

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.507 of 2018

Arising Out of PS. Case No.-34 Year-2015 Thana- GANGABRIDGE District- Vaishali

1. Manoj Rai, S/o Kailash Rai,
2. Kailash Rai S/o Late Jugeshwar Rai,
Both are R/o Village-Diwan Tok, P.S.- Ganga Bridge, District- Vaishali.

... .. Appellants

Versus

The State of Bihar

... .. Respondents

with
CRIMINAL APPEAL (DB) No. 484 of 2018

Arising Out of PS. Case No.-34 Year-2015 Thana- GANGABRIDGE District- Vaishali

1. Bachha Rai, S/o Late Jagdeo Rai,
2. Bipin Rai, S/o Bachha Rai,
Both are R/o Village- Diwan Tok, P.S.- Ganga Bridge, District- Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 507 of 2018)

For the Appellant/s : Mr. S. K. Lal, Advocate, Advocate
Mr. Rudal Singh, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Manish Chandra Gandhi, Advocate

(In CRIMINAL APPEAL (DB) No. 484 of 2018)

For the Appellant/s : Mr. Amarnath Singh, Senior Advocate
Mr. Alok Kumar Alok, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Manish Chandra Gandhi, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date : 01-09-2023

Heard learned counsel, Mr. S. K. Lal assisted by



Mr. Rudal Singh, appearing for the appellants-accused in Cr. Appeal (DB) No. 507 of 2018 and learned senior counsel, Mr. Amarnath Singh assisted by Mr. Alok Kumar Alok, appearing for the appellants-accused in Cr. Appeal (DB) No. 484 of 2018 and learned APP, Mr. Sujit Kumar Singh, appearing for the State as well as learned counsel, Mr. Manish Chandra Gandhi, appearing on behalf of the informant.

2. Both the above-mentioned appeals were preferred challenging the judgment and order of sentence dated 09.03.2018 and 14.03.2018 respectively, passed by learned Additional Sessions Judge-II, Vaishali at Hajipur, convicting appellants-accused in Sessions Trial No. 247 of 2016 arising out of Ganga Bridge P.S. Case No. 34 of 2015, directing above-named appellants/accused to undergo rigorous imprisonment for life under Section 302/34 of the Indian Penal Code (in short 'IPC') and imposed fine of Rs. 25,000/- and in default of payment of fine, to undergo simple imprisonment for 04 (four) months. A separate conviction was recorded, under Section 404/34 of the IPC with fine of Rs. 5,000/- where, in default of paying fine, further directed to undergo simple imprisonment for one month. Appellant No.1, namely, Manoj Rai in Cr. Appeal (DB) No. 507 of 2018 and Appellant No.2, namely, Bipin Rai in



Cr. Appeal (DB) No. 484 of 2018, further, separately sentenced to rigorous imprisonment for 5 years for offence under Section 27 of the Arms Act with fine of Rs. 10,000/-, where, in default of paying fine, they had to suffer simple imprisonment for 2 months. The fine amount, as mentioned above, were directed to pay to the father of the victim. All sentences as recorded above were ordered to run concurrently.

3. The brief of the prosecution case as it springs from the written information of the informant (PW-6), namely, Binda Rai, aged about 45 years, son of Baidhnath Rai, which was recorded by the S.I., Sarfaraz Ahmad, on 19.04.2015 at 0530 Hrs that the informant (PW-6) on 19.04.2015, while, going to Nawada Kala along with his son Pankaj Rai, aged about 24 years by his TVS Apache Motorcycle, having registration no. BR31N 6476, and so when they reached at about 04:00 PM, near Kapileshwar Chowk, he asked his son to stop motorcycle, as he had to attend the call of nature. The said motorcycle was stopped near a tea stall. Next to the moment, he answered the call of nature, he heard public alarm at Kapileshwar Chowk including alarm raised by his son. On suspicion, he reached at tea stall at Kapileshwar Chowk, he found that Manoj Rai, aged about 35 years, S/o Kailash Rai and Bipin Rai aged about 30



years, S/o Bachha Rai, both residents of Diwan Tok. Ashok Rai @ Buchhu Rai, aged about 35 years, S/o Sakaldev Rai, resident of Saraipur, P.S. Ganga Bridge, District – Vaishali, were surrounding his son Pankaj Rai and pointed gun to him and Bachha Rai, aged about 55 years, S/o Late Jagdeo Rai, Kailash Rai, aged about 60 years, S/o Jugeshwar Rai, resident of Diwan Tok, P.S. Ganga Bride, District – Vaishali, were taking his on sickle and were saying that today they will end the game of 'Pankajwa' (son of informant), as he disturbed them a lot, seeing the situation, informant raised alarm and tried to save his son, but all the accused persons including above-named appellants-accused, pushed him to a nearby ditch and thereafter, Manoj Rai and Bipin Rai (both the appellants-accused), Ashok Rai @ Buchhu Rai, opened indiscriminate firing upon his son, Pankaj Rai, consequent upon his son after going for a short distance, while making an attempt to save him fell down to the ground and subsequently, Bachha Rai and Kailash Rai (both appellants-accused) started to cut his son by sickle. He raised alarm and consequent upon the nearby public started to gather over there, resultantly, accused persons including appellants-accused, ran away with motorcycle of his son and his mobile having SIM No. 7250162108 by waiving pistol and gun in air. When the



informant went up to his son and checked his breathing, he found that his son, Pankaj Rai, is no more. Reason for the occurrence as assigned by the informant, as set out through present written information is that all above 5 (five) accused persons are his agnates and neighbours, who threatened him on several past occasion out of old family dispute. The allegation to advance threat to kill the only son of informant was also raised as to end his line of successor.

4. In furtherance of above written information, investigation was completed by Investigating Agency and subsequently, after completion of investigation, charge-sheet was submitted under Section 302 and 404/34 of the IPC and also under Section 27 of the Arms Act, before concerned jurisdictional Judicial Magistrate, who took cognizance, on the basis of material collected, during course of investigation and committed the case under Section 209 of the Cr.P.C. before the Court of learned Sessions Judge, where, the case was transferred to the Court of A.D.J.-IV, Vaishali at Hajipur, for trial and disposal after registering case as Sessions Trial No. 247 of 2016.

5. The learned Trial Court after going through the materials available on record, explained the charges under Section 302 and 404 of the IPC read with Section 34 of the IPC



and also Section 27 of the Arms Act, to above-named appellants-accused and on their pleading of “not guilty”, trial was proceeded, where, above-named appellants-accused were convicted for maximum of life imprisonment, for offence punishable under Sections 302 of the IPC along with Section 404 of the IPC and Section 27 of the Arms Act.

6. During course of trial, prosecution as to substantiate its case examined total of 10 prosecution witnesses as PW- 1, namely, Dilip Rai, PW- 2 Rakesh Rai, PW-3 Umesh Rai, PW-4 Narayan Rai, PW-5 Wakil Rai, PW- 6 Binda Rai (informant), PW- 7 Dr. Shailendra Kumar Verma (who conducted postmortem), PW- 8 Shivji Rai, PW-9 Amarjeet Kumar (Investigation Officer of the case) and PW- 10 Dhruv Narayan (2nd Investigating Officer). The prosecution also relied upon the following exhibits, as to substantiate its case, which are as follows:

Ext.1 :- Signature of Umesh Rai & Dilip Rai on inquest.

Ext.2 :- Post Mortem Report.

Ext.3 :- Fard-e-bayan of the informant Binda Rai.

Ext.3/1 :- Registration of Case.



Ext.4 :- Charge Sheet.

Ext.5 :- Inquest Report.

Ext.6 :- Seizure List.

Ext.7 :- Order in Town P.S. 475/11.

Ext.8 :- Fard-e-bayan.

Ext.9 :- Seizure List.

Ext.10 :- F.I.R. of Vaishali P.S. Case No. 232
of 2016.

Ext.11 :- Certified Copy of Seizure List.

Ext.12 :- F.I.R. of Ganga Bridge P.S. Case
No. 89 of 2016 dated 20.09.016.

Ext.13 :- Application of Umesh Rai dated
19.09.2016.

Ext.14 :- Proceeding U/S 107 Cr.P.C.,
Umesh Rai Vs. Ashok Rai.

Ext.15 :- Rejoinder dated 01.12.2016 filed
by accused Bipin Kumar.

Ext.16 :- Information dated 20.12.2016 sent
by Assistant Senior Secondary School.

7. During the trial, the learned Trial Court
recorded the statement of appellants-accused under Section 313
of the Cr.P.C. by putting all incriminating evidences before



them, as surfaced during the trial, which they denied and shown their complete innocence.

8. Appellants-accused in defence examined, one defence witness, namely, Dr. Suman Kant Singh and also exhibited the following documents:

Ext.A :- Ganga Bridge P.S. Case No. 78/2013.

Ext.B :- Charge Sheet of Ganga Bridge P.S. Case
No. 78/2013

Ext.C :- Prescription of Doctor.

Ext.C/1 :- Prescription dated 25.04.2005.

9. From the materials as surfaced, during trial, out of deposition of the aforesaid witnesses and document exhibited, the learned Trial Court recorded the order of conviction of above-named appellants-accused, under Section 302 and 404/34 of the IPC and Section 27 of the Arms Act, where, they have been ordered for sentences to suffer a rigorous imprisonment for life for offence punishable under Section 302 of the IPC, 3 years for the offence punishable under Section 404 of the IPC and 5 years for the offence punishable under Section 27 of the Arms Act along with fines. Being aggrieved with aforesaid order of conviction and sentence, the appellants-accused, preferred the present appeal.



10. Hence, this Appeal.

ARGUMENT ON BEHALF OF APPELLANTS-

ACCUSED:

11. Learned counsel appearing on behalf of the appellants-accused submitted that the conviction of appellants-accused as recorded by the learned Trial Court is not sustainable in view of the fact as prosecution not appears to prove its case during the trial beyond reasonable doubt. It is submitted that the prosecution witnesses, who are claiming to be the eye-witness of the occurrence are either relative or interested witnesses and as such their deposition are not appearing trustworthy. Learned counsels also submitted that PW- 3 is also not appearing eye-witness of the occurrence for the reason that description given by him regarding wearing of deceased is not matching with description of wearing as mentioned in inquest report. It is pointed out that even the informant is not appearing the eye-witness of the occurrence and it is very clear from his deposition that he was projected as an eye-witness and moreover, it is very clear from his deposition that during the course of actual occurrence, he was inside ditch from where he was lifted by public and by that time appellants-accused were ran away from the place of occurrence. It is further submitted that shop-keeper



of alleged tea stall, where occurrence took place, was not examined, who was an independent eye-witness of present occurrence. It is further submitted that Investigating Officer of this case categorically submitted that he did not find empty cartridges and collected blood stained soil from the place of occurrence. Learned counsel highlighted the deposition of Investigating Officer, where, he deposed that there was not even sign of anything on the place of occurrence in support of indiscriminate firing, as alleged. It is also pointed out by learned counsels that it was categorically stated by the informant (PW-6) that appellants-accused were pointed only gun on deceased son of informant as per his *fard-e-beyan*, whereas, in his deposition he stated about both gun and pistol, which further creates a doubt regarding his claim *qua* eye-witness of the occurrence.

12. It is submitted by learned counsel that PW- 5 Vakil Rai was neither examined by Investigating Officer, during course of investigation, nor his name was cited as charge-sheet witness, but was examined by the prosecution and as such in want of his statement under Section 161 of the Cr.P.C. the appellants-accused were deprived of their basic legal right of defence as to contradict his version during the trial. It is also



submitted that examination of accused under Section 313 (b) of the Cr. P.C. is also not made by placing incriminating evidence and same appears very casual by defying established principle of law.

13. While concluding the argument, learned counsel relied upon the report of Hon'ble Supreme Court as reported in the following matters:

- i. *Balraje @ Trimbak vs State Of Maharashtra*, [(2010) 6 SCC 673]
- ii. *Dalip Singh And Others vs State Of Punjab*, (AIR 1953 SC 364)
- iii. *Masalti vs State Of U. P.*, (AIR 1965 SC 202)
- iv. *Harbans Kaur And Anr vs State Of Haryana*, [(2005) 9 SCC 195]
- v. *Namdeo vs State of Maharashtra*, [(2007) 14 SCC 150]
- vi. *Hanumant vs The State of Madhya Pradesh*, [(1952) 2 SCC 71]

ARGUMENT OF LEARNED APP FOR THE STATE:

14. It is submitted by learned APP that the FIR in present case lodged immediately after the occurrence and there is no delay to create any doubt by giving space for any



afterthought. It is submitted that the informant (PW-6) of this case was father, who accompanied throughout with his deceased son and was present on place of occurrence. It is submitted that there is no apparent reason to disbelieve his version. Learned APP further pointed out that beside the informant other prosecution witnesses also supported the occurrence as an eye-witness and their deposition cannot be outrightly rejected for the reason that merely they are relative of the deceased, as there is no any reason appears to save a real culprit by implicating innocent persons. It is further submitted that minor contradiction are very natural and it cannot be expected from the witnesses to possess a photographic memory to recall each and every details of crime in question. While making this submission the learned APP relied upon the report of *Bhardabad and Govind Bhai Vs. State of Gujrat*, as reported in *AIR 1983 SC 753*. It is also submitted by learned APP that the manner of assault and injury as inflicted during the course of occurrence appears in full corroboration with postmortem report of the deceased, which appears from the deposition of PW-7, who conducted autopsy upon deceased. In view of submission as made above, learned APP submitted while summing up his argument that prosecution established its case beyond all reasonable doubt and as such



landing of learned court below over findings of convictions are correct.

DISCUSSION OF EVIDENCE:

15. By taking note of submissions of learned counsels appearing on behalf of the appellants and State and perusal of record, it appears to us that issues, which required to be

considered in present appeals, are:

(A) Whether, claim of PW-1, namely, Dilip Rai, PW-2, namely, Rakesh Rai, PW-3, namely, Umesh Rai, PW-4, namely, Narayan Rai, PW-5, namely, Vakil Rai, PW-6, namely, Binda Rai, who is also the informant of this case, as an eye-witness of the occurrence can be accepted and said to be trustworthy in view of their depositions.

(B) Whether, the depositions of witnesses, PW-1, PW-2 and PW-6 can be discarded, as being relative or interested/partition witnesses.

(C) Whether, depositions of PW-3, PW- 4 and PW-5 can be accepted, as a chance witnesses.

(D) And, finally, whether prosecution established its case beyond reasonable doubt before the learned Trial Court or it should need judicial interference at appellate stage.



16. To decide these issues, it would apposite to discuss the available evidences, oral and documentary, which were surfaced, during course of trial.

17. **PW- 1** is Dilip Rai, who is brother-in-law of the deceased, Pankaj Rai, claimed himself before the learned Trial Court as an eye-witness of the occurrence, which took place on 09.04.2015 at about 04:00 PM, where, the day was Sunday. It appears from his deposition that by that time he was taking tea at Kapileshwar Chowk, which is the place of occurrence. It is stated that when Binda Rai (informant/PW- 6) went to attend call of nature, Bipin Rai, Manoj Rai (both appellants-accused) and Ashok Rai opened indiscriminate firing upon the deceased. It is stated by him that deceased Pankaj Rai ran for a short distance, after receiving bullet injuries and thereafter, he fell down, whereafter Kailash Rai and Baccha Rai (both appellants-accused), started to cut him by sickle (*Hansua*). The police was informed by some unknown person and after 1½ hours police from Ganga Bridge police station came at place of occurrence. He identified appellants-accused before the learned Trial Court. In his cross-examination he stated before learned Trial Court that Pankaj Rai (deceased), and his father Binda Rai (informant/PW-6) were coming from western direction on



motorcycle but he stated that he was not formally interacted with them. He failed to name the owner of tea stall. He denied the suggestion before learned Trial Court that he made statement before the police that he was not the eye-witness of the occurrence. He categorically deposed that there was land dispute between the deceased and appellants-accused. He denied the suggestion that he was not present at place of occurrence i.e. Kapileshwar Chowk.

18. **PW- 2**, is Rakesh Rai, who is also brother-in-law of the deceased, Pankaj Rai and he also claimed to be an eye-witness of the occurrence, as he was available at the place of occurrence, while he was taking tea at tea stall. His deposition in examination-in-chief is on similar line that of PW-1 and same is not required to discuss herewith for the sake of brevity. In cross-examination, he disclosed that appellants-accused ran away towards northern direction after the occurrence, which was continued for 10 minutes in which total five(5) firing was made. He saw the occurrence from a distance of 30-35 ft.

19. **PW- 3**, is Umesh Rai, he is also claiming to be an eye-witness of the occurrence and on the date of occurrence at about 04:00 P.M. he was returning from his



agricultural field and when he arrived at Kapileshwar Chowk, he found that Ashok Rai, Manoj Rai (appellant-accused), Bipin Rai (appellant-accused), opened firing upon Pankaj, where, after receiving bullet injuries, Pankaj ran for a short distance and thereafter, Kailash Rai and Baccha Rai (both appellants-accused) start to cut him with sickle. Pankaj Rai died on spot. He identified appellants-accused before the learned Trial Court and deposed that he made statement before the S.I., during course of investigation. He also appears to be a witness of inquest report along with Dilip Rai (PW-1), which has been exhibited before the Court as Ext. 1 and Ext. 1/1, respectively. During his cross-examination, he stated that place where Pankaj received injury was stained with blood. He also deposed that clothes of Pankaj (deceased) was also stained with blood and was torn by bullet causing hole thereof. By giving description of wearing attire of the deceased Pankaj, he stated that he was in red t-shirt and black Jeans paint, where marks of cut injuries were present on neck, right cheek and right shoulder. He denied the suggestion of learned defence counsel that he was not present at the time of occurrence and deposed falsely being cousin brother-in-law of the deceased.

20. **PW- 4**, is also claiming to be an eye-witness



of the occurrence. It was stated by him that on the date of occurrence at about 04:00 PM, he was at Kapileshwar Chowk and saw that Ashok Rai, Bipin Rai (appellant-accused) and Manoj Rai (appellant-accused) were firing upon Pankaj Rai, who fell down on spot. It was stated in his examination-in-chief that someone cut Pankaj. It was stated by him that he recorded his statement before S.I. and identified appellants-accused, namely, Kailash Rai, Baccha Rai, Bipin Rai and Manoj Rai, before the learned Trial Court. In cross-examination, it was stated by him that he is the owner-cum-driver of vehicle bearing registration no. BR31G 6358, which was purchased from one Shyam Rai, but still registration certificate stands in the name of Shyam Rai and not transferred in his favour. On cross-examination, it was deposed by him that he is the cousin brother of the informant side and on the date of occurrence, he was coming with his Majic vehicle bearing registration no. BR31G 6358, loaded with wheat, to deliver one Parmeshwar Rai. He stopped his vehicle at the place of occurrence, due to firing and recorded his statement on spot, itself, before S.I. of this case. He denied the suggestion that before police, it was stated by him that he came to know about the occurrence, later on. It was specifically stated by him that firing was made from close range



and when alleged firing was made, the motorcycle of the deceased was in standing condition. He stated that at a distance of one (1) 'laggi' (equivalent to 10-11 hands), Binda Rai (PW-6) was answering the call of nature and thereafter he fell down in a dig. It is deposed by him that at that point of time, the owner of tea stall i.e. "*Kapileshwar Chaiwala*" was present at his shop, and no one was present thereof. He remains there till arrival of the police, where, police came after about 45 minutes of the occurrence. It was stated by him that the place where, Pankaj (deceased) received bullet injuries was stained with blood. It is categorically deposed by him that there is pending land dispute, between the parties. He denied the suggestion that deceased was criminal and was facing 4-5 cases, prior to this occurrence. He denied the suggestion of the learned counsel that out of previous enmities appellants-accused were falsely implicated.

21. **PW- 5**, is Vakil Rai, who is also claiming to be an eye-witness of the occurrence and on the date of occurrence at about 04:00 P.M., while he was returning from his field found deceased Pankaj Rai and Binda (informant/PW-6) coming together on a motorcycle and after stopping motorcycle, Binda Rai, went to attend call of nature and in meantime, indiscriminate firing started. It is stated by him that firing was



opened by Manoj Rai, Bipin Rai (both appellants-accused) and Ashok Rai, consequent upon, after receiving bullet injuries Pankaj Rai fell down to the ground, where, Kailsash Rai and Baccha Rai, as they were equipped with sickle (Hasua) started to cut him. They went away with motorcycle and mobile of Pankaj Rai (deceased) and further stated that the occurrence took place at Kapileshwar Chowk. He identified appellants-accused, Manoj Rai, Bipin Rai and Baccha Rai, before the learned Trial Court and also claimed to identify those accused, who were not present in Court. On cross-examination, he deposed before learned Trial Court that he has no any relation with Pankaj. On advancing a question by defence, where, he knows Chandreswar Rai of Karnpura village, he stated that though he knows Chandreswar Rai of Karnpura but he is not his relative. He denied the suggestion advanced by learned counsel that marriage of “Phua” (sister of father) was solemnized with one Kailash Rai of Gardania Chowk and marriage of Pankaj (deceased) was solemnized with daughter of said Kailash Rai. He stated about description of field from where, he was coming and further stated that he cannot give description of bullet shot and injury caused by sickle, but categorically stated that there was bullet injuries. He further stated in his cross-examination



that by that time he saw Pankaj, he had already received the bullet injury. He further stated that blood spread about a length equivalent to one hand over the ground, where, Pankaj fell down. It is also stated by him that he was present with police at place of occurrence, where police saw the blood spread over the ground and also seized empty cartridges, but he failed to deposed the number of empty cartridges, as collected by the police. He denied the suggestion that he has no land in Saraipur village and further denied that he is cousin brother-in-law of Pankaj (deceased). He further denied suggestion, as to deposed falsely being relative of Pankaj. He stated that he heard about pending land dispute between Pankaj and appellants-accused. He also denied suggestion that Pankaj was a criminal and some unknown miscreants committed his murder.

22. **PW- 6**, is Binda Rai, who is the informant of this case and father of the deceased, Pankaj Rai. He stated that while he was going to Nawada Kala along with his son, Pankaj Rai (deceased), on 19.04.2015 and as so they arrived at Kapileshwar Chowk at about 04:00 P.M., after stopping the motorcycle, he went towards East for a distance of 15 '*laggi*' (one *laggi* equivalent to 10 to 11 hands) to attend the call of nature and while he was attending his call of nature, he heard



public alarm at Kapileshwar Chowk. He rushed immediately thereof and found that Manoj Rai (appellant-accused), S/o Kailash Rai, Bipin Rai (appellant-accused), Ashok Rai, were pointed pistol to his son, where, Bachha Rai, Kailash Rai (both appellants-accused) were pointed sickle (Hansua). He tried to save his son, but Bachha Rai and Kailash Rai pushed him to a nearby dig, the informant fell down in the said ditch and in between, Manoj Rai and Bipin Rai (both appellants-accused) along with Ashok Rai opened indiscriminate firing upon his son. He raised alarm. When his son fell down, Baccha Rai and Kailash Rai (both appellants-accused) cut him with sickle. It is further stated thereof that public gathered over there, lifted him from the ditch and thereafter he rushed to his son, where, he came to know after touching the body of his son that he is no more. He further stated that he started to shouting and after one hour, police came over there. It is stated by him that appellants-accused taken away motorcycle and mobile of his deceased son and went in western direction. During cross-examination, he deposed that his *Fardbeyan* was recorded by S.I., Sarfaraj Ahmad, SHO, Ganga Bridge *Police Station*. It was read over to him and after finding recording correct, he put his own signature. He identified the signature of Sarfaraj Ahmad and



also his signature. It is also stated by him that Ravindra Rai also put his signature there. On his identification, the said *fardbeyan*/written information was exhibited before the learned Trial Court, as Ext. 3. He identified, Kailash Rai, Baccha Rai, Manoj Rai, Bipin Rai (all appellants-accused) before the learned Trial Court, who were present inside court-room. It was stated by him that he is the brother of one Vijay Rai, who lodged Ganga Bride P.S. Case No. 78 of 2023 against him and Pankaj and in said case from the side of Vijay Rai, Manoj Rai, S/o Kailash Rai, Chunni Lal Rai made statement before police against them. It was stated by him that land dispute was pending with one of the appellants-accused and further stated that accused persons were desirous to grab his land as he has only one son, but denied to lodge any complaint in writing. It was stated by him that his land was forcibly grabbed but no case was lodged in that connection. It is further stated by him that when he arrived at tea stall, he found there, Dilip Rai (PW-1), Umesh Rai (PW-3), Rakesh Rai (PW-2), Narayan Rai (PW-4), amongst them Dilip Rai, is relative and rest are not his relative. Dilip and Rakesh are brother-in-law of his son Pankaj, the name of father-in-law of Pankaj is Kailash Rai, who is resident of Jajhua of Gardaniya Chowk. It is stated by him also that some people



were already available at tea stall, but their name is out of his memory and said tea stall was of one Kapileshwar Rai. He said to be a regular visitor of the said tea stall and he never saw any servant there. It is stated by him that he heard public alarm, while he was urinating, but not heard about the sound of firing and when he saw first time his son, accused persons were holding him and that point of time he did not notice any bullet injury and cut mark on his neck. Appellants-accused were holding his son in standing position. It is specifically stated that at first instance his son received bullet injury, where, total firing was about 10-12 rounds, out of which 8 bullet shots was received by his son. He also stated that blood was spread over place of occurrence and it was also spread over the paint and clothes of his deceased son. He stated that after causing bullet and sickle injuries, appellants-accused ran away and thereafter, he came out from the ditch. He stated that appellants-accused, ran toward western direction. It is further stated by him that the police arrive at place of occurrence after one hour and till then he was with dead body of his deceased son. He failed to collect from his memory that there was any empty cartridges or not. He also failed to state, whether, police seized any materials over place of occurrence. He further failed to deposed that on whom



information, police came at place of occurrence. He also failed to state the names of those persons, who arrived at the place of occurrence before arriving police. It was also stated by him that there is only one litigation against his son, Pankaj, which was falsely lodged by his brother. On his further cross-examination, he denied the suggestion of learned counsel of defence that there is relation between Vakil Rai (PW-5) and wife of his deceased son Pankaj. He also failed to name of the person, who lifted him from the ditch. He denied the suggestion that out of land dispute he falsely implicated appellants-accused and further denied that Pankaj was a criminal and was murdered by some unknown miscreants, out of disputes developed due to partition of looted articles.

23. **PW- 7** is Shailendra Kumar, who is a doctor and conducted postmortem upon the deceased. He deposed through his deposition in the following terms;

1. I was posted at Sadar Hospital Hajipur on 19-04-15. I conducted Post mortem of Mr. Pankaj Kumar aged about 24 years S/o Binda Rai Village Diwan Tok Tola P.S. Ganga Bridge, Distt. Vaishali Hajipur on 19.04.15 at 11 P.M. Dr. U.P. Verma was the observer of this postmortem. The dead body was brought by Chaukidar 5/67 Pradeep Bhagat.

2. Rigor mortis present all the limbs eyes closed,



mouth closed. Gun powder burn on left face and left upper chest. Found the following external injuries.

1. One lacerated wound inverted charred margin located right occipital region of the skull adjoining neck size 2" x 1" track deep (wound of entry)
2. One lacerated wound with inverted margin right clavical region size 5" x 3" track deep (exit wound).
3. One incised wound mid upper chest region 5" x 2" bone deep.
4. One incised wound on right shoulder region 3" x 1/2" bone deep.
5. One incised wound right cheek 2" x 1/6" bone deep.
6. One lacerated wound with inverted charred margin located at back mid thoracic region, size 2" x 1" track deep (wound of entry).
7. One lacerated wound with everted margin size 5" x 2" track deep (wound exit).
8. One lacerated wound with inverted charred margin size 2" x 1/2" track deep located at right lower thorax (wound of entry).
9. One lacerated wound everted charred margin located with at abdomen near umbilical size 2" x 1" track deep) wound of exit.
10. One lacerated wound with inverted charred margin located right region size 2" x 1/2" track deep (entry wound).



11. One lacerated wound with everted charred margin on lower abdomen size 3" x 1" track deep (exit wound).

12. One lacerated wound with inverted charred margin located right lateral surface of thigh size 1" x 1/2" track deep (entry wound).

13. One lacerated wound with everted charred margin located medial surface of right thigh 2" x 1" track deep (exit wound).

3. On Dissection

1. Meanings and brain matter intact, chest cavity mid part of both lungs damaged with sever intra thoracic hemorrhage. All chambers of heart empty.
2. Stomach contains semi digested food.
3. Part of small and large intestine damaged with bleeding.
4. Both kidney are intact and pale.
5. Spleen congested, liver is pale.

Time since death- 6 to 36 hours.

Cause of death — severe hemorrhage and shock due to above injuries by firearm and sharp weapon.

4. This report is in my pen and signature also wears signature of Dr. U.P. Verma . P.M. report mark as Ext-2.

X X X X X X



Cross examination :-

5. This Postmortem was done on police requisition.

6. He received the inquest report but did not mention it in the post mortem report. Copy of inquest report was not available with post mortem report during his deposition before learned trial court.

24. **PW- 8**, is Shivji Rai, who is maternal uncle of the deceased. It was stated by him that on the date of occurrence at about 04:00 PM, he was going to the house of his sister and after hearing the public alarm, he went at Kapileshwar Chowk and heard that Bipin Rai, Manoj Rai, (both appellants-accused) and Ashok Rai, killed Pankaj Rai by causing firearm injury. He also stated that he heard that Kailash Rai (appellant-accused) and Bacchu Rai (appellant-accused) cut Pankaj Rai with sickle. It was also stated that police taken away the dead body and he also saw the dead body of Pankaj at the place of occurrence. He identified appellants-accused, namely, Kailash Rai, Baccha Rai, Bipin Rai, Manoj Rai, before the learned Trial Court. He is not the eye-witness of the occurrence and his entire deposition based upon hearsay input of unknown public, gathered over place of occurrence.

25. **PW- 9** is the Amarjeet Kumar, who is



Investigating Officer of this case, who prepared inquest report of Pankaj Rai (deceased) and stated that same is bearing the signature of Dilip Rai (PW-1) and Umesh Rai (PW-3), which on identification, exhibited as Ext. 5 before the learned Trial Court. He also seized the Apache Motorcycle bearing Registration No. BR 31N 6476 on 15.09.2016 in presence of witness, Binda Rai (PW-6) and Shikandar, what he identified before the learned Trial Court and on his identification, same was exhibited as Ext. 6. It is stated by him that after receiving information about the occurrence, he lodged a Sanha (case diary entry) and proceeded for place of occurrence with SHO and recorded the statement of informant (PW-6) at place of occurrence. He received the charge of investigation at place of occurrence itself by SHO and recorded the re-statement of the informant (PW-6). He also visited the place of occurrence which was described with permanent soling road in North going towards Karnpura village, permanent soling road in South going towards Diwan Tak, in East land of one Jhakhar Rai and in West, the tea stall of Kapileshwar Rai. These details are not showing any ditch near to place of occurrence. He recorded the statement of witnesses, during course of investigation. He also obtained a Call Details Record (CDR) and started to search the motorcycle, which was



taken away by appellants-accused. On cross-examination, he stated that he received the charge of investigation on 19.04.2015 at about 09:30 P.M., recorded statement of Informant (PW-6) i.e. *Fardbeyan* at about 05:30 P.M. on 19.04.2015. The inquest report was prepared at about 04:45 P.M., information regarding occurrence was received at police station at about 04:20 P.M. It was stated by him that the name of the appellants-accused was not disclosed while giving information regarding occurrence and clarified that the information was received by SHO not by him. It was also stated by him that blood was spread over place of occurrence, but he did not mention this fact in case diary. He categorically stated that no empty cartridges were recovered at the place of occurrence, rather he stated that nothing found at place of occurrence, which may indicate that any such occurrence took place thereof. It was stated by him that tea stall was of one Kapileshwar and he did not record his statement, during the course of investigation, whereas, he recorded the statement of persons, who were drinking tea at the tea stall of Kapileshwar. It was stated by him that the owner of motorcycle was Pankaj Rai (deceased). He stated that witness, Dilip Rai (PW-1) stated, during the course of investigation, that on 19.04.2015, he visited the place of occurrence, after receiving



the News that someone shot dead his brother-in-law, Pankaj Rai and after receiving this information, he went to see his brother-in-law, where several public were already gathered, who informed him about the occurrence. The same fact is also about witness, Rakesh (PW-2) and Narayan Rai (PW-4). He denied the suggestion that investigation is faulty and was in collusion with accused person.

26. PW- 10, is the Dhruv Narayan, who is also I/O of this case, who taken charge of investigation of this case, on 07.09.2015. He transferred on 10.03.2016 and hand over the charge of further investigation to SHO. He did nothing substantial, during course of investigation and only issued process under direction of learned Court, as per provisions laid down under Section 82 and 83 of the Criminal Procedure Code (Cr.P.C.), for securing presence of Manoj Rai, Kailash Rai (both appellants-accused), residents of Diwan Tak, P.S. Ganga Bridge and Bipin Rai, S/o Baccha Rai, Baccha Rai, S/o Jagdeo, Ashok Rai @ Bachha Rai, S/o Sakaldeo Rai before learned trial court.

27. **D.W. 01**, is a doctor, namely, Suman Kant Singh, who deposed that he was working as a doctor in A. S. Nursing Home, Patna City and on 15.04.2015, Kailash Rai (appellant-accused) resident of village Diwan Tak, P.S.- Ganga



Bridge, District-Vaishali was admitted in said Nursing Home and he was remain admitted thereof, till 25.04.2015. He identified prescription before the Court, which was exhibited as Ext. A and A/1. He denied the suggestion that Kailash Rai, visited only on 15.04.2015 and thereafter it was extended till 25.04.2015 without admitting him in hospital. He denied to suggestion that he prepared false prescription. He also denied that Kailash Rai admitted in said Nursing Home without any serious illness.

CONCLUSION:

28. PW- 1 and PW- 2, both are brother-in-law of the deceased Pankaj Rai. This fact is admitted that they are close relatives of deceased, as appearing from *Fardbeyan* (written information) of Binda Rai (informant/PW-6), which is exhibited as Ext. 4. It appears that before actual occurrence of firing and assault by sickle upon deceased by appellants-accused, PW-6 was pushed into a nearby ditch, but this fact was not disclosed either by PW- 1 & PW-2 in his examination-in-chief. It was deposed by PW- 9, who is Investigating Officer of this case, while taking contradiction that these two witnesses i.e. PW-1 & PW-2 arrived at Kapileshwar Chowk (P.O.) after the occurrence and this fact was stated by them, during course of investigation.



As per *Fardbeyan* (Ext.- 8) and PW- 1, only Binda Rai (informant/PW-6) went to attend the call of nature, but as per PW-2 both Pankaj Rai (deceased) and his father Binda Rai (informant/PW-6) went to answer the call of nature. Both witnesses i.e. PW-1 & PW-2 also failed to depose that appellants-accused ran away with motorcycle and mobile of deceased Pankaj Rai after occurrence. All these versions are deposed by informant/PW- 6/Binda Rai, who is father of the deceased, before the Court being an eye-witness of the occurrence, who claimed that he was accompanied throughout with his deceased son. None depositions of these material aspect in their examination-in-chief before the learned trial Court creates a doubt regarding presence of PW-1 and PW-2 at the place of occurrence. It is also important to note that no steps were taken by PW-1 & PW-2 to save his brother-in-law from the hand of appellants-accused. It also appears that when PW- 6 was urinating, PW-1 and PW- 2 were present at Kapileshwar Chowk, where appellants-accused alleged to caught hold the son of the informant/PW- 6. Being relative and brother-in-law, they do not make any endeavour to save Pankaj Rai, raised a serious doubt regarding their presence at place of occurrence. These two witnesses are closely related to the deceased and therefore a



common argument may be raised that their depositions against the accused persons are naturally having inimical. In this context, it is apposite to put on record the law relating to the appreciation of evidence of the related witnesses and the witnesses having enmity against the accused. In the matter of ***Balraje alias Trimbak Vs. State of Maharashtra***, reported in ***(2010) 6 SCC 673***, the Supreme Court has explained that when the eye witnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to meticulously analyze the evidence of related witnesses and those witnesses, who are inimically deposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Thus, close scrutiny of evidence of such type of witnesses is required to be done and if their evidence is found to be trustworthy, the same can be accepted. In ***Dalip Singh v. State of Punjab***, AIR 1953 SC 364, the Supreme Court in paragraph-26 observed thus:

“26. A witness is normally to be considered



independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

Similarly, in **Masalti Versus State of U.P., A.I.R.**

1965 SC 202, following are the observations of the Supreme Court in paragraph-14:

“14. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence;



whether or not the evidence strikes the court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

In Harbans Kaur Versus State of Haryana, (2005) 9

SCC 195, the Supreme Court has held thus in paragraph-6:

“6. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.”

Similarly, in **Namdeo Versus State of**



Maharashtra, (2007) 14 SCC 150, the following are the observations of the Supreme Court in paragraph-38:

“38. ... it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

Further, deposition of PW-2 also appears on different note *qua* depositions of PW-6 as PW-2 deposed that after occurrence, appellants-accused ran towards north, whereas PW-6 deposed that appellants-accused ran away towards western direction. PW-2 specifically deposed that there was five round of firing by appellants-accused, whereas it appears contrary to the deposition of PW-6, another eye-witness (informant), who said about 10-12 round of firing. Hence, on the basis of above contradicting deposition being an eye-witness and legal ratio as discussed, it can be gathered safely that depositions of (PW-1 & PW-2) are not appearing trustworthy



and same is appearing inimical towards appellants-accused being close relative/brother-in-law of the deceased, Pankaj Rai.

29. PW- 3, namely, Umesh Rai, PW- 4, namely, Narayan Rai and PW- 5, namely, Vakil Rai are appearing chance witnesses of the crime in question, as PW- 3, namely, Umesh Rai was returning from his agricultural field and while returning so, he arrived at about 04:00 P.M. at place of occurrence on 19.04.2015. Same is with PW- 5 Vakil Rai, who was also returning from his agricultural field and while so returning, arrived at place of occurrence at about 04:00 P.M. on 19.04.2015. Where, PW-4 is a vehicle driver and while he was going to some other village to deliver the wheat, he arrived at Kapileshwar Chowk i.e. place of occurrence at about 04:00 P.M. on 19.04.2015.

30. Now, the fact which to be examined that whether the presence of these chance witnesses are natural or they are projected chance witnesses. It appears from statement of PW- 3 that appellants-accused were known to him. He also failed to deposed that during course of occurrence, PW- 6 i.e. informant was pushed to a nearby ditch. It further appears as witnesses of inquest, he deposed that the colour of t-shirt and jeans were red and black, whereas, both were red in colour as



per inquest report (Ext. 5). These witnesses also failed to state that appellants-accused ran away towards western direction by taking motorcycle and mobile of the deceased. PW-3 further said that at tea stall, during occurrence, he was present along with PW-1 Dilip Rai, PW- 2 Rakesh Rai and PW-5 Vakil Rai.

31. PW- 4, namely, Narayan Rai, who is also appears chance eye-witness of the occurrence, stated in his cross-examination that none was present at tea stall of Kapileshwar Rai, at the time of occurrence. It also appears from deposition of PW- 4 that though he knows the name of appellants-accused Kailash Rai and Bipin Rai but failed to depose their name as assailants in his examination-in-chief, by stating that Pankaj received cut injury by someone else, without specifying name. He also deposed in cross-examination that none was present at tea stall of Kapileshwar when Pankaj fell to ground, which appears contrary to the deposition of PW- 3 that at tea stall, during the time of occurrence, Dilip Rai PW-1, Rakesh PW- 2, Vakil PW- 5 and one more person were present. As per statement of PW-4, informant/P.W.6, was urinating at a distance of one (1) *laggi* also appears incorrect in view of deposition of PW-6 itself, where he stated that he was urinating at a distance of about 15 *laggi* from the place of occurrence,



creating a further doubt regarding his presence at place of occurrence.

32. PW- 5, also claims to be an eye-witness of the occurrence, but he deposed differently *qua* other eye-witnesses, as PW-1, PW-3 and PW-4 that after stopping the vehicle Pankaj Rai (deceased) also went to attend the call of nature along with PW-6, whereas as per informant/P.W.6, only he went to answer the call of nature. All eye-witnesses specifically deposed that police visited the place of occurrence and also saw the place where blood was spread over and seized empty cartridges, but, the same fact was denied by I/O of this case, which has been examined as PW- 9. He stated specifically that though, blood was spread at place of occurrence, but he did not make entry of said fact in case diary and also deposed that no empty cartridges were found over there. One stepping ahead, PW- 9 stated before the learned Trial Court that nothing found at place of occurrence, which may suggest that any such alleged occurrence took place. These contradictions further make their deposition doubtful as an eye-witness of the occurrence.

33. By taking note of contradiction on above material aspects, it can be said safely that the PW-3, PW-4 and PW-5 are also not appearing eye-witnesses rather they have



projected as eye-witnesses by marking their presence as a chance at place of occurrence and moreover they are also appearing relatives of informant-side.

34. The most important witness of this occurrence, who is also claiming to be an eye-witness, is informant/PW- 6, namely, Binda Rai, who is the father of the deceased and claimed to accompanied with his deceased son from home itself, on same motorcycle and as they arrived at place of occurrence i.e. Kapileshwar Chowk, he stopped motorcycle and went to attend call of nature and when heard about public alarm, found his son was surrounded by appellants-accused by raising gun and sickle (*Hansua*), he rushed there to save him but was pushed to a nearby ditch by appellants-accused. In his cross-examination, he deposed that after firing and causing sickle assault, appellants-accused, ran away and only thereafter, he was lifted from the ditch and came to his son, where, he found that appellants-accused ran toward western direction, which is also appearing doubtful, in view of the deposition of PW- 2, who stated to run away towards north. He also failed to depose having any empty cartridges at place of occurrence. He also failed to depose that who lifted him from ditch. In view of his deposition, it is apparent that at the time of



actual incident of firing and assaulting with sickle, he was inside the ditch, near to place of occurrence and as such his deposition, in examination-in-chief, naming appellants-accused, explaining details of firing and sickle assault on his deceased son appearing doubtful, as he was inside ditch during actual occurrence.

35. In view of the above, it appears that there are several material contradictions in depositions of different prosecution witnesses, who are claiming to be an eye-witness of the occurrence i.e. PW-1, PW-2, PW-3, PW-4 & PW-5. It also appears that informant/PW-6 was pushed to a nearby ditch, at place of occurrence, before starting actual firing and when he was lifted from the ditch, by that time, the appellants-accused had run away towards western direction, creating a serious doubt over entire prosecution case and in totality regarding version of the prosecution witnesses claiming an eye-witness of the occurrence.

36. In the matter of ***Guna Mahto vs. State of Jharkhand*** reported in ***(2023) 6 SCC 817***, it was held in paragraph 17 as under:-

17. We may reiterate that, suspicion howsoever grave it may be, remains only a doubtful pigment in the story canvassed by the prosecution for establishing its case beyond any reasonable doubt. [Venkatesh v.



State of Karnataka, 2022 SCC OnLine SC 765; Shatrughna Baban Meshram v. State of Maharashtra, (2021) 1 SCC 596; Pappu v. State of Uttar Pradesh, (2022) 10 SCC 321]. Save and except for the above, there is no evidence: ocular, circumstantial or otherwise, which could establish the guilt of the accused. There is no discovery of any fact linking the accused to the crime sought to be proved, much less, established by the prosecution beyond reasonable doubt.

37. It is our bounden duty to ensure that miscarriage of justice is avoided at all costs and the benefit of doubt, if any, be given to the accused, the principles which were laid down by Hon'ble Apex Court in the matter of ***Hanumant Govind Nargundkar vs. State of M.P.*** reported in ***(1952) 2 SCC 71***.

38. Accordingly, both appeals stand allowed as prosecution failed to establish guilt of above named appellants-accused beyond reasonable doubts.

39. Hence, the impugned judgment of conviction dated 09.03.2018 and order of sentence dated 14.03.2018 passed by learned Additional Sessions Judge-Ii, Vaishali at Hajipur in connection with Sessions Trial No. 247 of the 2016 arising out of Ganga Bridge P.S. Case No. 34 of 2015 is quashed and set aside. The appellants, namely, Manoj Rai and Kailash Rai in



Criminal Appeal (DB) No.507 of 2018 and Bachha Rai and Bipin Rai in Criminal Appeal (DB) No. 484 of 2018 are hereby acquitted of the charges levelled against them by the learned trial court, by giving them benefit of doubt. They are directed to be set at liberty forthwith unless their detention are required in any other case.

40. Let, Lower Court Records be sent back to the learned court below along with copy of this judgment. Fine, if any, deposited by the appellants-accused, be returned to them, forthwith.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

S.Katyayan/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	15.09.2023
Transmission Date	15.09.2023

