

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.291 of 2015

Arising Out of PS. Case No.-129 Year-2008 Thana- SONEPUR District- Saran

Rakesh Kumar Singh @ Pappu Singh son of Damodar Singh, Resident of village- Akilpur, Near- Vishwakarma Temple, Sonepur, Darihara Road, P.S.- Sonepur, District- Saran at Chapra

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 20 of 2015

Arising Out of PS. Case No.-129 Year-2008 Thana- SONEPUR District- Saran

Surendra Singh Son of Late Ram Swaroop Singh Resident of Village - Akilpur, Near - Vishwakarma Temple, Sonepur, Darihara Road, P.S.-Sonepur, Dist.-Saran at Chapra

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 30 of 2015

Arising Out of PS. Case No.-129 Year-2008 Thana- SONEPUR District- Saran

1. Amar Nath Singh son of Ram Narayan Singh
2. Manoj Singh @ Manoj Kumar Singh son of Surendra Singh
3. Rudresh Singh son of Damodar Singh
4. Mohan Singh son of Ram Khelari Singh All residents of village - Akilpur, Near - Vishwakarma Temple, Sonepur, Darihara Road, P.S. Sonepur, District - Saran at Chapra.

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 291 of 2015)

For the Appellant : Mr. Manoj Kumar, Advocate
Mr. Prakash Kumar, Advocate

For the Respondent : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 20 of 2015)

For the Appellant : Mr. Ashok Kumar Chaudhary, Sr. Advocate
Mr. Prakash Kumar, Advocate

For the Respondent : Mr. Dilip Kumar Shina, APP



For the informant : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rajesh Kumar, Advocate
Mr. Laxmi Kant Sharma, Advocate

(In CRIMINAL APPEAL (DB) No. 30 of 2015)

For the Appellants : Mr. Ashok Kumar Chaudhary, Sr. Advocate
Mr. Prakash Kumar, Advocate
For the Respondent : Mr. Abhimanyu Sharma, APP
For the informant : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rajesh Kumar, Advocate
Mr. Laxmi Kant Sharma, Advocate

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

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 09-08-2021

Heard Mr. Ashok Chaudhary, learned senior advocate being assisted by Mr. Prakash Kumar and Mr. Ram Binay Singh, learned advocates for the appellants in Cr.Appeal (DB) No. 20 of 2015 and Cr.Appeal (DB) No. 30 of 2015, Mr. Manoj Kumar, learned advocate for the appellant in Cr.Appeal (DB) No. 291 of 2015 and Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor being assisted by Mr. Abhimanyu Sharma and Ms. Shashi Bala Verma, learned Additional Public Prosecutors for the State.

2. The appellants in these appeals challenge the judgment of conviction dated 4th December, 2014 and the order of sentence dated 11th December, 2014 passed by the learned



Additional Sessions Judge-IV, Saran at Chapra in Sessions Trial No. 206 of 2010 arising out of Sonapur P.S. Case No. 129 of 2008.

3. By the aforesaid judgment dated 4th December, 2014, Surendra Singh (Cr.Appeal (DB) No. 20 of 2015) Amar Nath Singh, Manoj Singh @ Manoj Kumar Singh, Rudresh Singh and Mohan Singh (Cr.Appeal (DB) No. 30 of 2015) have been convicted for the offences punishable under Sections 147 and 302 read with 149 of the Indian Penal Code (for short 'IPC') and Rakesh Kumar Singh @ Pappu Singh (Cr.Appeal (DB) No. 291 of 2015) has been convicted for the offences punishable under Sections 147 and 302 of the IPC as well as Section 27 of the Arms Act.

4. After hearing the convicts on the point of sentence, vide consequential order dated 11th December, 2014, Trial Court sentenced the appellants Surendra Singh, Amar Nath Singh, Manoj Singh @ Manoj Kumar Singh, Rudresh Singh and Mohan Singh to undergo R.I. for one and a half years for the offence punishable under Section 147 of the IPC and R.I. for life and a fine of Rs.10,000/- each for the offence punishable under Section 302 read with 149 of the IPC and in default of payment of fine to undergo simple imprisonment for a further period of six months. He sentenced the appellant Rakesh Kumar Singh @ Pappu Singh



to undergo R.I. for life and to pay a fine of Rs.15,000/- for the offences punishable under Section 302 of the IPC and in default of payment of fine to undergo simple imprisonment for six months, R.I. for two years for the offence punishable under Section 148 of the IPC and R.I. for five years for the offence punishable under Section 27 of the Arms Act. The Trial Court, however, directed that all the sentences awarded against the convicts shall run concurrently.

5. Since these three appeals arise out of common judgment of conviction and sentence, they have been heard together and are being disposed of by a common order.

6. The sessions trial in which the impugned judgment and order were passed relates to the first information report (for short 'FIR') that had been registered on 31st May, 2008 at 11:00 AM in Sonapur Police Station under Section 154 of the Code of Criminal Procedure (for short 'Cr.P.C') in respect of an incident that had occurred at village Akilpur situated at a distance of about 11 kilometers from the Police Station at 09:00 AM on 30th May, 2008.

7. The FIR giving rise to the sessions trial was registered on the basis of the oral statement of Chandrama Singh (P.W.5), which was reduced into writing by one Prakash, a Sub-



Inspector of Police of Town Police Station, Hajipur at 01:00 PM
on 30th May, 2008 at Sadar Hospital, Hajipur.

8. In his oral statement, the informant Chandrama Singh
stated as under :-

“My name is Chandrama Singh. I am son of late Vyas Singh, resident of Village- Akilpur, P.S.- Sonapur, District Saran. Today, on 30th May, 2008 at 01:00 PM, I am giving my statement before the Sub-Inspector of Town Police Station that at around 09:00 AM, I was working in my field situated towards west of the road of my village. My brother Shiv Prasad Singh @ Shivji Singh was returning to his village from the village Tarwa Magarpal. As he reached near Vishwakarma Temple, the accused Surendra Singh, Mohan Singh, Indal Singh, Rakesh Singh @ Pappu Singh, Rudresh Singh, Amarnath Singh, Manoj Singh, Raja Sharma @ Raja Singh and Satish Sharma, who were variously armed with weapons including pistol surrounded him upon which he shouted for help. Thereafter, I ran towards him from my field. I saw that the aforesaid named accused persons had apprehended my brother. On seeing me, Surendra Singh instigated to kill my brother Shivji Singh upon which, Rakesh Kumar Singh @ Pappu Singh fired shot causing injury to Shivji Singh, who fell down. Thereafter, all the



accused persons threatened me to flee away. I raised alarm upon which Bashisht Singh, Dilip Singh and several other villagers came there and the accused persons fled away. I took my brother to Hajipur Sadar Hospital in a vehicle where the doctor declared him dead.

I claim that the accused persons conspired together and shot my brother dead. The motive for the occurrence is that they were putting pressure to compromise Sonapur P.S. Case No. 33 of 2007 registered against them by my bataidar. My bataidar had instituted the case for demanding rangdari from him for restoring possession of the land captured by them on which he was farming watermelon. A case against Rajdeo Sharma @ Raja Singh and Satish Sharma is also pending, which was being looked after by my deceased brother. It is for this reason that the accused persons have committed the offence.

9. On receipt of the aforesaid oral statement of the informant at 11:00 AM on 31st May, 2008, Arun Malakar, the S.H.O., Sonapur Police Station registered Sonapur P.S. Case No.129 of 2008 dated 31st May, 2008 against all the nine named accused persons under Sections 302/34 of the IPC and 27 of the Arms Act and took up investigation of the case himself.



10. At this stage, it would be pertinent to note that on 30th May, 2008 itself, even before the institution of the FIR, the S.H.O., Sonapur Police Station had received an information that one person has been shot dead at village Akilpur pursuant to which he made Station Diary Entry vide S.D.E. No. 876 of 2008 and proceeded to the place of occurrence along with the police party.

11. At the place of occurrence, he seized blood-stained soil and prepared the seizure list (Exhibit-1/B) at 03:00 PM over which Dilip Singh (P.W. 4) and Shiv Lal Paswan (not examined) put their respective signatures.

12. It would also be pertinent to note that on 30th May, 2008 at 01:30 PM the inquest report (Exhibit-3) of the deceased was prepared by one Prakash (not examined), a Sub-Inspector of Hajipur Town Police Station, who had also recorded the oral statement of the informant.

13. The witnesses to the inquest report are Subodh Kumar Singh (not examined) and Chandrama Singh (P.W.5).

14. The autopsy on the body of the deceased was conducted at 03:20 PM on 30th May, 2008 by Dr. Ranjeet Kumar (P.W.8), Medical Officer, Sadar Hospital, Hajipur.



15. Apparently, the seizure, preparation of inquest report and the autopsy on the body of the deceased were all done one day prior to the institution of the FIR.

16. During investigation, the investigating officer recorded the statements of witnesses, collected the inquest report and the post-mortem examination report.

17. In all, nine persons were named in the FIR. On completion of investigation, two of them, namely, Raja Sharma and Satish Sharma were found innocent and were not sent up for trial. However, the complicity of one Damodar Singh, who was not named in the FIR was also found in the offence. Hence, eight persons were sent up for trial.

18. On receipt of the charge-sheet, the learned jurisdictional Magistrate took cognizance of the offences, sent summons to the accused persons and, after complying with the statutory requirements of Section 207 of the Cr.P.C, committed the case to the court of Sessions for trial.

19. The Trial Court explained the charges under Sections 148 and 302/149 of the IPC to the aforestated accused Surendra Singh, Mohan Singh, Indal Singh, Manoj Singh, Rudresh Singh, Damodar Singh and Amarnath Singh and under Sections 302 of the IPC and 27 of the Arms Act to the accused Rakesh Singh @



Pappu Singh to which they pleaded not guilty and claimed to be tried.

20. During trial, the prosecution examined the following nine witnesses in order to prove the charges framed against the accused persons: Anil Kumar Sah (P.W.1), Rohit Kumar (P.W.2), Vashishth Singh (P.W.3), Dilip Singh (P.W.4), Chandrama Singh (P.W.5), Gauri Shankar Pathak (P.W.6), Arun Kumar Malakar (P.W.7), Dr. Ranjeet Kumar (P.W.8) and Ram Lal Tiwary (P.W.9).

21. The prosecution also proved the following documents during trial :-

<u>S.Nos.</u>	<u>Documents</u>	<u>Exhibits</u>
1.	Seizure List	Exhibit- 1/B
2.	Signature of the informant on the fardbeyan	Exhibit-2
3.	Signature of the informant on the inquest report	Exhibit-3
4.	Formal FIR	Exhibit-4
5.	Post-Mortem Report	Exhibit-5
6.	Attested copy of Sanha	Exhibit-6
7.	Affidavit with Sanha	Exhibit-7

22. The defence also examined six witnesses in order to prove innocence of the accused persons. They are: Bharat Kumar Srivastava (D.W.1), Md. Mumtaz Hussain (D.W.2), Fanindra Kumar Singh (D.W.3), Kiran Devi (D.W.4), Ashok Kumar Singh (D.W.5) and Deepak Kumar (D.W.6).

23. The defence also proved certain documents in support of its case.



24. **Chandrama Singh (P.W.5)** stated in his examination-in-chief that he saw that Rakesh Kumar Singh @ Pappu Singh fired shot, which caused injury to his brother Shivji Singh on his back. He stated that he tied a *gamchha* around the wound sustained by his brother. He proved the contents of the fardbeyan. He also proved his signature over it, which was marked as Exhibit-2. He proved his signature on the inquest report, which was marked as Exhibit-3. He stated that the incident was witnessed by Dilip Singh (P.W.4), Rohit Kumar (P.W.2), Bashishtha Singh (P.W.3) and Anil Kumar Singh (P.W.1). He stated that the other witnesses, namely, Siyaram Singh, Ran Vijay Singh, Baban Singh, Sachchidanand Mukhiya, Surendra Gupta, Raju Rai and others have gone in collusion with the accused persons. He further stated that one Sunil Rai of village Sanua was his bataidar. He gave his farm land to the said Sunil Rai on batai. He was farming watermelon on that land but the accused persons, namely, Rakesh Kumar Singh @ Pappu Singh, Rudresh Singh, Indal Singh and Mohan Singh extorted Rs.5,000/- as *rangdari* from him. They were further demanding Rs.19,000/- as *rangadari* from him. When he failed to fulfill their demand, they forcibly took his signature on a blank sheet of paper and forbade him to do farming over the land on batai, which gave rise to filing a case against them, which was



being looked after by his brother Shivji Singh. He stated that a case is also pending against the accused Raja Sharma and Satish Sharma.

25. In cross-examination, he stated that Bashishth Singh is his agnate, Dilip Singh is his co-villager, Rohit Kumar is his nephew and Anil Kumar Singh is his son. He stated that the priest of Vishwakarma Temple is one Ranjeet Tiwary (not examined). He had seen Damodar Singh near the Vishwakarma Temple. He admitted that the police personnel of Sonapur Police Station had come at the place of occurrence at 03:00 PM on 30th May, 2008 and took Ranjeet Tiwary to the police station. He stated that at that time he was at the hospital. He admitted that Dilip Singh and Shiv Lal Paswan took the police to the place of occurrence. He admitted that his family members had told him that the police had also visited his house on 30th May, 2008, but they had not recorded the statement of his family members. He denied the defence suggestion that he had not stated either to the police officers of Hajipur Town Police Station or to the investigating officer of Sonapur Police Station that the deceased was shot in his back from behind. He stated that he reached Hajipur Sadar Hospital with his injured brother at about 10:00 AM. He admitted that the doctor examined his brother and declared him dead. He stated that his



elder brother Dinesh Singh, Anil Singh, Dilip Singh, Rohit Singh, Bashishth Singh and other villagers were also with him. He stated that out of them Dilip Singh immediately went back to his village, but the others remained with him till 08:00 PM on 30th May, 2008. He admitted that the accused Surendra Singh is a teacher, but he denied that he was not present at the place of occurrence on 30th May, 2008. He also denied that Indal Singh and Mohan Singh was not present at the place of occurrence on 30th May, 2008. He admitted that the accused Amarnath Singh is a teacher at Chautha in Begusarai, but denied that he was not present at the place of occurrence on 30th May, 2008. He also denied that the accused Manoj Singh son of Surendra Singh is settled in his *sasural* at Samastipur and, on the date of occurrence, he was in his *sasural*.

26. He admitted in cross-examination that his son, namely Nand Kishore Singh is employed in police department in the State of Jharkhand. However, he expressed ignorance about the post on which was functioning. He denied that his son is attached with the Inspector General of Police, Jharkhand and on his pressure, the S.H.O., Hajipur Town Police Station fabricated an ante-dated fardbeyan. He also denied that he had not named any accused initially but, later on, he set up a false case and gave name of the accused persons in his ante-dated fardbeyan. He stated that



his brother was not facing any criminal case. He denied that his brother was a criminal and was killed by some unknown accused persons and out of enmity, the names of the accused persons have been given in the fardbeyan. Later on, he admitted that his deceased brother was an accused in a case under Section 307 of the IPC. He also admitted that he himself was made accused in a case for firing shot on the nephew of Baikunth Singh in which accused Mohan Singh was a witness. He further admitted that the accused Satish Sharma had instituted a case in which he along with three sons of the deceased Shivji Singh, namely, Nawal Singh, Rajesh Singh and Rakesh Singh were made accused. He stated that the *gamchha*, which was used to tie the wound of Shivji Singh was handed over to the police.

27. **Anil Kumar Singh (P.W.1)** has corroborated the statement made by the informant in his oral statement giving rise to the institution of the FIR.

28. In cross-examination, he admitted that he was employed in the police department between 1997 and 2006. He stated that he was dismissed from service without any reason. He stated that the distance of Vishwakarma Temple from the place of occurrence is about 100-150 yards. He stated that when he heard the sound of firing, he came running towards his injured uncle. He



could see that the shot fired had hit him in his back. He denied that he had stated before the police that he heard the sound of firing when he was coming to Vishwakarma Temple from his house. He admitted that he along his father has been made accused in a case registered under Section 307 of the IPC by Baikunth Singh. He denied the defence suggestion that he was dismissed from service because he had obtained job by submitting forged certificate. He admitted that his house is situated at a distance of one and half kilometers from Vishwakarma Temple. He stated that he had stated to the police that all the accused persons were instigating to kill Shivji Singh when he was surrounded by the accused persons. His brother cried for help. He denied the defence suggestion that his family members are having criminal antecedent and the deceased was killed in a different manner. He also denied the defence suggestion that Indal Singh and Amarnath Singh were not present in the village on the date of occurrence.

29. **Rohit Kumar (P.W.2)** has also corroborated the initial statement made by the informant before the police officer of Hajipur Town Police Station in his examination-in-chief.

30. In cross-examination, he stated that on 30th May, 2008 he had reached Hajipur Sadar Hospital at about 10:00 AM. He continued there till 07:00 PM. Between 10:00 AM and 07:00



PM, Chandrama Singh, Bashishth Singh Shivji Singh and Anil Singh were also present at the Sadar Hospital, Hajipur. He stated that the police officer came in the Sadar Hospital at about 02:00 PM. He stated that Sonapur Police was not informed either by him or by anyone else. He stated that he does not know whether any police officer came from Sonapur Police Station between 10:00 AM and 07:00 PM on 30th May, 2008. He admitted that when he came back to his village, he came to know that the police had come. At that time, only the female members were present in the house of the informant. He stated that Baban Singh had told him that the police had come from Sonapur Police Station on 30th May, 2008. He stated that the deceased Shivji Singh was cremated on 31st May, 2008 at 02:00 PM. He denied the defence suggestion that he had not stated before the police that on 30th May, 2008, he was present at Vishwakarma Temple. He denied that he had not stated before the police that all the accused persons had surrounded the deceased. He further denied the defence suggestion that he had not stated before the police that on the order of accused Surendra Singh, Rakesh Kumar Singh @ Pappu Singh fired shot hitting on the back of the deceased Shivji Singh. He also denied the defence suggestion that he had not witnessed the occurrence.



31. **Bashishth Singh (P.W.3)** has also corroborated the initial version of the informant in his examination-in-chief. He has stated that at the time of occurrence he was working in his field.

32. In cross-examination, he stated that no police officer of Sonapur Police Station had come at Hajipur Sadar Hospital on 30th May, 2008. He stated that he left the hospital at about 08:00 PM. He admitted that when he came back to his village, he came to know that Sonapur Police had also come to his village. He admitted that when Sonapur Police had come to his village, the female members of the house of the deceased had disclosed that Shivji Singh had sustained gun shot injury. He stated that no one had visited Sonapur Police Station either on 30th May, 2008 or on 31st May, 2008. He denied the defence suggestion that he had not stated before the police that all the accused persons had surrounded the deceased. He admitted that Surendra Singh is a teacher but denied the defence suggestion that on the date of occurrence he was at his school. He also denied the defence suggestion that Indal Singh had gone to Samastipur on the date of occurrence for Physical Efficiency Test being conducted by the Railway. He denied the defence suggestion that he had not witnessed the occurrence.



33. **Dilip Singh (P.W.4)** stated that on 30th May, 2008 at 09:00 AM when the incident took place he was present at Vishwakarma Temple. He corroborated the prosecution case as narrated in the FIR. In his examination-in-chief, he stated that when the S.H.O. of Sonapur Police Station came at the place of occurrence, he was in the village. He seized the blood-stained soil. He stated that the seizure list was prepared over which he and Shiv Lal Paswan put their respective signatures. He proved his own signature and the signature of Shiv Lal Paswan, which were marked as Exhibits-1 and 1/A.

34. In cross-examination, he stated that he went together with the victim Shivji Singh to hospital on 30th May, 2008 after the incident in the same vehicle. He stated that he reached the hospital at 10:00 AM and stayed there till 01:00 PM. Thereafter, he came back to his village. He stated that after the incident the injured Shivji Singh was brought to the Temple by him, Chandrama Singh, Bashishth Singh and Rohit Kumar. He stated that when the seizure list was prepared, he had not given his statement to the police. His statement was recorded by the police on the next day. He stated that prior to the preparation of the seizure list, he knew everything about the occurrence, but neither the police had made any inquiry from him, nor he thought it proper to disclose. He denied the



defence suggestion that he had deposed falsely at the instance of Nand Kishore, who is serving in the police department in the State of Jharkhand. He admitted that on 30th May, 2008 the police had visited the house of the deceased. He denied the defence suggestion that he had not stated before the police that he was at the Vishwakarma Temple on the date of occurrence. He also denied the defence suggestion that he had not stated before the police that Shivji Singh had cried for help and that he had taken the victim to the Vishwakarma Temple from where he was taken to the hospital. He admitted that in the case of murder of Om Prakash, the deceased Shivji Singh had deposed from his side.

35. **Dr. Ranjeet Kumar (P.W.8)** was posted as Medical Officer at Hajipur Sadar Hospital on 30th May, 2008. He did the post-mortem examination on the body of the deceased Shivji Prasad Singh. He found the following ante-mortem injuries on his person :-

1. Entry wound with inverted margin of ¼” x ¼” on the back of right thorax at the level of 10th and 11th ribs. The wound was surrounded by blackening and charring.
2. Exit wound 2” x 2” with overt margin on the just left of xyphisternal.

According to P.W. 8, cause of death was shock and haemorrhage and the time elapsed since death was within 24 hours. He proved his signature on the post-mortem



report, which was marked as Exhibit-5. According to him, the injury caused was sufficient in ordinary course of nature to result into death.

36. In cross-examination, he stated that the body was received at Sadar Hospital, Hajipur at 02:10 PM on 30th May, 2008. He stated that the post-mortem examination on the body of the deceased commenced at 03.20 PM on 30th May, 2008. He stated that the dead body was produced by a Hawildar. He admitted that there was no attendant at the time of post-mortem examination.

37. **Arun Malakar (P.W.7)** stated in his examination-in-chief that on 30th May, 2008 he was posted as S.H.O. of Sonapur Police Station. He received an information on phone that one person has been shot at and has sustained injuries. He made Station Diary Entry in this regard vide Sanha No. 876 of 2008 and proceeded to village Akilpur. When he reached at the place of occurrence, he was told that the injured has been taken to hospital. He seized blood stained soil at the place of occurrence and prepared the seizure list in presence of Dilip Singh (P.W.4) and Shiv Lal Paswan (not examined) at 03:00 PM. They put their respective signatures over the seizure list. He proved the seizure list which was marked as Exhibit-1/B. He stated that thereafter as per information received by him he proceeded to Hajipur Sadar



Hospital where the injured was taken. He inquired from the persons present there about the incident. He stated that he received oral statement of the informant Chandrama Singh on 31st May, 2008 at 11:00 AM. He did pagination over it and put his signature. He proved his signature on the oral statement, which was marked as Exhibit-2/A. On the basis of the said oral statement, he registered formal FIR, which was proved by him and marked as Exhibit-4. He stated that he himself took up the investigation, inspected the place of occurrence, saw blood-stains at the place of occurrence, recorded the further statement of the informant and the statement of the witnesses, received the supervision note from the superior police officers as also the post-mortem report of the deceased from the Hajipur Sadar Hospital. He stated that, thereafter, he was transferred from Sonapur Police Station to a different Police Station.

38. In cross-examination, he stated that after recording sanha, he left the police station within half an hour. He seized the blood-stained soil from the place of occurrence and prepared the seizure list at 03.00 PM. He admitted that till the seizure list was prepared he had not received the copy of the oral statement of the informant. He also admitted that he had inquired from the witnesses to the seizure list regarding the incident and the name of



the culprits, but they did not disclose the name of the culprits at the place of occurrence. He stated that when he reached Hajipur Sadar Hospital he could not meet the informant. When he reached there, the injured Shivji Singh was in operation theater as a result of which his statement could not be recorded. When he inquired from the family members of Shivji Singh at the hospital, they denied to give any statement. They stated that they will give their statement later. He admitted that when he reached Hajipur Sadar Hospital, the S.H.O. of Hajipur Town Police Station was already present there, but he did not give copy of the oral statement of the informant to him. He stated that in his presence, the statement of the informant was not recorded and he does not know as to when his oral statement was recorded. He admitted that during investigation he came to know that the accused Surendra Singh is a teacher. He admitted that he had recorded the statement of Bharat Srivastava (not examined), Ram Binod Singh (not examined) and Phanindra Kumar Rai (not examined). He admitted that during investigation he came to know that the *sasural* of the accused Manoj Singh is at Mohadipur in the district of Samastipur. He admitted that Anil Singh (P.W.1) did not state before him that he had seen the accused firing shot. He did not state that all the accused persons were instigating to kill Shivji Singh. He further



admitted that Bashishtha Singh (P.W.3) did not state before him that the accused persons, who had surrounded the deceased, were raising slogan '*maro*' '*maro*'. He admitted that Dilip Singh (P.W.4) did not state before him that he was present at Vishwakarma Temple and Shivji Singh cried for help. He did not state that the enemy was firing shot at him. He also admitted that Chandrama Singh (P.W.5) did not state before him that the accused opened fire causing injury in the back of Shivji Singh. He further admitted that he did not send the blood stained soil and blood stained grass to the Forensic Science Laboratory for test. He admitted that he did not draw sketch map of the place of occurrence.

39. **Gauri Shankar Pathak (P.W.6)** was posted at Sonapur Police Station as Police Inspector. He took over the investigation of the case on 20th February, 2009. He stated that the informant of the case had submitted an application to the Superintendent of Police alleging that the previous investigating officer was trying to help the accused Surendra Singh. He stated that he had inquired into the matter. He submitted that on completion of investigation he had submitted charge-sheet in the case before the court.

40. In cross-examination, he admitted that he did not submit any enquiry report to the Superintendent of Police. He



admitted that he did not incorporate the name of persons whose statements were recorded by him in the charge-sheet. He stated that all these witnesses were government servants. He denied the defence suggestion that in order to help the informant and destroy the evidence collected by the previous investigating officer he, out of his own, took over an application from the informant and started enquiring into the matter even before the investigation was formally entrusted to him in the case. He admitted that there is no mention in the case diary that in the light of the order of the superior officers he is taking the statement of the witnesses afresh.

41. **Ram Lal Tiwary (P.W.9)** stated in his examination-in-chief that he is a literate constable posted at Sonapur Police Station. He stated that under the orders of Om Prakash, S.H.O. of Sonapur Police Station, he had brought the entries made in the station diary between 25.05.2008 and 05.07.2008. He produced a copy of Sanha No. 876 of 2008 dated 30th May, 2008. He stated that he is possessing the original copy which has been drawn in the writing of Constable No.64, namely, Prakash Kumar Singh. He stated that the copy produced before the court is the true copy of its original. He proved the sanha, which was marked as Exhibit-6.

42. In cross-examination, he stated that in the sanha it has been written that the police are proceeding to verify the



information received, which was entered into sanha. He admitted that the signature of the person informing the police is not present on the sanha. He also admitted that the sanha was not scribed in his presence.

43. After examination of the prosecution witnesses, the prosecution case was closed. Thereafter, in order to enable the accused persons personally to explain the circumstances appearing in evidence against them, the court recorded their statements under Section 313 of the Cr.P.C.

44. Thereafter, the defence examined altogether six witnesses in order to prove innocence of the accused persons.

45. **Bharat Kumar Srivastava (D.W.1), Md. Mumtaz Hussain (D.W.2), and Fanindra Kumar Singh (D.W.3)** were posted as Block Education Officer, Dariyapur, Teacher at Block Office, Dariyapur and Headmaster in Primary School, Darihara respectively on 30th May, 2008. They have deposed that the appellant Surendra Singh (Cr.Appeal (DB) No. 20 of 2015) was part of inspection team on 30th May, 2008 and had visited the primary school, Darihara and middle school, Darihara with them. They stated that Surendra Singh was with them from 07:45 AM till 10:30 AM and, as such, the appellant Surendra Singh could not have been at the place of occurrence at about 09:00 AM as alleged.



46. **Kiran Devi (D.W.4)** was Councilor in District Boad, Samastipur on 30th May, 2008. She has deposed that appellant no.2 Manoj Singh (Cr.Appeal (DB) No. 30 of 2015) was with her from about 08:00 AM till 10:00 AM and was doing some work related to LIC at village Dubaha, which is far away from the place of occurrence. In cross-examination, she stated that she is not related to Manoj Singh in any manner.

47. **Ashok Kumar (D.W.5)**, a Principal of M.N.N.R. College, Champa on 30th May, 2008 stated in his deposition that the appellant no.1 Amarnath Singh (Cr.Appeal (DB) No. 30 of 2015) was a lecturer in the college and was present at his college from 06:30 AM till 11:00 AM on 30th May, 2008. He further stated that the appellant Amarnath Singh had marked attendance on 30th May, 2008 and the attendance was marked in his presence.

48. After closure of the defence case and after hearing the rival submissions made on behalf of the parties, the Trial Court convicted the appellants in these three appeals and sentenced them in the manner discussed above.

49. Mr. Ashok Kumar Chaudhary, learned senior advocate being assisted by Mr. Prakash Kumar, learned advocate appearing for the appellants in Cr.Appeal (DB) No.20 of 2015 and Cr.Appeal (DB) No. 30 of 2015 submitted that the Trial Court did



not appreciate the evidence led before it in correct perspective. He submitted that in the present case neither the informant nor the witnesses had seen the occurrence. The informant lodged the case after due deliberations and consultations belatedly. He contended that the FIR itself is antedated. According to him, the investigation conducted by the police is also tainted. He submitted that the allegation made in the FIR against Raja Sharma and Satish Sharma were common as against the remaining seven accused persons except accused Rakesh Kumar Singh @ Pappu Singh, who is said to be the assailant of the deceased. He argued that out of the nine accused persons named in the FIR, Raja Sharma and Satish Sharma were not sent up for trial as the police did not find their complicity in the offence. Further, one Damodar Singh, who was not named in the FIR was chargesheeted alongwith seven others and out of them Damodar Singh and Indal Singh against whom there is identical evidence have been acquitted by the Trial Court giving them benefit of doubt. He, thus, submitted that there was no reason for the Trial Court to have distinguished the case of the appellants in Cr.Appeal (DB) No. 20 of 2015 and Cr.Appeal (DB) No. 30 of 2015 with that of the two acquitted accused persons, namely, Damodar Singh and Indal Singh. He further contended that from the evidence, it would transpire that apart from Rakesh



Kumar Singh @ Pappu Singh, none had participated in the offence. Even the weapons in their hands have not been specified.

50. Mr. Chaudhary, learned senior counsel further contended that the medical evidence completely belies the prosecution case. In the FIR, it is not indicated that the accused Rakesh Kumar Singh @ Pappu Singh opened fire causing injury in the back of Shivji Singh, but the post-mortem report reveals that the injury caused to the deceased was in the back. He contended that the material development was made by the witnesses during trial which ought not to have been accepted by the Trial Court. He contended that there is no finding of common object as also that all had acted in tandem, which was necessary for convicting the appellants with aid of Section 149 of the IPC. Lastly, he contended that there was no occasion for the Trial Court to disbelieve the plea of alibi of the accused Surendra Singh, Amarnath Singh and Manoj Kumar Singh. He contended that D.W.1, D.W.2 and D.W.3 are public servants and there was no reason for them to give incorrect evidence before the Trial Court. Similarly, D.W.4 is an elected representative having no relation with the appellants. There is no reason for her to depose falsely before the court. He further contended that D.W.5 was the Principal of M.N.N.R. College,



Champa and his evidence has not been appreciated by the Trial Court.

51. Mr. Manoj Kumar, learned advocate appearing for the appellant in Cr.Appeal (DB) No. 291 of 2015, while adopting the submissions made by Mr. Ashok Kumar Chaudhary, learned senior advocate submitted that the investigating officer of the case contradicted almost all the witnesses examined on behalf of the prosecution. He contended that the veracity of the prosecution is doubtful in the background of the fact that the distance of Sonapur Police Station from Hajipur Town Police Station is hardly 5 kilometers but there is no reason why the so called oral statement, reached the Sonapur Police Station after 22 hours of its recording. He contended that the medical evidence completely belies the prosecution case. He contended that neither the weapon by which the crime was committed was recovered by the police nor any scientific investigation was made in the case. He contended that the entire case is nothing but a bundle of falsehood.

52. Per contra, Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor being assisted by Mr. Abhimanyu Sharma and Ms. Shashi Bala Verma, Additional Public Prosecutors and Mr. Rajesh Kumar and Laxmi Kant Sharma, learned advocates appearing for the informant submitted that the Trial Court has



rightly appreciated the evidences adduced before it and convicted the accused persons. He contended that the delay caused in the institution of the FIR was not deliberate. According to him, the delay, if any, was because of the fact that the police officer as well as family members of the deceased were first concerned with the treatment of the victim at Hajipur Sadar Hospital. He contended that there are at least five eye-witnesses to the occurrence and they have withstood the test of cross-examination. He argued that the FIR is not an encyclopedia, which should contain all the relevant facts. In the FIR itself, it is categorically stated that it was the accused Rakesh Kumar Singh @ Pappu Singh, who opened fire causing injury to the deceased. Merely because it is not mentioned that the injury was caused in the back, the FIR cannot be disbelieved. He contended that the defence witnesses are not trustworthy. They were not examined by the investigating officer during trial. Therefore, the Trial Court has rightly disbelieved them.

53. We have given our anxious consideration to the rival submissions and have carefully perused the evidence on record.

54. It is not disputed that the oral statement of the informant Chandrama Singh was recorded at 01:00 PM by one Prakash, a Sub-Inspector of Town Police Station, Hajipur on 30th



May, 2008 at Sadar Hospital, Hajipur. The endorsement made on the oral statement shows that it was forwarded to the Sonapur Police Station for investigation. However, the endorsement does not contain the date and time to show as to when the oral statement was forwarded to the Sonapur Police Station. The said police officer (Prakash) of Hajipur Town Police Station has not been examined during trial.

55. As per the investigating officer, the oral statement reached Sonapur Police Station at 11:00 AM on 31st May, 2008. The distance between Hajipur Town Police Station and Sonapur Police Station by road is only five kilometers. The inordinate delay caused in transmitting the duly recorded oral statement of the informant from Hajipur Town Police Station to Sonapur Police Station has not been explained.

56. It is not in dispute that FIR was not registered on the basis of the duly recorded oral statement of the informant at the Hajipur Town Police Station. The law on the point of institution of an FIR is well settled. Any information which amounts to cognizable offence is mandatorily to be registered as FIR by the police. Even if the information to be registered as FIR where the incident took place is out of jurisdictional area of the police station, the police is still obliged to take the information and



register it as FIR and thereafter transfer the FIR to the jurisdictional police station.

57. We have seen that the investigating officer has deposed that on 30th May, 2008 while he was posted as S.H.O. of Sonapur Police Station, he had received telephonic information that one person has been shot at by unknown criminals in village Akilpur. He has deposed that after making sanha entry, he proceeded to the place of occurrence at 12:15 PM. The said sanha has been proved as Exhibit-6. The sanha reads as under :-

“Sanha No. 876, Time 12:15 PM, information/departure – At this time an information has been received that one person has been shot at in village Akilpur by unknown criminals. Sanha is registered and for verification of the information I, S.H.O. Arun Malakar am proceeding to village Akilpur. In my absence, Mr. Kuldeep Paswan, Sub-Inspector is made incharge of the diary.”

58. If the contents of the sanha are to be believed, there was a definite information that one person was shot at by some unknown miscreants in village Akilpur even before 12:15 PM on 30th May, 2008. The information was certainly regarding a cognizable offence. The investigating officer proceeded to verify the genuineness of the information from the police station and



reached the place of occurrence within half an hour, which would mean that he had reached the place of occurrence at 12:45 PM on 30th May, 2008. He stated that he seized the blood stained soil at the place of occurrence and prepared the seizure list at 03:00 PM and between 12:45 PM and 03:00 PM he was inquiring into the matter. He stated that he inquired from the seizure list witnesses, but they did not disclose the name of the culprits involved in the crime.

59. The seizure list (Exhibit-1) contains names of Dilip Singh (P.W. 4) and Shiv Lal Paswan as witnesses to the seizure. Shiv Lal Paswan has not been examined during trial. Dilip Singh has claimed himself to be an eye-witness in his deposition before the court. It is not understandable as to why he did not disclose the name of the culprits when the investigating officer came and inquired into the matter and prepared the seizure list on 30th May, 2008.

60. Another peculiar aspect in this case is that on 30th May, 2008, after preparing the seizure list, when the investigating officer went to Hajipur Sadar Hospital, he could not meet the informant Chandrama Singh. If the informant was attending the victim at the hospital, as to why the investigating officer could not meet him.



61. The investigating officer has stated that since the victim Shivji Singh was in operation theater, he could not record his statement, which would mean that when he had reached Sadar Hospital, Hajipur after preparing the seizure list at 03:00 PM on 30th May, 2008, the said victim was alive and was undergoing treatment in the operation theater, but the informant has stated in his deposition that when he reached at the hospital at 10:00 AM on 30th May, 2008, the doctor examined Shivji Singh and declared him dead. Further, when we look at the inquest report (Exhibit-3), we find that it was prepared at 01.30 PM on 30th May, 2008. If he had already died at 10:00 AM or before 01:30 PM on 30th May, 2008, there was no occasion for him to be treated in the operation theater when the investigating officer visited the hospital after 03:00 PM.

62. Further, when we look at the deposition of Dr. Ranjeet Kumar (P.W.8) and peruse the post-mortem examination report (Exhibit-5), we find that the body of the deceased was received on 30th May, 2008 at 02.10 PM and the post-mortem examination commenced at 03:20 PM. The mystery remains unsolved. If the victim was undergoing treatment in the operation theater even after 03:00 PM, as to how his dead body was received by the doctor for post-mortem examination at 02:10 PM.



63. We have seen that the investigating officer has stated in his evidence that when he inquired from the family members of the victim, who were present at the hospital, they refused to give their statement and disclose the name of the culprits involved in the commission of the offence. It is not understandable as to why the family members would have withheld the names of the culprits from the investigating officer of the case, if they were knowing their names. There was no reason for them not to disclose the name of the culprits.

64. We have also seen that when the investigating officer visited the Sadar Hospital, Hajipur after preparing the seizure list at 03:00 PM, he met the S.H.O. of Hajipur Town Police Station, but he did not hand over the duly recorded oral statement of the informant to him. If the oral statement was already recorded by the police officer of Hajipur Town Police Station at 01:00 PM on 30th May, 2008 and the S.H.O. of Sonapur Police Station had himself visited the hospital at 03:00 PM on the same day and met the S.H.O. of Hajipur Town Police Station, who was present there from before, there was no reason why same could not have been handed over to him. Surprisingly, the S.H.O. of Sonapur Police Station was not even told by the S.H.O. of Hajipur Town Police



Station that oral statement of the informant had already been recorded.

65. Another peculiar circumstance in the present case is that admittedly the place of occurrence is within the territorial jurisdiction of Sonepur Police Station. After the S.H.O. of Sonepur Police Station came back to Sonepur from the Hajipur Sadar Hospital on 30th May, 2008, he did not institute the FIR. He waited for the whole night on 30th May, 2008 and on the next day at 11:00 AM when the oral statement of the informant recorded by Mr. Prakash, a Sub-Inspector of Hajipur Town Police Station was received at his police station, he instituted the FIR. It is not known who delivered the oral statement of the informant to the SH.O. of Sonepur Police Station.

66. When we appreciate the facts and circumstances of the case, we find that if the investigating officer had received information on phone regarding injury caused to some unknown person in village Akilpur by unknown criminals, and even if we presume that the information was cryptic and after making station diary entry he proceeded to the place of occurrence to verify the veracity of the information and when he reached the place of occurrence he had definite information about the crime. In such a situation, if no one was willing to register FIR, he ought to have



recorded his self-statement at the place of occurrence itself and, thereafter, instituted the FIR and investigated the case. The non-registration of the FIR by him on 30th May, 2008 was definitely a dereliction of duty on his part. Secondly, if Mr. Prakash, a police officer of Hajipur Town Police Station had already recorded the oral statement of the informant on 30th May, 2008 at 01:00 PM at Sadar Hospital, Hajipur and prepared the inquest report of the deceased on the same day, he ought to have registered the FIR at Hajipur Town Police Station promptly and should have forwarded the same to the Sonapur Police Station within whose jurisdiction the crime was committed. Non-registration of FIR and retaining the oral statement of the informant in his possession for 22 hours and not delivering the same to the jurisdictional police station when he visited Hajipur Sadar Hospital was a gross misconduct on his part.

67. Once we find that the police officers have deliberately failed to register FIR on receipt of information of a cognizable offence and registered the FIR after reaching the place of occurrence, after inquiring into the matter, after preparing the inquest report, after preparing the post-mortem report, after due deliberations, consultations and discussions, the inalienable



inference would be that the investigation is tainted. It would be highly unsafe to rely upon such a tainted investigation.

68. In ***State of A.P. Vs. Punati Ramulu***, since reported in ***1994 Supp (1) SCC 590***, the Supreme Court observed “*the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stopped to fabricate evidence and create false clues.*”

69. The object and essence of prompt lodging of FIR has been explained by the Supreme Court in the ***State of A.P. Vs. M. Madhusudhan Rao***, since reported in ***(2008) 15 SCC 582***, the Supreme Court observed as under :-

“Time and again, the object and importance of prompt lodging of the first information report has been highlighted. Delay in lodging the first information report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets



bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained.”

70. Similarly, in ***Thulia Kali v. State of T.N.***, since reported in ***(1972) 3 SCC 393***, the Supreme Court observed that the FIR in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The Supreme Court observed that the delay in lodging the first information report should be satisfactorily explained. The Court further observed that in the light of the evidence the trial court has to consider whether the delay in lodging the FIR has adversely affected the case of the prosecution or not.

71. In ***State of Punjab Vs. Ramdev Singh***, since reported in ***(2004) 1 SCC 421***, the Supreme Court held that the delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same. However, if the delay is explained to the satisfaction of the court, the same



cannot by itself be a ground for disbelieving and discarding the entire prosecution version.

72. It is a matter of surprise to us that the prosecution has not examined Prakash, the Sub-Inspector of Police, who had recorded the oral statement and prepared the inquest report. It was he, who could have unfolded the relevant facts of the case necessary for adjudication. It was he, who could have explained the reason for not registering the FIR at Hajipur Town Police Station promptly or for delayed transmission of the oral statement of the informant to the Sonapur Police Station. His non-examination has certainly caused prejudice to the defence.

73. Coming back to the deposition of the witnesses, we notice that the informant has admitted that the non-official witnesses except Dilip Singh (P.W.4) are all his family members. Even Dilip Singh is his co-villager. It is an admitted case of the prosecution that the accused persons were on inimical terms. It is well settled by now that the evidence of interested, inimical and related witnesses is to be scrutinized with care and caution. It cannot be rejected merely on the ground of being partisan or related witnesses. If on careful scrutiny, such witness is found to be reliable, it may be sufficient to pass order of conviction thereon.



74. Keeping the aforesaid principle in mind, when we appreciate the evidence of the witnesses, we find that the investigating officer has contradicted Anil Kumar Sah (P.W.1) by deposing that he had not stated in his statement under Section 161 of the Cr.P.C that he had seen the accused Rakesh Kumar Singh @ Pappu Singh opening fire causing injury to his uncle Shivji Singh and that the other accused were instigating to kill Shivji Singh. The investigating officer contradicted Bashishth Singh (P.W.3) by deposing that he had not stated in his statement made under Section 161 of the Cr.P.C that those, who were surrounding Shivji Singh were instigating to kill him. The investigating officer contradicted Dilip Singh (P.W.4) by admitting that he did not state before him that he was at the place of occurrence (Vishwakarma Temple) and that Shivji Singh cried for help. He contradicted the informant Chandrama Singh (P.W.5) by admitting in his evidence that he did not state before him that the accused fired hitting on the back of Shivji Singh.

75. We have seen that the attention of the witnesses examined on behalf of the prosecution was drawn towards the relevant part of their evidence on which contradictions were taken from the investigating officer. The aforesaid contradictions are material contradictions and as such the evidences adduced by the



witnesses examined on behalf of the prosecution do not inspire confidence.

76. Looking to the ante-mortem injury sustained by the deceased, as noticed by Dr. Ranjeet Kumar (P.W.8), who conducted the post-mortem examination on the body of the deceased, the wound of entry was on the back of right thorax at the level of 10th and 11th ribs and wound of exit was just left of xyphisternal. The informant did not state in his oral statement that the deceased was shot in the back. The witnesses examined by the investigating officer during investigation also failed to point out that the deceased was shot in the back. They have made material improvement while deposing before the court. The improvement made by them in their testimonies during trial regarding manner of occurrence does not inspire confidence.

77. The aforesaid discussion leads us to conclude that the FIR was not registered promptly, the investigation was tainted and the witnesses examined on behalf of the prosecution are wholly unreliable. Thus, in the facts and circumstances of the case, we are of the view that the Trial Court was not justified in convicting the accused Amar Nath Singh, Manoj Singh @ Manoj Kumar Singh, Rudresh Singh, Mohan Singh and Surendra Singh for the offences punishable under Sections 147 and 302/149 of the IPC and the



accused Rakesh Kumar Singh @ Pappu Singh for the offences punishable under Sections 148 and 302 of the IPC as well as Section 27 of the Arms Act.

78. In view of the foregoing discussions, we are persuaded to conclude that the impugned judgment of conviction dated 4th December, 2014 and the order of sentence dated 11th December, 2014 passed by the learned Additional Sessions Judge-IV, Saran at Chapra in Sessions Trial No. 206 of 2010 arising out of Sonapur P.S.Case No. 129 of 2008 cannot be legally sustained. Accordingly, the impugned judgment of conviction and the order of sentence passed by the learned Additional Sessions Judge-IV, Saran at Chapra in Sessions Trial No. 206 of 2010 arising out of Sonapur P.S.Case No. 129 of 2008 are, hereby, set aside. The appellants are acquitted of the charges levelled against them.

79. Since the appellants, namely, Surendra Singh (Cr.Appeal (DB) No. 20 of 2015), Amar Nath Singh, Manoj Singh @ Manoj Kumar Singh, Rudresh Singh and Mohan Singh (Cr.Appeal (DB) No. 30 of 2015) are on bail, they are discharged from the liabilities of their bail bonds. The appellant Rakesh Kumar Singh @ Pappu Singh (Cr.Appeal (DB) No. 291 of 2015), who is in jail, is directed to be released forthwith, unless he is required in any other case.



80. These appeals stand allowed.

(Ashwani Kumar Singh, J)

(Arvind Srivastava, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	17.08.2021
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