

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.2 of 2018

Arising Out of PS. Case No.-71 Year-2014 Thana- BARHARA District- Bhojpur

Jogendra Rai, Son of Keshav Prasad Rai, Resident of Village-Sabalpur
Gangauli Bakhorapur, P.S.- Barhara, District- Bhojpur.

... .. Appellant

Versus

1. The State of Bihar
2. Dhurkheli Rai, Son of Late Suraji Rai,
3. Pardeshi Rai,
4. Bideshi Rai, Both son of Vishwanath Rai, All resident of Village- Sabalpur
Gangauli Bakhorapur, P.S.- Barhara, District- Bhojpur.

... .. Respondents

Appearance :

For the Appellant :	Mr. Aditya Narayan Singh-1, Advocate
For the Respondent-State:	Dr. Mayanand Jha, APP
For the Respondent No.2:	Mr. Madanjeet Kumar, Advocate
For the Respondent No.3:	Mr. Manoj Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 12-02-2021

Respondent Nos. 2 to 4 were tried in Sessions Trial
No. 153 of 2015 arising out of Barhara P.S. Case No.71 of 2014
in the Court of Sessions Judge, Bhojpur, Ara for having
committed an offence punishable under Section 302/34 of the
Indian Penal Code (for short 'IPC') and were acquitted of the
charges levelled against them vide judgment dated 22.09.2017.
The informant being a victim in terms of Section 2(wa) of the
Code of Criminal Procedure (for short 'Cr.P.C') has challenged
the judgment of acquittal in the present appeal filed under
proviso to Section 372 of the Cr.P.C.



2. The First Information Report (for short 'FIR') of Barhara P.S. Case No. 71 of 2014 dated 26.04.2014 was registered under Section 302/34 of the IPC on the basis of oral statement of the informant (appellant) Yogendra Rai recorded on 26.04.2014 at 5:40 a.m. in Sadar Hospital, Ara by Jahangir Ansari, S.H.O., Barhara Police Station.

3. In his oral statement, the informant stated that on 25.04.2014 at 5:30 p.m. his father Kesho Rai had gone to Sabalpur market near the bus stand for purchasing vegetables. At that time, he was also present in the market. At about 5:35 p.m. Dhurkheli Rai, Raj Kumar Rai, Pardeshi Rai and Guddu Rai, all residents of village Sabalpur Gangauli, P.S. Barhara, District- Bhojpur, who were also present in the market, suddenly attacked upon his father. Dhurkheli Rai repeatedly struck with *fasuli* on neck, shoulder and arms of his father causing a number of injuries. Raj Kumar Rai gave *farsa* blow to his father and Pardeshi Rai and Guddu Rai also assaulted his father. When he and his family members tried to save Kesho Rai, the accused persons namely, Kamta Rai, Bideshi Rai, Raj Bahadur Rai, Vishwanath Rai, Deo Muni Rai, Deepak Rai and Ram Jeet Rai, who were armed with *lathi* and *danda*, chased them away. He has further stated that with the help of villagers he took his



father to Mani Chhapra Hospital from where his injured father was referred to Sadar Hospital, Ara. While undergoing treatment at Sadar Hospital, Ara, his father died at 10:00 p.m. He has attributed the motive for causing murder of his father to be the pending land dispute with the accused persons, namely, Deo Muni Rai, Kamta Rai, Kamla Rai and Vishwanath Rai before Court in which decision was expected in favour of the deceased.

4. After recording the oral statement of the informant, the S.H.O. Jahangir Ansari registered the FIR and took up investigation of the case himself. In the FIR, altogether 13 accused persons, namely, Dhurkheli Rai, Raj Kumar Rai, Pardeshi Rai, Guddu Rai, Sri Ram Rai, Sanjeet Rai, Kamta Rai, Bideshi Rai, Raj Bahadur Rai, Vishwanath Rai, Deo Muni Rai, Deepak Rai and Ramjeet Rai were named.

5. On completion of investigation, he submitted charge-sheet in the case. He found the case true against the accused Dhurkheli Rai, Raj Kumar Rai, Pardeshi Rai, Bideshi Rai and Deo Muni Rai. During investigation, culpability of the remaining FIR named accused persons was not found true. Hence, they were not sent up for trial.

6. On perusal of the police report submitted under Section 173(2) of the Cr.P.C, the learned A.C.J.M., Bhojpur, Ara



took cognizance of the offence punishable under Section 302/34 of the IPC against Dhurkheli Rai, Deo Muni Rai, Raj Kumar Rai, Pardeshi Rai and Bideshi Rai.

7. After complying with the statutory requirements of Section 207 of the Cr.P.C, the learned A.C.J.M., Bhojpur, Ara committed the case to the Court of Sessions for trial.

8. Since the accused Deo Muni Rai died prior to framing of charge, his name was deleted from the array of accused persons. The remaining chargesheeted accused persons were charged under Section 302/34 of the IPC. As they did not plead guilty and claimed to be tried, the trial commenced.

9. In order to substantiate its case, the prosecution examined nine witnesses. They are P.W.1 Muku Rai (nephew of the deceased), P.W.2 Jitendra Rai (brother of the deceased), P.W.3 Sunil Sah, P.W.4 Manoj Pandey, P.W.5 Jogendra Rai (informant of the case and son of the deceased), P.W.6 Pappu Pandey, P.W.7 Mangal Rai, P.W.8 Dr. Kripa Shankar Choubey and P.W.9 Jahangir Ansari.

10. Out of the aforesaid prosecution witnesses, PW-3 Sunil Sah, PW-4 Manoj Pandey, PW-6 Pappu Pandey and PW-7 Mangal Rai were declared hostile by the trial court at the instance of the prosecution. Hence, the prosecution case



primarily hinges upon the testimony of PW-1 Muku Rai, PW-2 Jitendra Rai and PW-5 Yogendra Rai coupled with the postmortem report and the deposition of PW-8 Dr. Kripa Shankar, who had conducted autopsy on the deceased and PW-9 Jahangir Ansari, who had investigated the case and the attendant circumstances.

11. The prosecution also exhibited the following documents :

Ext.-1 : Signature of Jogendra Rai on the fardbeyan

Ext.-1/1 : Signature of Muku Rai on the fardbeyan as
a witnesses

Ext.-2 : Post-mortem report

Ext.-3 : Carbon copy of inquest report

Ext.-3/1 : Signature of Muku Rai on carbon copy of
inquest report

Ext.-3/2 : Signature ofr Narsingh Rai on carbon copy
of inquest report

Ext.-4 : Formal FIR

Ext.-4/1 : Signature of Jahangir Ansari on FIR

12. After closure of the prosecution case, the accused persons were examined under Section 313 of the Cr.P.C.

13. Thereafter, three witnesses were examined on



behalf of the defence in order to prove innocence of the accused persons. They are D.W.1 Rangnath Singh, D.W.2 Ganga Ram and D.W.3 Vishwanath Rai. Apart from the oral testimony, the defence also exhibited the following documents in support of its case:

Ext.-A : Certified copy of formal FIR of Barhara
P.S. Case No. 3 of 1980

Ext.-B : Certified copy of the order dated
19.11.2013 passed in land dispute case no.
140/12-13 by DCLR, Sadar, Ara

Ext.-C : Certified copy of the order dated
24.06.2004 passed by the learned 2nd
Munsif, Ara in T.S. No. 77/99

Ext.-C/1 : Certified copy of Complaint in T.S. No. 77/1999

Ext.-D & D/1: Certified copies of deposition of Deomuni
Bhar and Mungiya in S.T. No. 177/1984 in
the court of 3rd Additional Sessions Judge,
Bhojpur, Ara.

14. After hearing the arguments, when the matter was fixed for judgment before the trial court, the accused Raj Kumar Rai absconded. Subsequently, his trial was separated and again the parties were heard. Having considered the evidence adduced



during trial, the trial court, vide its judgment dated 22.09.2017, acquitted the accused persons, namely, Dhurkheli Rai, Pardeshi Rai and Bideshi Rai giving them benefit of doubt.

15. Being aggrieved from the judgment of acquittal passed by the trial court, the informant (victim) has preferred the present appeal. The State did not challenge the acquittal of the respondent no. 2 to 4 by the trial court.

16. While challenging the judgment of the trial court the contentions raised on behalf of the appellant are:-

(1) The trial court failed to appreciate that PW-1, 2 and 5 have fully supported the prosecution case. Their evidence had remained totally unshaken.

(2) The trial court failed to appreciate that the trivial omissions and discrepancies in their evidence did not go to the root of the matter. They are explainable variations which are likely to occur in the normal course and do not in any way adversely affect the case of the prosecution.

(3) The trial court failed to appreciate that merely because PWs- 1, 2 and 5 were related to the deceased, their evidence did not lose credibility.

(4) The trial court ought not to have given undue



weightage to non-examination of independent witnesses for disbelieving the prosecution case.

(5) The trial court failed to appreciate that any illegality or defect in investigation did not cause serious prejudice to the accused. Hence, the benefit of doubt should not have been given to the accused due to the shortcomings on the part of the investigating officer either in registering the FIR or investigating the same.

17. On the other hand, on behalf of the respondent nos. 2 to 4, it is contended that the trial court has recorded its finding of acquittal after appreciating and considering the entire evidence brought on record. The view taken by the trial court is plausible. It is further contended that an order of acquittal can be set aside in appeal only if the appellate court is satisfied that the reasons in support of acquittal recorded by the trial court are non-existent, extraneous, perverse, ill-founded or wholly misconceived. It is contended that since the view taken by the trial court is legal, proper and in consonance with law, the appeal deserves to be dismissed.

18. In order to examine the merits of the rival contentions, it is necessary for us to first of all refer to the



deposition of PWs-1, 2 and 5.

19. PW-1 Muku Rai has stated in his deposition that his uncle Kesho Rai was murdered about 2-2 ½ years ago. At the time of incident, he was ten steps away from the place where the murder took place. He saw that Pardeshi Rai, Dhurkheli Rai, Raj Kumar Rai, Bideshi Rai and Deomuni Rai had caught hold of his uncle Kesho Rai and the accused Dhurkheli Rai cut his neck with *fasuli*. Thereafter, stampede took place. The accused persons chased him and others with intent to assault. They fled away. After sometime, he along with others came back from his house and took his uncle to Manichapra Hospital on a cot. After preliminary treatment, his injured uncle was referred to Sadar Hospital Ara. His uncle was taken to Ara where he was alive till 10:00 p.m. and, thereafter, he died. He stated that the motive behind the occurrence was the land dispute.

20. In cross-examination, he has stated that his shop is situated about 800-900 steps away from the place of occurrence in the eastern side. He opens his shop at 6:30 a.m. and closes it at 7:30 p.m. On the date of occurrence, he had closed his shop at about 6:20-6:30 p.m. While he was on way after closing the shop and when he re-reached near the accused persons, the incident took place. He denied the defence suggestion that the



accused Deomuni Rai had filed a case in the court of Deputy Collector, Land Reforms vide Case No.140 of 2013, which was decided in favour of Deomuni Rai. He expressed ignorance about the defence suggestion that in a case relating to murder of Suraji, brother of the accused Deomuni Rai, the deceased Kesho Rai and his family members were accused. He also denied the defence suggestion that before the police he had stated that when he reached at the place of occurrence he found his uncle Kesho Rai in an injured condition. He further denied the defence suggestion that he had reached at the place of occurrence after the offence had already been committed.

21. PW-2 Jitendra Rai has stated in his deposition that the incident took place about two years back. At that time, it was 5:30 in the evening, when he was present in Sabalpur market for buying vegetable. He saw Dhurkheli Rai with a *fasuli* in his hand. He was sharpening his *fasuli* on stone-chips. He stated that Bideshi Rai, Pardeshi Rai, Deo Muni Rai and Raj Kumar Rai surrounded his brother Kesho Rai and Dhurkheli Rai assaulted him with *fasuli* on his head, shoulder and neck. When the accused persons were assaulting Kesho Rai, he raised hue and cry, but 5-6 miscreants chased him away. He went to his house and brought a cot. He took his brother to Manichapra



Hospital from where was referred to Ara Sadar Hospital. His brother died at 10:00 p.m. in Ara Sadar Hospital.

22. In cross-examination, he has stated that he is not aware as to who were the accused persons in the case relating to murder of Suraji, brother of Deo Muni Rai. However, he has admitted that the deceased Kesho Rai was made accused in that case. He has also admitted that there was land dispute between deceased Kesho Rai and Deo Muni Rai. He has denied the defence suggestion that in that case the decision came in favour of Deo Muni Rai. He has stated that on the date of occurrence he had gone to Sabalpur Bazar to buy vegetable at about, 4:00-4:30 p.m. alone. He came back to his house after taking vegetable at about 5:00 p.m. He went again to Sabalpur market, as his daughter Baby Kumari had gone to the market and his wife told him to call back Baby Kumari. He has stated that his daughter was standing near a *gumti* of Bagha Pandey in the market. He stated that the dead body of Kesho Rai was brought back to his house. Thereafter, it was taken to Manichapra. He stated that he along with Kashi, Yogendra, Shankar and Muku went together with the dead body to Mani Chapra. They were carrying the dead body on their head. On the way, the police vehicle with Bada Babu (S.H.O.) came. The S.H.O. met them



between Bakhorapur and Sabalpur. He took them in his vehicle and dropped them at Manichapra. The body was cremated at Neknam Ghat. He denied the defence suggestion that he has not witnessed the occurrence and has named the accused persons out of enmity.

23. PW-5 Yogendra Rai is the informant of the case. He has stated that the incident took place on 5th April, 2014 in Sabalpur market at 5:30 p.m. At that time, he was present at the place of occurrence. When he was returning from market, he saw Dhurkheli Rai, Raj Kumar Rai, Bideshi Rai, Pardeshi Rai and Guddu Rai were indiscriminately assaulting his father Kesho Rai. Dhurkheli Rai was armed with *fasuli* in his hand and he was assaulting his father on his shoulder and neck indiscriminately. When he raised hue and cry, he was chased away by the accused persons. He has further stated that Dhurkheli Rai, Raj Kumar Rai, Pardeshi Rai and Bideshi Rai chased him away. While he was going towards his house, he saw his family members coming towards him. He stated to his family members that the accused persons were killing his father. When they came back to the place of occurrence, the accused persons had left the place of occurrence. He has stated that on reaching at the place of occurrence, he saw that his father was



lying unconscious. Thereafter, he took his father on a cot to Manichapra Hospital. When he was on way between Sabalpur and Bakhorapur, he saw a vehicle of local administration in which, his father was first taken to Manichapra Hospital and from there to Sadar Hospital Ara, where he died at about 10:00 p.m. He deposed that his statement was recorded by the police in the hospital. It was read over to him and he put his signature on the statement after finding it correct. He proved his signature on the fardbeyan, which was marked as Ext. 1. He also proved the signature of witness Muku Rai, which was marked as Ext. 1/1.

24. In cross-examination, he has stated that on the date of occurrence, he had gone to Sabalpur market to buy vegetable at about 4:00 p.m. He stated that at the time of occurrence, nearly 50-60 people had assembled there. He stated that nobody had taken his statement at the place where the vehicle of administration had arrived. He further stated in cross-examination that from Manichapra, his father was taken to Ara in a Bolero vehicle of one Raju Prasad. He deposed that when his father was taken to Sadar Hospital, Ara, his statement was not recorded. His statement was recorded after death in the hospital on the next day at about 10:00 a.m. and at the same



time, statement of Muku Rai was also recorded. He has stated that he does not know that in the case relating to murder of Suraji, brother of Deo Muni Rai, the deceased Kesho Rai was made an accused. He has further stated that in the land dispute, the decision was made in their favour and not in favour of Deo Muni Rai. He has denied the defence suggestion that his father was a criminal and the accused persons have been falsely implicated because of the ongoing land dispute. He has also denied the defence suggestion that on the date of occurrence, he was not at the place of occurrence and was working as a sweet maker (*Halwai*) at Hajipur in the shop of Raju Prasad.

25. PW-8, Dr. Kripa Shankar Choubey has stated in his deposition that on 26th April, 2014 he was posted as Medical Officer, Sadar Hospital, Ara. On that day, the body of the deceased Kesho Rai was received at 06:15 a.m. He conducted autopsy on the body of the deceased at 07:30 a.m. on 26.04.2014 itself. On external examination, he found *rigour mortis* present, eyes and mouth open. He also found the following antemortem injuries:- (i) sharp cutting injury left side of neck, transversely about 2/3rd from left side leading to injury of major vessels, nervous muscle and vital structures in the neck from left side and (ii) Lacerated wound shoulder region



measuring 10" x 9" x deep to bone and left shoulder joint. According to him, the cause of death was injury to neck by sharp cutting weapon and the time elapsed since death was about 6-24 hours of postmortem examination. He proved his handwriting and signature on the postmortem examination report, which was marked as Ext. 2.

26. In cross-examination, he stated that he has no knowledge about the doctor, who had declared Kesho Rai dead. He has admitted that from the injury mentioned in the postmortem report, there could be instantaneous death and death might occur even after sometime. He clarified that after suffering such a person may remain alive for 5-6 hours.

27. PW-9 Jahangir Ansari has stated in his deposition that on 26.04.2014, he was posted as S.H.O. of Barhara Police Station. On that date, he had recorded fardbeyan of Yogendra Rai, son of Kesho Rai and on that basis, he had instituted Barhara P.S. Case No.71 of 2014 dated 26.04.2014 under Section 302/34 of the IPC and took up the investigation himself. He prepared the inquest report of the deceased Kesho Rai. He proved the carbon copy of the inquest report and the signature of witnesses to the inquest Muku Rai and Narsingh Rai, which were marked as Ext. 3, 3/1 and 3/2. He stated that thereafter he



recorded the further statement of the informant Yogendra Rai. He also recorded the statement of witnesses Muku Rai and Narsingh Rai in the hospital. He inspected the place of occurrence, which was the back side of passenger shade of bus stand of Sabalpur and Gangauli. He noticed large quantity of dry blood scattered at the spot. He recorded the statement of Jitendra Rai and Sunil Sah. He stated that the fardbeyan is in his pen. He stated that the formal FIR is also in his pen signature. He proved the formal FIR which was marked as Ext 4 and signature of the witnesses on FIR, which was marked as Ext. 4/1.

28. In cross-examination, he has stated that the fardbeyan of the informant was recorded at 05:40 a.m. on 26.04.2014. He admitted that he recorded the statement of witnesses Muku Rai and Narsingh Rai after preparing the inquest report and after two minutes of recording of the fardbeyan. He admitted that he recorded the statement of informant twice and witnesses Muku Rai and Narsingh Rai only once. He stated that there is no need for registration of formal FIR on the basis of fardbeyan before starting investigation in the matter. Subsequently, he stated that investigation starts after registration of formal FIR. He admitted that he has not



mentioned in the case diary about recording of FIR on the fardbeyan. He also admitted that he has not mentioned in the case diary as to how he received information of the occurrence. He contended that Barhara Police Station is 4-5 k.m. from village Sabalpur. He admitted that neither the village choukidar nor any other staff informed the occurrence which took place on 25.04.2014. He also admitted that the informant had given him name of thirteen persons as accused but he found eight of them to be innocent. He further admitted that has nowhere mentioned that when he reached at the hospital and when he left the hospital. He contended that he did not try to gather any evidence as to how the injured was brought to the hospital. He admitted that during investigation, he did not make any inquiry from Mani Chapra Hospital regarding the treatment of the injured Kesho Rai. He also admitted that he did not mention in the case diary as to when the doctor at Ara Sadar Hospital had admitted Kesho Rai in the hospital and when he was declared dead. He admitted that when an injured is taken to hospital by a police patrolling vehicle or when an injured is taken to hospital by police, the police officer accompanies the injured and records his fardbeyan. He had admitted that he had mentioned in the diary that Kesho Rai was convicted in a case of murder of the



father of Dhurkheli Rai. He further admitted that as per the statement of witnesses recorded during investigation, the deceased Kesho Rai was a convict.

29. From the evidence of prosecution witnesses examined during trial, it would be evident that the incident in which father of the informant sustained injuries took place at 05:35 p.m. on 25.04.2014. PWs-1, 2 and 5 claimed themselves to be the eye-witnesses to the occurrence. PW-1 and 5 have stated that the injured Kesho Rai was first taken to Mani Chhapra Hospital on a cot. They have stated that after preliminary treatment, the injured was taken to Sadar Hospital, Ara where he died at 10:00 p.m. The incident had taken place at Sabalpur market in presence of several persons. However, the matter was not reported to the police. PW-9 Jahangir Ansari, the S.H.O. of Barhara Police Station has admitted in his cross-examination that Barhara police station is only 4-5 k.m. from village Sabalpur. He also admitted that when an injured is taken to hospital by a police patrolling vehicle or when an injured is taken to hospital by police, the police officer accompanies the injured and records his fardbeyan. Since, it stands admitted by the prosecution witnesses that the incident took place in presence of several persons in a busy market and the police



station is hardly 4-5 k.m. from the place of incident and a vehicle of administration had immediately arrived in which the injured was taken to hospital, it is surprising as to why the FIR was not instituted promptly. It is also surprising as to why the police were not informed when the victim was being treated at Mani Chhapra Hospital. We have seen that the Investigating Officer has admitted that at no point of time, he tried to gather any evidence as to how and when the injured was brought to the hospital. He also admitted that he did not inquire as to when the victim Kesho Rai was declared dead in the hospital. There is no plausible explanation for delay of over 12:00 Hours in recording the fardbeyan of the informant.

30. The FIR has its own probative value. The lodging of information of the commission of offence at first available opportunity creates confidence in bona fide of investigation of a criminal case. The object of insisting upon prompt lodging of the FIR in respect of commission of a cognizable offence is to obtain earlier information regarding the circumstances in which the crime was committed. An inordinate delay without any justification creates suspicion because of threat of introduction of a coloured version or an exaggerated account or a concocted story as a result of deliberation and consultation.



31. The arrival of the police or vehicle of administration immediately after the incident assumes great significance. If the police or officers of local administration had arrived at such an early stage, there was no reason as to why no case was registered on 25.04.2014 itself.

32. Furthermore, there is no reason as to why the FIR was not registered either by the informant or by any other witness, who were accompanying the informant when the victim was being taken for treatment soon after his death at 10:00 p.m. on 25.04.2014.

33. In **Thulia Kali vs. State of TN [(1972)3 SCC 393]**, the Hon'ble Supreme Court observed that delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. The Hon'ble Supreme Court further observed that on account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation.

34. We further find that there is positive evidence of enmity between the parties existing from before. Under such circumstance, the possibility of false implication of the accused persons cannot be ruled out. Hence, the inordinate and



unexplained delay of about 12 hours in registration of the FIR under the attending facts and circumstances of the case creates suspicion on the genuineness of the FIR.

35. We also find another important aspect on the scrutiny of evidence of prosecution witnesses. PW-1 Muku Rai and PW-5 Yogendra Rai have stated in their deposition that the victim Kesho Rai was taken to Mani Chapra in an injured condition from there he was referred to Ara Sadar Hospital where he was alive till 10:00 p.m., but PW-2 Jitendra Rai has given a completely different story. He has stated that the victim Kesho Rai died on the spot and his body was brought back to his house. He stated that he together with Kashi, Yogendra, Shankar and Muku was carrying the body and on the way, a police vehicle came in which the body of the deceased was taken up to Mani Chapra. The deposition of PW-2 is not in alignment with the deposition of PW-1 Muku Rai and PW-5 Yogendra Rai.

36. We find from the evidence that the consistent case of the prosecution is that the accused persons assaulted the deceased Kesho Rai at about 05:35 p.m. on 25.04.2014 in Sabalpur market. PW-1 Muku Rai claims himself to be an eye witness to the occurrence of offence. However, he admits in his



evidence that he reached at the place of occurrence when the incident took place after closing his shop at 06:20-06:30 p.m. Hence, if the incident had taken place at 05:35 p.m. and PW-1 had reached near the place of occurrence after closing his shop at 06:20-06:30 p.m., he could not have been an eye witness to the incident. His deposition makes him a wholly unreliable witness.

37. We have also seen that PWs-1, 2 and 5 are close relatives of the deceased. However, a close relative, who is a natural witness cannot be regarded as a interested witness but if by co-incidence or chance a person arrives at the place of occurrence at the time it is taking place, he is called a chance witness. If a chance witness happens to be a relative of the victim or inimically disposed towards the accused, then his testimony requires a very cautious and close scrutiny.

38. From the evidence discussed above, we have seen that PW-1 Muku Rai arrived at the place of occurrence when the incident took place, as he was returning home after closing his shop whereas PW-2 Jitendra Rai has justified his presence at Sabalpur market by saying that he had gone there in search of his daughter Baby Kumari and PW-5 Yogendra Rai claims his presence near the place of occurrence at the time of incident



because he had gone to buy vegetable. They all are chance witnesses and were inimically disposed towards the accused. Under such circumstance, their evidence requires a very cautious and close scrutiny. We have seen that their deposition is not in alignment with each other. The inconsistency in their testimony creates doubt about their presence at the place of occurrence when the incident took place.

39. Upon scrutiny of the evidences adduced on behalf of the parties and after hearing the rival contentions, the learned Sessions Judge held that the accused persons were entitled to benefit of doubt and accordingly acquitted them. The learned Sessions Judge doubted the presence of PWs. 1, 2 and 5 at the place of occurrence when the incident took place. He found variations in the prosecution case and the depositions of witnesses. He was of the view that an inordinate and unexplained delay of 12:00 hours in recording the statement of informant and other witnesses as also institution of the FIR when the police appeared at the scene just after the occurrence was sufficient to doubt the genuineness of the FIR. According to him, since the previous enmity due to land dispute stands admitted, the possibility of false implication of the accused persons cannot be ruled out. He was also of the view that since



PWs 1, 2 and 5 were closely related to the deceased, their evidence is required to be scrutinized carefully with a greater degree of caution. According to him, their evidence could have been relied upon if it would have inspired confidence to believe the prosecution case. However, their evidence is not worthy of credence. He was also of the view that since PWs 1, 2 and 5 were family members of the deceased, examination of independent witnesses to corroborate the prosecution case was of great significance but there is no independent witness to support the prosecution case on any single point.

40. Having re-appreciated and re-considered the entire evidence brought on record by the parties, we are of the opinion that the view taken by the trial court for acquitting the accused is a plausible view. It cannot be held to be illegal, improper, contrary to law or perverse. The reasonings given by the trial court for arriving at its conclusion are well-founded.

41. In **Sheo Swarup vs. King Emperor [AIR 1934 PC 227]**, while giving proper weight and consideration to the views of trial Judge in case of an appeal against acquittal, the Privy Council observed as under:-

“... the High Court should and will always given proper weight and consideration to such matters as (1) the



views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.”

42. In **Chandrappa vs. State of Karnataka [(2007) 4 SCC 415]**, the Supreme Court observed that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. In the said case, the Supreme Court further held that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

43. In **Ghurey Lal vs. State of U.P. [(2008) 10 SCC**



450], the Supreme Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial court have acquitted, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

44. In **State of Rajasthan vs. Naresh [(2009) 9 SCC 368]**, the Supreme Court ruled that an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.

45. For the reasons aforesaid and the ratio laid down by the Hon'ble Supreme Court in its various judgments noted above, we are of the considered opinion that the appeal deserves to be dismissed. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

(Arvind Srivastava, J.)

sanjeet/-

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