

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.681 of 2012

Arising Out of PS. Case No.-216 Year-2009 Thana- DINARA District- Rohtas

Keshwar Singh, son of Late Ganesh Singh, Resident of Village-Bhagiratha,
P.S.-Dinara, P.O.-Khudru, District-Rohtas at Sasaram.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

With
CRIMINAL APPEAL (DB) No. 832 of 2012

Arising Out of PS. Case No.-216 Year-2009 Thana- DINARA District- Rohtas

Sanjay Singh, Son of Sri Keshwar Singh, Resident of Village-Bhagiratha,
P.S.-Dinara, P.O.-Khudru, District-Rohtas at Sasaram.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) Nos. 681 of 2012 & 832 of 2012)

For the Appellants	:	Mr. Ajay Kumar Thakur, Advocate Mr. Nilesh Kumar, Advocate Mr. Udbhav, Advocate
For the Respondents	:	Ms. Shashi Bala Verma, APP with Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 13-02-2020

The aforesaid Criminal Appeal (DB) Nos. 681 of
2012 and 832 of 2012 preferred by the accused/appellants
Keshwar Singh and Sanjay Singh respectively are directed
against the judgment of conviction dated 15th June, 2012 and
order of sentence dated 18th June, 2012 passed by the learned 6th



Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No.58 of 2010 whereby both the appellants have been convicted for the offence punishable under Section 302 read with 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and the appellant Sanjay Singh has further been convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for a further period of three years.

2. The prosecution case is based on the fardbeyan of the Sheopati Singh (PW-5), which was recorded by the Officer-in-Charge of the Dinara Police Station, Amarnath Singh on 12.10.2009 at 4:15 p.m., at Kaharpurwa Badhar, in village-Bhagiratha Dera, P.S.-Dinara, District-Rohtas. He has stated in his fardbeyan that on 12.10.2009, at about 2:00 p.m., he had gone together with his son Bans Narain Singh aged 38 years for cultivation of potato in his field situated in the eastern side of his village. When he reached near his field, he saw that his brother Keshwar Singh, aged about 70 years, nephew Sanjay Singh, aged about 38 years, grand-sons Deepak Singh, aged about 19 years and Ashok Singh, aged about 15 years had damaged the ridge and ploughed his field. On being asked, they got into a battle of words. In the meantime, at about 3:00 p.m.,



Keshwar Singh exhorted his son Sanjay Singh, who took out his country-made pistol and fired a shot causing injury to Bans Narain Singh in the back of his head as a result of which, he fell down. Thereafter, Deepak Singh also fired a shot from his country-made pistol causing injuries to Bans Narain Singh in the back of his left ear. His injured son died at the spot. He has further stated that the accused Ashok Singh was also possessing a country made pistol and had also opened fire.

3. The fardbeyan of the informant was witnessed by PW-3 Rajbansh Singh.

4. The Officer-in-charge of Dinara Police Station, Amarnath Singh, after recording the fardbeyan on 12.10.2009, at 4:15 p.m., prepared the inquest report of the deceased Bans Narain Singh at the place of occurrence itself on the same day at 5:30 p.m.. The inquest report was witnessed by PW-3 Rajbansh Singh and one Rakesh Kumar Singh (not examined).

5. On perusal of the inquest report, which was proved during trial by PW-8 Amarnath Singh and marked as Exhibit-5, it would appear that the body of the deceased was found lying in the village-Kaharpurwa in the parti land of one Deomuni Singh. Column 6 of the inquest report meant for



noting the circumstances, if any, which reveal about the manner in which crime was committed has been left blank. In column no.9, the police officer, who has prepared the inquest report has noted that the death was caused due to gun shot injury.

6. After preparing the inquest report, the Officer-in-charge of Dinara Police Station, Rohtas drew a formal first information report (for short 'FIR'), vide Dinara P.S. Case No.216 of 2009, under Section 302 read with 34 of the Indian Penal Code and 27 of the Arms Act, at 10:00 p.m., on 12.10.2009 and took up the investigation himself. In the FIR, apart from the appellants Keshwar Singh and Sanjay Singh, two others, namely, Deepak Singh and Ashok Singh were also made named accused.

7. On completion of investigation, the Investigating Officer submitted charge sheet under Section 302 read with 34 of the Indian Penal Code and 27 of the Arms Act against all the four named accused persons.

8. Upon receiving the chargesheet, learned Chief Judicial Magistrate took cognizance of the offences.

9. Since a plea of juvenility was taken by the accused Deepak Singh and Ashok Singh before the court of Chief Judicial Magistrate, after inquiry, the learned Chief



Judicial Magistrate, vide order dated 22.01.2010, declared them juvenile in conflict with law and sent their case for inquiry and disposal to the Juvenile Justice Board, Sasaram.

10. After complying with the mandatory provisions under Section 207 of the Code of Criminal Procedure (for short 'CrPC'), the learned Chief Judicial Magistrate committed the case of the appellants to the court of sessions for trial on 22.01.2010.

11. After receipt of the record, the trial court framed charge under Section 302 read with 34 of the Indian Penal Code against both the appellants. The appellant Sanjay Singh was also charged for the offence punishable under Section 27 of the Arms Act separately.

12. Since the appellants denied the charges framed against them and claimed for trial, the trial commenced.

13. The prosecution in support of its case examined altogether seven witnesses. They are PW-1, Kanchan Kumari (daughter of the deceased), PW-2, Indu Devi (wife of the deceased), PW-3 Rajbansh Singh (brother of the deceased), PW-5, Sheopati Singh (informant and father of the deceased), PW-6, Dr. Sidheshwar Prasad Singh and PW-7, Amarnath Singh (Investigating Officer).



14. Apart from the oral testimony of witnesses, the prosecution also proved signature of Jitendra Singh on seizure list (Exhibit-1), postmortem report (Exhibit-2), fardbeyan (Exhibit-3), FIR (Exhibit-4) and inquest report (Exhibit-5) in support of its case.

15. After closure of the prosecution case, questioning of the appellants was done under Section 313 of the CrPC to enable them to explain the circumstances which came out in evidence against them.

16. The only circumstance explained by the trial court to the appellants is that the witnesses have stated in their deposition that on 12.10.2009, at 2:00 p.m., when the informant Sheopati Singh and his son Bans Narain Singh had gone to see their field in village-Bhagiratha Dera, Mauza-Kaharpurwa for cultivation of potato, they saw that the appellants and the other accused persons had ploughed his field after cutting the ridge. When the son of the informant complained in this regard, the accused persons entered into a battle of words. In the meantime, at about 3:00 p.m., on the instigation of the appellant Keshwar Singh, the appellant Sanjay Singh took out his country-made pistol and shot in the back of the head of Bans Narain Singh as a result of which he died.



17. The defence of the appellants is that no occurrence as alleged had taken place and they have been implicated in the case falsely.

18. The trial court appreciated the evidence and the material brought on record and came to hold that the prosecution had been able to establish the charge under Section 302 read with Section 34 of the IPC against both the appellants and under Section 27 of the Arms Act against the appellant Sanjay Singh.

19. Being aggrieved with the judgment of conviction and order of sentence passed by the trial court, these two appeals have been filed by the respective appellants.

20. Mr. Ajay Kumar Thakur, learned counsel appearing for the appellants submitted that the trial court has failed to appreciate the evidence in proper perspective. He submitted that according to the prosecution case the occurrence took place on 12.10.2009, at 3:00 p.m., in the field of the parties but, it is strange and surprising that not a single independent witness of the locality has been examined by the prosecution.

21. Mr. Thakur has contended that the witnesses examined during trial have categorically stated that in the nearby field several persons were present but, it is surprising



that the Investigating Officer, who reached at the place of occurrence did not record the statement of any of the independent witnesses. He submitted that the prosecution witnesses, apart from being closely related are also on inimical terms with the appellants and their family members. In that view of the matter, the trial court ought to have scrutinized their evidence with caution. However, the trial court erroneously relied upon the wholly unreliable testimony of related, interested and inimical witnesses in order to hold the appellants guilty. He has further contended that the trial court failed to appreciate that the earliest version received by the police was deliberately withheld. According to him, the trial court ought to have drawn adverse inference due to withholdment of the earliest version received by the police regarding the offence. He has further contended that the trial court also failed to appreciate that the prosecution has changed the place of occurrence during trial. He has further contended that the discrepancies in preparation of inquest report and the delay in institution of the FIR and transmission of the same to the court has also not been properly appreciated by the trial court. He submitted that the body was sent to the hospital for postmortem examination on the next day at 11.15 a.m.. He has contended that there is no



explanation as to why the body of the deceased was not sent for postmortem examination on the date of occurrence itself. It is also not known as to where the body of the deceased was kept for the whole night. He has contended that the trial court also failed to appreciate that the medical evidence was totally inconsistent with the ocular testimony of the witnesses. The consistent case of the prosecution right from the beginning is that the deceased had sustained two gunshot injuries, but the postmortem examination report and the evidence of the doctor would clearly suggest that the deceased had sustained only one gunshot injury. He has argued that the weapon of assault was not recovered by the Investigating Officer and even the blood stained earth was not sent for chemical examination. He urged that the investigation was conducted in a highly casual any perfunctory manner and the conviction has been recorded without sufficient evidence. Lastly, he has contended that the trial court has failed to appreciate that the prosecution has withheld the material witnesses, namely, Rakesh Singh, Jitendra Singh, Rishi Muni Singh.

22. The State has contested the appeals. Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State has contended that the trial court has rightly appreciated



the evidence adduced on behalf of the prosecution. He contended that the minor discrepancies highlighted by the prosecution would never be fatal for the prosecution case. Such discrepancies are natural. They are of no consequence. He contended that the fardbeyan of the informant was recorded promptly. The Officer-in-charge of the police station took up investigation of the case himself, prepared inquest report of the deceased and recorded the fardbeyan at the earliest possible time. Hence, it cannot be argued that the investigation of the case was perfunctory. He contended that even if there is any inconsistency in the medical expert evidence and the ocular testimony, the ocular testimony has to be given preference over the expert opinion. He has further contended that merely because the witnesses are closely related to the deceased, their deposition cannot be brushed aside. There is no law that guilt can not be established on the basis of the evidence of related or inimical witnesses. He contended that the prosecution witnesses are consistent on the point of place of occurrence. Hence, the submission on behalf of the appellants that the place of occurrence has been changed is not correct. According to him, all the witnesses examined during trial have stood the test of the cross-examination. Their version is consistent and nothing has



been suggested to bring any kind of improbabilities in their testimonies. He has contended that any defect in investigation would not vitiate the trial.

23. We have heard the parties and carefully perused the evidence on record.

24. PW-5, Sheopati Singh, has supported the allegations as alleged by him in his fardbeyan, which has been marked as Exhibit-3. He has stated that while his son Bans Narain Singh was sitting beneath Babool tree, on the exhortation of the appellant Keshwar Singh, his son Sanjay Singh fired a shot in the back of his head due to which he fell down. Thereafter, Deepak also fired, which hit in the back of his left ear. He has stated that his grand-daughter Kanchan Kumari informed his son Rajbansh Singh, who is a constable and, on his information, police had arrived at the place of occurrence and recorded his statement. He has stated that there is land dispute with Sanjay Singh and others.

25. In cross-examination, he admitted that the accused Keshwar Singh is his full brother. He has stated that he cannot say the plot number of his potato field. The field belongs to the State Government and, in the same plot, on the western side, the accused Keshwar Singh has also his share. He has



further stated that his son had sustained two gunshot injuries while he was sitting beneath the Babool tree. He has stated that blood had fallen on the ground and it was shown to the police and the police had brought the blood-stained earth. He has further stated that prior to the occurrence, no case of snatching and loot was lodged against his son. However, he admitted that Dinara P.S. Case No.6 of 2000 dated 12.01.2000 was instituted against him as well as his son in which charge sheet was submitted under Section 392 of the Indian Penal Code. His attention was drawn towards his previous statement made during investigation. He has denied the defence suggestion that he had not stated before the police that at the time of occurrence, wife and daughter of the deceased Bans Narayan Singh, namely, Indu Devi and Kanchan Kumari respectively were also present in the potato field. He has also denied the defence suggestion that his son was involved in criminal activity and was killed in a different manner and when the murder had taken place, he was not present at the place of occurrence.

26. PW-1, Kanchan Kumari, has stated that on 12.10.2009, at 3:00 p.m., she was present at the place of occurrence along with her father Bans Narain Singh, mother Indu Devi and grand-father Sheopati Singh. She has stated that



Sanjay Singh fired a shot on the back of the head of her father on the instigation of Keshwar Singh and second firing was made by Deepak Singh. She admitted that Keshwar Singh is elder brother of his grand-father. She has stated that the field was situated at the distance of ½ km south from her house and, in the western side of the land, there is embankment of Dharmawati river where large number of Babool trees exist and it is a lonely place. She has further stated that the accused did not plough the land belonging to her share. They had only cut some portion of ridge of the field. She has stated that her father was killed while he was sitting beneath the Babool tree. She has further stated that he had sustained gunshot injury at a distance of 10 feet from his field and had fallen in the field of Deomuni. She has further stated that the occurrence took place beneath the Babool tree. She has further stated that when the police arrived near the dead body, she was present there but, when the police recorded the statement of her grand-father, she was not present at the place of occurrence. She has stated that after her father was killed, she along with others went back to her village. She has stated that the police had arrived at the place of occurrence within fifteen minutes. The police came to her house on the next day. Her attention was also drawn towards her previous statement made



before police. She has denied the defence suggestion that she had not stated before the police that on the date of occurrence, she was present at the place of occurrence along with her mother, father and grand-father. She has also denied the defence suggestion that it is not a fact that she had not stated before the police that on the instigation of Keshwar Singh, Sanjay Singh had fired a shot at the deceased from behind. She has further denied the defence suggestion that due to the existing land dispute between the parties, a malicious prosecution has been launched against the accused persons. She has also denied the defence suggestion that her father was killed by some unknown accused persons.

27. PW-2, Indu Devi, wife of the deceased, has corroborated the prosecution case as narrated in the FIR in her examination-in-chief.

28. In cross-examination, she admitted that the accused persons are her agnates. She has stated that at the time of occurrence, in the nearby field, several people were present. She has stated that accused persons had also assaulted her, her daughter and father-in-law. Since they had sustained simple injuries, they did not receive any treatment. She has further stated that both the accused Sanjay Singh and Deepak Singh had



opened fire from behind and her husband died instantaneously after sustaining the injuries. At the place of occurrence, huge quantity of blood had fallen on the ground. The police had immediately came at the place of occurrence and she had disclosed the entire facts to the police.

29. Her attention was also drawn towards her previous statement recorded by the police during investigation. She has denied the defence suggestion that she had not stated before the police that she was present along with her daughter and father-in-law in the potato field at the time of occurrence of offence. She has further denied the defence suggestion that she had not stated before the police that the accused persons had cut the ridge of her field and, at the instigation of Keshwar Singh, Sanjay Singh had opened fire causing injury to her husband in the back of his head and thereafter, Deepak Singh opened fire causing injury in the back of his left ear as a result of which he died. She has denied the defence suggestion that she had not stated before the police that the accused persons had assaulted her, her father-in-law and her daughter. She has denied the defence suggestion that her husband was killed in a different manner by some unknown persons and the accused persons have been implicated in a false case.



30. PW-3, Rajbansh Singh, is a hearsay witness. He has stated that he was informed on phone about the occurrence. Thereafter, he came to the village and he learnt about the occurrence through his family members and villagers. He denied the defence suggestion that his brother was a criminal and was killed due to his involvement in criminal activities.

31. He has stated that he had reached at his village at about 6:00-6:30 p.m.. He has admitted that on receiving information on phone, when he reached at the place of occurrence, he met the police. He has further stated that at the place of occurrence, huge quantity of blood had fallen on the ground. At that time, more than hundred villagers were present at the place of occurrence. He has named Rakesh Singh, Jitendra Singh, Rishimuni Singh amongst the persons present at the place of occurrence. He has stated that the police had made inquiry from the persons present at the place of occurrence. He has denied the defence suggestion that no occurrence as alleged by him had taken place and the deceased was killed by some unknown criminals and due to the ongoing land dispute and enmity between the parties, the accused persons have been falsely implicated.

32. PW-4, Jitendra Singh, brother-in-law of the



deceased, is also a hearsay witness. He has stated that his niece Kanchan Kumari informed him on phone about the occurrence. Thereafter, he came to the place of occurrence. In his presence, seizure list was prepared over which he had put his signature. He has proved his signature on the seizure list which has been marked as Exhibit-1. He has denied the defence suggestion that he has falsely deposed before the court as he is a close relative of the deceased.

33. PW-6, Dr. Sidheshwar Prasad Singh, has stated that on 13th of October, 2009, he was posted as Medical Officer in Sadar Hospital, Sasaram. On that day, he conducted the postmortem examination on the body of the deceased Bans Narain Singh and found the following antemortem injuries:-

- “(i) Lacerated wound 1/2” x 1/2” x cavity deep over posterior aspect of head (occipital region).
- (ii) Lacerated wound 4” x 3” x cavity deep left side of chin.”

34. He has stated that injury no.(i) and (ii) were communicating each other. According to him, injury no. (i) was wound of entry and injury no. (ii) was wound of exit. He has proved the postmortem report, which has been marked as Exhibit-2.



35. In cross-examination, he admitted that he did not find any other antemortem injury on the person of the deceased save and except the two injuries mentioned in the postmortem report. He has further admitted that such type of injury could be caused by only one shot. According to him, such injury could be caused if firing is made from a distance of one meter only. He has admitted that he did not recover anything from the body of the deceased.

36. PW-7, Amarnath Singh, the Investigating Officer, has stated that on 12.10.2009, he took up the investigation himself. After taking investigation, he recorded the fardbeyan of the informant Sheopati Singh, prepared the inquest report of the deceased Bans Narain Singh, recorded the re-statement of the informant and inspected the place of occurrence. He has stated that the place of occurrence is about 800 yards away from the river Dharmawati in the mauza-Kaharpurwa. It is surrounded by the field of Nathuni Singh in the east and west, Moshafir Yadav in the north and Iner Singh in the south. The body of the deceased was lying in the field itself. He has stated that he recorded the statement of witnesses, namely, Kanchan Kumari, Indu Devi and Rajbans Singh. He has proved the fardbeyan which has been marked as Exhibit 3. He



has further proved the formal FIR, which was in the writing of Munshi of the police station over which he had put his signature, which was marked as Exhibit-4. He has stated that on completion of investigation, he submitted charge sheet in the court.

37. In cross-examination, he has stated that the distance of place of occurrence from the police station is 8 km. He admitted that prior to coming to the place of occurrence, he had received information about the incident. He has admitted that it is not stated in the fardbeyan that who gave information at the police station. He has admitted that he has not mentioned anywhere at what time he left the police station and at what time, he reached at the place of occurrence. He has further admitted that he has not mentioned in the case diary regarding any damage done to the ridge of the field of the informant. He has further admitted that he has not prepared the sketch map of the place of occurrence. He admitted that neither in the fardbeyan nor in the further statement of the informant, there is any disclosure about the presence of Kanchan Kumari and Indu Devi at the place of occurrence. He has also admitted that he has not recorded statement of any independent witness during investigation. He admitted that he did not find any blood on



cloth of any witnesses. He also admitted that he did not find any injury on the body of Kanchan Kumari, Sheopati Singh and Indu Devi.

38. He contradicted PW-1 Kanchan Devi by saying that she had not disclosed in her statement recorded under Section 161 of the CrPC that on the date of occurrence, she was present along with Sheopati Singh, Bans Narain Singh and Indu Devi in the potato field. He has further contradicted her by saying that she had not stated before him that the accused persons had cut the ridge of the field. He admitted that Kanchan Kumari had never stated before him that the accused Keshwar Singh had instigated the accused Sanjay Singh to kill the deceased.

39. He has also contradicted PW-2 Indu Devi by saying that she had not stated before him that she had gone together with her daughter and father-in-law in the potato field on the date of occurrence. He has further contradicted her by saying that she had not stated before him in her statement under Section 161 CrPC that on the exhortation of the appellant Keshwar Singh, Sanjay Singh opened fire causing injury in the neck of her husband and, thereafter, Deepak Singh opened fire causing injury in the back of the ear of her husband. He has also



contradicted her by saying that she had not stated in her previous statement that the accused persons had assaulted her and her daughter and father-in-law. He admitted that he did not see any injury on the person of Kanchan Kumari, Sheopati Singh and Indu Devi.

40. PW-7 has also proved the inquest report, which has been marked as Exhibit-5. He has admitted in cross-examination that the inquest report was prepared prior to the institution of the FIR.

41. Having seen the oral and the documentary evidence adduced during trial, it is to be ascertained as to whether or not the trial court rightly came to the conclusion of guilt of the appellants.

42. In the process of such ascertainment, firstly, we shall deal with the fardbeyan of the informant, which has been marked as Exhibit-3. The fardbeyan of PW-5 Sheopati Singh was recorded by PW-7 at the place of occurrence on 12.10.2009 at 4:15 p.m.. PW3, Rajbansh Singh, is a witness to the fardbeyan. In his deposition, he has stated that on the alleged date and time of occurrence, he was present at the place of his posting in Dhangai police station. He received information on phone from his niece PW-1 Kanchan Kumari regarding murder



of his brother Bans Narain Singh. On receiving information, by time he reached at his village, it was 06-6:30 in the evening. It is surprising that when he reached to his village at 06:30 p.m. on 12.10.2009 and the place of occurrence is adjacent to his village, as to how he became a witness to the fardbeyan, which was recorded at 04:15 p.m.. It is equally surprising as to how PW-3 Rajbansh Singh became a witness to the inquest report, which was prepared by PW-7 on 12.10.2009 itself at 5:30 p.m..

43. The prosecution has not been able to explain the circumstance under which PW-3 became a witness to the fardbeyan and the inquest report, which were prepared even before he reached at the place of occurrence. Apparently, it gives an impression that the fardbeyan and the inquest report are creatures of afterthought.

44. On perusal of the inquest report (Exhibit-5), it would be evident that though it is stated that murder has been caused due to gunshot injury, the column meant for noting the circumstances and the manner in which the offence was committed has been left blank. Since the circumstances and the manner in which the offence was committed was known to the Investigating Officer, as the inquest report was prepared by him after seventy five minutes of recording the fardbeyan, not



mentioning the same in the relevant column also creates doubt about the bona fide of the inquest report.

45. The inquest report is prepared by the Investigating Officer to find out prima facie the nature of injuries and the possible weapons used in causing those injuries as also the possible cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted.

46. Coming back to the deposition of the Investigating Officer, it would be manifest to note that the alleged shoot out in which the deceased Bans Narain Singh was killed had allegedly occurred at 03:00 p.m. on 12.10.2009 and the Investigating Officer has admitted that he had received an information regarding the incident at the police station itself but he did not disclose the source of his information. He has admitted that he did not mention in the fardbeyan about receipt of the information on the basis of which he proceeded from the police station to the place of occurrence. He has also admitted that he has not mentioned the time when he left the police station and he when he reached at the place of occurrence in the



case diary.

47. Ordinarily, in terms of Section 154 of the CrPC, when a report is received relating to a cognizable offence, an FIR should be lodged. However, when a cryptic or anonymous complaint is received, it is not necessary to institute an FIR and start investigation. In such case, the police officer may for good reasons carry out a preliminary inquiry to find out the truth or otherwise of the allegations contained therein. However, in such case also, the police officer receiving the information is required to make entry in the station diary about the information received. The police officer would also be required to note the time of receipt of such information and the time at which he has proceeded from the police station to inquire about the veracity of such complaint.

48. In the instant case, neither the station diary entry was produced before the court nor any disclosure has been made by the Investigating Officer (PW-7) as to when he received, through whom the information was received, at what time he left the police station for verifying the veracity of the allegation and at what time he reached at the place of occurrence. He has also not stated that the information received by him was anonymous or cryptic. On the contrary, he has



admitted in his deposition that on receipt of information regarding the incident, he left the police station and reached at the place of occurrence. He has also admitted that he has not noted the time of his reaching at the place of occurrence either in the fardbeyan or in the case diary.

49. The submission on behalf of the appellants is that the first information received by the police regarding the incident has deliberately been withheld and the subsequent statement which has been treated as FIR is hit by Section 162 of the CrPC. In this regard, it would be relevant to note that in **Anand Mohan v. State of Bihar [2013 Cri.L.J. 2644]**, a wireless message was sent soon after the incident to the Police Station. The Supreme Court considered whether the wireless message could be considered as the FIR or the typed report subsequently lodged by one of the witnesses in the police station could be considered to be FIR as contended by the prosecution in that case. The Supreme Court observed that the person who gives the information and who has to sign the information has to choose which particular information relating to commission of cognizable offence to be treated as an FIR. The wireless message was cryptic and did not sufficiently disclose the nature of the offence committed, or the identity of the persons, who



committed the offence. The Supreme Court observed that unless information was collected as to how exactly the deceased was killed it was not mandatory for the witness to lodge the same as an FIR or for the officer of a police station to treat the wireless message as an FIR. The Supreme Court did not find any error in the trial court or the High Court not having treated wireless message as an FIR and having accepted the subsequent typed information as lodged by the witness as the FIR.

50. Thus, it would be manifest from the aforesaid judgment that a wireless message or a telephonic information to the investigating officer, which is cryptic in nature may not be treated as an FIR and the subsequent information, be it oral or written may be treated as an FIR and would not be hit by Section 162 of the CrPC.

51. However, not recording a report regarding a cognizable offence even if it is cryptic in the station diary and not producing the same before the court without any proper explanation would certainly create a dent in the prosecution case. Under such circumstance, it would be difficult to accept that the information first received was cryptic and was not in the nature of FIR.

52. At this stage, it would be relevant to note



that FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the informant under Section 157 or to contradict it under Section 145 of the Evidence Act. However, when the FIR is clouded with suspicion as it is product of undue deliberation and consultation then, it loses its corroboration value.

53. When we examine the arguments raised by the learned counsel for the appellants, in extenso, it would appear from the evidence of PW-1 Kanchan Kumari that PW-7 had reached at the place of occurrence within 15 minutes of the alleged murder. We would further find from the evidence of PW-2 Indu Devi that at the time of occurrence, in the nearby field, several people were present. The alleged murder had taken place at 3:00 p.m. However, the fardbeyan was recorded after 75 minutes of the alleged incident at 04:15 p.m. on 12.10.2009. If the Investigating Officer had reached at the place of occurrence within 15 minutes of the alleged incident and several persons were present in the nearby field at the time of occurrence, it is not known as to why the fardbeyan of the informant was recorded by the Investigating Officer after 75 minutes of his reaching at the place of occurrence. There is also no explanation as to why the FIR was belatedly registered at 10:00 p.m., on



12.10.2009. It is rather inexplicable as to why the FIR was sent to the court after two days on 14.10.2009.

54. In the background of the facts noted above, when we see that PW-3 Rajbansh Singh has been made a witness to the fardbeyan as also the inquest report of the deceased, which were prepared even before he reached in the place of occurrence village, the fardbeyan, the formal FIR and the inquest report of the deceased become a suspicious document.

55. We further find that the inquest on the dead body had started at 05:30 p.m. on 12.10.2009, but the body of the deceased was received at 11:15 a.m. on 13.10.2009 at Sadar Hospital, Sasaram. The postmortem examination on the body of Bans Narain Singh was conducted at 02:20 p.m. on 13.10.2009. When the Investigating Officer had reached at the place of occurrence, the body of the deceased was lying in the parti land of Deomuni Singh at Kaharpurwa mauza in village-Bhagiratha Dera. There is no explanation as to why the body was not sent to the sadar hospital immediately for postmortem examination looking at the gravity of the offence. There is also no explanation as to where the body of the deceased was kept for the whole night on 12.10.2009.



56. It has been argued on behalf of the appellants that the investigation of the case was conducted in a highly casual and perfunctory manner. In this regard, it would be apposite to note that in the evidence of prosecution witnesses, it has come that the wound caused to the deceased had resulted in profused bleeding at the place of occurrence and blood had fallen on the ground. It has also come in evidence that the Investigating Officer had collected the blood-stained earth. However, neither the blood-stained earth nor the blood-stained cloth were produced before the trial court nor they were sent for examination to the Forensic Science Laboratory. Under the circumstance, the alleged recovery of blood-stained earth from the place of occurrence becomes highly doubtful. The weapon of the assault was also not recovered by the Investigating Officer to prove the allegation of murder of the deceased Bans Narain Singh. The Investigating Officer has admitted that he had not drawn the sketch map of the scene of offence. In a case of murder sketch map is drawn and exhibited to show the true depiction of scene of offence. In **Pratap Singh and Another v. State of Madhya Pradesh [(2006) 2 CrLR(SC) 1]**; **Nasu Sheikh and Others v. The State of Bihar [1972 SCC (Cri) 578]** and **Lallu Manjhi and Another v. State of Jharkhand**



[(2003) 2 SCC 401], the Supreme Court has observed that preparation of sketch map is essential in order to ascertain the exact position of the scene of offence. The court should not be left in any doubt and required to guess the exact position of the witnesses vis-a-vis the place of occurrence of the crime.

57. It has been argued on behalf of the appellants that the prosecution has changed the place of occurrence during trial. In this regard, when we look at the FIR, we find that the informant Sheopati Singh has alleged that the accused persons shot dead his son Bans Narain Singh when he had reached in his own field where he had gone for cultivation of potato, but while deposing in court, he has stated that when altercation was taking place, his son was sitting beneath the Babool tree where the accused persons shot him dead from behind. We further find that PW-1 Kanchan Kumari has stated that her father was shot while he was sitting beneath the Babool tree standing at a distance of 10 pace from his field and had fallen dead in the field of Deomuni. The Investigation Officer (PW-7), who had inspected the place of occurrence, has stated that the place of occurrence was surrounded by the field of Nathuni Singh in the east and west, Mosafir Yadav in the north and Iner Singh in the south. He has not stated that the place of occurrence was adjacent to the



field of the informant or the deceased. In view of the inconsistency in evidence of witnesses regarding the place of occurrence in the deposition of prosecution witnesses, the court has been left to guess the exact position of the scene of offence.

58. Apparently, the investigation of the case was conducted in highly careless manner. However, it is settled law that only defective investigation cannot be a sole ground to reject the prosecution case if stands proved on the basis of direct evidence on record.

59. On the point of defective investigation, the Supreme Court in case of **State of Karnataka vs. Suvarnamma and Anr. [(2015) 1 SCC 323]**, observed:-

“It is also well settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence.”

60. In **Dhanaj Singh @ Shera and Ors. vs. State of Punjab [AIR 2004 SC 1920]**, the Supreme Court while placing reliance on the case of **Karnel Singh vs. State of M.P.** observed:-

“In the case of a defective investigation the Court has to be circumspect in evaluating the



evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

61. In **Abu Thakir and Ors. vs. State [AIR 2010 SC 2119]**, the Supreme Court observed:-

“... This Court in *State of Karnataka Vs. K. Yarappa Reddy* held that “even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true, the Court is free to act on it albeit the investigating officer’s suspicious role in the case”.”

62. In **Ajay Kumar Singh vs. The Flag Officer Commanding-in-chief and Ors. [(2016) 9 SCC 179]**, the Supreme Court observed as under:-



“ The evidence adduced by the prosecution must be scrutinized independently of such lapses either in the investigation or by the prosecution or otherwise, the result of the criminal trial would upon the level of investigation or the conduct of the prosecution. Criminal trials should not be made casualty for such lapses in the investigation or prosecution.”

63. In view of the ratio laid down by the Supreme Court in the abovenoted cases, in spite of the deficiencies and lapses in the investigation by the Investigating Officer, it would not be proper to throw out the prosecution case. However, it would be desirable that the evidence adduced during trial be scrutinized independently.

64. PW-2 Indu Devi has stated in her evidence that at the time of occurrence several persons were present in the nearby field. Similarly, PW-3 Rajbansh Singh has stated that when he reached at the place of occurrence more than 100 co-villagers were present near the body of the deceased. Amongst them, he has named Rakesh Singh, Jitendra Singh and Rishimuni Singh, but none of them was examined during trial. It would be pertinent to note that Rakesh Singh is also a witness to the inquest report. The Investigating Officer has candidly



admitted that he did not record statement of any independent witness present at the scene of the offence.

65. Learned counsel appearing for the appellants has submitted that the witnesses examined during trial being relatives and inimical are interested witnesses. He has submitted that the deceased being a man of a criminal background was killed by some unknown person but, because of the admitted enmity existing from before between the parties, the appellants have been falsely implicated in the case.

66. By now, it is well settled position in law that the evidence of a witness who is related to the deceased is not to be discarded in all cases. A related witness may not necessarily be an interested witness. The testimony of a witness who is related to the deceased or is an interested witness should be considered by the court with care and caution in order to exclude the possibility of false implication. The evidence of an interested witness can not be presumed to be tainted as a matter of rule. The court has to consider whether the testimony of such a witness is creditworthy after closely scrutinizing and appreciating the evidence on record. On a consideration of the testimony, if the same is wholly reliable, cogent, credible and trustworthy, it can be relied upon.



67. In this context, we may refer with profit to the decision of the Supreme Court in **Dalip Singh & Ors. vs. State of Punjab**[AIR 1953 SC 364] wherein Vivian Bose, J. speaking for court observed as under:-

“We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this court endeavoured to dispel in Rameshwar v. The State of Rajasthan (AIR 1953 SC 364).”

68. In the said case, it was further observed:-

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent



person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.”

69. In **Pulicherla Nagaraju @ Nagaraja Reddy vs. State of A.P. [(2006) 11 SCC 444]**, while dealing with the liability of the interested witness, who are relatives, the Supreme Court observed as under:-

“ it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise found to be trustworthy and credible.”

70. In **Kartik Malhar vs. State of Bihar [(1996) 1 SCC 614]**, it has been held by the Supreme Court that a close relative who is a natural witness cannot be regarded as an interested witness. The term ‘interested’ postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason.



71. Keeping in mind the aforesaid principles in mind, when we look to the evidence of PW-1 Kanchan Kumari and PW-2 Indu Devi, we find that though they claim themselves to be present at the time and place of occurrence, they are neither witness to the fardbeyan of the informant nor to the inquest report of the deceased. The informant has also not named them as witness to the alleged offence in his fardbeyan. They have been contradicted in material particular by the Investigating Officer. The Investigating Officer has contradicted PW-1 by saying that she had not disclosed in her previous statement recorded under Section 161 of the CrPC that on the date of occurrence, she was present along with the deceased Bans Narain Singh, the informant Sheopati Singh and her mother Indu Devi in the potato field. He has further contradicted her by saying that she had not stated before him that the accused persons had cut the ridge of the field. He also contradicted her by saying that she never stated before him that that the accused Keshwar Singh had instigated the accused Sanjay Singh to kill the deceased.

72. The Investigating Officer has also contradicted Indu Devi by saying that she did not state before him that she had gone together with the daughter and father-in-



law in the potato field on the date of occurrence. He has further contradicted her by saying that she had not stated before him in her statement under Section 161 of the CrPC that on the exhortation of the appellant Keshwar Singh, Sanjay Singh fired a shot causing injury and thereafter the accused Deepak Singh fired a shot causing injury in the back of ear of her husband.

73. In view of the aforesaid material contradictions, their presence at the time and place of occurrence becomes highly doubtful.

74. The informant Sheopati Singh (PW-5) has supported the allegations, as alleged by him in his fardbeyan during trial with minor change in his initial version by saying that while his son Bans Narain Singh was sitting beneath the Babool tree, he had sustained two gunshot injuries. In cross-examination also, he has stated that his son had sustained two gunshot injuries while he was sitting beneath the Babool tree.

75. However, Dr. Sidheshwar Prasad Singh (PW-6), who had conducted the postmortem examination on the body of the deceased Bans Narain Singh found only two antemortem injuries, which were communicating to each other. According to him, the first injury found on the person of the deceased on the posterior aspect of the head was wound of entry and the second



injury on the left side of chin was wound of exit. In cross-examination, he has categorically admitted that the injuries found on the person of the deceased were caused by only one gunshot.

76. Thus, we find that the medical opinion is totally inconsistent with the ocular testimony of the witnesses examined during trial.

77. The medical evidence adduced by the prosecution has great corroborative value. It proves that the injuries could have been caused in the manner alleged and the death could have been caused by the injuries so that the prosecution case being consistent with verifiable medical evidence.

78. Justice Monir (as he then was) in his principles and Digest of the Law of Evidence summed up by stating that when a medical person is called as an expert, he is not to witness the facts, because his evidence is not direct evidence of how an injury in question was done. He gives his opinion only on how that, in all probability was caused. The value of such evidence lies only to the extent it supports and lends weight to direct evidence of eye-witnesses or contradicts evidence and removes the possibility of the injury in question



and could take the manner alleged by the witness.

79. It is well settled that an expert evidence is normally taken with a greater sense of acceptability. However, it is equally well settled that the courts are not absolutely guided by the report of the experts. Specially, if such reports are perfunctory, unsustainable and are result of deliberate attempt to misdirect the prosecution.

80. In a given case, where the eye witnesses' account is found credible and trustworthy, the medical opinion pointing to alternative possibility may not be accepted as conclusive.

81. It has rightly been argued by the learned counsel for the prosecution that oral evidence has primacy over the medical evidence. If the oral testimony of the witness found reliable, creditworthy and inspires confidence, the oral evidence has to be believed and the same cannot be rejected on hypothetical medical evidence. But, if oral evidence is clouded with doubt and is not found wholly reliable, creditworthy and inspires confidence and the medical evidence completely rules out the prosecution story, recording a judgment of conviction would be highly unsafe.

82. In **Piara Singh & Ors. v. State of Punjab**



[AIR 1977 SC 2274], the Supreme Court observed that the evidence of a medical man or an expert is merely an opinion which lends corroboration to the direct evidence in the case. Where there is a glaring inconsistency between direct evidence and the medical evidence in respect of the entire prosecution story, that is, undoubtedly a manifest defect in the prosecution case.

83. In **Ram Narain v. The State of Punjab** [AIR 1975 SC 1727] and **Amar Singh & Ors. v. State of Punjab** [(1987) 1 SCC 679], Supreme Court has held that if the evidence of witness is totally inconsistent with the medical evidence, it would be considered a fundamental defect in the prosecution case unless reasonably explained and it would be sufficient to discredit the entire case.

84. In the instant case, we have already seen that the investigation has been conducted by the Investigating Officer in a perfunctory manner, the initial version regarding the alleged offence has been suppressed, the independent witnesses present at the scene of the offence have been withheld, the witness to the inquest and the fardbeyan could not have been present either at the time of preparation of the inquest report of the deceased or at the time of recording of the fardbeyan and the



wife and the daughter of the deceased have been contradicted in material particular by the Investigating Officer of the case. Under such circumstance, if the case of the prosecution is that the appellant Sanjay Singh fired first shot hitting on the back of the head of the son of the informant and the accused Deepak Singh fired the second shot hitting in the back of the ear of the deceased and the doctor could find only one gunshot injury on the body of the deceased while conducting the autopsy, it would be highly unsafe to place reliance on the evidence of the informant (PW-5) in order to hold the appellants guilty of the charge under Section 302 read with 34 of the Indian Penal Code.

85. In view of the discussions made above and after carefully analyzing and scrutinizing the evidence adduced by the prosecution, we are of the opinion that the trial court has completely erred in appreciating the evidence on record. The finding of facts by the trial court cannot be sustained.

86. Both the appeals are allowed. The impugned judgment of conviction and order of sentence dated 15th June, 2012 and 18th June, 2012, respectively, passed by the learned 6th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 58 of 2010 are set aside. The appellants are hereby acquitted from the charges.



87. The appellant Keshwar Singh, who is on bail, is discharged from the liabilities of the bail bonds. The appellant, Sanjay Singh, who is in custody, is directed to be released forthwith, in case, he is not required in any other case.

88. However, keeping in mind the provisions of Section 437-A of the CrPC, the appellants Keshwar Singh and Sanjay Singh are directed to forthwith furnish personal bonds in sum of Rs. 10,000/- (rupees ten thousand) with two reliable sureties in the like amount before the trial court, which shall be effective for a period of six months to the effect that in the event of filing of Special Leave Petition against the instant judgment for grant of leave, the appellants, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

(Ashwani Kumar Singh, J.)

(Arvind Srivastava, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.02.2020
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