

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1043 of 2018

Arising Out of PS. Case No.-20 Year-2007 Thana- KALER District- Jehanabad

Farid Khan Son of Late Maksud Khan, resident of Village- Kothi, P.S. Kaler,
District- Arwal.

... .. Appellant/s
Versus
The State Of Bihar

... .. Respondent/s

Appearance :
For the Appellant/s : Mr. Vikramdeo Singh, Adv.
Mr. Harendra Kumar, Adv.
For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 07-08-2023

The sole appellant has preferred this appeal under
Section 374(2) of the Code of Criminal Procedure against the
judgment of conviction dated 11.04.2018 and order of sentence
dated 12.04.2018 passed by the learned Presiding Officer, Fast
Track Court No. 1, Jehanabad, in Sessions Trial No. 109 of
2009/451 of 2017, arising out of Kaler P.S. Case No. 20 of
2007, whereby and whereunder the appellant has been convicted
and sentenced as under:-

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine



302 of the Indian Penal Code	Rigorous imprisonment for life	5,000/-	S.I for three months
27 of the Arms Act.	Rigorous imprisonment for three years	5,000/-	S.I for three months

All the sentences have been ordered to run concurrently.

2. The FIR in the present case was registered at 7 A.M. on 20.06.2007 in relation to the occurrence, said to have taken place at 7:30 P.M. on 19.06.2007, disclosing commission of the offences punishable under Sections 147, 148, 149, 452, 380, 323, 302/120(B) of the IPC and Section 27 of the Arms Act. The information regarding the occurrence was received at the police station on 19.06.2007 at 7:45 P.M. itself as is evident from the formal FIR under Section 154 of the CrPC (Ext. 2). Further, from the formal FIR (Ext. 2), it transpires that the distance of the police station from the place of occurrence was three kilometers. The son of the deceased Md. Musharaf Hussain is the informant (PW 5) of the concerned Kaler P.S. Case No. 20 of 2007, which gave rise to Sessions Trial No. 11/2009/109 of 2009 in the court of Fast Track Court No. 1, Jehanabad.

3. It is the prosecution's case, as narrated in the First Information Report, based on a written report of the informant, that the informant and his family members including



his parents were sitting in their house when this appellant, who had earlier killed the informant's younger brother, entered into the house, armed with rifle. Other persons, namely, Maksud Khan, armed with a double barrel gun, Sallauddin Khan, armed with a single barrel gun, Khalil Khan, Habib Khan, Mahboob Khan, Akhtar Khan, Ibrahim Khan, Nasrullah Khan, Lakhu Khan, Biku Khan, Julfikar Khan and Chhotan Khan, all armed with firearms and sharp cutting weapons, also entered into his house with this appellant. As soon as they entered into his house, Maksud Khan exhorted his son (the present appellant) to shoot the deceased, who was lying on a cot. Thereafter, the appellant shot at the deceased with his rifle in his chest from a close range, leading to his instantaneous death. He also alleged that co-accused Sallauddin Khan and Maksud Khan created a furor by brandishing their arms. In the meanwhile, when the family members raised an outcry, his mother Nadra Khatoon (PW 2) and sister Rashida Khatoon (PW 4) were assaulted in their heads by Khalil Khan, Habib Khan and Mahboob Khan with the butts of their fire-arms, leading to injuries. Further, they and others, namely, Akhtar Khan, Nasrullah Khan, Lakhu Khan, Biku Khan and Julfikar Khan jointly assaulted his mother Nadra Khatoon and sister Rashida Khatoon and snatched golden



ornaments from them. The informant escaped the attack by concealing himself, though the accused persons were searching from him also. He further alleged that before causing the occurrence, co-accused Maksud Khan had hatched up a conspiracy to commit the offence with his daughter Sibi Khatoon in her house. Based on the allegation to the aforesaid effect in the written statement, Kaler P.S. Case No. 20 of 2007 came to be registered.

4. The police, upon completion of the investigation, submitted charge-sheet against this appellant only, while keeping the investigation pending against one Tuntun Yadav. Upon taking of the cognizance of the offence, however, all the accused persons were summoned. Co-accused Maksud Khan died during the pendency of trial. After the case was committed to the Court of Sessions, charges were framed against the accused persons including this appellant and 13 others. All the accused persons including this appellant were charged of commission of offence punishable under Section 302, read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act.

5. We notice, at this juncture itself, that all the persons, who were facing trial, except the appellant, have been



acquitted by the trial court by the impugned judgment dated 11.04.2018 and this appellant alone has been held guilty of the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. This is the circumstance in which the present appeal has been preferred against the sole appellant challenging the judgment of conviction and the order of sentence passed by the trial court.

6. At the trial, the prosecution examined altogether 12 witnesses. The doctors, who had conducted the postmortem examination and examined the injured persons, deposed as PW 11 and PW 12. The Investigating Officer came to be examined as PW 10, whereas the informant deposed as PW 5. The informant's mother, i.e., the widow of the deceased, Nadra Khatoon, deposed as PW 2, whereas the informant's sisters and the daughters of the deceased Sabina Khatoon and Rashida Khatoon deposed as PW 3 and PW 4 respectively. PW 1 Md. Meraj Khan is said to be a chance witness. PWs 6, 7 and 9 are the hearsay witnesses, whereas PW 8 is said to be an injured witness, who was not present in the house at the time of occurrence. As PW 8 did not support the prosecution's case, he came to be declared hostile at the instance of the prosecution. In addition to the oral evidence of the witnesses, the prosecution



adduced at the trial following documentary evidence:-

Ext. A- certificate issued by SEW Constructions Ltd.
Mandleshwar dated 21.06.2007

Ext. B- Purchase receipt of Mobile dt. 21.06.2007

Ext. C- Photocopy of attendance register of SEW of
accused of Md. Habib Khan

Ext. C/1- Photocopy of attendance register of SEW
Construction Company of accused of Md. Khalil Khan

Ext. C/2- Photocopy of attendance register of SEW
Construction Company Ltd. of accused Md. Mehboob Khan

Ext. C/3- Photocopy of attendance register of SEW
Construction Company Ltd. of accused Md. Julfakar Alam.

7. After closure of the prosecution's evidence, the appellant and other accused persons were examined under Section 313 of the CrPC by the trial court so as to give them an opportunity to explain the circumstances emerging against them, based on the evidence adduced at the trial. They denied the circumstances and got examined four defence witnesses as has been noted hereinabove. The trial court, after having appreciated and analyzed the evidence adduced at the trial, recorded conviction of this appellant and acquittal of other persons facing trial by the impugned judgment of conviction.



8. Mr. Vikramdeo Singh, learned counsel appearing on behalf of the appellant, has submitted that the prosecution failed to establish the manner of occurrence, place of occurrence as well as the time of occurrence, based on the evidence adduced at the trial. He has submitted that the *antemortem* injuries found on the body of the deceased during the postmortem examination does not support the prosecution's case. He has further argued that it is manifest from the evidence of the Investigating Officer that the witnesses, who claimed to be present inside the house at the time of the alleged occurrence, were not present in the house. He has further submitted that though it has been definite case of the prosecution that the deceased was shot dead by the appellant when he was lying in a cot, the Investigating Officer did not find any blood mark on the cot or the bed over or around the cot or on the floor of the house. Though it is the prosecution's case that several shots were fired, no bullet hole in the walls was detected by the I.O. on any part of the house of such firing. He has further submitted that the delay in registration of FIR has remained unexplained, though, according to the informant, the police were informed about the occurrence within 15 minutes of the time of occurrence which is an undisputed fact. Further, it is evident that



the First Information Report reached the court of learned Chief Judicial Magistrate nearly 5 days after the registration of FIR. Delay of five days in transmission of FIR has also remained unexplained, which casts serious doubt over the entire prosecution's case. He has lastly submitted that the occurrence is said to have taken place at 7:30 P.M., but the witnesses are inconsistent about the means of identification. He accordingly submits that the finding of conviction recorded by the trial court is unsustainable and requires this Court's interference in the present appeal. Elaborating his submissions, he has referred to the evidence of the Investigating Officer (PW 10). The Investigating Officer deposed at the trial that PW 2, the wife of the deceased, had stated during the investigation that the appellant and two other persons were standing at the door of the house, whereafter, the appellant had entered into her house when her son Md. Musharaf Hussain (PW 5), the informant, was in the nearby house of *mauseri sasur* (husband of mother's sister) Mahtab Khan. The I.O. also deposed that the informant's sisters Rashida Khatoon and Sabina Khatoon had stated during the investigation about the entry of this appellant only, and not others. He has submitted that the prosecution's witnesses have apparently introduced improvements in the case at the stage of



trial. He submits, with reference to the evidence of the I.O., that the claim of the eye witnesses including the informant, that they were present at the time when the alleged occurrence had taken place, is not at all substantiated, rather contradicted. He argues that attention of the I.O. had been drawn at the trial by the defence while cross-examining him regarding the contradictory depositions of the witnesses about the presence of so-called eye witnesses. As regards, the failure on the part of the prosecution to establish manner of occurrence, he has submitted that it is the specific case of the prosecution that the appellant had shot at the deceased in his chest from a close range when he was sleeping in supine position on the cot. The postmortem report, however, suggests one entry wound in the back of the deceased and exit wound in the chest, which is contrary to the evidence of the witnesses. Further, one *antemortem* injury has been found during the postmortem examination on left axilla said to have been sustained by a firearm. He submits that the postmortem report does not support the prosecution's case that the fire was shot from a close range. He has also submitted, by referring to the evidence of the I.O., that no blood was found at the place of occurrence, which casts a serious doubt on the prosecution's case.



9. Learned Additional Public Prosecutor, representing the State, has, in reply, submitted that there are eye witnesses to the occurrence, who have fully supported the prosecution's case. He has submitted that some of the prosecution's witnesses themselves had sustained injuries in the occurrence, which have been proved by the doctor, who had examined them. He has further submitted that the delay, if any, in registration of the FIR or in transmission of FIR to the court has not caused any prejudice to the appellant in the present matter and the same does not adversely affect in any manner the prosecution's case. He has argued that the minor contradictions in the evidence of the prosecution's witnesses deserve to be ignored as they appear to be an outcome of exaggeration about the occurrence by the witnesses at the trial.

10. We have perused the impugned judgment of the trial court as well as the lower courts' records. We have given our thoughtful consideration to the rival submissions made on behalf of the appellant. It is manifest on scrutiny of the evidence and records available before this Court and according to the prosecution's story that the occurrence had taken place at 7.30 P.M. on 19.06.2007. The informant disclosed in his written report itself that there was animosity between the family of the



deceased and the appellant since, according to him, the appellant had earlier killed the informant's brother. The police had received the information at 7.45 P.M. on 19.06.2007 itself whereafter, the police arrived at the house of the informant and prepared the inquest report at 10.30 P.M. We do not find any explanation available on record as to why, in the meanwhile, no *fardbeyan* was recorded and FIR was not registered. The FIR came to be registered much later, not only after preparation of inquest report at 10.30 P.M., but in the next morning at 7 A.M. We do not find any justification on record for such delay. It is true that every delay in registration of FIR cannot be treated to be fatal to the prosecution's case. If, based on the materials/evidence available on record, the delay in registration of the FIR is found to be satisfactorily explained, then only the delay in lodging of the FIR cannot be fatal. It is settled legal position that delay in setting the law into motion by lodging of complaint and registration of First Information Report is normally viewed by courts with suspicion because there is possibility of concoction and embellishment of the occurrence. It is, therefore, essential for the prosecution to satisfactorily explain the delay. The object of insisting upon a prompt lodging of First Information Report is to obtain early information not



only regarding the assailants, but also about the part played by the accused, the nature of the incident and the names of the witnesses. In the case at hand, we are of the view that the prosecution has not been able to satisfactorily explain the delay in lodging of the FIR.

11. It is also manifest that the FIR registered on 20.06.2007 was sent to the court, five days after registration of FIR. Section 157 of the CrPC mandates that if, from information received or otherwise, an Officer-in-Charge of a police station has reason to suspect the commission of an offence, which he is empowered under Section 156 to investigate, he shall 'forthwith' send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report. The requirement of sending the report 'forthwith' under Section 157 of the CrPC has been held by the Supreme Court to be indispensable and absolute and such report, the Supreme Court has held, in case of *Arjun Marik and others versus State of Bihar* reported in 1994 (supp) 2 SCC 372, must be forwarded with earliest dispatch. The requirement of sending the report 'forthwith' to the Magistrate under Section 159 has dual purpose; firstly, to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by



deliberations and consultation, and secondly, to enable the Magistrate concerned to have a watch on the progress of investigation. It will be useful to reproduce paragraph 24 of the Supreme Court's decision in the case of *Arjun Marik* (supra), which reads as under:

“24. The matter does not stop here. There is yet another serious infirmity which further deepens the suspicion and casts cloud on the credibility of the entire prosecution story and which has also been lost sight of by the trial court as well as the High Court and it is with regard to the sending of occurrence report (FIR) to the Magistrate concerned on 22-7-1985 i.e. on the 3rd day of the occurrence. Section 157 of the Code of Criminal Procedure mandates that if, from information received or otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. Section 157, CrPC thus in other words directs the sending of the report forthwith i.e. without any delay and immediately. Further, Section 159 CrPC envisages that on receiving such report, the Magistrate may direct an investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the Code of Criminal Procedure. The forwarding of the occurrence report is indispensable and



absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word “forthwith” occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.”

12. In case of **Arjun Marik** (supra), the report was dispatched to the Magistrate on 22.07.1985 in respect to an incident which had taken place on 19/20.07.1985. The Supreme Court noted that if, in fact, the FIR was already recorded in the morning of 20.07.1985, there was no reason not to dispatch the same to the Magistrate concerned till 22.07.1985. A submission was made before the Supreme Court on behalf of the State of Bihar, in case of **Arjun Marik** (supra) that the Investigating Officer remained busy in investigation on 20.07.1985, which was Saturday, and since 21.07.1985 was Sunday, the report was sent on Monday, 22.07.1985. A submission was also made that in Bihar even in murder cases, FIR is never sent to the residence of a Magistrate on Sundays and holidays. Noticing the said



submission, the Supreme Court in the case of *Arjun Marik* (supra), made following observations in Paragraph 25, relevant portion of which is being reproduced hereinbelow:-

“25. But in the present case, admittedly, the report as alleged is said to have been despatched to the Magistrate concerned on 22-7-1985 by a special messenger, vide Ext. 2. It is, thus, clear that the report was not sent forthwith, in other words immediately and without delay as the incident had occurred in the intervening night of 19/20-7-1985 and according to Doman, PW 10 the officer in charge of the police station, the FIR was already recorded in the morning of 20-7-1985. If in fact the FIR was already recorded in the morning of 20-7-1985 there was no reason not to despatch the same to the Magistrate concerned till 22-7-1985. Though there is no material on record to show as to why delayed report was sent to the Magistrate on 22-7-1985 but the learned counsel appearing for the respondent-State submitted at the Bar that the investigating officer remained busy in the investigation on 20-7-1985 which was Saturday and since 21-7-1985 was Sunday the report was sent on Monday, 22-7-1985. He submitted that in Bihar State even in murder cases FIR is never sent to the residence of a Magistrate on Sundays and holidays. If that be so, we are afraid such a practice can never be said to be healthy practice



which renders the mandatory provision nugatory. If such a practice is prevalent it must be deprecated and it is high time that the authorities concerned should wake up and see that the provisions of Section 157 CrPC are complied with in letter and spirit.”

13. We notice that in the present case there are patent contradictions in the evidence of the prosecution's witnesses on the point of presence of the informant in the house when the occurrence had taken place. Animosity between the appellant and the informant's family is an admitted fact. In such circumstance, delay in registration of FIR and delayed transmission of FIR to the Magistrate needs to be viewed seriously as there may be possibility of introduction of distorted version by deliberation and consultation to falsely implicate the appellant and others.

14. This aspect, coupled with the fact that no blood mark was found nor any bloodstained cloth or material was seized from the place of occurrence where the police had reached soon after commission of occurrence, raises serious doubt about the prosecution's case. It is the evidence of the Investigating Officer himself that no blood mark was found when he had reached the place of occurrence and had seen the



dead body lying on the cot. In the aforesaid background, we find force in the submission advanced on behalf of the appellant that the postmortem report does not corroborate the prosecution's definite case of the appellant having shot in the chest of the deceased with rifle. No entry wound caused by firearm has been found in the chest of the deceased, rather entry wound has been found in the back of the deceased and exit wound on his chest. It is further the definite case of the prosecution that the deceased was lying in a supine position when the fire was shot at him. If he was shot at by the appellant in the manner as alleged by the informant, entry wound caused by firearm would not have been present in the back of the deceased. Further, learned counsel for the appellant has been able to convince this Court, with reference to the depositions of the I.O. and the prosecution's witnesses that the informant was in fact not present in the house, but had gone to his relative's house, nearby. It is noteworthy that according to the Investigating Officer, five spent cartridges were recovered from the said place of occurrence in the First Information Report. The informant disclosed that only one fire was shot by the appellant.

15. Taking a holistic view of the matter and the above-noted discussions, we are of the considered view that the



prosecution cannot be said to have established its case against the appellant beyond all reasonable doubt. The appellant deserves to be acquitted by giving him benefit of doubt.

16. Accordingly, the impugned judgment of conviction dated 11.04.2018 and order of sentence dated 12.04.2018 passed by the learned Presiding Officer, Fast Track Court No. 1, Jehanabad in Sessions Trial No. 109 of 2009/451 of 2017, arising out of Kaler P.S. Case No. 20 of 2007 are set-aside. The appellant stands acquitted of the charge of commission of offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act.

17. The appeal is allowed.

18. The appellant is in custody. Let him be released forthwith, if not, required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Sonali/Kundan

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