

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.349 of 2017

Arising Out of PS. Case No.-321 Year-2001 Thana- BHABHUA District- Kaimur (Bhabua)

Bhanu Pratap Singh S/o- Late Doman Singh, Resident of Village- Dovri, P.S.-
Chainpur, District- Kaimur at Bhabhua.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Tribhuwan Narayan Mr. Mr.Md. Helal Ahmad
For the Informant		Mr. Ansul Ms. Aparna Arun
For the State		Mr.S.B.Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

Date : 08-11-2023

This appeal has been preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 for setting the aside the judgment dated 04.02.2017 and order of sentence dated 13.02.2017 passed by the learned Additional Sessions Judge-IVth, Kaimur at Bhabua in Sessions Trial No. 174 of 2002/346/2016 (R-3902/2014), arising out of P.S. Bhabhua, FIR No. 321 of 2001, whereby the appellant has been convicted and sentenced as under:-

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
302/34 of the IPC	RI for life	10,000/-	SI for six months



2. The informant of this case is P.W.2, Kamlapati Singh, the father of the deceased, Ranvijay Bahadur Singh. The *fardbayan* of P.W.2 was recorded on 03.11.2001 at 11.00 a.m., at the residence of the deceased Ranvijay Bahadur Singh who was an advocate in Bhabua District Court. The informant mentioned in the *fardbayan* that he was present in his village and in the morning of 03.11.2001 at about 7.00. A.M., he came to know that the previous evening, his son was murdered by firing at 6.00 P.M. at his house, situated in Bhabua. Having heard about the incident, the informant came to Bhabua and he came to know that the firing was made at the Darwaza of the deceased. The deceased was carried to the hospital, where the doctors declared him as dead. Due to shock, the informant became unconscious. It has been mentioned further that at the time of occurrence, the daughter-in-law of the informant (wife of the deceased), was present in her house and she was in an unconscious state (at the time of *fardbayan*). The informant also mentioned in the *fardbayan* that the detailed description of the occurrence would be given when his daughter-in-law would regain her consciousness.

3. On the basis of the *fardbayan* of the informant Bhabua P.S.Case No. 321 of 2001 (Exhibit-2) was registered



against unknown for commission of the offences punishable under Section 302 of the IPC and Section 27 of the Arms Act. During investigation, the involvement of seven accused persons including the appellant was found. The Investigating Authorities submitted the charge sheet No.06 of 2002 on 05.01.2002 against four accused persons, namely, Bhanu Pratap Singh (the appellant), Dhananjay Singh (died), Bhoga Singh (died) and Ramesh Singh (acquitted), for commission of the offences punishable under Sections 302/120B of the IPC and Section 27 of the Arms Act. The investigation against three accused persons remained pending. After splitting, the case of all these four accused persons were committed to the court of sessions. The charges were framed against them on 3rd May, 2003 under Sections 302/34, 120B of the IPC and Section 27 of the Arm Act. The accused persons pleaded not guilty and claimed to be tried. Co-accused Bhoga Singh died during the pendency of the trial and the proceeding against him was dropped, vide order dated 13.06.2008.

4. Co-accused Dhananjay Singh was also convicted along with the appellant in the present case and he was also sentenced, as indicated above, but he died during the pendency of his Cr.Appeal (DB) No. 364 of 2017. After the death of



Dhananjya Singh, Cr.Appeal (DB) No. 364 of 2017 abated.

5. It is pertinent to mention here that co-accused Ramesh Singh, who is brother of Bhoga Singh was also tried with other accused persons in Sessions Trial No. 174 of 2002, was acquitted by the learned trial court.

6. In order to prove its case, altogether 13 witnesses have been examined by the prosecution.

7. The informant of this case is P.W.2, Kamlapati Singh, the father of the deceased. At the time of occurrence, he was not present at the residence of the deceased situated in Bhabua town, where he was murdered. At that time, he was in his village, namely, Kori. This witness heard about the occurrence on the next morning i.e. on 03.11.2001. Having heard about the occurrence, he came to his house situated in Bhabua. Then he came to know that his son was murdered at his door when he returned from the court. (The deceased was a practicing lawyer). He stated that his son was brought to the hospital where he was declared dead. At the time of occurrence, the deceased, his wife (P.W.6) and his two sons Shalu and Aashu were present in the house. The brother-in-law (*sala*) of the deceased namely Bablu, P.W.11 was also present in the house at the time of occurrence. When this witness went to his house in



Bhabua, his daughter-in-law was in unconscious state and was not in a position to state anything. His (the informant's) grandsons were also not in a condition to narrate about the occurrence as they were not in normal mental condition. During presence of this witness in his Bhabua-situated house, the police came and recorded his *fardbayan* (Exhibit-3). This witness deposed further that P.W.11 Bablu Singh, who is the resident of village *Baruna*, was the brother-in-law (*sala*) of the deceased. Co-accused Bhoga Singh had lodged a case against P.W.11 for commission of the offences under Section 307 of the IPC and Section 27 of the Arms Act. That case was prior to the present case. After that case, P.W.11 was residing in the house of the deceased. The deceased was a lawyer practicing in Bhabua Civil Court. He was doing *pairvi* in that case on behalf of P.W.11. The deceased had made efforts to get that case compromised, which was the reason why co-accused Bhoga Singh was not happy with the deceased. Co-accused Bhoga Singh had asked the deceased to oust P.W.11 from his house, but the deceased did not do so. This witness deposed further that the native village of his wife (wife of this witness) and the native place of the wife of co-accused Bhoga Singh was in same, namely, village *Mokri*. Before the occurrence, the wife of this witness (mother of the



deceased) had gone to village *Mokri*, where she met the mother-in-law (*sass*) of co-accused Bhoga Singh and she (mother-in-law of the deceased) had asked her for compromise in the case, in which P.W.11 was an accused, to which the mother-in-law of Bhoga Singh replied that Bhoga Singh had stated that he would take blood for blood and would not spare even the persons who were giving patronage to P.W.11. This witness stated further that at the occasion of the *Shradh Karma* of the deceased, P.W.11, along with one Ramashish Singh, had come to his village *Kori* and they told this witness that they identified Bhoga Singh, Bhanu Pratap Singh (appellant), Ramesh Singh and Dhananjay Singh. This witness thereafter went to the police station and apprised the investigating officer of this fact, but the investigating officer replied that the statement of this witness had already been recorded and he would record the statement of P.W.11. This witness deposed further that these four accused persons in deep conspiracy had murdered his son. During deposition of this witness, three out of four accused persons were present in the dock, but this witness did not identify any of them as he had not seen them before.

8. P.W.5 Sharda Devi is the mother of the deceased.

At the time of occurrence, she was also not present at the place



of occurrence, rather she was in her native place (*Maika*) at village *Mokri*. She deposed further that P.W.11 Bablu, who is brother-in-law of the deceased, had enmity with Bhoga Singh. Her son (son of this witness) was doing *pairvi* in the case lodged against Bablu Singh. Due to fear of Bhoga Singh, Bablu was residing in the house of the deceased. Bhoga Singh etc. were threatening the deceased to refrain from doing *pairvi* in that case. When this witness had gone to her native place (*naihar*), she met the mother-in-law of Bhoga Singh. This witness asked the mother-in-law of Bhoga Singh to persuade Bhoga Singh for compromise in the case lodged against P.W.11. The mother-in-law of Bhoga Singh replied that they were not ready for compromise. This witness after getting the information about the occurrence, came to her house in Bhabua. Her daughter-in-law was in unconscious state. There Bablu (P.W.11) apprised this witness that Bhoga Singh and two others had committed murder of the deceased by firing shot. In her cross-examination, this witness stated that she came to Bhabua in the night of occurrence at about 9-10 P.M. In paragraph 10 of her cross-examination, this witness stated that P.W.11 had not gone to her village after the case lodged by Bhoga Singh. P.W.11 after that case, was residing in her house, (the house of this witness in



Bhabua).

9. P.W.6 Sangeeta Singh is the widow of the deceased. At the time of occurrence, she was present inside her house along with her two sons and her brother (P.W.11). This witness deposed that at the time of occurrence, she was present in the veranda of the first floor of the house. Bablu (P.W.11) was also there. Her son Shalu was in the room situated on ground floor. On that day, she was waiting for her husband. When her husband came to the house and asked to open the door, this witness heard the sound of firing. She rushed to the ground floor but her brother Bablu (P.W.11) remained in the veranda. Bablu saw, from the veranda of the first floor, that three persons were fleeing away after firing on the deceased. This witness, when came at *Darwaza*, saw her husband in injured condition. He had suffered fire shot at his chest. Bablu was shouting that the miscreants were his co-villagers. He was also shouting that Bhoga Singh fled away after killing the deceased. This witness and P.W.11 brought the deceased to the hospital where he was declared dead. She also stated that there was enmity between P.W.11 and co-accused Bhoga Singh and Bhoga Singh had lodged a case against P.W.11. The husband of this witness was attempting for an amicable compromise in that case. This



witness did not identify the appellant, Ramesh Kumar Singh and Dhananjy Singh, who were present in the dock.

10. P.W.4, Ravi Shankar Singh happens to be the father-in-law of the deceased and father of P.W.11. On the day of occurrence, he was in his village. He got the information about the occurrence on the next day at 8.00 A.M.. This witness went to Bhabua at the house of the deceased and came to know that he was shot dead at his *darwaza*. He came to know that his son-in-law was brought to the hospital where the doctors declared him dead. When this witness went to the house of the deceased, he found his daughter in an unconscious state. This witness stated further that one month prior to the occurrence, someone had fired at the accused Bhoga Singh and Bhoga Singh had falsely implicated his son P.W. 11 in that case. He stated further that his son was residing at the house of the deceased and the deceased was making efforts for compromise in that case. He stated further that on 25.10.2001, a meeting was held at the residence of Bhoga Singh in which co-accused Ramesh Sigh and the appellant along with 2-4 other persons participated and they hatched up a conspiracy to murder the deceased, and to meet the expenses, Rs. 50,000/- were collected after selling rice. He stated further that all the four accused persons in a deep



conspiracy had murdered his son-in-law. This witness identified the accused persons present in the dock. He stated in paragraph no.3 of his deposition that on 03.11.2001 when his daughter regained her consciousness for a short while, she apprised this witness that the appellant was roaming in nearby street along with 2-4 persons. In paragraph no.4, this witness has stated that he went to village *Kori* at the occasion of *Sharadh* of the deceased where P.W.11 and one Ramashray Singh told this witness that Bhoga Singh, Ramesh Singh, Bhanu Pratap Singh (appellant) and Dhananjy Singh had committed murder of Ranvijay. P.W.11 also apprised this witness that he was an accused in a case under Section 307 of the IPC which was the reason that he was not producing himself for recording his statement before the Investigating Authorities.

11. P.W.3 Ganesh Singh is a practicing lawyer of Bhabua District Court and he is the neighbour of the deceased. He deposed that soon before the occurrence he saw the deceased talking with three persons. He did not identify the persons who were with the deceased. This witness proceeded towards the market, whereas the deceased proceeded towards his house. When this witness reached near Nagarpalika gate, he heard the sound of firing. Later on, he heard that Ranvijay Singh had



suffered fire shot injury. Meanwhile, he saw some persons carrying the deceased towards hospital. This witness also accompanied those persons and went to the hospital where the doctors declared Ranvijay Singh dead. This witness deposed that the accused persons present in the dock were not amongst the persons, who were along with the deceased on the day of occurrence.

12. P.W.11 Bablu Singh is the sole eye-witness who was present at the house of the deceased along with wife and children of the deceased at the time of occurrence. This witness deposed that the deceased was his brother-in-law (*bahnoi*). He was murdered on 02.11.2001 at about 6.00 P.M. At that time, this witness was present in the balcony situated at the roof of the house of the deceased. The deceased came from the court and three persons were also with him. One of them was the appellant, the second was co-accused Bhoga Singh and the third was Ramesh Singh. Bhoga Singh and Ramesh Singh caught hold of the hands of the deceased and Bhanu Singh (appellant) fired in the chest of the deceased. He fell down on the ground and the miscreants fled away through the street. The deceased was brought to the hospital, but this witness soon thereafter went from the hospital as there was a case under Section 307 of



the IPC and he was apprehending his arrest in that case. He further deposed that he surrendered in that case and thereafter his statement was recorded. During cross-examination, he has stated that on 22.04.2022, he had sent a letter from jail to the court of CJM. At the time of recording of his deposition, the letter dated 22.04.2002 sent by this witness from jail to the court of CJM, was shown to him by the defence and this witness identified his signature on that letter which has been marked as Exhibit-A. He deposed that he surrendered on 20.12.2001 i.e. after some days of murder of the deceased. In paragraph 19 of his cross-examination, this witness stated that before his surrender in the court below, he met the informant and P.W.6 (wife of the deceased) on 18th December and he told the names of the accused persons to them on 18th December. In paragraph 21, this witness stated that after the occurrence, he had never gone to the village *Kori*. He met the father of the deceased (informant) in Bhabua itself. He stated that the deceased was also in active politics and he was a candidate of MLA from Samta Party.

13. P.W. 1 and P.W.2 are the formal witnesses. P.W.1 is an advocate clerk. He identified the signature and handwriting of the then ASI Anil Kumar Karn on formal FIR,



which has been marked as Exhibit-1 and P.W. 12 identified his signature on inquest report (Exhibit-7).

14. P.Ws. 10 and 13 are the doctors and members of the Medical Board, which conducted the postmortem on the dead-body of the deceased. The post-mortem report has been marked as Exhibit-6. The following external injuries were found on the dead-body and the doctors opined as under:-

External injuries.

1. An irregularly circular lacerated wound of 1.5 cm diameter margin inverted tattooed on right anterior of chest in the left third intercoastal space 2½" lateral to mid line of chest cavity depth with corresponding shirt and Ganji burnt and torn. It was wound of entry.

2. An irregularly circular lacerated wound of 3.5 cm diameter margin inverted and irregular over left side back of the chest near mid linear border of left scapula 2½" lateral to mid-line of the back of chest of chest cavity depth with torn Ganji, shirt and black clot with corresponding wound. It was wound of exit.

Opinion

Above noted injuries, external and internal were ante mortem, grievous and fatal caused by fire-arms from close range.



*Death is excessive haemorrhage
and shock arising from above noted injuries.
Time elapsed since death PM examination
within 18 to 24 hours.*

15. P.W.7 Chandradeo Sigh @ Danji Singh hailed from the same village *Baruna* wherefrom co-accused Bhoga Singh and P.W.11 Bablu Singh hailed. At the time of occurrence, this witness was present in *Baruna* village. He heard on 03.11.2001 that someone had murdered Ranvijay Singh. He deposed that Bhoga Singh was his co-villager. He stated further that prior to the present occurrence, someone had fired at Bhoga Singh, due to which he was angry.

16. As discussed above, P.W.4 Ravi Shankar Singh, father-in-law of the deceased, deposed that the accused persons had collected money to meet the expenses of the conspiracy of the murder of the deceased by selling rice. P.W.8 Nabirasul Ansari @ Nagu Mian was the person who had weighed the rice. He deposed that he was engaged in weighing ration. One Phoolchand Singh had purchased some rice, which this witness had weighed.

17. P.W.9 Anil Kumar Karn is the Investigation Officer. This witness deposed that he inspected the place of occurrence and the place where the dead-body was found was a



pucca construction and the bloodstains were found thereon. A pellet of .315 bore was also found from the place of occurrence which was seized and the seizure list was prepared which is Exhibit-4. This witness recorded the statements of the witnesses and after conclusion of the investigation, submitted charge sheet. He deposed that P.W.11 was in jail in connection with Case No. 263 of 2001 and his statement was recorded in jail.

18. The following documentary evidences have been exhibited by the prosecution in addition to the oral evidences:-

Exhibit-1	<i>Fardbayan</i> written by Anil Kumar Karn O/C Bhabua
Exhibit-2	Formal FIR written Sikandar Mandal
Exhibit-3	Signature of Kamlapati Singh on <i>fardbayan</i> and protest petition.
Exhibit-4	Carbon copy of the seizure list
Exhibit-5	Carbon copy of inquest report
Exhibit-6	Postmortem report
Exhibit-7	Signature of Subhash Chandra Singh on the inquest report
Exhibit-A	An application of Bablu Singh dated 22.04.2002

19. After conclusion of the prosecution evidence,



the accused persons were questioned by the learned trial court to enable them to explain the incriminating circumstances appearing in the evidences against them. The accused persons answered all those questions in negative and pleaded their complete innocence.

20. The learned counsel for the appellant has submitted that there is only one eye-witness in this case who is Bablu Singh, P.W.11. He is brother-in-law of the deceased. He claimed that he was present in the house of the deceased at the time of occurrence and he had seen the appellant firing in the chest of the deceased, whereas co-accused Bhoga Singh (deceased) and co-accused Ramesh Singh (acquitted by the learned trial court), had caught hold of the deceased. But the deposition of this witness is not believable as there are a number of contradictions in his statement and the statements of other witnesses which create doubts on involvement of the appellant in the alleged occurrence. P.W. 2, who is father of the deceased and the informant, did not name any of the accused persons in the *fardbayan*. He heard the names of the accused persons, for the first time, from P.W.11 Bablu Singh and one Ramashish Singh (not examined) when they had come in the village *Kori* at the occasion of Sharadh ceremony of the deceased, but P.W.11



Bablu Singh, during his deposition, stated that he never went to the village *Kori* after the occurrence had taken place. The learned counsel has submitted further that it is surprising that the village *Kori* was situated merely at a distance of 30 kms from Bhabua, but the informant who is father of the deceased, came to know about the occurrence in the next morning, whereas the deceased is alleged to have been killed at 6.00 P.M. in the preceding evening. He has submitted further that during deposition of P.W. 11, he identified his signature on Exhibit-A. P.W.11 did not contradict Exhibit-A, which is a letter sent by him to the CJM, forwarded by the Jail Authority, in which P.W.11 mentioned about the innocence of the accused persons. Learned counsel has further submitted that P.W.11 Bablu Singh, who is the sole eye-witness, has deposed in paragraph No.19 of his deposition that he met his sister and father of the deceased on 18th December and he disclosed the names of the accused persons to them, but his sister P.W.6 (wife of the deceased) did not name the appellant in her deposition, whereas her brother P.W.11 has disclosed the name to her on 18th December, much prior to recording of her deposition in court. The statement of the sole eye-witness (P.W.11) is not only contradicted by the depositions of other prosecution witnesses, but also it is self-



contradictory. In paragraph no. 22 of his deposition, P.W.11 deposed that he came to the hospital with his sister (P.W.6), but in paragraph no.34 of the deposition he deposed that his sister was not with him in the hospital. She became unconscious at her *darwaza* 2-3 minutes after the occurrence. He (P.W.11) brought the injured (deceased) to the hospital with the help of Mohalla people. Learned counsel has submitted further that from perusal of the deposition of P.W.6, it transpires that just after the occurrence, P.W.11 started shouting that Bhoga Singh had killed the deceased. It also transpires that P.W.11, after the occurrence, had only uttered the name of co-accused Bhoga Singh and not of the appellant or any other co-accused persons, but P.W.11 in his deposition named the appellant as the main assailant. This fact alone makes the involvement of the appellant, in the alleged occurrence, doubtful. Learned counsel has submitted further that P.W.3 Ganesh Singh, who is neighbour of the deceased, had seen the deceased along with three persons soon before the occurrence, but during his deposition in court he stated categorically that the accused persons present in the dock were not amongst the three persons whom he had seen with the deceased on that day. The learned counsel also submitted that Sharda Devi (P.W.5), who is mother of the deceased, deposed



that at the time of occurrence, she was in her native place (*maike*). After being informed about the occurrence, she came to Bhabua in the same night at 9-10 P.M. P.W.11, Bablu Singh was present there and he disclosed to this witness that Bhoga Singh and two others had killed the deceased, meaning thereby the name of Bhoga Singh and two others were well within the knowledge of P.W.5 before registration of the FIR. Her husband (P.W.2) lodged the FIR on the next day, but he did not mention in his *fardbayan* the name of any of the accused persons, whereas on the previous night itself, the names of the accused persons was well within the knowledge of his wife. No circumstances have been put forth showing any reason which prevented his wife from disclosing the names of the accused persons to her husband (informant). Moreover, there is nothing in the deposition of P.W.5 which shows that P.W.11 disclosed the name of the appellant to her, along with co-accused Bhoga Singh.

21. On the other hand, the learned Additional Public Prosecutor for the State, assisted by the learned counsel for the informant, has submitted that the sole eye-witness P.W.11, Bablu Singh, had seen the occurrence. In his deposition, he has categorically stated that co-accused Bhoga Singh (died)



and Ramesh Singh (acquitted by the learned trial court) had caught hold of the deceased and the appellant Bhanu Pratap Singh had fired in his chest. Though there is no other eye-witness, who had seen the specific role of the accused persons, but the circumstances have been corroborated by the other witnesses. P.W.6, who is wife of the deceased, rushed to the ground floor and when she came at her *darwaza*, she saw her husband in injured condition. Her brother Bablu Singh (P.W.11), who remained present in veranda of the first floor, saw three persons fleeing away after firing on the deceased. Bablu was shouting that the miscreants were his co-villagers. He was also shouting that Bhoga Singh fled away after killing the deceased. Learned counsels have submitted that there is nothing which makes the statement of the wife of the deceased and the sole eye-witness Bablu Singh to disbelieve them and their evidence is above board and corroborated by the medical evidence. Learned counsels have also submitted that the motive for commission of the occurrence has also been established as per the depositions of the witnesses. It has come in the evidences of the prosecution's witnesses that P.W.11, who is brother-in-law (*sala*) of the deceased, was an accused in a criminal case lodged by co-accused Bhoga Singh for the offence punishable under



Section 307 of the IPC. The deceased was doing *pairvi* on behalf of Bablu Singh. He had given shelter to Bablu Singh in his house and the accused persons had threatened the deceased for his extending protection to Bablu Singh. He has also submitted that P.W.11 narrated the entire occurrence to P.W.2, P.W.4 and P.W.6 and they have stated during their deposition that P.W.11 had disclosed the names of the accused persons to them.

22. We have perused the impugned judgment of the trial court and the lower court's records. We have given our thoughtful consideration to the rival submissions advance on behalf of the parties.

23. As discussed above, the only eye-witness of this case is Bablu Singh, P.W.11, who is brother-in-law of the deceased. As per the evidence of the prosecution's witnesses, at the time of occurrence, this witness was present in the balcony of the first floor of the house. He saw the appellant firing in the chest of the deceased and also saw Bhoga Singh and Ramesh Singh catching hold of the deceased. The sister of this witness rushed to the ground floor and saw her husband in injured condition. This witness had seen the occurrence from the balcony of the first floor of the house. The wife of the deceased



has been examined as P.W.6. She stated in her deposition that her brother was uttering that Bhoga Singh fled away after killing her husband. There is nothing in the deposition of P.W.6 that P.W.11 had named any other accused, except co-accused Bhoga Singh. But P.W.11 in his deposition named the appellant as the main assailant which makes the statement of P.W.11 as doubtful.

Secondly, the informant (P.W.2) and father-in-law of the deceased P.W.4, stated in their depositions that at the occasion of *Sharadh* ceremony, P.W.11 had come in village *Kori* with one Ramashish Singh and they disclosed the names of the accused persons to them, but P.W.11, in his deposition, has categorically stated that he had never gone to village *Kori* after the occurrence. The statements of P.W.2 and P.W.4 are contradicted by the deposition of P.W.11 and this fact alone makes the prosecution's case as well as the involvement of the appellant in the alleged occurrence as doubtful.

Thirdly, as per the prosecution's case, the informant was in his village at the time of occurrence. He came to the place of occurrence in the next morning at 7.00 A.M. The village of this witness is 30 kms away from the place of occurrence. The occurrence had taken place at 6.00 P.M., on 02.11.2001 and this witness heard about the occurrence in the



morning of 03.11.2001. The place of occurrence is not far away from the village of P.W.2. It is rather surprising that the information was transmitted to P.W.2, so late. The wife of P.W.2, who is the mother of the deceased, has been examined as P.W.5. As per her deposition, at the time of occurrence, she was in her *maike* i.e. in village *Mokri* and in the same night between 9.00 to 10.00 p.m. she came to the house of the deceased in Bhabua. She also deposed that P.W.11 was also present there and he apprised this witness that Bhoga Singh and two other accused persons had committed murder of the deceased by firing shot. There is nothing in the statement of P.W.5 which shows that P.W.11 disclosed the name of the appellant to this witness along with co-accused Bhoga Singh.

Fourthly, P.W.3 Ganesh Singh who is an independent witness and neighbour of the deceased, soon before the occurrence, had seen the deceased along with three persons. Thereafter he proceeded towards market, but when he reached near Nagarpalika gate, he heard the sound of firing. Soon thereafter, he saw the injured being carried to the hospital. This witness also accompanied the injured to the hospital, where the doctors declared him as dead. But this witness stated categorically in his deposition that the accused persons present



in the dock were not amongst the three persons, who were along with the deceased on the day of occurrence.

Fifthly, P.W.11 sent the letter (Exhibit-A) on 22.04.2002 from the jail to the learned CJM, Bhabua. That letter was shown to P.W.11 during the course of his examination in court. He identified his signature on that letter/application and after his identification, it was marked as Exhibit-A. In that letter, he had mentioned that he had stated to the I.O. that in the present case, the innocent persons were falsely implicated. This fact also creates doubt on the involvement of the appellant in the present case.

24. In view of discussions noted above, we are of the opinion that the appellant Bhanu Pratap Singh deserves acquittal by giving him benefit of doubt. Accordingly, he stands acquitted of the charge of commission of offences punishable under Section 302/34 of the Indian Penal Code.

25. Accordingly, the impugned judgment dated 04.02.2017 and order of sentence dated 13.02.2017 passed by the learned Additional Sessions Judge-IVth, Kaimur at Bhabua in Sessions Trial No. 174 of 2002/346/2016 (R-3902/2014), arising out of P.S. Bhabhua, FIR No. 321 of 2001, are set aside.

26. The appeal is allowed.



27. Since the appellant Bhanu Pratap Singh is in custody, let him be released forthwith, if not required in any other case.

(Nawneet Kumar Pandey, J)

I agree
(Chakradhari Sharan Singh, J)

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	04.09.2023
Uploading Date	14. 11.2023
Transmission Date	14. 11.2023

