

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1158 of 2017**

Arising Out of PS. Case No.-65 Year-2010 Thana- PAUTHU District- Aurangabad

Shambhu Sharma Son of Late Raghu Nandan Sharma, Resident of Village-
Itwan, Police Station- Pouthu, District- Aurangabad.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Ravindra Kumar, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 13-05-2024

The present appeal is filed under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') against the judgment of conviction dated 24.07.2017 and the order of sentence dated 27.07.2017, rendered by learned Ad-hoc Additional District & Sessions Judge, F.T.C.-VI, Aurangabad in Sessions Trial No.247 of 2013/46 of 2017, arising out of Pauthu P.S. Case No.65 of 2010, whereby the Trial Court has convicted the appellant herein for the offences punishable under Sections 302/34 of the Indian Penal Code as well as under Section 27 of the Arms Act and he has been sentenced to undergo R.I. for life alongwith fine of Rs.10,000/-



for the offences punishable under Sections 302/34 of the Indian Penal Code and in default of payment of fine, the appellant has to undergo S.I. for six months. The appellant is further sentenced to undergo R.I. for three years alongwith fine of Rs.10,000/- for the offence punishable under Section 27 of the Arms Act and in default of payment of fine, the appellant has to undergo S.I. for six months. All the sentences are directed to run concurrently.

2. The factual matrix of the present case is as under:-

2.1. Fardbeyan of Parshu Ram Singh came to be recorded on 22.12.2010 at 03:00 p.m. The informant, who is brother of the deceased, has stated in his fardbeyan that on 22.12.2010 at about 01:30 p.m., he along with his brother, namely, Ram Shlok Singh (deceased) was sowing wheat and labourers were carrying bags of paddy from his field to home. In the meantime, the nephew of the informant, namely, Santosh Kumar, aged about 14 years came with lunch and he along with his deceased brother started taking lunch. In the meantime, two unknown persons, aged about 30-35 years, were watching them. The informant asked them as to where they live. Thereafter the two persons moved towards East upon which the brother of the



informant stood up and one of the persons shot fire which hit Ram Shlok Singh in his rib-cage. Thereafter the informant, his brother Ram Shlok Singh and his nephew Santosh Kumar started running towards West. In the meantime, eleven persons from his village, armed with deadly weapons, came there from the eastern side and surrounded them. The brother of the informant Ram Shlok Singh and nephew Santosh Kumar ran towards North and South. It is alleged that thereafter Shambhu Sharma (appellant) and Girdhari Sharma started firing by pistols which they were carrying in their hands which hit the brother of the informant on his right side of neck, chest, right back, forehead, head, leg and right temple. The brother of the informant died instantaneously. All the accused persons fled towards East. The informant further alleged that the reason for the occurrence is land-dispute.

2.2. On the basis of the aforesaid fardbeyan, formal FIR came to be registered for the offences punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

2.3. The Investigating Officer thereafter carried out the investigation and during the course of investigation, he had recorded the statements of the witnesses and also collected



documentary evidence. Thereafter he filed the charge-sheet against the appellant before the concerned Magistrate Court. As the case was exclusively triable by court of sessions, the learned Magistrate committed the same to the concerned Sessions Court where the same was registered as Sessions Trial No.247 of 2013/46 of 2017.

2.4. After conclusion of the Trial, the Trial Court passed the impugned judgment of conviction and order of sentence whereby the present appellant has been convicted, as observed hereinabove. The appellant has, therefore, filed the instant appeal before this Court.

3. Heard Mr. Ravindra Kumar, learned counsel for the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State.

4. Learned Advocate appearing on behalf of the appellant submits that there is interpolation in the FIR and date and time has been changed in the fardbeyan. It is contended that there is delay in sending the FIR to the concerned Magistrate court. Thus from the aforesaid, it can be said that the present appellant has falsely been implicated in the incident in question. At this stage, it is further submitted that before recording of the fardbeyan of the informant at 03:00 p.m., inquest of the dead



body of the deceased was already prepared at 02:45 p.m. It is further submitted that as per the fardbeyan given by the informant, the nephew Santosh Kumar came in the agricultural field with lunch and thereafter the informant with his brother (deceased) started taking lunch. At that time, two unknown persons came armed with pistols and shot fire, therefore, his brother sustained injury in the rib cage. It is further stated in the fardbeyan that thereafter brother of the informant and his nephew tried to run away. At that time, 11 accused named in the FIR came with deadly weapons and surrounded them and thereafter Shambhu Sharma and Girdhari Sharma shot fire from their pistols and, therefore, his brother Ram Shlok Sharma sustained 3-4 bullet injuries. Bullets fired by the aforesaid two persons hit on the various parts of the body of Ram Shlok Sharma, as a result of which he died. Learned counsel, therefore, urged that as per the case of the informant, three different accused shot fire in which deceased Ram Shlok Sharma sustained at least five bullet injuries. However, the medical evidence does not support the case of the so called eye witness.

4.1. Learned counsel further submits that in the fardbeyan there is reference of another eye witness Santosh.



However, the prosecution did not examine Santosh before the Trial Court. It is further submitted that two other witnesses are projected as eye witnesses, i.e., P.W.-9 and P.W.-11, who are near relatives of the deceased. However, there is no reference in the fardbeyan about the presence of the aforesaid two witnesses. Thus, in fact there is no eye witness to the occurrence in question and three witnesses including the informant were projected as eye witnesses to the occurrence, therefore, their deposition is required to be scrutinized closely. In the present case, the said witnesses are not trustworthy and, therefore, this Court may discard the deposition of the so called eye witnesses.

4.2. Learned Advocate for the appellant, at this stage, has submitted that the prosecution did not examine the first Investigating Officer who had carried out the investigation. Thus, because of the non-examination of the first Investigating Officer, the defence has lost the chance to cross-examine him and the prejudice has been caused to the defence because of non-examination of the first Investigating Officer. Learned Advocate, therefore, urged that the impugned judgment of conviction and order of sentence rendered by the Trial Court be quashed and set aside as the prosecution has failed to prove the case against the appellant-convict beyond reasonable doubt.



5. On the other hand, learned Additional Public Prosecutors appearing on behalf of the State has contended that there are three eye witnesses to the occurrence in question and they have attributed specific role to the appellant. It is alleged that the appellant shot fire and the bullet hit the deceased. The said story is supported by the medical evidence, therefore, merely because the first Investigating Officer has not been examined by the prosecution, benefit of the same may not be given to the defence. It is submitted that the prosecution has proved the case against the appellant-convict beyond reasonable doubt, therefore, the Trial Court has not committed any error while passing the impugned judgment of conviction and order of sentence. The learned APP, therefore, urged that the present appeal be dismissed.

6. At this stage, we would like to appreciate the evidence led by the prosecution as well as by the defence. Before the Trial Court, the prosecution had examined sixteen witnesses, namely, P.W.-1, Satyendra Sharma, P.W.-2, Usha Devi, P.W.-3, Shyam Nath Sharma, P.W.-4, Dhanraj Mistri, P.W.-5, Radhika Devi, P.W.-6, Ramawati Devi, P.W.-7, Dr. Sartaj Ahmad, P.W.-8, Dr. Vinaya Kumar Singh, P.W.-9, Triloki Sharma, P.W.-10, Parshuram Singh, P.W.-11, Pramod Sharma,



P.W.-12, Vijay Kumar Gupta, P.W.-13, Dihal Ram, P.W.-14, Baikunth Singh, P.W.-15, Bishwanath Prasad and P.W.-16, Bishwanath Prasad. Thereafter the statement of the accused under Section 313 of the Code came to be recorded.

6.1. The defence had also examined five witnesses, namely, D.W.-1, Umesh Sharma, D.W.-2, Ram Kripal Sharma, D.W.-3, Ram Badan Sharma, D.W.-4, Ramanuj Sharma and D.W.-5, Surendra Sharma.

7. P.W.-5, Radhika Devi is the mother of the deceased. The said witness in her examination-in-chief has deposed that the incident took place 3-3½ years ago at 12 o'clock. Paddy crops were being sowed. She was at her home at that time. Her grandson Santosh telephonically informed her that Shambhu killed his father. She and the wife of Ram Shlok went to the dam. The deceased had sustained gunshot injuries in his ear and leg. Blood was oozing out from his body. This witness saw that Shambhu, Dashrath, Anjani, Narayan and Baijnath were fleeing away. It is further deposed by this witness in her examination-in-chief that she identifies all the accused persons.

7.1. P.W.-5, in her cross-examination, has stated that there was land-dispute with accused Shambhu. The dispute was



with regard to a piece of land which was purchased by Srikant. There was no dispute with regard to the land which was purchased by father of Shambhu Sharma. The field where cultivation was going on is situated less than 1 k.m. away from her house. There is a road after 4-5 *kyari* near the place of occurrence. This witness does not know the area of reservoir where firing took place. There were two *peepal* trees. Her son was shot at in the field and not under the tree. This witness further stated in her cross-examination that she cannot tell the *khata* and *khesra* of the field. She also cannot tell the boundary of the place of occurrence. The driver of the tractor, namely, Ansu Bhuiyan was also present in the field. On that day, 9-10 labourers were working in the field and she cannot remember the name of the labourers. The phone call of Santosh was picked up by her. She firstly got the information of murder while in her home. She does not know the number of that phone. After getting information, firstly her daughter-in-law went and thereafter she went. She did not inform anybody in the village. When she reached, Ram Shlok Sharma had already died. The head of her son was in the north direction whereas his leg was in the south direction. When she reached, blood was oozing from the neck. The deceased had sustained five bullet



injuries. It is further stated by this witness that police had recorded her statement next day in the evening. She told the police that all accused persons were fleeing away saying *Jaikari*. She told the police that Santosh had called. She did not tell as to when Santosh came home, he himself informed. There was no dispute between Srikant and Ram Shlok Sharma. She has denied the suggestion that no such occurrence took place and there was dispute between her son and others. She has also denied the suggestion that she has falsely implicated Shambhu Sharma due to land-dispute. She has denied the suggestion that there was dispute between Ram Shlok and Tetar, Mahendra Kahar, Shivpati etc. and case was lodged. This witness has also denied the suggestion that she has falsely deposed as she is mother of the deceased.

8. P.W.-6, Ramawati Devi is the wife of the deceased who has deposed in her examination-in-chief that occurrence took place on 22.12.2010 at about 01:00 p.m. She was at her home. Her husband went to the field for sowing wheat along with Parshuram Sharma, Santosh Sharma and some labourers. She got information through unknown phone call that some people were assaulting her husband. She left her house after receiving the information. Thereafter Santosh informed her



on phone that Shambhu Sharma, Narayan Sharma, Banke Bihari Sharma, Girdhari Sharma, Kartik Sharma, Baijnath Sharma, Anjani Sharma, Shyamanuj Sharma and Sanjay Sharma surrounded her husband and Shambhu Sharma shot fire on him. The first bullet hit him in his temple, second bullet hit him in his neck, third bullet hit him in chest and fourth bullet hit him in rib-cage. The fifth bullet hit her husband in his leg. This witness further deposed in her examination-in-chief that she reached at the place of occurrence and saw that all accused persons surrounded her husband. She also saw Shambhu Sharma firing. Thereafter Girdhari Sharma shot fire which hit him in his chest. After receiving bullet injuries, her husband died in the field of Lakhan Deo Singh. Thereafter the accused persons fled away towards Mishra Bigha and Bartha. It is further deposed that in the year 2007, her two brothers-in-law, namely, Jogindra Sharma and Jay Govind Sharma were killed by Shambhu and all accused persons of this case and Ram Shlok Sharma was a witness in that case. The accused persons put pressure upon them to compromise the case and threatened them that otherwise they would be killed. For this reason, the occurrence took place. She had given these statements before the police. She identifies all accused person along with



Shambhu Sharma.

8.1. P.W.-6 has stated in her cross-examination that there was no dispute between her husband and Shambhu Sharma due to land dispute. P.W.-6 has further stated in her cross-examination that her husband had no enmity with Srikant Sharma and others till his death. No criminal case was going on between her husband and anyone. An unknown person made telephone call to my mother-in-law. She could not say the identity of that unknown person. When she reached, Ram Shlok Sharma had sustained bullet injury. Ram Shlok Sharma sustained injuries on his temple, neck, chest, rib-cage and leg. Blood was oozing out from his injuries. It is further stated that his head was in North direction while his leg was in South direction. Her husband died on that very place where he sustained bullet injuries. She did not bring him to any hospital. The police came at the place of occurrence. She firstly gave information to the police. The police had recorded her statement first. On her statement, case was lodged against the accused persons. She did not put her signature or thumb impression on her statement. Her family members who were present at the place of occurrence did not sustain any injury. This witness has denied the suggestion that she did not tell the police that some



persons came at her home and they informed that Shambhu Sharma and others killed the deceased Ram Shlok Sharma and she went to the field weeping and found her husband dead smeared with blood. She told the police that Santosh informed through phone that his father was surrounded by Shambhu Sharma, Narayan Sharma, Dashrath Sharma, Anjani Sharma, Ramanuj Sharma and Sanjay Sharma and Shambhu Sharma shot fire on him which hit him on his rib-cage, leg, head and neck. She saw that all accused persons surrounded her husband and Shambhu Sharma along with Girdhari Sharma shot fire and fled away towards Mishra Bigha. She gave statement that on 17th (Vishwakarma Puja) her two brothers-in-law, namely, Yogendra Sharma and Jai Govind Sharma were killed by all accused persons in which Ram Shlok Sharma was a witness and accused persons put pressure to compromise the case. When the case was not compromised, they killed her husband. She has denied the suggestion that quarrel took place between her husband and Tetar, Mahendra, Krishna, Sukhdeo and a case was lodged. She has also denied the suggestion that her husband was a criminal and he had enmity with others due to which he was killed by unknown persons and on account of land dispute going on with Shambhu Sharma, she has falsely implicated him.



She has denied the suggestion that no such occurrence took place and as she is wife of the deceased, she was falsely deposing in a false case.

9. P.W.-7, Dr. Sartaj Ahmad is the doctor who was one of the members of the Medical Board which conducted *post mortem* on the dead body of the deceased and found following injuries:

1. 1” round lacerated wound with charred and inverted margin over Rt. side of neck upper part- wound of entry No.1.

2. Lacerated 1” round wound with charred and lacerated an inverted margin over middle of back of neck- wound of entry No.2.

3. Both above mentioned injuries communicated to base of angle of jaw. On Dissection- where two metallic bullets were found lodged, were extracted and over accompany police for needful.

Cause of Death- All above mentioned injuries are ante mortem in nature caused by fire arm injury leading to haemorrhage shocked C.R. failure and death. Time elapsed since death and P.M. done within 24 hrs. To 36 hrs.

9.1. The witness further deposed in his examination-in-chief that this P.M. report was written by Late Dr. Gunjan Sinha the then M.O. Sadar Hospital, Aurangabad. Now he is no more but he identifies the writing and signature of Dr. Gunjan Sinha. The report also bears his signature as well as Dr. Vinaya



Kumar Sinha.

9.2. P.W.-7 has stated in his cross-examination that the above P.M. report is not in his pen. There was no wound of Exit as mentioned in the P.M. report. The bullet was extracted and it was handed over of sealing to the police concerned. He has only found two bullet injury on the dead body. He cannot say that the bullet was fired by Rifle or gun or by other fire arms.

10. P.W.-8, Dr. Vinay Kumar Singh has deposed in his examination-in-chief that on 23.12.2010, he was posted as Medical Officer in Aurangabad. A Medical Board was constituted for the purpose of conducting postmortem on the dead body of Ram Shlok Singh of which he was also a member. Dr. Gunjan Sinha had written P.M. report who is no more. He was totally agree with the report and put his signature on the report.

10.1. P.W.-8 has stated in his cross-examination that he cannot tell the date on which Dr. Gunjan Sinha died. He did not write name of place under his signature. It is further stated that it is not a fact that he was not a member of the Board.

11. P.W.-9, who is son of the informant, has stated in his examination-in-chief that the occurrence took place on



22.12.2010 at about 01:30 p.m. He was in his field and he heard the sound of firing. When he went towards the place of firing, he saw that two unknown persons chased Ram Shlok Sharma, who was taking lunch, towards West. Ram Shlok Sharma ran away towards West. Thereafter this witness saw that Shambhu, Dashrath Sharma, Narayan Sharma, Banke Bihari Sharma, Girdhari Sharma, Sanjay Sharma, Baikunth Sharma, Baijnath Sharma, Anjani Sharma, Kartik Sharma and Shyamanuj Sharma came from a bush and chased Ram Shlok Sharma. Shambhu Sharma shot fire from his pistol aiming the right portion of neck and middle of the neck of Ram Shlok Sharma. Girdhari Sharma shot fire on the leg and left chest of Ram Shlok Sharma. This witness further deposed in his examination-in-chief that in the year 2007, Shambhu Sharma, his brother along with others killed Jai Govind Sharma and Yogendra Sharma by *tangi* in which case, Ram Shlok Sharma was complainant. In the year 2010, Shambhu Sharma along with his brother and other accomplice destroyed one eye of Parshuram Sharma by bullet in which case, Ram Shlok Sharma was complainant. It is further deposed that they informed the police. Police came and recorded his statement. The police seized bullet of 315 and blood stained soil.



11.1. P.W.-9 has stated in his examination-in-chief that till date he has deposed against Shambhu Sharma in two cases. Ram Shlok Sharma was his own uncle. It is further stated that Surendra Ram, Ramashish Paswan and other labourers were working in his field. The place of occurrence is situated 1-1½ k.m. away in the East-South corner from his village. No work was going on at the time of occurrence in any field. The field of Shambhu Sharma is situated 12 step away from the place of occurrence but no agricultural work was going on. His father or deceased had no enmity relating to land dispute with Shambhu Sharma. The deceased and his father had no enmity with anyone except these accused persons. He proceeded after hearing the first sound of firing which was made by unknown persons. Five minutes after the first firing, second firing was made and thereafter the accused persons fired continuously. Total six bullets were fired. At the time of first firing, he was ten steps away from the place of occurrence in the North. He did not stop the accused from firing. The accused did not fire on him. The deceased sustained bullet injuries in the field of Kishundeo Sharma. After sustaining three gun shot injuries, the deceased fell down. The deceased sustained four firearm injuries. He informed the police. The police recorded his



statement. The FIR was lodged on the statement of Parshuram Sharma. Parshuram Sharma gave his statement orally. He did not give his statement second time. This witness further stated in his examination-in-chief that he told the police that after hearing the sound of firing he proceeded and saw that two unknown persons chased Ram Shlok Sharma who was taking lunch, towards West. He did not tell that the deceased had enmity with Pappu Sharma relating to land dispute.

12. P.W.-10, Parshuram Singh is the informant of the case who has deposed in his examination-in-chief that he and Ram Shlok Sharma were taking lunch under a *peepal* tree in his field. Two unknown persons came from the western side. They moved 2-4 steps ahead from the place where we were taking lunch. This witness was about to ask from them as to where they live, he shot fire. In the meantime, his brother started fleeing away towards West. Shambhu Sharma shot fire on Ram Shlok at his right temple and neck. Shambhu Sharma shot fire on both sides of neck of the deceased. Banke Bihari shot fire at left chest and left leg of the deceased resulting into his death. The son of Ram Shlok Sharma, who brought the lunch, was present there. This witness further stated that he stood up at a distance of 10-20 steps from the place of



occurrence. In the year 2010, Shambhu Sharma assaulted him, for which a case is going on and Ram Shlok Sharma was complainant.

12.1. P.W.-10 has stated in his cross-examination that no case is going on between Shambhu Sharma and him and his family or the family of the deceased except the present case. It is also stated that he could not identify the two unknown persons. Out of two unknown persons, one person shot fire. The other person also fired a shot while running away. The bullet did not hit which was fired by first unknown person. The bullet which was fired by the second unknown person also did not hit. Ram Shlok was fleeing away and unknown persons were making fire. They fired 4-5 bullets. Shambhu Sharma fired three bullets. The deceased sustained five bullet injuries. When his brother fell down, he reached there after 3-4 minutes. Blood was oozing from the body of his brother. He did not try to bring his brother to hospital as he had died. When he reached there, his brother died after two minutes. He gave information to the police through mobile. Triloki had also given information to the police through his mobile. Triloki is his son. It is further stated by this witness in his cross-examination that the tiffin was not seized by the police. The police seized blood-stained soil. He



could not say whether any other thing was seized or not.

13. P.W.-11, Pramod Sharma is the brother-in-law of the deceased and he has deposed in his examination-in-chief that the occurrence took place on 22.12.2010 at 01:30 p.m. He was in the field of Parshuram Sharma along with Triloki Sharma. Two unknown persons came from the East whom he did not know. Ram Shlok Sharma and Parshuram Sharma were taking lunch under a *peepal* tree. One unknown person shot fire upon Ram Shlok Sharma which did not hit him. Ram Shlok Sharma started fleeing away towards West. 5-6 persons came out of a bush out of whom this witness identified Shambhu Sharma, Girdhari Sharma and Banke Bihari Sharma. Ram Shlok sustained two bullet injuries in his neck and one bullet injury in chest. Girdhari Sharma shot fire upon Ram Shlok on his leg. Ram Shlok Sharma fell down and died. Thereafter he came to the police station. His statement was recorded at the place of occurrence after recording the statement of the informant. Before this incident, Shambhu Sharma killed two brothers of Ram Shlok Sharma in which Ram Shlok Sharma was informant and the accused persons put pressure upon him to compromise the case and when the case was not compromised, he was killed.



13.1. P.W.-11 has stated in his cross-examination that he is brother-in-law of the deceased. He was an advocate and practising in Arwal since 1996. He works with Senior Advocate Sri Bashishtha Narayan Singh. He was not informed about two unknown persons. Bush is situated 50 steps away from the place where the first bullet was fired by unknown person. He could not see the accused before firing was made upon his brother-in-law. After the first firing was made, his brother-in-law started fleeing away towards West. He did not follow him. It is further stated that there is only one place of occurrence. The deceased did not sustain any injury besides four firearm injuries. Parshuram Sharma firstly reached at the place of occurrence. He also reached there within five minutes. There was distance of 10 feet between the accused and his brother-in-law at the time of firing. It is also stated that Parshuram Sharma informed the police at 01:30 p.m. Police reached at 04:00 p.m. in the evening and the dead body was lying there. Parshuram Sharma gave his statement orally. Parshuram Sharma put his signature on the fardbeyan. The statements of Triloki Sharma and this witness were recorded at the place of occurrence. He has no knowledge regarding land dispute between the accused and his brother-in-law. He told the



police that Ram Shlok Sharma sustained two bullet injuries on his neck, one bullet injury on his chest and one bullet injury on his leg. He told the police that Triloki Sharma was with him and two persons came from the West whom he did not know. This witness did not tell the police that he saw the accused persons fleeing away. He did not tell the police that land dispute was going on between Shambhu Sharma and the deceased from before. He has denied the suggestion that no such occurrence took place and as he is the brother-in-law of the deceased, therefore, he has falsely deposed.

14. P.W.-12 is the second Investigating Officer of this case. This witness has deposed in his examination-in-chief that he was posted as S.H.O., Pauthu on 17.02.2011. He took over the charge of investigation from Akhileshwar Paswan on 17.02.2011. Akhileshwar Paswan was investigating the matter. This witness identifies the signature put by Akhileshwar Paswan on fardbeyan. He recorded the re-statement of Parshuram Singh who supported the prosecution case. He recorded the statement of witness Shailesh Sharma. He arrested Baikunth Sharma and Shambhu Sharma. He seized mobile phone, SIM and old diary from Shambhu Sharma and prepared seizure list. He had recorded the confessional statement of



Shambhu Sharma.

14.1. P.W.-12 has stated in his cross-examination that witness Shailesh Sharma had stated in his statement that land-dispute was going on with accused Shambhu Sharma and Shambhu Sharma is an active member of M.C.C. It is further stated by this witness that Dhanraj Mistri is not an eye-witness to the occurrence. Rameshwar Sah had stated in his statement that he heard the sound of firing and thereafter came to know about the occurrence.

15. As stated above, the defence has also examined five witnesses.

16. D.W.-1, Umesh Sharma has deposed in his examination-in-chief that on 22.12.2010 he was in Itwa village. He heard about the murder of Ram Shlok Sharma. Ram Shlok Sharma was killed by unknown persons. Shambhu Sharma was not involved in the occurrence. Shambhu Sharma was falsely implicated in this case due to land-dispute and he is innocent.

16.1. D.W.-1 has stated in his cross-examination that at the time murder of the deceased, he was in his sister's house situated in Itwa. Shambhu Sharma was not with him at the time of occurrence. He could not tell plot number and khata number of the land for which dispute was going on. Shambhu Sharma is



also the resident of village Itwa and he is his nephew.

17. D.W.-2, Ram Kripal Sharma deposed in his examination-in-chief that Shambhu Sharma was his villager. He was present at his home on 22.12.2010 at 01:30 p.m. Suresh Sharma and Shambhu Sharma were also with him. They were gossiping. He heard that Ram Shlok Sharma was killed. Unknown persons killed Ram Shlok Sharma and fled away. It is further deposed that Shambhu Sharma was falsely implicated in this case.

17.1. D.W.-2 has stated in his cross-examination that Shambhu Sharma is his nephew. It is not the fact that Shambhu Sharma killed Ram Shlok Sharma.

18. D.W.-3, Ram Badan Sharma has deposed in his examination-in-chief that he knows the informant and accused both of this case. Both are his co-villagers. On 22.12.2010, his co-villager Ram Shlok Singh was killed at about 01:30 p.m. This witness was sitting at the door of Ram Kripal Sharma. Ram Kripal Sharma, Shambhu Sharma, Suresh Sharma and Ramashish Sharma were also with him. They came to know that Ram Shlok Sharma was killed by some unknown persons. Shambhu Sharma did not commit murder of Ram Shlok Sharma. Shambhu Sharma was falsely implicated in this case



due to land dispute.

18.1. D.W.-3 has stated in his cross-examination that Shambhu Sharma was his nephew. He has denied the suggestion that he has falsely stated that on the day of occurrence, Shambhu Sharma and they were sitting at the door of Ram Kripal Sharma. He has also denied the suggestion that he has falsely deposed about the murder of Ram Shlok Sharma by unknown persons.

19. D.W.-4, Ramanuj Sharma has deposed in his examination-in-chief that he was sitting at the door of Ram Badan Sharma with Shambhu Sharma, Ram Badan Sharma, Ikwai Sharma, Siyaram Sharma and 2-4 others. People came shouting that Ram Shlok Sharma was killed by unknown persons. He has stated that Shambhu Sharma was falsely implicated in this case.

19.1. D.W.-4 has stated in his cross-examination that he neither gave any statement to the police nor the police inquired anything from him. Shambhu Sharma is his uncle. He has denied the suggestion that he has falsely deposed that on 22.12.10, Shambhu Sharma was sitting with him.

20. D.W.-5 has deposed in his examination-in-chief that his village is ½ k.m. away from village Itwa. The



occurrence took place on 22.12.2010 at 01:30 p.m. This witness heard the sound of firing. He came to know that Ram Shlok Sharma was killed. He knows Shambhu Sharma since he was born. Ram Shlok Sharma was killed by unknown persons.

20.1. D.W.-5 has stated in his cross-examination that he did not give statement before the police relating to this incident. Shambhu Sharma is not his relative. Ram Badan Sharma and Siyaram Sharma told him to depose in the case.

21. We have considered the submissions canvassed by leaned counsel appearing for the parties. We have also perused the materials placed on record and the evidence led by the prosecution before the Trial Court. In fact, we have re-appreciated the entire evidence.

21.1. It would emerge from the record that P.W.-1 to P.W.-4 have not supported the case of the prosecution and, therefore, they were declared hostile. It is also not in dispute that P.Ws.-5 and 6 are not the eye-witnesses to the occurrence in question. Further, P.Ws.-13 to 16 are the formal witnesses, therefore, the case of the prosecution rests on the deposition given by P.W.-9, who is son of the informant, P.W.-10, who is informant and P.W.-11, who is brother-in-law of the deceased.

21.2. From the deposition given by P.W.-10, the



informant, it would reveal that there are major contradictions in his deposition and the informant has improved his version at the time of giving deposition before the Court. During cross-examination, the said witness has stated that he could not identify the unknown persons who came at the place of occurrence. He has admitted that out of two unknown persons, one person shot fire and the another unknown person has also shot fire while fleeing away from the place of occurrence. He has specifically admitted that the first unknown person shot fire and the bullet hit in the rib cage of the deceased. He has further stated that Shambhu Sharma fired three bullets and the deceased sustained 4-5 firearm injuries. Further he had admitted that after his brother sustained first firearm injury, he reached at the place after 3-4 minutes. He has further admitted that he had shown the place of occurrence to the police officer who came at the place however, the police did not seize tiffin. The police seized the blood stained soil.

21.3. P.W.-9, Triloki Sharma is son of the informant. As per his deposition, when he heard the sound of firing, he rushed to the place of occurrence and thereafter he saw the accused who are named in the said deposition including Shambhu Sharma. The said witness has specifically stated that



one Girdhari Sharma also shot fire and the bullet hit on the leg and chest of the deceased. From the deposition of the said witness, it is revealed that in the agricultural field of the said witness, one Surendra Ram, Ramashish Paswan and other labourers were working. However, it is pertinent to note that the aforesaid witnesses have not been examined by the prosecution. The said witness further stated that the second bullet was fired after five minutes and total six bullets were fired.

21.4. P.W.-11, Pramod Sharma is brother-in-law of the deceased. He has stated in his examination-in-chief that on the date of occurrence, he was present in the field of Parshuram Sharma (informant). At that time, Triloki Sharma was also present with him. It is stated that two unknown persons came at the place. At that time, Ram Shlok Sharma and Parshuram Sharma were taking lunch and out of two unknown persons, one person took out pistol and shot fire on Ram Shlok Sharma. The said bullet did not hit him and thereafter 5-6 person from the bush came out with pistols. The said witness gave the name of three persons in examination-in-chief and it is alleged that Shambhu Sharma shot fire with pistol and two bullets hit Ram Shlok whereas Girdhari Sharma also shot fire and the bullet hit on the leg of Ram Shlok. It is relevant to note that the said



witness is an Advocate and was practicing since 1996.

22. Thus, from the aforesaid deposition of the so called eye witnesses, it is revealed that there are major contradictions in their deposition. There is no reference of name of Triloki Sharma and Pramod Sharma in the fardbeyan given by the informant. It is the specific case of the informant in the fardbeyan that his nephew Santosh was present at the place. The said Santosh has also not been examined by the prosecution whereas the aforesaid two witnesses, who were projected as eye witnesses, are near relatives of the deceased. Even their presence at the place was not natural. As observed hereinabove, as per the case of Triloki Sharma, after hearing the sound of firing he rushed to the place of occurrence and reached there and after five minutes second bullet was fired whereas as per the deposition given by P.W.-11, he alongwith Triloki Sharma had seen one unknown person firing from the pistol.

23. At this stage, we would like to refer the deposition given by doctor, P.W.-7, who had conducted the postmortem on the dead body of the deceased. From the deposition of the said witness, it would reveal that the deceased sustained two bullet injuries and there were two wounds of entry. The bullets were extracted from the body of the deceased



and the same were handed over to the police. The doctor has specifically admitted during cross-examination that he has found only two bullet injuries on the dead body.

24. Thus, the medical evidence does not support the version given by the so called eye witnesses.

25. At this stage, it is pertinent to note that admittedly the first Investigating Officer was not examined by the prosecution. The said officer had conducted the investigation and recorded the statements of the witnesses. One of the so called eye witnesses has stated that the Investigating Officer did not seize the tiffin from the place of occurrence and the police seized blood stained soil. However, when the Investigating Officer is not examined by the prosecution, the defence has lost the opportunity to cross-examine him. It is the specific case of the appellant that because of non-examination of the Investigating Officer, serious prejudice has been caused to him. We are of the view that the said submission canvassed by learned counsel for the appellant is correct. In the facts of the present case, because of the non-examination of the first Investigating Officer, prejudice has been caused to the appellant-convict.

26. It is also revealed from the original record that



there is overwriting in the time and date of recording of the fardbeyan. It is also revealed that there was delay in sending the FIR to the concerned Magistrate court. It is the specific contention taken by learned counsel for the appellant that he has falsely been implicated in the incident in question because of the dispute which was going on between the appellant and family members of the informant.

27. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellant beyond reasonable doubt despite which the Trial Court has recorded the judgment of conviction and order of sentence against the appellant herein. We have also gone through the reasoning given by the Trial Court and we are of the view that the Trial Court has committed serious error while passing the judgment of conviction and order of sentence against the appellant.

28. Accordingly, The instant appeal stands allowed. The impugned judgment of conviction dated 24.07.2017 and order of sentence dated 27.07.2017 passed by learned Ad-hoc Additional District & Sessions Judge, F.T.C.-VI, Aurangabad in connection with Sessions Trial No.247 of 2013/46 of 2017, arising out of Pauthu P.S. Case No. 65 of 2010 dated



22.12.2010 are quashed and set aside and the appellant is acquitted of the charges levelled against him by the learned Trial Court.

28.1. Since appellant, namely, Shambhu Sharma is in jail, he is directed to be released from custody forthwith, if his presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Ramesh Chand Malviya, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.05.2024
Transmission Date	17.05.2024

