

IN THE HIGH COURT OF JUDICATURE AT PATNA

DEATH REFERENCE No.6 of 2021

Arising Out of PS. Case No.-739 Year-2018 Thana- ARA NAGAR District- Bhojpur

The State of Bihar

... .. Petitioner/s

Versus

1. Babli Miyan S/O- Sabbu Miyan R/o of Mohalla Khetari, P.S. Ara Nagar, District - Bhojpur.
2. Abdulla Quraishi S/o Late Jamil Quarishi R/o Mohalla Kazi Tola, P.S.- Ara Nagar, District- Bhojpur.
3. Khurshid Qurashi S/o Late Jamil Quraishi R/o Mohalla Kasap Tola, P.S. Ara Nagar, District - Bhojpur.
4. Taushif Miyan @ Taushif Alam @ Tausif Ahmad S/o Late Md. Akhtar Alam R/o Mohalla Khetari, P.S. Ara Nagar, District - Bhojpur.
5. Ahamd Miyan @ Ahmad Hussain S/o Md. Yakub R/o Mohalla- Milki, P.S. Ara Nagar, District - Bhojpur.
6. Anwar Quraishi @ Sarla Miyan S/o Late Ali Jaan R/o Mohalla Rouza, P.S. Ara Nagar, District - Bhojpur.
7. Raju Khan S/o Md. Jalil R/o Mohalla Najirganj, Ara, P.S. Ara Nagar, District - Bhojpur.

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 470 of 2021

Arising Out of PS. Case No.-739 Year-2018 Thana- ARA NAGAR District- Bhojpur

Ahmad Miyan @ Ahmad @ Ahmad Hussain S/O Late Md Yakub Miyan @ Md Yakub, resident of Village - Milki Mohalla, P.S.- Ara Town, Distt.- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 534 of 2021

Arising Out of PS. Case No.-739 Year-2018 Thana- ARA NAGAR District- Bhojpur



Raju Khan @ Raju Kha Son of Md. Jalil @ Jalal khan, resident of Mohalla-
Milki (Kasai Tola), Najirganj, Ara, P.S.- Ara Nagar, Dsitrict- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 538 of 2021

Arising Out of PS. Case No.-739 Year-2018 Thana- ARA NAGAR District- Bhojpur

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1. Babli Miyan S/o Sabbu Miyan R/o Mohalla- Khetari, P.S.- Ara Nagar, District- Bhojpur, Bihar.
2. Abdullah Qureshi S/o Late Jamil Quareshi R/o Mohalla- Kazi Tola, P.S.- Ara Nagar, District- Bhojpur, Bihar.
3. Khurshid Qurashi S/o Late Jamil Quaishi R/o Mohalla- Kasap Tola, P.S.- Ara Nagar, District- Bhojpur, Bihar.
4. Anwar Quraishi @ Sarla Miyan Son of Late Ali Jaan R/o Mohalla- Rouza, P.S.- Ara Nagar, District- Bhojpur, Bihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with

CRIMINAL APPEAL (DB) No. 542 of 2021

Arising Out of PS. Case No.-739 Year-2018 Thana- ARA NAGAR District- Bhojpur

Taushif Miyan @ Taushif Alam @ Md Taushif Alam @ Tausif Ahmad S/O-
Late Md.Akhtar Alam, resident of Village- Khetari Mohalla, P.S.- Ara Town,
District- Bhojpur (Bihar)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In DEATH REFERENCE No. 6 of 2021)

For the Petitioner/s : xxx

For the Respondent/s : Mr. J.P. Singh, Amicus Curiae

Mr. Kamlesh Kumar Singh, AC to Amicus Curiae

(In CRIMINAL APPEAL (DB) No. 470 of 2021)



For the Appellant/s : Mr. Pratik Mishra, Advocate
Mr. Zainul Abedin, Advocate
For the State : Ms. Shashi Bala Verma, APP
For the Informant : Mr. Ravindra Kumar, Advocate
(In CRIMINAL APPEAL (DB) No. 534 of 2021)
For the Appellant/s : Mr. Vikram Deo Singh, Advocate
Mr. Shankar Kumar, Advocate
For the State : Ms. Shashi Bala Verma, APP
For the Informant : Mr. Ravindra Kumar, Advocate
(In CRIMINAL APPEAL (DB) No. 538 of 2021)
For the Appellant/s : Mr. Jitendra Singh, Senior Advocate
Mr. Ashutosh Nath, Advocate
Mr. Kumar Nikhil, Advocate
Mr. Yash Singh, Advocate
For the State : Ms. Shashi Bala Verma, APP
For the Informant : Mr. Ravindra Kumar, Advocate
(In CRIMINAL APPEAL (DB) No. 542 of 2021)
For the Appellant/s : Mr. Keshav Shrivastava, Senior Advocate
Mr. Sarbottam Kumar Sarkar, Advocate
Mr. Raj Kumar, Advocate
For the State : Ms. Shashi Bala Verma, APP
For the Informant : Mr. Ravindra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 17-08-2022

The appellants Ahmad Miyan @ Ahmad @ Ahmad Hussain, Raju Khan @ Raju Kha, Babli Miyan, Abdullah Qureshi, Khurshid Qurashi, Anwar Quraishi @ Sarla Miyan, and Taushif Miyan @ Taushif Alam @ Md. Taushif Alam @ Tausif Ahmad have been held guilty vide order dated 09.03.2021 passed in Sessions Trial No.117 of 2019 arising out of Ara Town P.S. Case No.739 of 2018 by the learned Additional Sessions Judge-IXth, Bhojpur at Ara to the charges under Sections 302 read with 34, 307 read with 34, 387 read



with 34 and 120B of the Indian Penal Code (for short 'IPC') and Section 27 of the Arms Act.

2. Consequent upon the conviction, vide order dated 14.06.2021, the aforesaid convicts have been sentenced to death and to pay a fine of Rs.one lakh each for the offence punishable under Section 302 read with 34 of the IPC, rigorous imprisonment for ten years and a fine of Rs.50,000/- each for the offence punishable under Section 307 read with 34 of the IPC, rigorous imprisonment for seven years and a fine of Rs.50,000/- each for the offence punishable under Section 387 read with 34 of the IPC, rigorous imprisonment for seven years and a fine of Rs.50,000/- each for the offence under Section 120B of the IPC and rigorous imprisonment for seven years and a fine of Rs.10,000/- each for the offence punishable under Section 27 of the Arms Act and in default of payment of fine to undergo simple imprisonment for a further period of three months. The Trial Court has directed that all the sentences shall run concurrently.

3. Reference made by the Trial Court under Section 366 of the Code of Criminal Procedure (for short 'CrPC') for confirmation of death sentence awarded to the convicts in the aforesaid sessions trial has been registered as Death Reference



No.06 of 2021.

4. The appellant Ahmad Miyan @ Ahmad @ Ahmad Hussain has challenged his conviction and sentence awarded in the aforesaid sessions trial by filing Criminal Appeal (DB) No.470 of 2021. The appellant Raju Khan @ Raju Kha has challenged his conviction and sentence imposed by the Trial Court by filing Criminal Appeal (DB) No.534 of 2021. The appellants Babli Miyan, Abdullah Qureshi, Khurshid Qurashi and Anwar Quraishi @ Sarla Miyan have challenged their conviction and sentence imposed by the Trial Court by filing Criminal Appeal (DB) No.538 of 2021. The appellant Taushif Miyan @ Taushif Alam @ Md. Taushif Alam @ Tausif Ahmad has challenged his conviction and sentence imposed by the Trial Court by filing Criminal Appeal (DB) No.542 of 2021.

5. These appeals preferred by the appellants as well as the reference made by the Trial Court under Section 366 of the CrPC 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 at 6:30 pm on 06.12.2018 in Bhojpur Town Police Station in respect of an incident that



had occurred at Shobha Market, Dharman Chowk situated at a distance of 0.5 kilometre in the eastern direction from the Ara Town Police Station on the basis of the written report submitted by Akil Ahmad (P.W.1).

7. In his written report, Akil Ahmad stated that on 06.12.2018, at around 12:48 pm, when he, his brother and other family members were running the shop in Shobha Market, suddenly, Khurshid Qurashi, Md. Naiyer, Raju Khan, Babli Miyan, Abdullah Qureshi, Sarla Miyan, Ahmad Miyan, Shamsher Miyan and Taushif Miyan, all residents of Mohalla-Milki and Kasai Tola, P.S.- Ara Town, District- Bhojpur and 4-5 unknown persons came to the shop and demanded Rs.10,00,000/- (Ten Lakh) as extortion money. When his brother denied to pay the said amount, all the accused persons took out pistol from their lower back and started hurling abuses. When his brother Imran opposed, Khurshid Qurashi and Naiyer Miyan opened indiscriminate firing upon Imran because of which he died on the spot. At the same time, Babli Miyan and Shamsher Miyan also opened fire with an intention to kill him and a bullet hit him in his abdomen as a result of which he became unconscious. When he regained consciousness, he came to know that one another person had also sustained gun shot injury



in the said incident. He attributed the motive for the said incident to be demand of Rs.10,00,000/- as extortion money by the accused persons because he and his family members had purchased a shop in the Shobha Market.

8. Upon receipt of the aforesaid written report, Jay Prakash Singh, Station House Officer (for short 'SHO') of Ara Town Police Station handed over the investigation of the case to Jay Prakash Rai, a Sub-Inspector of Police (P.W.9). He registered Ara Town P.S. Case No.739 of 2018 on 06.12.2018 under Sections 387, 302, 307 read with 34 of the IPC and Section 27 of the Arms Act against altogether nine named accused persons and 4-5 unknown accused persons.

9. While the investigation was still continuing, Jay Prakash Rai (P.W.9) was transferred to a different police station. He handed over the investigation of the case to J. P. Singh, the SHO of Ara Town Police Station on 31.12.2018. Subsequently, the investigation of the case was handed over to one Rahmatullah (P.W.10) who took over the investigation of the case on 19.01.2019. After completing investigation, he submitted charge sheet vide Charge Sheet No.84 of 2019 dated 07.03.2019 under Sections 387, 302, 307, 120B of the IPC and Section 27 of the Arms Act finding the allegations made in the



FIR to be true.

10. After complying with the statutory requirements under Section 207 of the CrPC, the learned Chief Judicial Magistrate, Ara committed the case to the court of sessions for trial.

11. On receipt of the record from the court of Chief Judicial Magistrate, Ara, learned Sessions Judge, Ara transferred the case to the court of Additional Sessions Judge, IXth, Ara.

12. Thereafter, the appellants were charged for the offences punishable under Section 302 read with 34, 387 read with 34, 307 read with 34, 120B of the IPC and Section 27 of the Arms Act to which they did not plead guilty. Hence, the trial commenced.

13. During trial, the prosecution examined altogether ten witnesses and proved certain documents in support of charges.

14. **Akil Ahmad (P.W.1)**, who is the informant of the case as well as an injured victim, stated in his testimony that the incident took place on 06.12.2018 at 12 noon. At that time, he had gone out of his shop for chewing betel leaves. He heard a sound of firing and when he came back to his shop at Shobha Market, he saw that his brother Imran had sustained gun shot



injury and was lying on the ground. In the meantime, a gun shot hit him in his back as a result of which, he fell down and became unconscious. He stated that due to the gun shot injury, his brother died on the spot. He proved his signature on the inquest report, production-cum-seizure list dated 06.12.2018 and the written report dated 06.12.2018, which were marked as Exhibits-1, 2 and 3 respectively. He stated in his examination-in-chief that he had not seen who fired those gun shots or who fired upon him or his brother. At this stage, he was declared hostile by the Court at the request of the prosecution.

15. He was cross-examined by the prosecution. He denied the contents of the written report. He further stated that it is wrong to allege that he is helping the accused persons and, therefore, he has turned hostile. He was also cross-examined by the accused persons in which he stated that he is not the scribe of the written report. He admitted that he is not literate. He further admitted that he had simply put his signature on the written report, the contents of which were never read over to him. He admitted that when the incident took place there was none except him and his brother at the place of occurrence. He had become unconscious after sustaining gun shot injury and when he regained consciousness, he found himself in the



hospital. Thereafter, his brother Suhaib had come from his house. He stated that at the time of occurrence, the accused persons had covered their faces. He further stated that accused persons facing trial were not involved in the commission of the crime.

16. **Amir Faiyaj (P.W.2)** stated in his examination-in-chief that the incident took place on 06.12.2018 between 12:00 and 12:30 pm At that time, he was present at his shop in Shobha Market situated at Dharman Chowk, Ara. His brothers, namely, Imran (deceased), Akil (P.W.1), Suhaib (P.W.4) and Sohail (not examined) were present in the shop. At that time, during an argument between Akil and Khurshid Ahmad and his friends Naiyer etc., bullets were fired. The first bullet fired by the accused persons hit Akil in his abdomen and head. Thereafter, Imran was hit by numerous rounds of firing in his head, abdomen and chest. He further stated that he had not seen who fired those gun shots because there were several persons present on the spot. He identified his signature on the seizure list, which was marked as Exhibit-2/1.

17. In cross-examination, he identified Ahmad Mian, who was present in the dock. He admitted that his statement was not recorded by the police during investigation. He further



admitted that he is coming for the first time before the court to depose as a witness.

18. **Md. Farukh (P.W.3)** stated in his testimony that on 06.12.2018 when the incident took place, he was busy doing cable work relating to telephone no.222677 at Dharman Chowk. Suddenly, he sustained a gun shot in his thigh and his treatment was done at the Sadar Hospital, Ara. In the examination-in-chief itself, he stated that he had no knowledge as to who had fired at him.

19. **Suhaib (P.W.4)** stated in his testimony that the incident took place at about 12:30 pm on 06.12.2018. At the relevant time, he along with his brothers Akil Ahmad (P.W.1), Md. Suhail and Imran were present in his shop situated at Shobha Market. Apart from them, Amir Faiyaj and Md. Saddam were also present there. In the meantime, Khurshid Qurashi, Naiyer Quraishi, Raju Khan, Babli Miyan, Abdullah Qureshi, Shamsher, Guddu Mian, Sarala Miyan, Taushif Miyan and Ahmad Miyan came there and asked his brother as to why they have not sent the ransom amount of Rs.10 lakh. They had earlier demanded ransom amount from his brother Imran. He further stated that he told the accused persons that they have recently opened the shop and they do not have the capacity to pay Rs.10



lakh. He told them that all the brothers can jointly afford to pay Rs.5 lakh only. Upon this, they started abusing him and his brothers, which was opposed by them. Thereafter, the accused persons took out pistol from their lower back and resorted to indiscriminate firing causing injury to his brother Akil Ahmad in his abdomen as a result of which he fell down and his brother Imran on his nose, neck, chest and both legs. Some of the accused persons were firing outside the shop also to create terror in the mind of the persons, who had assembled outside the shop as a result of which one Farooq, an employee of BSNL sustained gun shot injury in his leg. He stated that just after the occurrence, he and Imran on one rickshaw and P.W.1 Akil Ahmad, P.W.2 Amir Faiyaz and Md. Suhail on another rickshaw went to the Sadar Hospital, Ara where the doctor declared Imran as brought dead and Akil Ahmad was receiving treatment. At the Sadar Hospital Ara, on 06.12.2018, the inquest report of his brother Imran was prepared by the Police Officer of Ara Town Police Station on which he put his signature. He proved his signature, which was marked as Exhibit-1/1. He stated that on 05.01.2019, the police had come to his shop and seized the CCTV footage. He and Amir Faiyaj had put their signature on the seizure list. He identified his own signature and the



signature of Amir Faiyaj, which were marked as Exhibit-2/1 & 2/2 respectively. He identified the accused persons in the dock.

20. In cross-examination, P.W.4 admitted that the deceased Imran and Suhail were sent to jail in connection with a case under the Bihar Prohibition and Excise Act. He further admitted that there was a case pending against him and his deceased brother Imran for assaulting police personnel and in that case he had been sent to jail for 5-6 days. He stated that the place of occurrence is a busy market. At the relevant time, he was standing at a distance of 2 feet from the miscreants, who had resorted to 3-4 rounds of firing upon him, but he escaped unhurt. He stated that all the accused persons were firing from one direction. According to him, blood had fallen on the ground to a great extent. He admitted that he had informed the police regarding the incident at 12:45 pm from his mobile no.9431822292 on the date of occurrence itself. On receiving the call, Daroga Ji had come at the hospital at 12:55 pm At that time, he had also reached at the Sadar Hospital. However, he came back from the hospital to the place of occurrence within two minutes. When he came back, the Daroga recorded his statement at about 1:10 pm on 06.12.2018. At that time, he stayed at his shop for merely 15-20 minutes. Subsequently, the



Daroga came to his house where inquiries were made from him between 5:30 and 6:00 pm. He put his signature on the inquest report brought by the Daroga at his residence. He admitted that he did not see the signature of his brother on the inquest report. He further admitted that his statement was subsequently recorded by the police at 6 pm at the police station. He had admitted that when he gave his statement to the police for the first time his family members were present there. In his further cross-examination, he admitted that the incident had taken place in the stairs of Shobha market. He admitted that he had intimated the police on telephone at 12:45 pm, when he was taking Imran to hospital on rickshaw. He admitted that when he came back to his shop at about 1:10 pm from the hospital on the date of occurrence, the police party was busy in inspecting the place of occurrence and the Daroga was recording something in his diary. He admitted that when the Daroga had come to the hospital also, he was recording something in the diary. He admitted that whatever he had disclosed to the police was being recorded in the diary by the Daroga. He had denied the defence suggestion that he had falsely deposed before the court.

21. **Dr. Jitendra Nath Mishra (P.W.5)** stated in his testimony that he was posted as Medical Officer at Ara Sadar



Hospital. He had conducted the postmortem examination on the body of the deceased Imran at 3:10 pm on 06.12.2018 and found the following antemortem injuries on his person:-

- a) 1st entry wound-Lacerated inverted wound 1/2 inch X 1/2 inch X cavity deep over route of nose (right side).
- b) IInd entry wound- Lacerated, inverted wound of size 1/2 inch X 1/4 inch X cavity deep over right cheek.
- c) IIIrd entry wound-Lacerated, inverted wound of size 1/2 inch X 1/2 inch X cavity deep over right side of upper neck.
- d) IVth entry wound- Lacerated, inverted wound size 1 inch X 1 inch X cavity deep, just below right clavicle (Lateral side).
- e) Vth entry wound-Lacerated, inverted wound of size 1 inch X 1 inch X cavity deep on upper chest, 1 inch right from the middle.
- f) VIth entry wound- Lacerated, inverted wound of size 1/2 inch X 1/2 inch X cavity deep on right chest above and medial to right nipple.
- g) VIIth entry wound- Lacerated, inverted wound of size 1/2 inch X 1/2 inch X cavity deep at right inguinal region.
- h) VIIIth Exit wound- Lacerated, everted wound of size 3/4 inch X 3/4 inch X cavity deep at posterior to left ear.
- i) IXth Exit wound- Lacerated, reverted wound of



size 3/4 inch X 3/4 inch X cavity deep on left chest on back side.

- j) Xth Exit wound- Lacerated, everted wound of size 3/4 inch X 3/4 inch deep over left iliac crest.
- k) XIth Exit wound- Lacerated, everted wound of size 1 inch X 1 inch X cavity deep on upper natal cleft (2 inch lateral to mid line).
- l) XIIth Exit wound- Lacerated, everted wound of size 3/4 inch X 3/4 inch X cavity deep on anterior aspect or left upper thigh.
- m) XIIIth Exit wound- Lacerated, everted wound of size 3/4 inch X 3/4 inch X cavity deep at upper thigh (left lateral).
- n) XIVth Exit wound-Lacerated, everted wound of size 3/4 inch X 3/4 inch X cavity deep on posterior thigh.

22. According to him, the time elapsed since death was 6 to 36 hours and the cause of death was shock and haemorrhage caused by the abovementioned firearm injuries. He proved his writing and signature on the postmortem examination report, which was marked as Exhibit-4. He stated that he had held the postmortem examination on the body of the deceased Imran in presence of Dr. M. H. Ansari and Dr. Sujit Kumar.

23. In cross-examination, P.W. 5 stated that all wound of entries are situated on the right side of body of the deceased



meaning thereby that the injuries were caused from the right side of the body of the deceased. He stated that he cannot say the distance from which the firing was done at the deceased. He further admitted that rigor mortis was present on the whole body of the deceased. He stated that rigor mortis develops within 3 to 6 hours. He could not say when rigor mortis develops on the whole body of the deceased. However, he stated that normally rigor mortis starts disappearing after 36 hours of the death of the deceased.

24. **Dr. Sujit Kumar (P.W.6)** stated in his examination-in-chief that on 06.12.2018, he was posted as Medical Officer at Sadar Hospital, Ara. On this date, a medical team was constituted for conducting the postmortem examination on the person of the deceased Imran. He was one of the members of that team. He stated that the postmortem examination of the deceased Imran was done in his presence and the report was prepared before him over which he had put his signature. He identified his signature, which was marked as Exhibit-4/1.

25. **Dr. Md. Mobinul Haque Ansari (P.W.8)** stated in his examination-in-chief that on 06.12.2018, he was posted as Medical Officer at Sadar Hospital, Ara. On this date, he was



made a member of the team constituted for conducting the postmortem examination on the body of the deceased Imran. He identified his signature on the postmortem examination report, which was marked as Exhibit-4/2.

26. **Dr. Arun Kumar (P.W.7)** stated in his testimony that he had examined the injured Akil Ahmad in the Emergency Ward at Ara Sadar Hospital on 06.12.2018 and found a lacerated wound 1 inch X 1/4 cm X 1/4 cm in left lower side of his abdomen. He advised for ultra sound and X-ray of abdomen. The opinion regarding the nature of injury was kept reserved till the receipt of the X-ray report. Since the X-ray report showed that no bony injury was caused on the person of the injured Akil Ahmad, the nature of injury was opined to be simple. He identified his own writing and signature on the injury report, which was marked as Exhibit-5/1.

27. In cross-examination, he stated that he cannot say as to who had brought the injured before him in the Emergency Ward. He stated that he cannot say the distance from which firing was made. He further admitted that there was no blackening at the place of injury. He denied that he was known to the injured Akil Ahmad from before and he had issued the injury report just in order to help him due to old acquaintance.



28. **Jay Prakash Rai (P.W.9)**, the first investigating officer of the case stated in his testimony that he was handed over investigation of Ara Town P.S. Case No.739 of 2018 by the SHO, Jay Prakash Singh on 06.12.2018. He stated that the formal FIR of Ara Town P.S. Case No.739 of 2018 was in the writing of an Assistant Sub-Inspector of Police, namely, Jagniwas Sharma and the formal FIR was duly signed by the SHO, Jay Prakash Singh. He identified and proved the signature of the SHO, Jay Prakash Singh, which was marked as Exhibit-3/1. The seizure list was prepared by the Assistant Sub-Inspector, Pawan Kumar Singh. He identified the signature of Pawan Kumar Singh on the seizure list, which was marked as Exhibit-3/2. He stated that the inquest report of the deceased was prepared by one Ramanuj Singh, a Sub-Inspector of Police. He identified the signature and writing of Ramanuj Singh, which was marked as Exhibit-1/2. He stated that he received the copy of the FIR and seizure list after the investigation was handed over to him. Thereafter, he recorded the subsequent statement of the informant Akil Ahmad. The informant had supported the contents of the FIR in his subsequent statement. Thereafter, he perused the seizure list and inspected the place of occurrence. He recorded the statements of the witnesses,



namely, Md. Suhaib Ahmad and Md. Farooq. He apprehended some of the accused persons. On 31.12.2018, he was transferred to Aayar Police Station whereafter he handed over the investigation to the SHO, J. P. Singh.

29. In his cross-examination, he admitted that he came to know about the incident at 2 pm. At that time, he was at Ara Nawada Town Police Station. At 6 pm, the case was registered and he was handed over its investigation. He admitted that even before the FIR was registered, the seizure list was prepared at 1:30 pm and the inquest report was prepared at 1:45 pm on 06.12.2018. He admitted that he had not recorded the statements of the police officers, who had prepared the seizure-list and the inquest report. He admitted that he inspected the place of occurrence at 7:35 pm. He stated that he tried to record the statement of other shopkeepers of Shobha Market, but none of them was ready to give his statement. He left the place of occurrence at about 8:05 pm. He denied the defence suggestion that the incident was reported to him by Suhaib on mobile phone. He further admitted that Suhaib had not stated before him that Amir, Faiyaj and Md. Saddam were also present at the place of occurrence. He admitted that Suhaib had not stated before him the names of Khurshid Qurashi, Abdullah Qureshi,



Raju Khan, Naiyeb Quraishi, Babli Miyan, Shamsheer and Guddu Miyan as the persons who had asked from him as to why extortion demand amounting to Rs.10 lakh was not sent to them. He had also not stated before him that he told the accused persons, who were demanding extortion amount that since he had opened the shop recently, he and his brother can afford to pay only Rs.5 lakh. He admitted that the distance of the police station from the place of occurrence is hardly 500 meter and it takes 5 to 10 minutes to reach at the place of occurrence from the police station on foot. He admitted that he had received a phone call regarding the incident on his mobile no.7004118107. The incident was reported to him on his phone by a Sub-Inspector of Ara Town Police Station, namely, Manoj. He admitted that he did not record the statement of the aforesaid Sub-Inspector in the case-diary. He further admitted that when he reached at the place of occurrence, none of the family members of the deceased was present there. He also admitted that he did not seize any weapon relating to crime.

30. **Rahmatullah (P.W.10)** is the second Investigating Officer of the case. He stated in his testimony that he took over the investigation of the case under the orders of SHO, Jay Prakash Singh on 19.01.2019. After taking over investigation of



the case, he recorded the statements of witnesses, namely, Amir Faiyaj, Suhail Ahmad and Akil Ahmad. On finding the allegations made in the FIR to be true during investigation, he submitted Charge Sheet No.84 of 2019 on 07.03.2019 under Sections 387, 302, 307 and 120B of the IPC and Section 27 of the Arms Act against Khurshid Qurashi, Md. Naiyer and Anwar Quraishi @ Sarla Mian. He continued with further investigation of the case after submitting charge sheet.

31. In his cross-examination, he admitted that he had shown CCTV footage of Shobha Market to Md. Suhail, which was produced by him as Material Exhibit-1 before the court. However, he could not locate Ahmad Miyan, Abdullah Qureshi and Khurshid Qurashi in the CCTV footage. He further admitted that during investigation, he had not found the accusation against Ahmad Miyan to be true. He admitted that during investigation Md. Suhail had not stated that Md. Amir Faiyaj and Md. Saddam were present at the place of occurrence. He admitted that he had not prepared the seizure list of the CD containing CCTV footage. There is no mention in the seizure list that the said CD was in sealed cover. He admitted that he had sent the CD to FSL, Patna, but it was reported that the examination of CD is not done at FSL, Patna. He admitted that



during investigation, he did not record the statement of the owner of the Shobha Market or her family members.

32. After examination of P.W.10, the prosecution closed its case. Thereafter, in order to enable the appellants to explain the circumstances appearing against them, the Trial Court recorded their statements under Section 313 of the CrPC in which they denied the charges and pleaded their innocence.

33. The defence did not lead any oral or documentary evidence during trial.

34. Since the defence did not lead any evidence during trial, the Trial Court closed the defence case.

35. Thereafter, arguments advanced on behalf of the parties were heard and, on appreciation of evidence on record, the Trial Court held the appellants guilty to the charges noted hereinabove vide impugned judgment dated 09.03.2021 and sentenced them vide impugned order dated 14.06.2021.

36. Mr. Keshav Shrivastava, learned senior counsel for the appellant Taushif Miyan @ Taushif Alam @ Md. Taushif Alam @ Tausif Ahmad in Criminal Appeal (DB) No.542 of 2021 submitted that the impugned judgment and order has been passed by the Trial Court only on the basis of testimony of P.W.4, who illegally claimed to be an eye witness of the



occurrence. He contended that there is no eye witness in respect of the accusation against the appellant Taushif Miyan. He submitted that the Trial Court failed to appreciate that P.W. 1 in para-14 of his cross-examination stated that at the place of occurrence, nobody was present except him and his deceased brother. He further stated that when he regained consciousness at the hospital, his brother Suhaib (P.W.4) came from home, which falsifies the case of the prosecution. He submitted that the Trial Court failed to appreciate that P.W.9, who was the first Investigating Officer of the case admitted in his testimony that no drop of blood was found at the place of occurrence. He contended that the Trial Court failed to appreciate the fundamental principles of sentencing. It failed to appreciate the correct meaning of rarest of rare case. It had ignored the vital aspects of the case in favour of the appellant and convicted him on conjecture and surmises.

37. Mr. Jitendra Singh, learned senior counsel for the appellants Babli Miyan, Abdullah Qureshi, Khurshid Qurashi and Anwar Quraishi @ Sarla Miyan in Criminal Appeal (DB) No.538 of 2021 submitted that the impugned judgment of conviction passed by the Trial Court is illegal, perverse, unwarranted and against the materials on record. He submitted



that out of ten witnesses examined on behalf of the prosecution, P.W.1, who is the informant of the case has himself disowned the contents of the FIR and demolished the case of the prosecution. Similarly, P.W.2 has specifically stated in his deposition that he had not seen any accused person using gun to shoot anyone. He stated that he does not know as to who fired causing injury to the deceased Imran and the injured Akil Ahmad. P.W.3 stated in his testimony that when he was troubleshooting a telephone line, a bullet hit his thigh. He further contended that though P.W.4 claims himself to be an eye witness, his testimony does not inspire confidence. He contended that though the incident took place in a busy market, no independent witness has been examined in the present case. He argued that in present case, the institution of the FIR was belatedly made by the prosecution. The version on which the FIR has been instituted is not the first version which reached to the police regarding a cognizable offence. According to him, even the place of occurrence was not established by the prosecution. The CCTV footage firstly does not prove anything against the appellants and, secondly, the same is not admissible in evidence, as being a secondary electronic evidence, it was not proved in terms of the statutory requirements under Section 65B



of the Indian Evidence Act. He urged that the reasons assigned by the Trial Court for coming to the conclusion of guilt against the appellants did not find support from the factual matrix and the evidence of the case.

38. Mr. Vikram Deo Singh, learned counsel for the appellant Raju Khan @ Raju Kha in Criminal Appeal (DB) No.534 of 2021 submitted that there is no direct or circumstantial evidence to attract the involvement of appellant Raju Khan @ Raju Kha in the present case. He contended that the Trial Court failed to scrutinize the prosecution evidence and convicted the appellant in absence of any evidence against him. He argued that once the informant denied that the written statement was not scribed by him and stated that he only put his signature on it and admitted in his testimony that the written statement was not read over to him, the very initiation of the criminal prosecution against the appellant on the basis of the FIR in question is bad in law. He submitted that the testimonies of P.W.2 and P.W.3 did not incriminate the appellant in any manner. The conflicting stand of P.W.4 in the present case makes him a totally unreliable witness. He submitted that apart from the aforesaid four witnesses, the remaining witnesses are doctors, who either conducted the postmortem examination on



the body of the deceased or examined the injured informant of the case and the police officers who investigated the case. Their testimonies do not indicate anything on the basis of which a conclusion of guilt against the appellant could have been arrived by the Trial Court. He urged that the Trial Court failed to scrutinize the prosecution evidence properly and convicted the appellant without any evidence and as such the impugned judgment and sentence are erroneous and fit to be set aside.

39. Mr. Pratik Mishra, learned counsel for the appellant Ahmad Miyan @ Ahmad @ Ahmad Hussain in Criminal Appeal (DB) No.470 of 2021 submitted that there was an inordinate delay of about six hours in the institution of the FIR when the police station was just 500 metre away from the place of occurrence and the police had arrived at the place of occurrence within few minutes. The undue delay caused in the institution of the FIR when the witnesses were present at the place of occurrence and the police reached there immediately after the occurrence creates a serious doubt about the veracity of the prosecution case. He contended that the FIR becomes a suspicious document also because the same was instituted after the major part of the investigation was over. He argued next that the genesis of occurrence and the place of occurrence could not



be proved by the prosecution. He contended that in the instant case, the informant, who is an injured witness, did not support the case of the prosecution. The other prosecution witnesses examined in the instant case except P.W.4 have also not supported the prosecution case as narrated in the FIR. Insofar as P.W.4 Suhaib is concerned, though he claims to be an eye witness to the incident, his testimony would clearly prove that he is a thoroughly unreliable witness. He contended that medical evidence in the present case is highly inconsistent with the prosecution story. The doctor (P.W.5), who conducted the postmortem examination on the body of the deceased stated that the time elapsed since death was 6 to 36 hours whereas the postmortem examination on the body of the deceased was conducted within 3 hours of the commission of the crime. Lastly, he contended that the non-examination of the material witnesses like the police officers, who lodged the FIR formally, prepared the inquest report and the seizure list on the date of occurrence, has caused serious prejudice to the defence case. He urged that the findings of the Trial Court are erroneous as the prosecution has miserably failed to prove its case beyond reasonable doubts.

40. Mr. J. P. Singh, learned *amicus curiae* appearing in



Death Reference No.06 of 2021 submitted that in the instant case, the Trial Court has not appreciated the evidence on record properly. He contended that virtually it is a case of no evidence. P.Ws.1 to 3 have not uttered the name of any of the accused persons involved in the crime. Their evidence is of no consequence so far as the prosecution case is concerned. Insofar as P.W.4 is concerned, there are major contradictions as to the material and vital aspects in his testimony. He contended that though P.W.4 stated that huge quantity of blood had fallen at the place of occurrence, the Investigating Officer stated in his testimony that he did not find a single drop of blood at the place of occurrence. He submitted that the FIR was belatedly instituted on a written report which was collected during investigation of the case and the same was hit by Section 162(1) of the CrPC. He submitted that as per P.W.4, blood mark inflicted on his cloth including his T-shirt was given by him to the Investigating Officer. Neither T-shirt has been exhibited in the seizure list nor any such material was produced before the Trial Court. He submitted that the genesis of occurrence has not been proved by the prosecution. The very reason for the alleged occurrence is demand of ransom of Rs.10 lakh by the accused persons. P.W.1 has denied to be the author of the written report



and P.W.9 stated in his testimony that he does not know who had written the written report and when and where it was written. He contended that P.W.4 stated in his testimony that he had stated before the police during investigation that the accused persons told Imran (deceased) that why he did not send the ransom of Rs.10 lakh. However, the Investigating Officer has denied it and has stated that no such statement was made by P.W.4 during investigation. He submitted that even if the prosecution story is believed to be true, awarding death penalty to all of the named accused in the instant case seems to be erroneous and exaggerating. The guidelines issued by the Supreme Court in *Bachan Singh vs. State of Punjab*, reported in (1980) 2 SCC 684 and *Machhi Singh & Ors. vs. State of Punjab*, reported in 1983 SCR (3) 413 for awarding death sentence in the rarest of rare case have been overlooked by the Trial Court.

41. On the other hand, Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State being assisted by Mr. Ravindra Kumar, learned counsel for the informant submitted that the Trial Court has correctly appreciated the evidence on record. The evidence of P.W.2 and P.W.1 is corroborating each other. They are eye witnesses to the occurrence. They have fully



established the place of occurrence and the manner of occurrence in their testimony. She contended that though P.W.1 turned hostile, he did not deny that he had put his signature on the written report. She further contended that the medical evidence is also in alignment with the oral testimony of the witnesses. The doctor, who examined the injured and the doctor, who conducted the postmortem examination on the body of the deceased have clearly stated that they had received bullet injuries on their person. She submitted that P.W.4 has given a vivid description of the manner of occurrence and the role played by the appellants in the said incident and, thus, it cannot be said that the impugned judgment of conviction and order of sentence are contrary to the evidence on record. She submitted that the Material Exhibit-1 would also corroborate the prosecution case.

42. We have heard the submissions advanced on behalf of the parties and the learned *amicus curiae* and perused the materials on record.

43. In the instant case, apart from the deceased, there are two injured witnesses, namely, Akil Ahmad (informant) and Md. Farukh (P.W.3). The informant has been declared hostile by the Court at the request of the prosecution. He has stated in his



testimony that the written report which was given to the police was not written by him and the contents of the written report were not read over to him. He is illiterate and he had simply put his signature over it. In his testimony, he contended that the accused persons of the case were not involved in the alleged occurrence. The other injured witness Md. Farukh stated in his testimony that he has no knowledge as to who all had fired. He stated that he cannot identify the accused persons who committed the occurrence. He admitted that he is making the statement for the first time in the court.

44. Apparently, the evidence of the two injured witnesses do not incriminate the appellants in any manner. Similarly, when we scrutinize the evidence of P.W.2 Amir Faiyaj, we notice that he has stated that P.W.1 Akil Ahmad had sustained firearm injury on his head and abdomen. However, the doctor (P.W.7), who examined P.W.1 found only one lacerated wound on his person in his left lower side of abdomen. He did not find any injury on his head. Moreover, P.W.2 has also admitted that he did not see who fired gunshots because there were several persons present on the spot. He also admitted in cross examination that his statement was not recorded by the police during investigation and he was coming for the first time



in the court to depose as a witness.

45. Thus, the evidence of P.W.2, who turned up before the court for the first time and whose statement was not recorded during investigation by the police does not indicate involvement of the appellants in any manner in the alleged offence.

46. The only other eye witness in the present case is P.W.4 Suhaib. He stated in his testimony that he informed the police about the alleged occurrence on phone at 12:45 pm. He further stated that on receiving his call, the Daroga came at the hospital at 12:55 pm. At that time, he had also reached at the Sadar Hospital. He came from the hospital to the place of occurrence within two minutes and the Daroga recorded his statement at about 1:10 pm. He stated that inquiries were made from him by the police between 5:30 and 6 pm. and his subsequent statement was recorded by the police at 6 pm on 06.12.2018. We have seen that the formal FIR was lodged by the police at 6:30 pm on 06.12.2018. Therefore, as per evidence of P.W.4, before institution of the formal FIR on the basis of a written report submitted by P.W.1, he had given statement to the police not once, but twice, i.e., at 1:10 pm and 6:00 pm and the police had made inquiries about the incident from him between



5:30 and 6:00 pm on 06.12.2018.

47. Hence, either the earliest version has purposely and deliberately been suppressed and not brought on the record by the prosecution or the claim of P.W.4 to be present at the place of occurrence is absolutely false.

48. It is pertinent to note here that P.W.4 stated in his testimony that just after the occurrence, he and Imran on one rickshaw and P.W.1 Akil Ahmad, Amir Faiyaj and Md. Suhail on another rickshaw went to the Sadar Hospital, Ara. However, P.W.1 has not supported this fact. He has stated in his testimony that when he regained consciousness in the hospital, P.W.4 came to the hospital from his house.

49. Neither P.W.1, who has been declared hostile nor P.W.2 has stated in his testimony a word about the rickshaw story as narrated by P.W.4. Even Suhail, who is none other than the brother of the deceased as well as brother of the informant and P.W.4, has not come forward to support the rickshaw story of P.W.4 or the prosecution case.

50. The non-examination of Suhail coupled with the fact that neither Amir Faiyaj (P.W.2) nor the informant (P.W.1) has supported the rickshaw story, the claim of P.W.4 to be present at the place of occurrence at the time of occurrence



becomes highly doubtful.

51. Further, while scrutinizing the testimony of P.W.4, we find that he has stated that when the miscreants made 3-4 rounds of firing, he was present at the shop at a distance of two feet only. It is surprising as to how he remained uninjured and managed to escape when firing by the miscreants was being made from such a close range.

52. At this stage, it would also be pertinent to note that P.W.4 has stated in his testimony that he had signed the inquest report at his house when Daroga came to his house. The inquest report was prepared at the Sadar Hospital, Ara. He further stated that he did not see the signature of his brother Akil Ahmad on the inquest report. It would clearly mean that P.W.4 Suhaib was not even present at the place of occurrence at the time of preparation of the inquest report as the police had obtained his signature on it later at his house.

53. It is evident from perusal of the inquest report that P.W.1 is the first witness to the inquest report. It is surprising that P.W. 4, who has signed the inquest report as the second witness did not see the signature of P.W.1 Akil Ahmad. It may be a reason as to why the police officer, namely, Ramanuj Singh, who had prepared the inquest report has purposely been



withheld.

54. On the basis of the above discussions, we are of the opinion that it has rightly been contended by the learned counsel for the appellants in these appeals that P.W.4 is not a reliable witness.

55. Insofar as, the place of occurrence is concerned, though P.W.4 has stated in his testimony that the firing took place inside the shop situated in the Shobha Market, the Investigating Officer (P.W.9) Jay Prakash Singh stated in his testimony that the occurrence took place in front of the Sobha Market. Though, the prosecution witnesses have stated that blood had fallen on the ground at the place of occurrence to a great extent, the Investigating Officer (P.W.9) admitted in his testimony that not a single drop of blood was found at the place of occurrence. Thus, we are of the opinion that the defence could not establish even the place of occurrence by leading cogent evidence.

56. Coming back to the medical evidence, it would be of salience to note that the postmortem examination on the body of the deceased has been held by Dr. Jitendra Nath Singh (P.W.5) at 3:10 pm on 06.12.2018. He stated in his evidence that the time elapsed since death of Imran was 6 to 36 hours.



Therefore, the occurrence took place on or before 9:10 am on 06.12.2018, i.e., much before the time of occurrence mentioned in the FIR.

57. Apart from that P.W.5 admitted in his cross-examination that rigor mortis was present on the whole body of the deceased. He stated that rigor mortis develops within 3 to 6 hours. Though, he stated that he cannot say when the rigor mortis develops on the whole body, as per Chapter XIV of Modi's Textbook of Medical Jurisprudence and Toxicology: 24 Edition, 2012, the time of onset of rigor mortis varies greatly in different cases, but the average period of its onset may be regarded as 3 to 6 hours after death in temperate climates, and it may take 2 to 3 hours to develop. In India, it usually commences in 1 to 2 hours after death. In temperate regions, rigor mortis usually lasts for 2 to 3 days. In Northern India, the usual duration of rigor mortis is 24 to 48 hours in winter and 18 to 36 hours in summer. On the basis of the study of various books on Medical Jurisprudence, it can easily be inferred that in general, rigor mortis sets in one to two hours after death and is well developed from head to foot in about 12 hours. In the instant case, the doctor stated that the rigor mortis had developed on the body of the deceased when he had conducted the post mortem



examination within 3 hours of the death. This may be the reason as to why he stated that he cannot say as to when rigor mortis develops on the whole body. Thus, we are of the opinion that the medical evidence is definitely not in alignment with the ocular evidence relating to the time of incident and the death of the deceased.

58. We have also noticed in the present case that the police officers, who lodged the formal FIR, prepared the inquest report and the seizure list on the date of occurrence have not been examined by the prosecution. The havildar Yugal Manjhi, who identified the deceased at the time of postmortem examination has also not been examined. The Sub-Inspector of Police, namely, Manoj of Ara Town Police Station, who had informed the first Investigating Officer about the occurrence has also been withheld. The full brother of the deceased Suhail, who according to P.W.4, was present at the time of occurrence has also not come forward to support the prosecution case. The non-examination of these material witnesses without any reasonable explanation from the side of the prosecution has caused serious prejudice to the case of the defence.

59. It is reiterated that as per the prosecution case, the alleged occurrence took place at 12:48 pm on 06.12.2018. P.W.9



Jay Prakash Singh, the first Investigating Officer in para-43 admitted that the distance of the place of occurrence from the police station is just 500 metre. He admitted that even before the investigation was handed over to him, the seizure-list was prepared at 1:00 pm and the inquest report was prepared at 1:45 pm on 06.12.2018. He admitted that he did not examine the police officer, who had prepared the seizure-list and the inquest report.

60. A perusal of the inquest report, which has been marked as Exhibit-1 would make it clear that the same was prepared by Ramanuj Singh, a Sub-Inspector of Police, Ara Town Police Station in the Emergency Ward of Ara Sadar Hospital at 1:45 pm on 06.12.2018 and P.W.1 Akil Ahmad and P.W.4 Suhaib had put their signature over it as witness. Similarly, the seizure list of empty cartridges and bullet marked as Exhibit-2, was prepared at a place near Shobha Market at Dharman Chowk at 1:30 pm on 06.12.2018 by one Pawan Kumar Singh, a Sub-Inspector of Police, Ara Town Police Station. The witnesses to the said seizure list are Raj Narayan Singh Yadav and Sanjay Yadav. The aforesaid seizure list and the inquest report would clearly prove that the police had reached at the place of occurrence at 1:30 pm and at Ara Sadar



Hospital at 1:45 pm on 06.12.2018.

61. The injured informant and P.W.4, who are witnesses to the inquest report were present when the police arrived after receiving information. The Daroga recorded the statement of P.W.4 at 1:10 pm at the place of occurrence, made inquiries from him between 5:30 pm to 6:00 pm on 06.12.2018 and recorded his subsequent statement at 6 pm on 06.12.2018, but the earliest statement recorded by the police has not been treated as FIR. It is not known what happened to the earliest information given to the police by P.W.4. The FIR has been instituted on the basis of a written report submitted by P.W.1 belatedly at the police station at 6:30 pm on 06.12.2018, which would be hit by Section 162(1) of the CrPC.

62. As seen above, though, the police reached at the place of occurrence just after the occurrence and prepared the seizure list as well as the inquest report and the postmortem examination on the body of the deceased was held at 3:10 pm on 06.12.2018, there is no explanation as to why the FIR was not promptly registered. The belated institution of the FIR after the major part of the investigation was over and that too on the basis of a written statement, which was not the first information regarding a cognizable offence rather the same was collected by



the police during investigation creates a serious dent in the prosecution case.

63. In *Thulia Kali vs. State of T.N.*, reported in (1972) 3 SCC 393, the Apex Court has held that first information report 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 importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. 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. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.

64. It is well known that the object of FIR is to set the



criminal law in motion. It is the information given to the police on the basis of which the criminal law is set in motion. It enables the officer-in-charge of the police station to initiate the investigation and to collect evidence as soon as possible. Though, there is no duration of time which is fixed for giving information of a crime to the police, if the police officer deliberately fails to record the FIR on receipt of information of a cognizable offence and registers FIR after considerable lapse of time, the entire investigation gets contaminated. Many a time, the faulty investigation leads to the collapse of the prosecution case and the criminal justice system.

65. In *State of Andhra Pradesh vs. Punati Ramulu and Ors.* reported in *1994 Supp (1) SCC 590*, the Supreme Court observed:

“The investigating officer has deliberately failed to record the FIR on receipt of information of a cognizable offence of the nature, as in this case, and had prepared the FIR after reaching the spot after due deliberations, consultations and discussions, 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 be stopped to fabricate evidence and create false



clues”.

66. In *Mukesh and Ors. vs. NCT of Delhi and Ors.* reported in (2017) 6 SCC 1, the Supreme Court observed:

“Delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by courts with suspicion because there is possibility of concoction of evidence against an accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. Whether the delay is so long as to throw a cloud of suspicion on the case of the prosecution would depend upon a variety of factors. Even a long delay can be condoned if the informant has no motive for implicating the accused.”

67. The discussions made above would make it evident that in the instant case, the police have deliberately failed to institute the FIR on receipt of an information about a cognizable offence of heinous nature and started investigation even without registration of the case. The police failed to register the FIR even after reaching the spot and commencing the investigation. They allowed the injured and the deceased to be taken to the Sadar Hospital, Ara where they prepared the inquest report and handed over the body of the deceased to the doctor for



postmortem examination and the doctor commenced and completed the postmortem examination at 3:10 pm on 06.12.2018. The institution of the FIR in the evening at 6:30 pm on the basis of the written report by the injured Akil Ahmad clearly gives an impression that the same was instituted after due deliberations, consultations and discussions. Thus, in view of the observations made by the Supreme Court in ***Punati Ramulu*** (supra) and ***Mukesh and Ors.*** (supra), it can safely be said that it would be highly unsafe to rely upon such a tainted investigation, as one would not know to what extent the police officers fabricated evidence and created false clues.

68. The CCTV footage of Sbobha market (Material Exhibit-1) is a secondary electronic evidence. The same was not proved in terms of the statutory requirements under Section 65-B of the Indian Evidence Act. Hence, it is not admissible in evidence. Even otherwise the 2nd Investigating Officer, who produced it before the court, did not utter anything relevant against the appellants in the CCTV footage. Thus, the Material Exhibit-1 is of no help to the case of the prosecution.

69. Thus, on consideration of the entire evidence, we are of the opinion that the prosecution has miserably failed to prove its case beyond reasonable doubt against the appellants.



70. For all the reasons discussed above, the appeals are allowed. The impugned judgment of conviction dated 09.03.2021 and the consequent order of sentence dated 14.06.2021 passed in Session Trial No.117 of 2019 arising out of Ara Town P.S. Case No.739 of 2018 by the learned Additional Sessions Judge-IXth, Bhojpur at Ara are, accordingly, set aside.

71. The appellants, namely, Ahmad Miyan @ Ahmad @ Ahmad Hussain (in Criminal Appeal (DB) No.470 of 2021), Raju Khan @ Raju Kha (in Criminal Appeal (DB) No.534 of 2021), Babli Miyan, Abdullah Qureshi, Khurshid Qurashi and Anwar Quraishi @ Sarla Miyan (in Criminal Appeal (DB) No.538 of 2021) and Taushif Miyan @ Taushif Alam @ Md. Taushif Alam @ Tausif Ahmad (in Criminal Appeal (DB) No.542 of 2021) are acquitted of the charges levelled against them. They shall be released from the jail forthwith unless they are required in any other case.

72. Since, we have allowed the appeals and set aside the impugned judgment of conviction and the consequent order of sentence passed by the Trial Court, the reference made by the Trial Court for confirmation of death sentence vide Death Reference No.06 of 2021 is, hereby, rejected.



73. Before parting with the death reference and these appeals, we would record our appreciation for the able assistance rendered by Mr. J. P. Singh, learned *amicus curiae*.

74. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs.7500/- to Mr. J. P. Singh, learned *amicus curiae* in Death Reference Case No.06 of 2021 as a consolidated fee for the services rendered by him.

(Ashwani Kumar Singh, J)

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	27.07.2022
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