

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.943 of 2014**

Arising Out of PS. Case No.-82 Year-2012 Thana- NALANDA District- Nalanda

1. Sheo Kumar Prasad S/o Sukhdeo Mahto
2. Mahesh Prasad S/o Sheo Kumar Prasad
3. Pintu Kumar S/o Sheo Kumar Prasad, All resident of Village- Chor Bigha, P.S.- Nalanda, District- Nalanda.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

**Appearance :**

|                    |   |                                      |
|--------------------|---|--------------------------------------|
| For the Appellants | : | Mr. Rajendra Prasad, Senior Advocate |
|                    |   | Mr. Ritesh Kumar, Advocate           |
|                    |   | Mr. Pramod Kumar, Advocate           |
| For the State      | : | Mr. Bipin Kumar, APP                 |
| For the informant  | : | Mr. Anil Chandra, Advocate           |

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**  
**and**  
**HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

**Date : 02-09-2022**

The present appeal has been preferred against the judgment of conviction dated 21.11.2014 and order of sentence dated 28.11.2014 passed by the Additional Sessions Judge-I, Nalanda at Biharsharif in Sessions Trial No.25 of 2013 arising out of Nalanda P.S. case No.82 of 2012, whereby and whereunder the appellants have been convicted under Section 302 and 307 read with Section 34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life and fine of Rs.5000/-



each for offence under Section 302 read with 34 of the Indian Penal Code. However, no separate sentence has been passed for the offence under Section 307 read with Section 34 of the Indian Penal Code. In default of payment of fine, the appellants have been sentenced to undergo one month's S.I.

2. Prosecution case, as per fard-beyan of informant Gulabi Kumari, in brief, is that she gave her fard-beyan before S.H.O. Rajnandan on 30.08.1992 at 9:30 p.m. alleging therein that on that date in the evening the informant alongwith her mother-in-law Kanti Devi, daughter Juhi and other family members were taking dinner at her residence. In the meantime, the appellants came armed with pistol and asked the informant to prevent her mother-in-law to depose in the case of murder of her father-in-law and on refusal by her mother-in-law Kanti Devi, the appellants fired upon Kanti Devi causing her death at the spot and the daughter of the informant, namely, Juhi Kumari also sustained fire arm injury on her leg.

3. On the basis of the fard-beyan of the informant, Nalanda P.S. case No.82 of 2012 was registered against the appellants under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act. After investigation, the police submitted charge-sheet under Sections 302/34, 307 of the Indian



Penal Code and Section 27 of the Arms Act. The learned S.D.J.M., Biharsharif took cognizance against the appellants and committed the case to the Court of Sessions. Charges were framed against the appellants under Sections 302/34, 307/34 of the Indian Penal Code and Section 27 of the Arms Act. The appellants pleaded not guilty and claimed to be tried.

4. During trial, the prosecution examined altogether seven witnesses, namely, Snehlata alias Sneha Devi (P.W.1), Nishant Kumar (P.W.2), Juhi Kumari (P.W.3-injured), Gulabi Kumari (P.W.4-informant of the case), Dr. Srikant Prasad (P.W.5, who conducted the postmortem and examined the injured), Rajnandan (P.W.6-Investigating Officer) and Rajmani Prasad Sinha (P.W.7). The prosecution has brought on record documents like the postmortem report (Ext.3), Inquest Report (Ext.6), injury report of Juhi Kumari (Ext.8). Defence has not examined any witness in support of its case.

5. Learned Senior Counsel for the appellants submits that the judgment of conviction and order of sentence passed by the learned trial court is erroneous and bad in the eye of law. There are several infirmities in the evidence adduced by the prosecution, which have been ignored by the learned trial court. It has been contended that the place of occurrence has not been established



and proved by the prosecution beyond all reasonable doubt. Further, the medical evidence brought on record by the prosecution does not support the ocular evidence. Therefore, it has been argued that the manner of occurrence has also not been proved by the prosecution. Moreover, the prosecution has not brought on record any evidence on the point of any source of identification under which the appellants have been identified.

6. On the other hand, learned A.P.P for the State, in support of the judgment of conviction and order of sentence, has submitted that the prosecution has been able to establish and prove its case beyond all reasonable doubts. There is enough evidence on record to prove the guilt of the appellants. Thus, the judgment and order under challenge requires no interference.

7. After hearing the arguments advanced by both the sides and perusing the material available on record, following issues arise for consideration:-

(I) Whether the prosecution has been able to prove the manner of occurrence, in light of the fact that the medical evidence brought on record by the prosecution does not corroborate the ocular evidence?

(II) Whether the prosecution has been able to establish and prove the place of occurrence beyond all reasonable doubts?



(III) Whether the prosecution has brought on record any evidence regarding the source of identification under which the appellants were identified?

8. In order to deal with the first issue, we have examined the fard-beyan and deposition of the informant (P.W.4) of this case. As per the allegation, all the three appellants are said to have arrived at the house of the Informant (P.W.4) and opened gun-fire. The firing is said to have been made by all the three appellants. This version has also been supported by other prosecution witnesses, who have claimed to be present at the place of occurrence at the relevant time. In the cross-examination in paragraph 12 the informant has stated that firing was made indiscriminately. Further, it is also the case of the prosecution that the deceased got hit by the bullet in her chest. In other words, as per the prosecution version, bullet entered into the body of the deceased by her chest. However, from perusal of the post-mortem report of the deceased, it is apparent that the doctor in his opinion has opined that the wound of entry is present in the back and has further opined that the wound of exit is in front of the chest. Therefore, the manner of occurrence is not supported by the medical evidence. It is also noted that the allegation is of indiscriminate firing by all three appellants, but the post-mortem



report of the deceased shows that the deceased sustained single fire-arm injury. Hence, in light of the aforesaid fact that the ocular evidence is in variance with the medical evidence brought on record by the prosecution, we are of the opinion that the prosecution has not been able to prove the manner of occurrence beyond all reasonable doubts. Since the manner of occurrence with regard to the deceased stands uncorroborated with the medical evidence, therefore, it will not be safe to rely upon the narration of the informant and other witnesses with regard to the allegation made for the offence under Section 307 of the Indian Penal Code.

9. So far the second issue is concerned, from perusal of the fard-beyan and deposition of the prosecution witnesses, it is clear that the place of occurrence is the room at the entrance door of the house of the informant, where the informant and her family members were having meal. The case of prosecution is consistent on this point that the Informant and other family members were having dinner, when the appellants arrived at the house armed with weapon. However, from perusal of the ocular evidence of the Investigating Officer it has come on record that there were no utensils or food articles found at the place of occurrence. Rather, he has categorically stated that except the dead body he has not seized any other article from the place of occurrence. Further, there



is no material exhibit brought on record by the prosecution. However, it is apparent from the record that the police had reached the place of occurrence with a short span of time. The alleged occurrence is said to have occurred at around 8 O' clock in the night, whereas the fard-beyan has been recorded at 9:30 p.m. in the night. Therefore, we are of the opinion that the prosecution has not successfully proved the place of occurrence.

10. Coming to the third issue, from perusal of the entire record, it is apparent that the prosecution has not disclosed any source of identification under which the appellants have been identified by the Informant and other prosecution witnesses. It is clear from the record that the incident took place at 8 O' clock in the night. There is no revelation by the Informant and other prosecution witnesses, present at the place of occurrence at the time of incident, regarding any source of light. The place of occurrence is the room at the entrance door of the house of the Informant. At this juncture, we find it relevant to refer to the judgment of the Hon'ble Supreme Court rendered in the case of ***Kapildeo Mandal and Ors. Vs. State of Bihar*** reported in (2008) 16 SCC 99, wherein the Hon'ble Supreme Court in paragraph 9 has observed as follows:

*“9. ... The incident happened that 11.00 O'clock in the night. The witnesses have stated*



*that they have seen the incident and recognized the appellants either in the torch-light or in the lantern-light which was burning at their house. It has come in evidence of the witnesses as well as the Investigating Officer that neither the torch or the lantern was seized by the I.O. during the course of investigation nor was it produced before the court. In the circumstances, it is difficult to believe that the appellants have been identified in the torch-light or in the lantern-light.”*

Therefore, in the given facts of the present case, there is no revelation of any source of identification. Hence, the prosecution has not brought on record any evidence regarding the source of identification under which the appellants were identified.

11. In view of the findings arrived at the issues formulated above, we are of the considered opinion that the prosecution has not been able to prove the charges framed against the appellants beyond all reasonable doubts. The appellants deserve to be given benefit of doubt.

12. Hence, the present appeal is allowed. The judgment of conviction dated 21.11.2014 and order of sentence dated 28.11.2014, passed by the Additional Sessions Judge-I, Nalanda at Biharsharif in Sessions Trial No.25 of 2013 arising out of Nalanda



P.S. case No.82 of 2012, are set aside. Since the appellants are in custody, therefore, they are directed to be released from custody forthwith, if not required in any other case.

(Sudhir Singh, J)

( Chandra Prakash Singh, J)

Narendra/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          |            |
| Uploading Date    | 07.09.2022 |
| Transmission Date | 07.09.2022 |

