of the offence and case was committed to the court of session on 15-03-2007 and as such, it



was numbered as Sessions Trial No. 210 of 2007. On 08-05-2007 charge under Sections 302, 201/34 of the I.P.C. was framed against appellant, which was denied by him and he claimed to be tried.

6. During the trial, to establish its case on behalf of the prosecution, altogether 10 witnesses were examined. Out of 10 witnesses, Umesh Kumar, village chowkidar was examined as P.W.2. P.W.5 Rekha Devi, P.W.6 Kunal and P.W.7 Yugal Paswan, all co-villagers of the appellant and deceased were examined as witness to the occurrence, whereas, P.W.3 Kishori Pasi and P.W.4 Vidya Nandan Singh are hearsay witnesses. P.W.9 Nawesh Singh is the witness to the seizure list. P.W.10 Rajdeo Prasad was the officer incharge of Shekhopur Sarai Police Station, who recorded *fardbeyan*, investigated the case and submitted chargesheet. However, P.W.1 Shrawan Kumar (own brother of the appellant and son of the deceased) and P.W.8 Md. Mustaquim (Sarpanch of the village) did not support the prosecution case and as such, they were declared hostile.

7. After conclusion of the prosecution evidence, on 11-01-2008 circumstances and evidences brought during the trial were explained to the appellant and his statement under Section



313 of the Code of Criminal Procedure, 1973 was recorded, in which, he denied the evidences. However, on behalf of defence, neither any oral evidence nor documentary evidence has been brought on record. On the basis of material collected during the trial, the learned Trial Judge by the impugned judgment has convicted the appellant, which has been assailed by the appellant through his jail appeal.

8. Smt. Rina Sinha, learned *Amicus Curiae*, after placing entire evidence, both oral and documentary, has argued that prosecution has not been able to establish its case beyond all reasonable doubt. She tried to persuade the Court that it appears that the appellant was falsely implicated in a deep-rooted conspiracy by the investigating officer and in connivance with P.Ws. 5, 6 and 7. It has been argued that on examination of so called eye-witnesses i.e. P.Ws. 5, 6 and 7, it is apparent that there were serious inconsistencies in their evidences and as such, it would be difficult to come to a conclusion that who was the reliable witness, otherwise evidence of all the three so-called eye-witnesses creates a doubt that none had seen the occurrence or the occurrence had taken place in the manner otherwise than the manner shown by the prosecution.



9. Smt. Rina Sinha, learned *Amicus Curiae* has emphasized that the prosecution has neither established the manner of occurrence nor in the case, place of occurrence has been exactly established and in absence of two main ingredients, the learned Trial Judge was not required to pass judgment of conviction and sentence. She has specifically referred to evidence of P.W.5/Rekha Devi, particularly her evidence in paragraph - 3, in which, she categorically accepted that she had not seen the occurrence, rather she only heard the sound of cry of deceased, however; P.W.6 Kunal, who was shown to be star witness in the case, has come and deposed, as if, he was firstly informed by Rekha Devi (P.W.5) regarding the occurrence and thereafter, he visited the place of occurrence, however; he was threatened and chased by the appellant, who was carrying *Hasua* (sickle) in his hand. He (P.W.6) further stated that he had seen the injured lying in the field. Smt. Sinha, learned *Amicus Curiae* submits that if P.W.6 was the main eye-witness to the occurrence, the investigating officer was required to immediately record his statement, but P.W.6 in paragraph 10 of his evidence himself has stated that his statement was recorded by the police two days after the occurrence and that too on the way while he was going



somewhere else. She has further argued that evidence of P.W.6 may not be relied upon due to the reason that in paragraph - 4, this witness stated that he got information regarding death of the deceased at 2:00 PM, whereas the informant/P.W.2 chowkidar of the village in *fardbeyan* itself has stated that he got information regarding death of Upendra (father of the appellant) at 12:30 PM. This also creates serious doubt either on the evidence of P.W.2 or evidence of P.W.6.

10. It has further been argued by Smt. Rina Sinha, learned *Amicus Curiae* that despite the fact that appellant only on the next date was arrested by the police, police had not bothered to take any step regarding seizure of the said *hasua* (sickle), which was purported to be used by the appellant, as a weapon and through which, it was alleged that appellant had inflicted injury on the person of the deceased. On the contrary, it has been argued that the investigating officer in paragraph 13 of his cross-examination has admitted that he had not taken any step for recovery of the weapon, even the room of the wife of the appellant was not searched by the police to ascertain as to whether the weapon was concealed in the room or not. It has further been argued that as per prosecution case, dead body of



deceased was burnt by number of villagers, however; nothing has been indicated as to what was the reason that villagers were assisting the appellant in disposing of the dead body. Even some of the witnesses, though had claimed to identify number of accused persons, who were involved in burning the dead-body, but none of those witnesses have said regarding presence of appellant at the time of burning of the dead body.

11. Learned *Amicus Curiae* has also argued that during investigation, no material evidence has been seized from the alleged first place of occurrence, however; the investigating officer vaguely has stated that he had noticed blood drop at the first place of occurrence. The prosecution case, according to learned *Amicus Curiae*, appears to be not believable due to the reason that had it been a case that appellant was involved in murder of his father, his brother Shrawan Kumar, who was examined as P.W.1, would have certainly even whispered regarding involvement of the appellant, but P.W.1 was declared hostile by the prosecution. In sum and substance, it has been argued that in absence of any motive, non-establishment of place of occurrence and inconsistent evidence of the so-called eye-witnesses, there was no reason for the learned Trial Judge to pass the judgment of conviction and



sentence and as such, the judgment of conviction and sentence is liable to be set aside.

12. Sri Ajay Mishra, learned Addl. Public Prosecutor opposing the appeal has argued that it is true that during the trial, no cogent evidence has been brought on record regarding the motive of the occurrence, but fact remains that P.W.6 is the eye-witness to the occurrence and all other witnesses, such as; P.W.2, 3 & 4 have stated in their evidences that they were informed by P.W.6 Kunal regarding the occurrence. Sri Mishra, learned A.P.P. submits that in a criminal trial, number of witnesses hardly matters, it is the quality of the evidence, which is required to be tested. He submits that the evidence of P.W.6 itself is sufficient for approval of the judgment of conviction and sentence.

13. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same, *prima facie*, we are of the opinion that the learned Trial Judge has incorrectly passed the judgment of conviction and sentence, but before proceeding, it would be necessary to discuss the evidence of prosecution witnesses.

14. P.W.2 Umesh Singh, local Chowkidar, has stated that on the date and time of occurrence, he was at his home. He



heard that Hare Ram (appellant) by inflicting *hasua* (sickle) had killed his father Upendra Singh. The murder had taken place about 2 km. north-east of Nigar Khanda in the maize field. After getting information, he went to the police station for giving information to the police, however; he did not find Bada Babu (officer incharge of the police station), however; Munshi of the Thana over mobile arranged conversation with the officer incharge with him and as per direction of the officer incharge, this witness went to the place of occurrence. While he was moving towards the field, he got an information that dead body had already been lifted and thereafter, this witness rushed to dabaria khanda where at a lonely place surrounded by seisum trees as well as toddy trees, he saw that dead body was kept on cot, which was having injury and there was bleeding from his stomach, chest and head. There 30-40 persons were collecting wood and kerosene oil for burning the dead body. Amongst them, he could identify Madan Singh, Sachita Singh, Ramji Singh, Shankar Singh, Ram Pravesh Singh, Bum Singh, Bipin singh, Mintu Singh, Kundan Singh and Shiv Kumar Singh, however this witness has not whispered regarding presence of appellant. This witness further stated that despite his obstruction, the accused persons, by sprinkling kerosene oil on wood and dead-



body, ignited the same. Even the informant was threatened. Thereafter, he started to wait for arrival of officer incharge, who reached at 2:15 PM. After noticing the arrival of the police vehicle, all accused persons fled away.

15. At this juncture, it is relevant to notice that nothing has been indicated as to what was the reason that 30-40 villagers had assembled for burning of the dead body. There is big question whether the said act was of burning the dead body or it was cremation, otherwise there was no reason for presence of such huge number of villagers at the time of burning of the dead body. Even had it been a case that 30-40 persons had assembled for disappearing the evidence, then there was no reason for allowing the informant to remain present for arrival of the police. This also creates some doubt regarding the conduct of the informant.

16. The informant further stated that at the place of occurrence itself after arrival, the officer incharge Rajdeo Prasad recorded his *fardbeyan* and he identified his signature on the *fardbeyan*, which was marked as Ext.1. In paragraph -2 (at page 12 of the paper book), this witness has further stated that those accused persons with a view to save Hare Ram (appellant) were burning the dead body. This also appears to be not believable that



in a case in which appellant had killed his father, large number of villagers would come forward to save the appellant and they would indulge in committing an offence under Section 201 of the I.P.C. by way of disposing/disappearing the evidence. In paragraph 3 of his evidence, he further stated that reason for the occurrence was that there was dispute in between appellant and father regarding partition of the land, surprisingly no chit of paper has been brought on record nor any other plausible evidence has been brought on record to show that there was any such dispute or not. The best witness at this very point would have been brother of the appellant (P.W.1). He too has not supported such version. Accordingly, the reason, which has been assigned by P.W.2 informant/chowkidar, creates serious doubt regarding the conduct of this witness. In paragraph 4 of his cross-examination, this witness (P.W.2) admits that he himself had not seen Hare Ram (appellant) killing his father.

17. Another witness, who was introduced as eye-witness, is P.W.5 Rekha Devi. In her evidence, she has stated that she was doing some work in her field. It has come in evidence that the said field was about 2 km away from village, even then, she was doing field work alone in maize field. She stated that while



she was in field, she heard sound of cry of Upendra (deceased), thereafter, she rushed to Kunal and informed him. Thereafter, Kunal went to settle the dispute, however; Hare Ram (appellant) chased him to assault. Thereafter, he fled away. She stated that Hare Ram was assaulting his father in khanda. In paragraph 1, she further stated that thereafter she heard that Hare Ram (appellant) had killed his father and belatedly she heard that villagers had burnt the dead body to ashes. In paragraph 2 of her cross-examination, she stated that she had gone to her field at 6:00 in the morning and returned at 12.00 noon and thereafter, she did not come out from her house. There was field of Ram Singh also in the khanda, where there was crop of maize of the height of about 3 feet. She stated that she herself had not seen the fight. On court question, "**she answered that she had not seen anyone, only she had heard the sound of cry of Upendra and thereafter, she fled away. She further stated that the statement, which she deposed in the court, was made on the basis of information, which she heard in the village.**" On examination of court answer of this witness, her earlier entire evidence itself is wiped out and no reliance can be placed as to whether she was witness to the occurrence or not,



save and except the fact that she had heard the sound of cry of the deceased. She had not even stated that while the deceased was crying, there was presence of appellant or not.

18. P.W.6 Kunal, one another co-villager, to the reasons best known to the prosecution has been introduced, as if, he had seen many thing, however; on minute examination of his evidence vis-a-vis evidence of P.W.5 (Rekha Devi), certainly evidence of P.W.6 may not be relied. P.W.6 Kunal in his evidence has stated that occurrence had taken place at about 11 in day time. He was doing field work in his maize field, in the meanwhile, Rekha Devi (P.W.5) rushed to him and told that Upendra Singh (deceased) and Hare Ram (appellant) were fighting with each other. Thereafter, he went to settle the dispute, however; he was chased by the appellant. In evidence of this witness to the extent that he was informed by Rekha Devi (P.W.5) itself comes into cloud of doubt, since P.W.5 Rekha Devi in her evidence has stated that after hearing the cry, she simply fled to her house. Meaning thereby that evidence of P.W.6 to the extent that he was informed by Rekha Devi may not be believed. Ofcourse, in his evidence, he further stated that after being chased, he went to Yugal Paswan (P.W.7), who was also doing some work in the field nearby field of



this witness and informed Yugal Paswan, thereafter, both of them went to the place of occurrence, however; till then, Hare Ram (appellant) had already fled away. This witness stated that he saw that Upendra Singh (deceased) was lying in injured condition and thereafter, he pushed him up and then asked for water. Thereafter, Yugal Paswan (P.W.7) and Rekha Devi (P.W.5) fetched water to him. Subsequently, he states that he went to the house of the injured for giving information and from there, he returned back to his house and subsequently, he heard that villagers had burnt the dead body. In the evidence of this witness to the extent that Yugal Paswan (P.W.7) and Rekha Devi (P.W.5) had provided water to the injured may not be believed due to evidence of P.W.5 itself. If this part of the evidence of P.W.6 is considered as incorrect or concocted, certainly no reliance can be placed on his other part of the evidence and this witness can be termed as 'untrustworthy witness'. In his evidence, it has also come that police had recorded his statement two days after the occurrence, that too while he was moving for somewhere else. At this juncture, it is necessary to notice that in the *fardbeyan*, the fact has come out with a case that informant was informed by P.W.6 Kunal regarding the occurrence. In normal course, the



investigating officer, who had also recorded *fardbeyan*, would have firstly visited to examine this star witness, however; in a casual manner, he (P.W.6) was examined while he was moving for somewhere else. This also creates some doubt on the prosecution case. In any event, in his evidence, it has not come that he (P.W.6) saw the appellant assaulting his father.

19. P.W.7 Yugal Paswan in his evidence has stated that on the date and time of occurrence, he was in his khanda and ploughing his field. In the meanwhile, he heard the voice of Kunal (P.W.6). Thereafter, he came out from his khanda and thereafter, Kunal informed that Hare Ram (appellant) and Upendra (deceased) both were fighting with each other. Thereafter, this witness with Kunal (P.W.6) and Rekha Devi (P.W.5) went there. He saw that Hare Ram (appellant) was giving *hasua* blow on his father. After noticing this witness and others, Hare Ram chased them and he returned back. Subsequently, he saw that Hare Ram was fleeing away, then he went near Upendra (deceased) and saw that he (deceased) was bleeding and on his person, there were number of cut injuries. They provided water, however since there was injury on his mouth, he could not drink. Kunal (P.W.6) thereafter went to house of Upendra (deceased) to inform



regarding the occurrence and this witness went to do his field work. Thereafter, he was not aware as to what happened.

20. The evidence of this witness i.e. P.W.7 is also inconsistent with the evidence of P.W.5 and P.W.6. P.W.5 Rekha Devi had stated that after hearing the sound of cry of deceased, she went and informed P.W.6 Kunal and thereafter, P.W.6 Kunal went to the place of occurrence, who was chased by the appellant, however; this witness (P.W.7) is stating that he alongwith P.W.5 and P.W.6 went to the place of occurrence and all were chased by the appellant. Apart from that, P.W.5 in answer to court question in categorical term has stated that after hearing the sound of cry of deceased, he fled and directly went to her house. Meaning thereby that she had neither informed P.W.6 nor accompanied P.W.6 and P.W.7 to the place of occurrence. These serious inconsistencies in the evidence of P.Ws. 5, 6 and 7 categorically demolishes the prosecution case.

21. So far as P.W.3 Kishori Pasi and P.W.4 Vidya Nandan Singh, who were co-villagers, are concerned, in their evidence they have only stated that they were informed by P.W.6 Kunal regarding the occurrence. Since the source, from which both the witnesses got information, appears to be doubtful, there is no



reason to place any reliance on their evidence. Besides this, both the witnesses i.e. P.W.3 and P.W.4 have stated that police arrived at the second place of occurrence where the dead body was being burnt and police had carried the dead body with them, however; neither the investigating officer nor any other witnesses have stated regarding collecting dead body, rather P.W.10 Rajdeo Prasad, surprisingly who had recorded *fardbeyan* of the informant/P.W.2, himself had taken up investigation of the case and right from the recording of the *fardbeyan*, he himself recorded formal F.I.R., prepared seizure list and he himself had filed chargesheet in the case.

22. In normal course, such mode/practice should have avoided by the investigating officer. Once he had recorded *fardbeyan*, then in that event, he was required to hand over investigation to other police officer. Only one police officer, who at the very inception, had come and recorded *fardbeyan*, recorded formal F.I.R., took up investigation, arrested the appellant and submitted chargesheet against the appellant, whereas investigation in respect of other named accused persons was kept pending. The Court is of the opinion that an officer, who records *fardbeyan*, may avoid to conduct entire investigation, otherwise



there would be every possibility of bias in the mind of such officer. To avoid biasness and unfair investigation, it is advisable to the police officer, who records *fardbeyan*, to avoid further investigation.

23. In his evidence in paragraph - 1, P.W.10/I.O. deposed that on 06-07-2006 he was posted as officer incharge in Shekhopur Sarai Police Station. He got information from Choukidar Umesh Singh/P.W.2 regarding the killing of Upendra Singh by the appellant and also the fact that villagers were burning the dead-body on the same date at 14.30 hrs (2:30 PM), he reached dabaria khanda in the village Nimi and saw that dead body of Upendra Singh was burning. At the same place, he recorded *fardbeyan*, over which, there was his signature as well as signature of the informant and he identified the same, which was marked as Ext.2. He further stated that he himself took up investigation of the case and in course of investigation, he recorded re-statement of the informant. He stated that while he arrived, the dead-body had already burnt to ashes and due to this reason, from the said place, he collected ashes, semi-burnt seisum wood, semi burnt cot, जरकिन (gallon) of kerosene oil. He prepared seizure list and obtained signature of Nawesh Singh (P.W.9) and



Nunu Lal Prasad (not examine). This witness also put his signature. He then identified the seizure list and it was marked as Ext.3. In paragraph -2, he described that he inspected the place of occurrence, where dead body was burnt. In the northern side, there was orchard of one Yugal Singh, in southern side orchard of Viro Singh, in eastern side mango orchard of Genhari Singh and again in eastern side, there was vacant land of Manoj Singh. However, to the reasons best known to the investigating officer, he has not bothered to examine either of those persons, whose orchards/land were near the place of occurrence. Again in the next paragraph, he inspected the first place of occurrence, regarding which, it was disclosed that deceased was done to death. It was maize field of deceased Upendra, which was in village Nimi. Though, he stated that he had noticed sign of blood drop and some sign of dragging of the dead body towards southern side in the sugarcane field, but to the reasons best known to him, he has not bothered to collect soil soaked with the blood or blood marks soil. Again in the same paragraph, he stated that said place of occurrence was surrounded from northern side by the sugarcane field of Arjun Singh, southern side sugarcane field of Ganesh Yadav, eastern side maize field of Shankar Singh and again on



west side maize field of Shankar Singh, but he has not bothered to examine either of those witnesses. Moreover, he has not recorded any finding as to once the field, in which the said occurrence had taken place, was it possible to see the occurrence from the field beyond sugarcane field or maize field. He further stated that during investigation, he recorded statement of other witnesses and in paragraph - 5 of his evidence, he stated that on the next date i.e. 07-07-2006, he recorded statement of P.W.6 (Kunal), P.W.7 (Yugal Paswan) and P.W.5 (Rekha Devi). Once the case has been initiated on the basis of information provided by Kunal, in normal course, it was expected that the investigating officer would have firstly visited to the premises of P.W.6 (Kunal) to gather further information, but in the case, to the reasons best known to the investigating officer, he recorded statement of number of witnesses and at belated stage, he recorded the statement of P.Ws. 5, 6 and 7. Though initially, those witnesses tried to depose, as if, they had seen the occurrence, but on minute examination of their evidence and inconsistencies, there was no reason to place any reliance on their evidences.

24. It is also evident from the evidence of investigating officer that appellant was apprehended by him on the same date



i.e. date of occurrence, however he himself admits that he had not even bothered to search the house of the appellant or room of his wife to recover so called used weapon nor anything has been indicated as to whether he took any step or he recovered weapon or not. He further in paragraph - 12 of his cross-examination, stated that he was not in a position to state as to whether murder had taken place in the field of maize or sugarcane field. Meaning thereby that the investigating officer himself was not sure regarding the place of occurrence and as such, the actual place of occurrence, where the so called murder had taken place, has not been established by the prosecution. In paragraph 10 of his cross-examination, he stated that he had not sent any article to F.S.L. and further he stated that the chowkidar had got information regarding murder at about 12:30 PM. It is also difficult to perceive that once chowkidar Umesh (informant) had stated that he got information at 12:30 PM from the mouth of P.W.6, the evidence of P.W.6 that he got information regarding the death at 2:00 PM itself is a big question regarding reliability or credibility on the prosecution evidence. Even though, no such articles were produced during the trial, save and except, he identified the seizure list, the seizure list witness i.e. P.W.9 in his evidence has



stated that the police on a blank paper had obtained his signature.

This also goes against the prosecution case.

25. On examination of entire evidence on record, the judgment of conviction and sentence may not be approved, in view of following facts and circumstances:

(i) The prosecution has miserably failed to establish the motive behind killing of deceased, who was own father of the appellant, whereas, his younger brother, who was examined as P.W.1, has not supported the prosecution case. None of the witnesses have brought on record any admissible material to show that there was any motive for the occurrence.

(ii) In the case, actual place of occurrence i.e. place where the deceased was done to death has not been categorically established by the prosecution nonetheless the investigating officer himself has stated that he was not sure as to at which place murder had taken place.

(iii) The entire case is based on hearsay evidence. The source of hearsay has been projected by the prosecution as P.W.6 Kunal, who was introduced, as if, he was informed by P.W.5 (Rekha Devi) that he had heard the cry of the deceased and also regarding the fact of fighting in between the deceased and the appellant and thereafter, he visited the place of



occurrence. Even after his arrival, he has not seen the occurrence, rather it was stated that he was chased by the appellant and he noticed that the injured was lying. At that very time, he has not stated that the injured had died or not. It is not a case that anyone had seen the actual death of the injured, rather a case was built up that dead body was being cremated or burnt at a different place. The prosecution has not been able to establish the reason that as to why the villagers had participated in the disposal of the dead body, rather it appears that after the death the dead body was cremated. Even at the time of cremation, none of the witnesses have seen the appellant.

(iv) Once on the date of occurrence itself, appellant was apprehended by the police, in normal course, the investigating officer would have taken step to recover the weapon used in the occurrence, however; in the evidence of investigating officer, it has come that he has not even bothered to inspect the room where the appellant was residing, what to talk about search of different places regarding recovery of the weapon.

(v) On examination of evidence of P.W.5, 6 and 7, who were projected as star witnesses to the occurrence, there are serious inconsistencies in their evidence and if we examine those evidences vis-a-vis evidences of other witnesses, the noticing of the occurrence by any of the witnesses appears to be doubtful.



26. Accordingly, the fact that prosecution has not brought on record any credible oral evidence to witness the actual occurrence, non-assigning of any plausible explanation as to why number of villagers had participated in cremation/burning the dead-body, non-establishment of the place of occurrence and also other materials, which we have discussed here-in-above, create serious doubt on the prosecution case, and as such, in view of aforesaid facts and circumstances, there is no reason to approve the judgment of conviction and sentence.

27. Accordingly, the judgment of conviction and sentence dated 08-05-2008 and 12-05-2008 respectively passed by the learned Addl. Sessions Judge, F.T.C.-Vth, Sheikhpura in Sessions Case No. 210 of 2007/Trial No. 78 of 2008 (arising out of Shekhopur Sarai P.S. Case No. 19 of 2006) is, hereby, set aside and the jail appeal i.e. Cr.Appeal (DB) No. 445 of 2009 is allowed. Since the appellant (Hare Ram Singh) is in jail, it is directed to release him forthwith, if not wanted in any other case.

28. So far as Cr.Appeal (DB) No. 65 of 2013 is concerned, since it was filed by the same appellant against the same judgment of conviction and sentence and also none had appeared on behalf of appellant, there is no reason to pass any



separate order. Virtually, this appeal has become infructuous, in view of the fact that jail appeal of the appellant i.e. Cr.Appeal (DB) No. 445 of 2009 has already been allowed. Accordingly, Cr.Appeal (DB) No. 65 of 2013 is directed to be consigned.

29. Let a copy of the first and last page of this judgment be handed over to Smt. Rina Sinha, learned *Amicus Curiae* and she be paid prescribed fee by the Patna High Court Legal Services Committee.

(Rakesh Kumar, J.)

(Anjani Kumar Sharan, J.)

Anay

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.07.2019
Transmission Date	30.07.2019

