

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.736 of 2016

Arising Out of PS. Case No.-151 Year-2012 Thana- MUFFASIL District- Aurangabad

1. Sushil Singh Son of Late Gaya Prasad Singh
2. Raju Singh Son of Sri Sushil Singh Both resident of village - Akauna, P.S. Mufassil, District - Aurangabad

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance:

For the Appellants:	Mr. Kanhaiya Prasad Singh, Sr. Adv. Md. Javed Jafar Khan, Adv.
For the Respondent:	Mr. Dilip Kumar Sinha, APP
For the Informant:	Mr. Ram Chandra Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date: 30-03-2022

Vide judgment dated 22.06.2016 passed by the learned Additional Sessions Judge-III, Aurangabad (hereinafter referred to as the 'Trial Court') in Sessions Trial No. 24/13/96/14 arising out of Aurangabad Mufassil P.S. Case No. 151 of 2012 the appellants have been held guilty for the charges under Sections 302 of the Indian Penal Code (for short 'IPC') and 27 of the Arms Act. Vide order dated 28.06.2016 the Trial Court sentenced them to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- each and in default to undergo simple imprisonment for six months under Section 302 of the IPC. No separate sentence was passed by the Trial Court for the offence



under Section 27 of the Arms Act. In the present appeal the appellants have challenged the aforesaid judgment of conviction and order of sentence.

2. The prosecution case as alleged in the written report submitted by the informant Ajay Yadav to the S.H.O. of Aurangabad Mufassil Police Station is that on 02.10.2012 at 07:30 PM when his uncle Tega Yadav and cousin brother Daroga Yadav reached near Devi Asthan situated in the southern side of his village, he saw his co-villagers Ajay Singh, Sushil Singh, Arvind Singh, Ranjan Singh, Ashok Singh, Ram Pravesh Singh, Naresh Singh, Manoj Singh and Dilip Singh being variously armed with khanti and lathi standing there. After seeing his uncle Tega Yadav and his cousin brother Daroga Yadav near Devi Asthan, the aforesaid persons started abusing them. They stated that 'Tegwa' and 'Darogwa' have come here for watering crops. They should be killed today. On such exhortation, Sushil Singh fired from the pistol causing injury in the abdomen of Tega Yadav and Raju Singh fired from his pistol causing injury in the left rib-cage of his cousin brother Daroga Yadav as a result of which they died on the spot. When he tried to save them, he too was assaulted with lathi by Ranjan Singh over his right eyebrow and Arvind Singh assaulted him with



lathi on his left hand. The occurrence was witnessed by his co-villagers Kameshwar Yadav (P.W.4), Chhedi Yadav (P.W.3), Nagendra Yadav (P.W.1) and others.

3. The aforesaid written report was handed over by the informant to the S.H.O. of Town Police Station, Camp Sadar Hospital, Aurangabad on 02.10.2012, who forwarded the same to the S.H.O. of Aurangabad Mufassil Police Station as the place of occurrence was within the jurisdiction of Aurangabad Mufassil Police Station.

4. On receipt of the written report, the S.H.O. of Aurangabad Mufassil Police Station drew a formal first information report (for short 'FIR'). He registered Aurangabad Mufassil P.S. Case No. 151 of 2012 dated 03.10.2012 at 01:00 AM under Sections 147, 148, 149, 323, 307, 302 and 504 of the IPC and 27 of the Arms Act and himself took up investigation of the case.

5. After completing the investigation of the case, the Investigating Officer submitted charge sheet vide charge sheet no. 245 of 2012 dated 30.12.2012 against the appellants and two others, namely, Ranjan Singh and Ashok Singh under Sections 147, 148, 323, 307, 302, 504 of the IPC and 27 of the Arms Act and kept the investigation open in respect of other accused



persons.

6. Accordingly, cognizance of the offence was taken by the learned Jurisdictional Magistrate. After complying with the mandatory requirements of Section 207 of the Code of Criminal Procedure (for short 'the Cr.P.C.'), the learned Jurisdictional Magistrate committed the case to the Court of Sessions for trial.

7. Subsequently, the Trial Court framed charges under Sections 302 of the IPC and 27 of the Arms Act against the appellants. It further charged the appellants and two others sent up accused persons, namely, Ranjan Singh and Ashok Singh under Sections 147, 148, 307/149, 302/149 and 504/149 of the IPC.

8. The appellants and the two other accused persons, who were put on trial, did not plead guilty and claimed to be tried. Accordingly, the trial commenced.

9. During trial, in order to prove the charges 16 witnesses were examined on behalf of the prosecution. They are Nagendra Yadav (P.W.1), an eye-witness and nephew of one of the deceased Tega Yadav, Awadhesh Yadav (P.W.2), a witness to the two seizure lists. Chhedi Yadav (P.W.3), the own brother of the deceased Tega Yadav who claims himself to be an eye-witness, Kameshwar Yadav (P.W.4), another eye-witness, Ram Janam



Chouhan (P.W.5), a hearsay witness, Satwant Kumar (P.W.6), a chance witness who also claims himself to be an eye-witness, Dr. Sunil Kumar (P.W.7), the doctor who issued injury report of the informant and was a member of the Medical Board which conducted the post-mortem examination on the bodies of the deceased Tega Yadav and Daroga Yadav, Dr. Anup Kumar Sinha (P.W.8) and Dr. Sunil Mahendra Kapoor (P.W.9), the two other members of the Medical Board which conducted the post-mortem examination on the bodies of the deceased Tega Yadav and Daroga Yadav, Rajendra Kumar Yadav (P.W.10), a witness to the inquest reports of the deceased Tega Yadav and Daroga Yadav, Ajay Yadav (P.W.11), the informant of the case, Sunil Kumar Yadav (P.W.12), a witness to the two seizure list i.e., the seizure list of motorcycle and the seizure list of clothes of the deceased, Om Prakash (P.W.13), the Investigating Officer of the case, Tej Narayan Singh (P.W.14), another Investigating Officer who submitted charge sheet in the case, Priti Bala (P.W.15), who had assisted the Assistant Director of the Forensic Science Laboratory in preparing the FSL report which has been marked as Exhibit-14 and Himjay Kumar (P.W.16), who has proved the FSL report of blood collected from the place of occurrence which has been marked as Exhibit-15.



10. **Ajay Yadav (P.W.11)** is the informant of the case. He has corroborated the prosecution case as narrated in the FIR. In cross-examination, he stated that on the date of occurrence at 12:00 noon, an altercation took place between the accused and the deceased persons. He stated that there was no previous enmity. The fact about the altercation was told to him by the deceased persons. They had also disclosed that the altercation took place on account of releasing water from the canal. He further stated that at the time of occurrence Chhedi Yadav, Nagendra Yadav and Kameshwar Yadav were also present along with him. They all had assembled near *Devi Asthan* for watering crop in the field as they have agricultural land near *Devi Asthan*. He admitted that when the incident took place, the members of the prosecution party were unarmed whereas the accused persons were armed with pistol. He stated that on the date of occurrence at about 08:00 PM both the injured were taken to the hospital on two motorcycles. According to him, at about 08:00 PM, the injured persons were taken to Aurangabad. It took about 20 to 25 minutes in reaching at Aurangabad. He stated that he cannot say whether the injured persons were alive or not when they were taken to Aurangabad. He stated that he informed the police after the doctor declared both of them dead. He met the



police for the first time at about 10:00 PM in the Sadar Hospital, Aurangabad, but no inquiry was made from him. He stated that he gave his written report to the Daroga at 10:30 PM on 02.10.2012. According to him, the inquest reports were prepared at about 11-11:15 PM at the hospital by the Daroga on 02.10.2012. He admitted that he is an accused in a case which had been instituted by the accused Sushil Singh. He stated that he cannot say whether Sushil Singh was provided treatment or not.

11. **Nagendra Yadav (P.W.1)**, stated in his testimony that Tega Yadav and Daroga Yadav reached near the Aahar bund, he saw the accused persons. Thereafter, he made the allegation of firing etc. He stated that near the place of occurrence, there are several houses of persons belonging to Sao, Baitha, Yadav and other castes. He stated that his statement was recorded by the Daroga at 11:00 P.M. on 02.10.2012 in the Sadar Hospital hospital where both the injured were taken. The doctor declared both of them dead and their inquest reports were prepared.

12. **Awadhesh Yadav (P.W.2)**, a seizure list witness admitted in cross-examination that he does not know as to whether the seizure lists were prepared prior to the institution of the FIR or after institution of the FIR. He expressed his inability



to disclose the name of the Daroga, who had prepared the seizure list. He stated that he does not remember what has been written in the seizure lists.

13. **Chhedi Yadav (P.W.3)**, another eyewitness stated in his testimony that on 02.10.2012 at 07:30 PM, he had left his house along with Tega Yadav, Ajay Yadav, Daroga Yadav, Nagendra Yadav and Kameshwar Yadav. He saw the accused persons standing near bund and as soon as they saw Daroga Yadav and Tega Yadav, Sushil Singh opened fire causing injury to Tega Yadav and Raju Singh opened fire causing injury to Daroga Yadav. Both the injured fell down after sustaining the injury caused by firearm. When Ashok Yadav came to their rescue Ranjan Singh and Arvind Singh assaulted him with *lathi*. When he and others raised hulla the accused persons fled away towards the western side. Thereafter, Tega Yadav and Daroga Yadav were taken to hospital on two different motorcycles.

14. In his cross-examination, he admitted that he came at the place of occurrence along with the police. He admitted that after taking his statement, the police inspected the place of occurrence and seized certain articles. He stated that Daroga and Tega were taken to hospital immediately after the incident had taken place. However, he did not accompany them. When he



came to the hospital after half an hour of the incident, he came to know that both the injured had died. He admitted that there is only one *Devi Asthan* in the village. and from his house up to *Devi Ashtan*, there is an approach road. He stated that he saw the accused persons from a distance of ten meter. At that time, he was at a distance of twenty meter from the *Devi Asthan*. When he saw the accused persons, they were variously armed at the bund. He heard the sound of firing from the place where he was standing. After firing, the accused persons fled away. He admitted that for an occurrence which took place on the same date, the accused Sushil Singh had also instituted a counter case of assault in which he has also an accused. He admitted that the counter case is still pending.

15. **Kameshwar Yadav (P.W.4)** stated in his testimony that the occurrence took place at 05:30 PM on 02.10.2012 at the bund.

16. In his cross-examination, he has admitted that prior to 10:00 PM on 02.10.2012, the police had reached at the place of occurrence. At that time, he was present there. The police did inquire about the occurrence from him on 02.10.2012. The police had prepared documents on that day and prepared the seizure list. He further admitted that the Daroga had made



inquiry from the persons present there and the villagers had disclosed him about the incident.

17. **Ram Janam Chouhan (P.W.5)** is a hearsay witness. He had not seen the incident himself. Satwant Kumar (P.W.6) another eyewitness also stated that the incident took place at the bund. He admitted that when he went at the bund, at that time, fifteen persons were present there from before.

18. **Dr. Sunil Kumar (P.W.7), Dr. Anup Kumar Sinha (P.W.8)** and **Dr. Sunil Mahendra Kapoor (P.W.9)** are the Medical Officers, who were posted at the Sadar Hospital, Aurangabad were the members of the Medical Board which conducted the postmortem examination on the bodies of the two deceased. The postmortem examination on the body of the deceased Tega Yadav commenced at 01:30 AM on 03.10.2012 and the postmortem examination on the body of the deceased Daroga Yadav commenced at 01:45 AM on 03.10.2012. Both the bodies were received in the Sadar Hospital at 01:00 AM on 03.10.2012. The bodies were identified by the Home Guard Jawan, namely, Lal Mohan Pandey and Anil Singh.

19. **Rajendra Kumar Yadav (P.W.10)** is a witness to the inquest reports of the deceased Tega Yadav and Daroga Yadav.

20. **Om Prakash (P.W.13)** stated in his deposition that on



02.10.2012, he was posted at Aurangabad Mufassil Police Station. He took up the investigation of Mufassil P.S. Case No. 151 of 2012. He inspected the place of occurrence situated at a distance of three hundred meter south from village Akauna at bund which is at a distance of twenty meter from *Devi Asthan* where he found that blood had fallen in large quantity. He was told by the villagers that Tega Yadav and Daroga Yadav had sustained firearm injury as a result of which blood had fallen and both of them had died. He seized certain articles and prepared two seizure lists at the place of occurrence. He stated that when he came back at the police station, he recorded the *fardbeyan* of the S.I. of Town Police Station, namely, Lakshmi Narayan Sudhansu. Immediately, thereafter, he said that he received the written report of Ajay Yadav along with the inquest reports of Tega Yadav and Daroga Yadav whereafter a formal FIR was registered.

21. In cross-examination, he admitted that he took over the investigation of the case at 09:45 PM on 02.10.2012 when a *Sanha* was registered at the police station. He further admitted that after the investigation was taken over and he had inspected the place of occurrence and prepared the seizure list, the FIR was registered at 01:00 AM on 03.10.2012. He admitted that in



the case diary at para-2, it has been recorded that Tega Yadav and Daroga Yadav had died and Ajay Yadav and Sushil Singh had sustained injuries. He admitted that the seizure lists were prepared at 10:15 PM on 02.10.2012 and they contain the case number of the present case.

22. **Priti Bala (P.W.15)** is a formal witness. She was an Assistant Scientist in the Forensic Science Laboratory, Patna. She stated that she had assisted the Assistant Scientist, Laboratory in preparing the FSL report, which has been marked as Exhibit-14.

23. **Himjay Kumar (P.W. 16)** has proved the FSL report collected from the place of occurrence, which has been marked as Exhibit-15. He stated that the blood-stained soil had been tested in the FSL, Patna and it was found that the blood was of human being. In cross-examination, he admitted that before taking the material for examination, he found that the material was not sealed. He admitted that he had not tested the RH factor of the said blood sample.

24. After closing the prosecution evidence, the Trial Court recorded the statement of the appellants under Section 313 of the Cr.P.C. for enabling them personally to explain the circumstances appearing in evidence against them.



25. The defence also examined five witnesses in support of its case. Out of them, Dilip Kumar Singh (D.W.3) and Dashrath Singh (D.W.4) are formal witnesses, who have proved Aurangabad P.S. Case No. 153 of 2012 dated 04.10.2012, which has been marked as Exhibit-D and the station diary entry from 02.10.2012 to 03.10.2012.

26. **Dharmendra Kumar Singh (D.W.1)**, Malkhana Guard stated in his deposition that any article seized in connection with any case is kept in Malkhana. However, upon examination of the Malkhana register, he did not find any mention of the articles seized in connection with the present case. He proved the relevant Malkhana register.

27. **Ramraj Singh (D.W.2)** stated in his testimony that as per station diary of Mufassil P.S. from 02.10.2012 to 05.10.2012, nothing is found regarding the articles seized in connection with Mufassil P.S. Case No. 151 of 2012.

28. We have heard Mr. Kanhaiya Prasad Singh, learned senior counsel for the appellants, Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State and Mr. Ram Chandra Singh, learned counsel for the informant.

29. By taking us extensively through the statement of witnesses as well as the records of the Trial Court, Mr. Kanhaiya



Prasad Singh, learned Senior Counsel for the appellants submitted that the alleged eyewitnesses examined on behalf of the prosecution had in fact not witnessed to the incident. They all are related to the deceased. No independent witness has been examined on behalf of the prosecution. Hence, in absence of the testimony of independent witnesses, the testimony of related and interested witnesses cannot be relied upon. He submitted that their evidence suffers from serious infirmities and, is therefore, wholly unreliable as well as untrustworthy.

30. Mr. Singh submitted that the date of occurrence is of 02.10.2012 at 07:30 PM, but the formal FIR was lodged at 01:00 AM on 03.10.2012. He contended that the I.O. has stated in his evidence that he took the charge of investigation on 02.10.2012 at 09:45 PM, started writing the case diary on the same day and inspected the place of occurrence at 09:45 PM where many persons were present, but no case was registered. He contended that P.W.4 Kameshwar Yadav admits in his evidence that he had given statement to the police regarding the occurrence at the place of occurrence itself just after arrival of the police. It is surprising as to why that statement has been suppressed and a written report was handed over to the police much later. He urged that the inquest reports of the two



deceased were prepared on 02.10.2012 at 11:15 PM at Sadar Hospital, Aurangabad. P.W.1 and P.W.10 were witnesses to the inquest reports. Thus, if the police had reached at the place of occurrence, started the investigation, inspected the place of occurrence and started writing the case diary at 09:45 PM on 02.10.2012 and one of the inquest witnesses, namely, Nagendra Yadav (P.W. 1), who is the nephew of the deceased Tega Yadav and cousin brother of the deceased Daroga Yadav claims to be an eyewitness to the actual occurrence, it is not understandable as to why he did not disclose the name of the miscreants to the police either at the initial stage at 09:45 PM on 02.10.2012 or at the later stage when the inquest was being prepared at 11:15 PM on 02.10.2012.

31. Mr. Kanhaiya Prasad Singh, learned Senior Counsel argued that the written report, which was handed over to the police at 01:00 AM on 03.10.2012 by the informant Ajay Yadav P.W.11 on the basis of which the formal FIR was instituted is nothing but an afterthought to implicate these appellants.

32. Referring to the deposition of P.W.7 Dr. Sunil Kumar, Mr. Singh, learned Senior Counsel submitted that he had examined the injured appellant Sushil Singh on 02.10.2012 at 10:20 PM i.e., on the date of occurrence itself and found seven injuries on



his person including a grievous injury. The injury report of the appellant no. 1 Sushil Singh was brought in evidence by the defence and was marked as Exhibit-A. It has also come in the evidence of the Investigating Officer Om Prakash that the appellant Sushil Singh had opened the canal to which the prosecution party protested and they all assaulted him as a result of which he got badly injured. The prosecution witnesses have not been able to explain as to how and under what circumstance the appellant Sushil Singh sustained seven injuries including a grievous injury. He contended that since the prosecution case is that all the nine accused persons were armed with lathi, khanty and pistol and the prosecution party was completely unarmed at the place of occurrence, it is not understandable as to how the appellant Sushil Singh sustained injuries. He pointed out that in the counter case filed by the appellant Sushil Singh, P.W.1 Nagendra Yadav, P.W.3 Chhedi Yadav, P.W.4 Kameshwar Yadav and P.W.11 Ajay Yadav have been convicted for committing the offence punishable under Section 325 of the Indian Penal Code. Hence, according to him, the prosecution has not come up with clean hands in the present case and the testimonies of the witnesses examined on behalf of the prosecution cannot be considered to be trustworthy.



33. Advancing his arguments, Mr. Singh, learned Senior Counsel submitted that the prosecution suffers from many serious infirmities which would make the prosecution story highly doubtful. He contended that if the occurrence took place at the bund, it is surprising that no empties were found at the alleged place of occurrence. The materials allegedly seized by the police were not produced in the court. The police officials, who had seized the articles and prepared the seizure lists have not been examined by the prosecution. The genesis of the occurrence has been deliberately suppressed which leads to irresistible conclusion that the prosecution has not come up with the true version of the case.

34. Per contra, Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State has opposed the contentions advanced on behalf of the appellants. He submitted that the evidences as adduced by the prosecution witnesses are reliable and trustworthy. The incident of killing Tega Yadav and Daroga Yadav was witnessed by several persons, who were examined by the prosecution during trial. The witnesses examined in the case are eyewitness and death of two persons from the side of prosecution has been admitted even in the counter case launched by the accused persons. There is no contradiction in the



testimony of witnesses and the use of firearm and the injuries sustained by the two deceased have not been rebutted by the defence. There is no iota of doubt that the appellants killed Tega Yadav and Daroga Yadav by causing firearm injury.

35. Mr. Sinha, learned counsel for the State further contended that the testimonies of prosecution witnesses are consistent and intact with regard to the core points. He contended that a close relative cannot be characterized as an interested witness. He is a natural witness. The only requirement of law is that his evidence should be scrutinized carefully. He urged that merely because the eyewitnesses are related to the deceased, their evidence cannot per se be discarded.

36. Mr. Ram Chandra Singh, learned counsel appearing on behalf of the informant argued that there is no merit in the submission made on behalf of the appellants that the FIR is an afterthought to implicate the appellants. He contended that from a perusal of the written report on the basis of which the FIR has been registered, it would be evident that the same was handed over to the SHO of Town Police Station, who was camping at Sadar Hospital, Aurangabad on 02.10.2012 itself. The SHO of Town Police Station forwarded the written report to the SHO of Muffasil Police Station, Aurangabad, which was received by



him at 01:00 PM on 03.10.2012, pursuant to which, the FIR was registered. Hence, there is no merit in the submission made on behalf of the appellants that there was an inordinate delay in institution of the FIR.

37. According to him, the delay, if any, was caused by the police over which the informant had no control. Moreover, the delay has properly been explained and, on that ground, no benefit can inure to the appellants.

38. Insofar as the injuries found on the person of the appellant Sushil Singh is concerned, he submitted that the same were self-inflicted injuries. He contended that the prosecution is not bound to give explanation of every simple injury sustained by the accused and the only grievous injury on the person of the accused was a lacerated wound on the forearm. He submitted that it is not a rule that whenever accused sustains an injury in the same occurrence, the prosecution is obliged to explain the injury and, on failure to do so, the prosecution case should be disbelieved.

39. We have carefully considered the rival submissions and meticulously examined the record and the proceedings including the oral and documentary evidence.

40. At the very outset, it is to be seen as to whether the



prosecution has proved that Tega Yadav and Daroga Yadav were killed on 2.10.2012 at 07:30 PM.

41. In order to prove homicidal death of Tega Yadav and Daroga Yadav on 02.10.2012, the evidence of Dr. Sunil Kumar (P.W.7), and Dr. Anup Kumar Sinha (P.W.8) as well as Dr. Sunil Mahendra Kapoor (P.W.9), who were Members of the Medical Board is of vital importance.

42. A Medical Board consisting of Dr. Sunil Kumar (P.W.7) and Dr. Anup Kumar Sinha (P.W.8) and Dr. S.M. Kapoor (P.W.9), all the three Medical Officers posted at the Sadar Hospital, Aurangabad had conducted the postmortem examination on the body of the deceased Tega Yadav at 01:30 AM on 03.10.2012 at Sadar Hospital, Aurangabad. During the postmortem examination on the body of the deceased Tega Yadav, the Board found a round shaped lacerated entry wound with charring, margin inverted, wound on right side of abdomen measuring 1/2"x1/4"x deep to abdominal cavity caused by firearm. It found the exit wound as a round shaped lacerated everted margin wound on the right side of back below right scapular measuring 1"x deep to abdominal cavity. It further found a lacerated wound on forehead right side 1/2"x1/4"x1/6" caused by hard and blunt substance. The Board opined the cause



of death to be hemorrhage and shock due to abovementioned injuries, which ultimately resulted into cardiac respiratory failure. It opined that the death was caused by firearm injury. It further opined that the time elapsed since death was within 12 hours.

43. The same Medical Board had conducted the postmortem examination on the body of Daroga Yadav at 01:45 AM on 03.10.2012 at the Sadar Hospital, Aurangabad. During the postmortem examination on the body of the deceased Daroga Yadav, the Board found a round shaped lacerated wound with charring, margin inverted, ante-mortem wound on the left side of abdomen measuring $\frac{1}{2}$ "x $\frac{1}{4}$ " x deep to abdominal cavity caused by firearm. The said injury was wound of entry. It also found an oval shaped lacerated wound everted margin on right side of back below right scapular region measuring 1"x $\frac{1}{2}$ " x deep to abdominal cavity. The same was wound of exit. The Board opined that the aforesaid two injuries found on the person of the deceased communicated each other. The Board opined that the cause of death was hemorrhage and shock due to abovementioned injuries which ultimately resulted into cardiac respiratory failure. The Board held that the time elapsed since death was within 12 hours.



44. The sworn testimonies of P.Ws. - 7, 8 and 9 are corroborated by the contemporaneous postmortem examination reports (Exhibits- 4 and 5). They would clearly suggest that Tega Yadav and Daroga Yadav died due to firearm injuries sustained by them causing haemorrhage and shock resulting into cardiac respiratory failure.

45. The evidence of doctors of the Medical Board coupled with the inquest reports and the eyewitness version of Nagendra Yadav (P.W.1), Chhedi Yadav (P.W.3), Kameshwar Yadav (P.W.4), Satwant Kumar (P.W.6) and Ajay Yadav (P.W.11), who claim themselves to be the eyewitnesses is sufficient to hold that the prosecution has proved that Tega Yadav and Daroga Yadav died a homicidal death on 02.10.2012.

46. Now, let us examine whether by its evidence the prosecution has been able to bring home the guilt of the accused persons.

47. In this regard, first of all, it is required to be seen as to whether there was any delay in lodging the FIR and if there was any delay, the same is fatal to the prosecution case.

48. It has been argued on behalf of the appellants that though the informant has alleged that the incident took place at 07:30 PM on 02.10.2012, the formal FIR was lodged at 01:00



AM on 03.10.2012. It has also been argued that much before the institution of the FIR, the police had started investigation and even the inquest reports were prepared prior to the institution of the FIR.

49. By now it is well settled that the FIR is an important document even though it is not a substantive piece of evidence. The prompt lodging of FIR lends credence to the prosecution version and prevents the possibility of a coloured version being put by the informant. However, there is no duration of time fixed by the statutory provisions under the Cr.P.C. for giving information of a crime to the police. The law requires that the FIR should be filed within reasonable time. The question of reasonable time is to be decided by the Court in the facts and circumstances of a particular case.

50. It is equally well settled that even a long delay in lodging the FIR can be condoned if plausible explanation is given and the evidence adduced during trial demonstrates that there is no motive of implicating innocent person. However, the undue or unreasonable delay in lodging the FIR gives rise to suspicion. It puts the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the testimony of the



witnesses.

51. In the instant case, the consistent version of the informant Ajay Yadav is that the occurrence took place at 07:30 PM on 02.10.2012, but Kameshwar Yadav (P.W.4), who claims himself to be an eyewitness stated in his evidence that the occurrence took place at 05:30 PM on 02.10.2012. He has changed the time of occurrence, which is also being corroborated by Chhedi Yadav (P.W.3), who has stated that he met the Dargo at 07:00 PM on 02.10.2012. However, he has not stated about the incident taking place at that time.

52. **Om Prakash (P.W.13)**, the First Investigating Officer of the case stated in his deposition that he took charge of investigation of the present case on 02.10.2012 at 09:45 PM but the FIR was instituted at 01:00 AM on 03.10.2012. He admitted that he had inspected the place of occurrence at 09:45 PM on 02.10.2012. He further admitted that at that time, he found large number of persons at the place of occurrence. He categorically stated in his evidence that the first seizure list i.e., seizure list of Hero Honda Motorcycle in damaged condition bearing registration no. BR-26 7422, slippers, four Nippo batteries, a broken torch and blood-stained soil was prepared by him on 02.10.2012 at 10:15 PM in presence of Awadhesh Yadav (P.W.2)



and Sunil Kumar Yadav (P.W.12).

53. A perusal of the aforesaid seizure list marked as Exhibit-9 would make it evident that the same contains the case number as Mufassil P.S. Case No. 151 of 2012 under Sections 147, 148, 149, 323, 307, 302 and 504 of the Indian Penal Code. It is surprising that when no case was instituted on 02.10.2012 as to how the case number has been given at the top of the seizure list (Exhibit-9) by the Investigating Officer of the case, who admittedly prepared it at 10:15 PM on 02.10.2012.

54. When I look at the inquest reports of the deceased Tega Yadav and Daroga Yadav (Exhibits-6 and 7, respectively), I find that the inquest report of Tega Yadav (Exhibit-6) was prepared by one Sandeep Thakur, an Assistant Sub-Inspector of Police of Aurangabad Town P.S. and inquest report of Daroga Yadav (Exhibit-7) was prepared by one Mahendra Kumar, another Sub-Inspector of Police of Aurangabad Town P.S. at Sadar Hospital, Aurangabad on 02.10.2012 itself. The inquest reports would further show that the bodies of the two deceased had sustained gunshot injuries and were kept on an iron stretcher at 11:15 on 02.10.2012. The witnesses to the inquest reports are Nagendra Yadav (P.W.1) and Rajendra Kumar Yadav (P.W.10). Apparently, the inquest reports do not contain case number on them. They



do not even contain the name of any accused person even as suspect. The Police Officers, who had prepared the inquest reports have not been examined as witnesses in the present case. There is no explanation for their non-examination.

55. From a perusal of the seizure list and the inquest reports coupled with the evidence of Om Prakash, the Investigating Officer of the case, it would be crystal clear that much prior to the lodging of the present FIR, the investigation of the case had already commenced and, much prior to the institution of the FIR, the two seizure lists and the two inquest reports were prepared on 02.10.2012 itself. Furthermore, the case number mentioned upon the seizure list would make it evident that Mufassil P.S. Case No. 151 of 2012 was instituted on 02.10.2012 itself prior to the preparation of the seizure list.

56. When I look at the testimony of Nagendra Yadav (P.W.1), I find that he has not only changed the place of occurrence but also changed the manner of occurrence as given in the FIR. In the FIR, it is alleged that the firing took place when Tega Yadav and Daroga Yadav reached near *Devi Asthan*, but Nagendra Yadav (P.W.1) stated in his evidence that the occurrence took place when Tega Yadav and Daroga Yadav reached near Aahar bund. In his testimony, he further stated that near the place of



occurrence, there are several houses and those are the houses of Sao, Baitha, Yadav and other caste. He stated that his statement was recorded by the Daroga at 11:00 PM on 02.10.2012 in the hospital. Now the question is that if the statement of P.W.1 was recorded by the Police Officer at 11:00 PM on 02.10.2012, what happened to that statement.

57. I further find that like P.W.1, P.W.3 and 4 have stated in their deposition that the occurrence took place at the bund and not near the *Devi Asthan* as alleged in the FIR.

58. When I look at the testimony of Awadhesh Yadav (P.W.2), I find him to be a wholly unreliable witness. Though he is a seizure witness, he admitted in cross-examination that he is not aware as to whether the seizure lists were prepared prior to the institution of the FIR or after the investigation of the FIR.

59. Thus, from the testimony of P.Ws. 1 to 4 and P.W. 13, it would be manifest that the prosecution has suppressed the earliest version which was given to the Investigating Officer at the place of occurrence much prior to the lodging of the FIR. The testimony of the witnesses would further suggest that a large number of witnesses were present at the place of occurrence when the Investigating Officer visited the place of occurrence first at 09:45 PM on 02.10.2012. They all have been



withheld by the prosecution. The witnesses, who have been produced by the prosecution during trial are either closely related to the deceased or they are accused in the counter case. The witnesses examined in the case are also not consistent about the place of occurrence and the manner of occurrence. The witnesses examined during trial have unequivocally stated that Tega Yadav and Daroga Yadav were killed in the firing resorted to by the appellants Sushil Singh and Raju Singh. However, none of them has said about the injury caused to the appellant no. 1 Sushil Singh. The injuries sustained by Sushil Singh has not been explained by the prosecution party. From the record and the impugned judgment, it would be evident that the Investigating Officer of the present case was also the Investigating Officer of the counter case. The articles seized from the place of occurrence were neither mentioned in the station diary nor were kept in the Malkhana of the concerned police station. They were not even produced before the court during trial.

60. As the initial version given to the police has been suppressed, the witnesses examined on behalf of the prosecution are not consistent regarding the manner of occurrence and the place of occurrence, the injuries on the person of the appellant



no. 1 have not been explained, the materials seized from the place of occurrence were neither kept in the Malkhana nor were produced before the court and the seizure lists prepared at the place of occurrence much before the institution of the FIR contain the Police Station case number, a reasonable doubt about the veracity of the prosecution version is created in the mind of the Court.

61. By now it is well settled that in criminal case as life and liberty of the accused are involved, a strict standard of proof is required as to prove the guilt of the accused. It is not the preponderance of the probabilities that establishes the guilt of the accused. It is necessary that the evidence on record must prove it beyond reasonable doubt. A conviction cannot be based on the consideration that the prosecution story may be true. The accused can only be convicted if the court reaches the conclusion that the prosecution story must be proved. The burden of proving the guilt of the accused is upon the prosecution.

62. In the instant case, since there is a reasonable doubt as to the guilt of the appellants, I am of the opinion that they are entitled to the benefit of the same.

63. Accordingly, the impugned judgment of conviction dated



22.06.2016 and the consequent order of sentence dated 28.06.2016 passed by the Trial Court in Sessions Trial No. 24/13/96/14 arising out of Aurangabad Mufassil P.S. Case No. 151 of 2012 are set aside.

64. The appellants, namely, Sushil Singh and Raju Singh are acquitted from the charges levelled against them. They are directed to be set at liberty forthwith unless their detention is required in any other case.

65. The appeal stands allowed.

(Ashwani Kumar Singh, J)

Arvind Srivastava, J.- I agree.

(Arvind Srivastava, J)

rohit/-

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