

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.338 of 2012**

Arising Out of PS. Case No.-217 Year-2010 Thana- BHABHUA District- Kaimur (Bhabua)

Sugriv Choubey S/O Fulan Choubey Resident Of Village- Godhan, Police
Station- Bhabhua, District- Kaimur at Bhabhua.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 144 of 2012

Arising Out of PS. Case No.-217 Year-2010 Thana- BHABHUA District- Kaimur (Bhabua)

1. Fulan Chaubey S/O Late Nathuni Chaubey
2. Guptnath Chaubey S/O Late Nathuni Chaubey
3. Angad Chaubey S/O Fulan Chaubey
4. Bajrangi Chaubey S/O Fulan Chaubey, all R/O Vill Godhan, P.S.Bhabhua,
Distt-Kaimur At Bhabhua

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vikram Deo Singh, with Mr. Sada Nand Roy, Advocates
For the State	:	Mr. Abhimanyu Sharma, APP
For the informant	:	Mr. Kumar Sunil, Advocate

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

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)

Date : 18-05-2022

Heard Mr. Vikram Deo Singh, learned counsel for
the appellants, Mr. Abhimanyu Sharma learned Addl. Public
Prosecutor appearing for the State being assisted by Mr. Kumar
Sunil, learned counsel for the informant.

2. These appeals are directed against the judgment of conviction dated 18.01.2012 and the order of sentence dated 24.01.2012, passed by Shri Harendra Nath Tiwary, Sessions Judge, Kaimur at Bhabhua in Sessions Trial No. 311 of 2010, whereby and whereunder the all appellants have been convicted under sections 302/34 and section 341 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life with a fine of Rs. 15,000/- each and in default of payment of fine they have been further directed to undergo rigorous imprisonment for six months. The appellant, Sugriv Chaubey has further been convicted under section 27 Arms Act and has been sentenced to undergo rigorous imprisonment for five years with a fine of Rs. 2,000/- and in case of default of payment of fine he has been directed to undergo rigorous imprisonment for three months. Both the sentences in respect of Sugriv Chaubey has been directed to run concurrently.

3. These appeals were heard earlier and were disposed of by this Court by the judgment of acquittal dated 10th April, 2019. The informant assailed the aforesaid judgment before the Hon'ble Supreme Court in Cr. Appeal Nos. 10-11 of 2020 arising out of S.L.P. (Crl.) No. 5740-5741 of 2019 and the Hon'ble Supreme Court by order dated 7th January, 2020 set

aside the aforesaid judgment of acquittal and remanded the matter to this Court for disposal afresh.

4. Pursuant to the aforesaid order of remand of the Hon'ble Supreme Court, these appeals have been heard afresh.

5. The prosecution case, in brief, is that P.W. 5 Sushil Kant Pandey gave his written statement before the Officer-in-Charge, Bhabhua P.S. stating therein that on 22.05.2010 he alongwith his father had gone towards south of his house for plucking vegetables and as soon as he reached near the lane, all the accused persons namely, Sugriv Chaubey, Angad Chaubey, Bajrangi Chaubey, Fulan Chaubey and Guptnath Chaubey, all resident of village Gorhan at present residing at Patel Chowk, Bhabhua as well as Disco Pandey, who were standing there from before, and as soon as his father reached at the aforesaid place, Bajrangi Chaubey instigated on which Sugriv Chaubey having katta in his hand caused injury on the head and in the temple of his father namely, Nathuni Pandey. After receiving injury, his father fell down. Angad Chaubey is said to have kicked the deceased from his foot and further instigated to kill the informant. In the meantime, the informant managed to escape and went inside the house. After hearing the sound of firing the villagers came there and accused persons

fled away. The motive of the occurrence is said to be dispute regarding the deceased witnesses against the accused persons.

6. On the basis of the aforesaid written statement, Bhabhua P.S. Case No. 217 of 2010, dated 22.05.2010, was registered under section 341, 302, 506/34 of the Indian Penal Code and Section 27 of the Arms Act.

7. The police took up the investigation of the case and after investigation submitted charge sheet on 30.06.2010 against all the six accused persons showing Disco Pandey as absconder. In this case cognizance was taken on 05.07.2010 and the case was committed to the Court of Sessions on 29.07.2010.

8. Charges were framed in this case on 30.08.2010 against all the appellants to which the appellants pleaded not guilty and claimed to be tried.

9. During trial, the prosecution has examined altogether 7 witnesses. P.W. 1/ Namuna Tiwari, P.W.2/ Lal Bachan Pathak, P.W. 3/ Rabindra Nath Pathak, P.W. 4/Ram Nandan Ram, P.W. 5/ Sushil Kant Pandey (informant of the case), P.W. 6/ Chandrachud Rai (Investigating Officer of the case) and P.W. 7/ Dr. Anil Kumar.

10. In order to establish the charge, the prosecution has proved the following documents as exhibits :-

Exhibit -1 Signature of Rabindra Nath Pandey on

the Inquest Report

Exhibit -2 Written Petition

*Exhibit -3 Signature of Sushil Kant Pandey on the
Inquest Report*

Exhibit -4 Formal F.I.R.

Exhibit -5 Endorsement on the written petition

Exhibit -6 Inquest Report

Exhibit -7 Post Mortem Report

*Exhibit -8 Certified copy of Sanha No. 675 dated
22.05.2010*

*Exhibit -9 Certified copy of Charge-sheet of
Bhabhua P.S. Case No.502 of 2009*

11. All the appellants in their statement under section 313 of the Code of Criminal Procedure have said that they are innocent. Appellant, Angad Chaubey, in his statement has further stated that on the alleged date and time of occurrence he was in his sasural at village Rupawanpur, P.S. Ramgarh, District- Kaimur and he was not present at the place of occurrence. Appellant, Guptnath Chaubey, in his statement has further stated that on the date of occurrence he had taken his wife to B.H.U. for treatment of cancer. Appellant, Fulan Chaubey, in his statement has further stated that on the alleged date and time of occurrence he was not present at the place of occurrence and he was worshipping in a temple at Kachahri Campus.

12. The defence did not produce any witness for

examination. However, as documentary evidence following documents have been marked as exhibits :-

- Exhibit -A* Certified copy of the formal F.I.R. of Bhabhua P.S. Case No. 502 of 2009
- Exhibit -A/1* Certified copy of Complaint Case No. 126 of 2009
- Exhibit- B* Certified copy of Charge-sheet of Bhabhua P.S. Case No. 502 of 2009
- Exhibit - C* Certified copy of Complaint Case No. 1424 of 2009
- Exhibit - D* Certified copy of Order dated 16.02.2010 of Complaint Case No. 1424 of 2009
- Exhibit - E* Certified copy of plaint of T.S. No. 23/09
- Exhibit - F* Certified copy of formal F.I.R. of Bhabhua P.S. Case No. 45 of 2010
- Exhibit – F/1* Certified copy of complaint Case No. 1447 of 2009
- Exhibit - G* Certified copy of charge-sheet of Bhabhua P.S. Case No. 45 of 2010
- Exhibit -H* Certified copy of judgment of G.R. No. 1018 of 1995/ Trial No. 340 of 1996
- Exhibit - I* Certified copy of deposition of Guptnath Chaubey in T.S. No. 173 of 1999
- Exhibit - J* Certified copy of deposition of Ram Nandan Ram in T.S. No. 173 of 1999
- Exhibit - K* Certified copy of Complaint Case No. 1080 of 2004

13. Before reaching to any conclusion, it would be necessary to firstly examine the evidence of prosecution witnesses.

14. P.W.1/ Namuna Tiwari has stated in his

evidence that it was 7.30 in the morning and he was at his home. He saw Fulan Chaubey, Guptnath Chaubey, Bajrangi Chaubey, Angad Chaubey and Sugriv Chaubey and one unknown person were going and from the other side Nathuni Pandey (deceased) and Shushil Kant Pandey (informant) were coming. In front of the house of Lal Bachan Pathak, all the six accused persons took Katta in their hand. Bajrangi Choubey said to kill both of them on which Sugriv Choubey fired at Nathuni Choubey which hit in the back of his head. Guptnath Choubey fired at the informant, which did not hit him. Angad Choubey fired at the witness, which also did not hit him.

In his cross-examination, this witness accepted that he is in litigating terms with the accused persons. He further stated that total three firings were made.

15. P.W. 2/ Lal Bachan Pathak has stated in his evidence that it was about 8 month ago at about 7-7.30 in the morning. He saw Fulan Chaubey, Guptnath Chaubey, Bajrangi Chaubey, Angad Chaubey and Sugriv Chaubey and one unknown person were going. They all were armed with Katta. At the same time from the other side Nathuni Pandey (deceased) was coming. Bajrangi Choubey shouted to kill them. On that Sugriv Choubey fired at Nathuni Choubey which

hit in the back of his head. After getting injured Nathuni Pandey fell down. His son Shushil Kant Pandey was 50 ft. away from the deceased. Fulan Choubey shouted to kill him also on which Guptnath Choubey fired at the informant which did not hit him. The informant ran away. On seeing this, this witness started shouting, on which Bajrangi Choubey fired on him but the same did not hit him and he ran away to his home. Thereafter all the accused persons ran away from the place of occurrence.

In cross examination this witness stated that about 10-12 gun shots were fired.

16. P.W. 3/ Rabindra Nath Pandey has stated in his evidence that the occurrence is of about 8 months about at 7.30 in the morning. He was washing his mouth at the Handpump. He heard the sound of Bajrangi Chaubey of “मारो मारो” then he saw that Fulan Choubey, Guptnath Choubey, Angad Choubey, Bajrangi Choubey, Sugriv Choubey and Disco Pandey had surrounded Nathuni Chaubey. They all had Katta in their hands. On instigation of Bajrangi Choubey, Sugriv Choubey fired at Nathuni Pandey which hit in the back side of his head. He fell down there. Sushil Kant Pandey son of Nathuni Pandey who was present there asked the accused persons as to why they are

killing his father and started shouting. On which, on the instigation of Fulan Choubey, Guptnath Choubey fired at Sushil Kant Pandey, which did not hit him and he ran away. This witness further stated that when he shouted, Disco Pandey fired at him, but the same did not hit him. Thereafter all the accused persons ran away towards south while firing.

In his cross examination, this witness stated that about 5-7 gun shots were fired.

This witness has proved his signature on the Inquest Report (Exhibit-1)

17. P.W. 4/ Ram Nandan Ram, has stated in his evidence that the occurrence is of 22.05.2010. It was in the morning at 7.30 when he was giving food to his cattle, he saw that Fulan Choubey, Guptnath Choubey, Bajrangi Choubey, Angad Choubey, Sugriv Choubey and one unknown person were going towards north from south and from south to north Nathuni Pandey and his son Sushil Kant Pandey were coming. When Nathuni Pandey reached in front of the door of Lal Bachan then all the accused persons surrounded him. They all had katta in their hands. On the instigation of Bajrangi Choubey, Sugriv Choubey fired on Nathuni Pandey which hit him in the back of his head and he fell down. When this

witness raised hulla, Angad Choubey fired at him which did not hit him and hide himself in a cattle-shed. After 2-3 minutes when he came out, he saw that Nathuni Pandey had died and there was blood on the floor.

In cross examination, this witness stated that he heard sound of 5-7 firing.

18. P.W. 5/ Shushil Kant Pandey, who is informant of the case, has stated in his evidence that the occurrence is of 22.05.2010 at 7.30 in the morning. He and his father were going to the field for plucking vegetables. This witness was moving behind his father by about 50-60 feet. When his father reached in front of the house of Lal Bhachan Pathak, then all the accused, Sugriv Choubey, Angad Choubey, Bajrangi Choubey, Guptnath Choubey, Fulan Choubey and Disco Pandey surrounded his father. They all were armed with Katta. On instigation of Bajrangi Choubey to kill his father, Sugriv Choubey fired on him which hit in the back side of his head. He fell down. He alongwith other witness shouted, on which on the instigation of Fulan Choubey, Guptnath Pandey fired on this witness which did not hit him. He ran away towards his house. While fleeing away he heard sound of 3-4 firings. When he alongwith other villagers reached to the place of occurrence,

he saw that his father had died and blood was oozing out of his head and had spread on the floor.

Informant has proved the Fardbeyan (Exhibit-2) and also proved his signature on the Inquest Report (Exhibit-3).

This witness also stated that the lane on which his father was killed goes from North to South and after about 300 feet North from the house of Harvansh Pathak, it turns towards East and his house is at about 100 feet from the turning.

He also stated that Ramdular Singh had filed case against him in which he had gone Jail and he lodged case against Surendra Mishra in which he had gone Jail.

19. P.W.6/ Chandrachud Rai, who is Investigating Officer of this case, has stated in his evidence that on 22.05.2010 he was posted as Sub Inspector in Bhabhua police station. On that day, he got the written statement of the informant Shushil Kant Pandey on basis of which Bhabhua P.S. Case No. 217 of 2019 was registered and formal F.I.R. was lodged. This witness has proved the Formal F.I.R. (Exhibit-4). This witness has also proved the endorsement (Exhibit-5) on the written statement.

This witness also stated that he himself took charge of investigation of the case. He received information

about the occurrence, lodged Sanha No. 675 dated 22.05.2010 and proceed to the place of occurrence for verification where informant gave his written statement.

This witness also proved the Inquest Report (Exhibit-6). He also proved the place of occurrence, which according to him is a village lane near the house of Lal Bachan Pathak.

In his cross examination this witness has stated that Namuna Tiwary did not gave statement that Bajrangi Choubey shouted to kill both of them. On this, when Nathuni Pandey tried to escape, Sugriv Choubey fired at him which hit in the back of his head. After this, Sushil Kant Pandey who was behind Nathuni Pandey started shouting and this witness also started shouting. On which, on the instigation of Fulan Choubey, Guptnath Choubey fired at Sushil Kant Pandey which did not hit him and he ran away to his house.

Witness Lal Bachan Pathak had not given evidence that on seeing this he started shouting on which Bajrangi Choubey fired at him which did not hit him and he ran away to his house. All the accused had Katta in their hands.

Witness Rabindra Nath Pandey had not given evidence that on instigation of Bajrangi Choubey, Sugriv

Choubey fired at Nathuni Pandey from his back and Sushil Kant Pandey asked the accused persons as to why they are killing and started shouting, on which on the instigation of Fulan Choubey, Guptnath Choubey fired at Sushil Kant Pandey. This witness also shouted on which Disco Pandey fired at him but he hide himself as a result of which the same did not hit him.

Witness Ramnandan Ram had not given evidence that when he shouted Angad Choubey fired upon him which did not hit him and he hide himself in a Cattle-shed. After 2-3 minutes, when he came out and went near Nathuni Pandey, he saw that Nathuni Pandey had died and there was blood on the floor.

Informant Sushil Kant Pandey had not stated that at the time of fleeing away he had heard the sound of 3-4 firings and he ran away to his house. On his hulla, 5-7 villagers came at his house. He alongwith the villagers again went to the place of occurrence.

(All the witnesses in their evidence have given statement to this effect)

This witness has also stated that in Sanha No. 675 no one is named. He did not find any blood at the place of

occurrence. He also did not find any Khokha or Chharra at the place of occurrence. He did not prepare any map of the place of occurrence. He did not investigate on the point that there is some land dispute between the informant and the accused persons. He stated that he cannot say whether Lal Bachan Pathak's house is adjacent to the house of Harvansh Pathak.

20. P.W. 7/ Dr. Anil Kumar, has stated in his evidence that on 22.05.2010 he was posted as Medical Officer at Sadar Hospital, Bhabhua and on that day at 11 AM in the morning he conducted the *post-mortem* on the deadbody of deceased Nathuni Pandey and found the following injuries :-

“On External Examination :- (i)Lacerated wound half inch in diameter scalp cavity deep over lower portion of occipital region, margin of the wound is inverted and surrounding area is charred. This injury is wound of entrance.

(ii) Lacerated wound 1 ½” in diameter scalp cavity deep over left side of forehead, margin of the wound is everted, This injury is wound of exit.

On dissection :- Skull, occipital and frontal bone fractured into pieces, brain and meninges lacerated, wounds No. 1 and 2 are communicating to each other, skull cavity contained dark blood and clot, Chest body cage intact, all thoresic viscera intact and pale, heart- little blood present in right chamber. Abdomen : Stomach empty, small intestine

contained fluid and Gas, large intestine contained fistal matter and gas, liver, spleen and both kidneys intact and pale, urinary bladder contained about 30 ml of urine.”

In the opinion of the doctor the cause of death is due to hemorrhage and shock as a result of above mentioned injuries cause by firearm which is *ante-mortem* in nature and fatal also and the death has been occurred within 6 hours due to the injuries caused by fire arms.

This witness has proved the *Post-mortem Report* (Exhibit-7).

21. Sri Vikramdeo Singh, learned counsel appearing for the appellants submitted that the evidence given by all the witnesses produced on behalf of the prosecution are false, unbelievable and shows unnatural conduct. Their statements are contradictory and they have been improved. As a matter of fact, none of the witness is eye witness to the alleged occurrence, but due to previous enmity all the accused persons have been named later on after thought.

22. Sri Ajay Mishra, learned Addl. Public Prosecutor appearing for the State opposes the prayer of the appellants. He submitted that all the evidences given by the witnesses are believable and the *post-mortem* report corroborates the same.

23. Mr. Kumar Sunil, learned counsel appearing for the informant agrees with the submissions made by the learned counsel for the State and adopts the same. He, however, in addition, has submitted that all the witnesses are consistent on the point that accused Sugriv Choubey fired on Nathuni Pandey on his back.

24. Having heard the submissions advanced on behalf of the parties and the materials available on record specially the evidences adduced by the witnesses, this Court finds that there are contradictions in the evidence of the witnesses and the same are not believable. As per the first information report only Sugriv Choubey fired at the deceased and shouted to kill the informant and on hearing the same the informant went inside his house, but in the evidence he said that Guptnath Choubey fired on him. In the F.I.R. he does not say about presence of any other witness, but as per evidence many persons were present there and accused persons fired on all the witnesses present there. Some witnesses say about 3-4 round of firing, some witnesses say about 5-7 round of firing and some witnesses say about 10-12 round of firing although the police did not find any Khokha or Chharra from the place of occurrence. It is alleged in the first information

report that accused persons fired at all the witnesses, but none of them sustained any injury. Not only this, in order to show complicity of all the accused persons, different accused persons have been shown to have fired at different witnesses.

25. It is general behaviour that when any body sees an injured person then he tries to provide him first aid or takes him to hospital, but in the present case the informant, who is son of the deceased, did not even try to touch his injured father whereas according to him and as per other witnesses also the deceased was shot dead in their presence. It is also relevant to note that the Investigating Officer did not find any blood at the place of occurrence. The place of occurrence is in the North-Southern lane in front of the house of Lal Bachan Pathak from where after 300 feet the lane turns towards East and the house of the informant situates about 100 feet away from the turning. According to informant, on firing he ran away and went inside his house, in such circumstances, his statement giving fine details of the occurrence appears to be unnatural. Further, there is a shop of Gaffar Mian in the neighbourhood of witness Lal Bachan Pathak and Namuna Tiwari, but the witnesses are not aware as to what kind of shop it is, which again is quite unnatural.

Witness Ramnandan Ram says that he does not remember whether he had given evidence in any civil case from the side of Nathuni Pandey, whereas Exhibit- J shows that he was a witness. From the evidence of the Investigation Officer it is clear that all the witnesses have given evidence improving their statement. Defence has asked questions on such variation in the statements from all the witnesses as also the Investigating Officer. None of the accused is named in Sanha No. 675 dated 22.05.2010 (Exhibit-8). All the witnesses as also the Investigating Officer are silent on the point as to when and in whose presence the Fardbeyan was recorded. It has specifically come in the first information report that the deceased had given evidence against the accused persons due to which he was killed, but the Investigation Officer has not investigated the case on this point. The informant accepts that he was lodged in jail and beside this case he has also lodged other cases. Witnesses also accept that the parties are on litigating terms from before. Documentary evidences adduced on behalf of the defence also supports this fact.

26. In view of the discussions made above, this Court is of the opinion that the evidence on record do not

support the findings arrived at by the trial court. This Court is of the opinion that the prosecution has miserably failed to bring home the charges levelled against the appellants.

27. For the reasons, recorded hereinabove, both the appeals are allowed. The impugned judgment of conviction dated 18.01.2012 and the order of sentence dated 24.01.2012, passed by Shri Harendra Nath Tiwary, Sessions Judge, Kaimur at Bhabhua in Sessions Trial No. 311 of 2010 are, hereby, set aside.

28. The appellants are acquitted of the charges levelled against them. They shall be released from the jail forthwith, if not wanted in any other case.

(Arvind Srivastava, J)

Ashwani Kumar Singh, J.

I have had the privilege of reading the judgment of my esteemed brother Arvind Srivastava, J. He has dealt with the factual background and the contentions advanced on behalf of the parties. Reasons have also been set out in the judgment of my esteemed brother. There is no need to repeat them. I agree with the conclusion arrived at and the operative part of the judgment.

2. However, I wish to add few more reasons for allowing the appeal and setting aside the impugned judgment of conviction and order of sentence.

3. According to the written report submitted by P.W.5 Sushil Kant Pandey, his father was killed on 22.05.2010 at 7.30 A.M. In the formal First Information Report (for short 'FIR') at para-3, it is mentioned that the written report was received in the police station on 22.05.2010 at 11 A.M. Immediately after receiving the written report Bhabhua P.S. Case No.217 of 2010 was registered. The formal FIR has been proved by P.W.6 Chandrachud Rai and has been marked as Exhibit-4. The distance of the police station from the place of occurrence as per column 5 of the formal FIR (Exhibit-4) is four kilometre.

4. P.W.6 Chandrachud Rai admitted in his testimony that he had received information at the police station that one person has been shot dead in village- Gorhan pursuant to which he registered Station Diary Entry No.675 dated 22.05.2010 and proceeded to the place of occurrence for verification of the information.

5. The said station diary entry has been brought on record and marked as Exhibit-8. A perusal of the Exhibit-8 would demonstrate that the information relating to the murder of

one person in village- Gorhan was received by P.W.6 at 8.30 A.M. on 22.05.2010 in the police station.

6. P.W.6 Chandrachud Rai admitted in his testimony that the informant Sushil Kant Pandey had given him written report at the place of occurrence itself. He further admitted that the inquest report of the deceased Nathuni Pandey was prepared at the place of occurrence on which the informant Sushil Kant Pandey and P.W.3 Rabindra Nath Pandey had put their signature in the capacity of witnesses to the inquest. The inquest report of the deceased Nathuni Pandey has been proved by the informant and marked as Exhibit-6.

7. On perusal of the inquest report (Exhibit-6) it would be evident that it was prepared in the village- Gorhan on Kachcha road in front of the house of P.W.2 Lal Bachan Pathak at 9.30 A.M. on 20.05.2010. In the inquest report, cause of death is mentioned as gun shot injury. There is no mention of name of any person involved in the offence in the inquest report. It would be pertinent to note here that P.W.6 Chandrachud Rai had himself took up the investigation of the case.

8. I further find from the testimony of P.W.7 Dr. Anil Kumar that he had conducted the postmortem examination on the body of the deceased Nathuni Pandey on 22.05.2010 at 11

A.M. at Sadar Hospital Bhabhua. He has proved the postmortem report, which has been marked by the Trial Court as Exhibit-7.

9. On perusal of the postmortem examination report (Exhibit-7), it would be evident that the body of the deceased Nathuni Pandey was received at the Bhabhua Sadar Hospital at 10.30 A.M. on 22.05.2010. The doctor who conducted the postmortem examination had personally seen the body of the deceased at 10.45 A.M. on 22.05.2010. He commenced the postmortem examination at 11 A.M. Exhibit-7 would further demonstrate that it was Dafadar No.10 Haribansh Pandey, who was accompanying the corpus and he had identified the deceased.

10. During cross-examination, P.W. 6 admitted in para-26 that in the formal FIR in Column No.3 (b), it is mentioned that the written report was received on 22.05.2010 at 11 A.M. at the police station. He further admitted in para-34 of his cross-examination that he has not written the time of receipt of the written statement of the informant in the case-diary.

11. Thus, the sequence of events narrated above would make it clear that the alleged murder took place at 7.30 A.M. on 22.05.2010. An information in this regard was received by P.W.6 Chandrachud Rai at the Bhabhua Police Station at 8.15 A.M. on

22.05.2010 pursuant to which he registered station diary entry and proceeded to the place of occurrence. The distance between the police station and the place of occurrence was only four kilometre. After reaching at the place of occurrence, he received a written report from the informant Sushil Kant Pandey. Thereafter, he prepared the inquest report of the deceased at 9.30 A.M. on 22.05.2010. After preparing the inquest report, he sent the body of the deceased to Bhabhua Sadar Hospital along with Dafadar No.10 Haribansh Pandey. The body of the deceased reached at the Bhabhua Sadar Hospital at 10.30 A.M. The doctor conducting the postmortem examination examined the body at 10.45 A.M. on 22.05.2010 and he commenced the postmortem examination at 11 A.M. on 22.05.2010.

12. The sequence of events narrated above make it manifest that much before the institution of the FIR, the Investigating Officer had inspected the place of occurrence, prepared the inquest report, examined the informant, received a written report from him and sent the body of the deceased to the Sadar Hospital for postmortem examination. Though the Investigating Officer claims that he received written report from the informant at the place of occurrence, the entries made in the formal FIR would suggest that the formal FIR was received at

the police station at 11 A.M. on 22.05.2010. The Investigating Officer also admitted in his cross-examination in para-26 that according to Column 3 of the written report relating to the offence was received at the police station on 22.05.2010 at 11 A.M.

13. Thus, the question would arise that if the written report of the informant was received at the place of occurrence itself as to why it was mentioned in the formal FIR that it was received at the police station at 11 A.M. Further, the next question which would arise is that if the written report of the informant was received at the police station what happened to the written report handed over to the Investigating Officer at the place of occurrence. This mystery ought to have been clarified by the Investigating Officer himself. However, no plausible explanation has been given by him which would make the FIR a suspicious document.

14. In case, the informant was knowing the name of the accused persons who had committed the offence, he would have certainly disclosed it to the Investigating Officer at the first instance when the police had visited the place of occurrence. However, in the inquest report prepared at 9.30 A.M. on 22.05.2010 by the Investigating Officer, the name of any of the

miscreants who had participated in the commission of the crime has not been mentioned.

15. Furthermore, the prosecution has also failed to prove the place of occurrence. As per the written report, on 22.05.2010, the informant along with his father was going towards south of his house for plucking vegetables. When he reached near the land, he saw all the accused persons standing from before. As soon as his father reached at the aforesaid place, Bajrangi Chaubey instigated on which Sugriv Chaubey having *katta* in his hand caused injury in the head and in the temple of his father Nathuni Pandey. After receiving injury, his father fell down and died. It is the case of the prosecution that after the deceased was shot, he died at the spot. The Investigating Officer reached at the place of occurrence shortly after the incident took place. He inspected the place of occurrence, the witnesses examined during trial on behalf of the prosecution have stated that since the deceased was shot in his head, blood was oozing.

16. Thus there must have been a fair amount of blood split at the place of occurrence. However, the Investigating Officer admitted in cross-examination that though he has discussed about the place of occurrence in the case diary, there is no mention of finding blood.

17. Hence, there is a considerable doubt about the occurrence having taken place at the place of occurrence, as disclosed by the prosecution because no blood could be found at the place of murder. At least, there is no evidence to show that there was any blood at the place of occurrence.

18. Another, circumstance which goes against the prosecution is that the Investigating Officer has admitted in cross-examination that at the site neither empties of cartridges fired from *katta* nor pellet was recovered. Absence of blood, empties of cartridges, *khokha* or pellet at the site when the Investigating Officer promptly reached at the site and started investigation when the accused persons had disappeared after the incident raises serious doubt about the place where the murder of the deceased Nathuni Pandey had taken place. This is not the case of the prosecution that the accused persons had cleaned the area or somebody had removed the empties. In a case of this nature where the information reached at the police station regarding the occurrence within an hour and the Investigating Officer promptly reached at the site as the distance was only 4 kilometre I find no reason why the empties of cartridges and blood were not recovered from the place of occurrence.

19. I further find from the evidence led before the court that attention of P.W.1 to P.W.5 in respect of their previous statements made before the police was drawn by the defence. The Investigating Officer contradicted P.W.1 Namuna Tiwari by admitting in cross-examination that he had not stated to him that Bajrangi Chaubey instigated to attack and in the meantime when Nathuni Pandey tried to run away Sugriv Chaubey fired from his *katta* which hit the back of head of Nathuni Pandey. He further contradicted P.W.1 by admitting that he had not stated before him that thereafter, Sunil Kant Pandey who was behind Nathuni Pandey started shouting and Gupta Nath Chaubey fired from his *katta* upon instigation by Fulan Chaubey but the bullet did not hit Sushil Kant Pandey. He further contradicted P.W.1 by admitting that he had not stated that Angad Chaubey fired from his *katta* on him when he started shouting but the bullet did not hit him and he ran into his house.

20. Similarly, the Investigating Officer contradicted P.W.2 Lal Bachan Pathak by admitting that he had not stated to him that he also started shouting whereafter Bajrangi Chaubey fired on him from his *katta* but the bullet did not hit him and he ran into his house. He further contradicted him by admitting that he had not stated before him that all the accused persons were

armed with *katta*.

21. The Investigating Officer contradicted P.W.3 Rabindra Nath Pathak by admitting that he had not stated before him that Sugriv Chaubey fired on Nathuni Pandey due to instigation of Bajrangi Chabey which hit the back of head of Nathuni Pandey. He further contradicted him by admitting that he had not stated that Sushil Kant Pandey asked the accused persons as to why they are assaulting and he shouted whereafter Guptnath Chaubey fired on him upon instigation of Fulan Chaubey. He had not stated that when he shouted Disco Pandey fired on him upon instigation of Fulan Chaubey but the bullet did not hit him as he concealed himself.

22. The Investigating Officer also contradicted P.W.4 Ram Nandan Ram by admitting that he had not stated before him that when he shouted then Angad Chaubey fired on him but the bullet did not hit him and he concealed himself in a cowshed. He had also not stated before him that he came out from the cowshed after 2-3 minutes and went near Nathuni Pandey and saw that Nathuni Pandey had already died and was bleeding.

23. The Investigating Officer contradicted P.W.5 Sushil Kant Pandey by admitting in cross-examination that he had not stated in his supplementary statement that he heard sound of 3-4

round of firing while running away. He also not stated that 5-7 villagers came to his house after hearing his shouting.

24. In view of the aforestated material contradictions in the testimonies of the eye witnesses with their previous statements made before the Investigating Officer during investigation, a serious doubt is created on their presence at the place of occurrence when the incident took place.

25. Having noticed the aforestated additional reasons, I reiterate my agreement with the judgment of my esteemed brother Arvind Srivastava, J.

(Ashwani Kumar Singh, J)

Manish/Kanchan

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