

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.1329 of 2017**

Arising Out of PS. Case No.-169 Year-2015 Thana- MUZAFFARPUR TOWN District-  
Muzaffarpur

Prakash Kumar son of Late Bharat Kumar Gupta, Resident of Mohalla- Nai  
Bazar Yadupatti Lane, P.S.- Town, District- Muzaffarpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

**Appearance :**

|                     |   |                                                                                                                                                                |
|---------------------|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant/s | : | Mr. Ajay Kumar Thakur, Advocate<br>Mrs. Vaishnavi Singh, Advocate<br>Mrs. Kiran Kumari, Advocate<br>Md. Imteyaz Ahmad, Advocate<br>Mr. Ritwik Thakur, Advocate |
| For the State       | : | Km. Shashi Bala Verma, APP                                                                                                                                     |

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI  
and  
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA  
ORAL JUDGMENT  
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

**Date : 23-04-2024**

The present appeal has been filed under Section-  
374(2) of the Code of Criminal Procedure, 1973 (hereinafter  
referred as 'Cr.P.C.') challenging the judgment of conviction  
dated 30.08.2017 and order of sentence dated 07.09.2017 passed in  
Sessions Trial No. 562 of 2015 (arising out of Muzaffarpur Town P.S.  
Case No. 169 of 2015, by learned District and Sessions Judge,  
Muzaffarpur by which the appellant/convict has been convicted  
for the offences punishable under Sections-302/34 of I.P.C. and  
27 of the Arms Act and sentenced to undergo life imprisonment



and a fine of Rs. 25,000/- under Section-302 of I.P.C. and in default of payment of fine, further R.I. for two months, R.I. for five years and fine of Rs. 5000/- under Section-27 of the Arms Act and, in default of payment of fine, R.I. for one month and the sentences have been ordered to run concurrently.

2. Heard Mr. Ajay Kumar Thakur, learned counsel for the appellant assisted by Mrs. Vaishnavi Singh, Mr. Ritwik Thakur and Mrs. Kiran Kumari .and Km. Shashi Bala Verma, learned A.P.P. for the respondent-State.

3. The brief facts leading to the filing of the present appeal are as under:

“On 06.03.2015 at about 02:00 p.m. the informant’s son Ujjwal Bhardwaj, aged about 22 years, was going to the Chowk in front of the house. When he reached about 100 metres towards south on the main road near the cow-shed, accused Prakash Kumar, son of Late Bharat Sah, came along with 4 unknown persons, fired at his son and fled away. The informant’s son fell down there itself. The informant was informed about the said incident by his neighbours. When the informant and his family members reached at the place of occurrence, informant’s son Ujjwal Bharadwaj told him that Prakash Kumar, son of Late Bharat Sah was accompanied with



4 unknown persons. It was Prakash Kumar who fired at him and all the accused ran away. The informant took his injured son to S.K.M.C.H., Muzaffarpur in the patrolling Mobile Van of Town Police Station and from there to Maa Janki Hospital, Bairiya, Muzaffarpur for better treatment where, during the course of treatment, he succumbed to the injuries.”

4. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 562 of 2015.

5. Learned counsel for the appellant Mr. Ajay Kumar Thakur, at the outset, submits that though the F.I.R. was recorded on 06.03.2015, the concerned Magistrate Court received the copy of the said F.I.R. only on 08.03.2015. Thus, there is a delay in sending the F.I.R. It is submitted that the Investigating Officer has admitted the said aspect and also admitted that no explanation for sending the F.I.R. belatedly is mentioned in the case diary. Thus, it is contended that the



present appellant has been falsely implicated in the F.I.R. Learned counsel, at this stage, submits that there is no eye-witness to the occurrence in question and the informant, who is father of the deceased, has given his *fardbeyan* after getting information about the occurrence from the neighbours and residents of the locality. However, the independent witnesses like neighbours have not been examined by the prosecution. Learned counsel further submits that the prosecution has also failed to prove the motive on the part of the appellant to kill the deceased. It is also submitted that the time and place of occurrence are also not duly proved by the prosecution by leading cogent evidence and there are different versions both, i.e. with regard to the place of occurrence and time of occurrence. It is submitted that the S.H.O., P.W. 6, has stated during cross-examination that when he returned from the hospital, he found blood-stain on the roof of the building and he had also seen the blood-stain at the place of occurrence in 1ft. radius. However, the Investigating Officer, P.W. 10, has specifically admitted during the course of cross-examination that he did not find any blood-stain at the place of occurrence.

6. Learned counsel Mr. Thakur further submits that there are major contradictions in the depositions given by the



prosecution-witnesses. It is pointed out by the learned Counsel from the record that some of the witnesses have stated that when they reached at the place of occurrence, the injured Ujjwal was conscious and he had given the names of two accused persons, whereas some of the prosecution-witnesses have stated that injured Ujjwal was unconscious. Learned counsel, at this stage, further submits that, admittedly, the chit which was written by the S.H.O. was written by him on the next day of occurrence in which he had stated that injured Ujjwal himself narrated about the occurrence and gave the names of the accused. However, there is no reference about the same in the *fardbeyan* which was given by the informant at Maa Janki Hospital, Muzaffarpur at 17:45 hours on 06.03.2015. Thus, the aforesaid chit is nothing but an afterthought on the part of the informant and the concerned police officer with a view to falsely implicate the present appellant.

7. Learned counsel further submits that the bullet which was recovered from the dead body of the deceased was not sent for necessary analysis to the Ballistic Expert. It is pointed out that empty cartridge was found from the place of occurrence. However, the same was also not sent for necessary analysis. Even the weapon which was used for committing the



alleged crime is also not recovered or discovered.

8. Learned counsel Mr. Thakur further submits that in the inquest report there is a reference with regard to the wound of the deceased being covered by bandage. However, the I.O. has specifically admitted in his cross-examination that he did not record the statement of the doctor who had given the treatment to the deceased nor the medical papers were collected by him. It is also contended that the S.H.O., P.W. 6, has stated that statement of the informant was recorded at S.K.M.C.H., Muzaffarpur by Ahiyapur police. However, the *fardebayan* of the informant was recorded at Maa Janki Hospital, Bairiya, Distt-Muzaffarpur. Thus, there is discrepancy with regard to recording of the statement of the informant. Learned counsel Mr. Thakur would also submit that though it is the case of the prosecution that injured Ujjwal gave his oral dying declaration before some of the prosecution-witnesses and disclosed names of the two accused, the said aspect was not put to the accused while recording his statement under Section-313 Cr.P.C. and thereby prejudice has been caused to the accused/appellant.

9. Lastly, learned counsel would contend that the defence has also examined 5 defence witnesses, including the independent witness Pinku Panwala (D.W. 1), who has stated



that when he heard the sound and reached at the place of occurrence, he saw that Ujjwal was lying in unconscious condition and Ujjwal was not in a position to speak anything as he was unconscious. It is further submitted that other prosecution-witnesses have also stated that there are 3-4 boys named Prakash residing in the same locality and the appellant Prakash was not present in the said village as he had gone to his maternal uncle's house. Learned counsel, therefore, urged that despite the fact that the prosecution has failed to prove the case against the appellant beyond reasonable doubt, the Trial Court has passed the impugned judgment of conviction and order of sentence. He, therefore, urged that the same be quashed and set aside and the present appeal be allowed.

10. On the other hand, learned Additional Public Prosecutor Km. Shashi Bala Verma has opposed the present appeal. She submits that the deceased himself has given the names of the accused persons, including the appellant to the informant and other prosecution-witnesses and, therefore, there is no reason to disbelieve the version given by the prosecution. It is also submitted that though there are no eye-witnesses to the occurrence in question, when the deceased himself has given the name of the appellant to the witnesses, learned Trial Court has



rightly relied upon the said oral dying declaration given by the deceased. It is also submitted that merely because there are certain minor contradictions in the depositions of the witnesses, benefit of the same may not be given to the accused, appellant herein. It is contended that from the evidence led by the prosecution before the Trial Court, prosecution has proved the case against the appellant beyond reasonable doubt and, therefore, the Trial Court has not committed any error while passing the impugned judgment and order. Learned A.P.P., therefore, urged that the present appeal may not be entertained.

11. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

12. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution as well as defence before the Trial Court.

13. Before the Trial Court, prosecution examined 11 witnesses. Defence has also examined 5 witnesses.

14. P.W. 1 Girija Devi is the mother of the deceased. She has stated in her examination-in-chief that the incident took place on 06.03.2015. At about 02:00 p.m., Belu



Chaudhary came to her house and requested her son Ujjwal Bhardwaj to go outside with him, whereas Prakash Kumar stood outside. Acceding to the request, her son went with them. After an hour and a half on hearing an uproar when she went outside, she saw Prakash Kumar fleeing with a revolver and Belu Chaudhary was giving blows with his hands to her son and saying that he has not died as yet. When she went nearer, Belu Chaudhary left the place. At that very moment police van reached there. Her son was conscious at that time. When he was being put into the van, he was uttering that Belu and Prakash had fired at him. He also said that there were three unknown boys also involved in the crime. She has further stated that her son was taken for Medical examination in the police van and her husband had also gone in the jeep. She reached to the Medical College after an hour and a half. She assessed her son's condition to be bad and, as such, got him discharged from there and took him to Maa Janki Hospital, where during the course of treatment, he succumbed to injury after half an hour. She claims to identify the accused Prakash Kumar present in the dock.

14. 1. She has stated in her cross-examination that several persons had gathered at the place of occurrence before she reached there out of whom she knows Pinku Panwala and



Pappu Dhobi. She does not know names of other persons. She has stated that those persons did not try to save her son. She did not talk with anybody. She had heard the uproar at about 2:00 p.m. At that time she was in her house with her husband and daughter. She was first to leave the house, followed by her husband. She has also stated that when her son went out from the house, Prakash Kumar was standing in the lane, which is a busy lane. She remained at the place of occurrence for about an hour, during which she did not talk to anybody.

15. P.W. 2 Santosh Kumar has not supported the prosecution case and he has been declared hostile by the prosecution.

16. P.W. 3 is Raj Narayan Jha who has stated that the incident took place on 06.03.2015 at about 02:00 p.m. On hearing the uproar he and others came outside and came to know that firing has been made. On reaching the place of occurrence, he saw a boy injured with gun-shot, whom he identified to be Ujjwal Bhardwaj. Ujjwal Bhardwaj was uttering that Prakashwa and Belua had fired at him. In a short while, police came at the scene and took the injured to hospital. He had also gone to the hospital afterwards. Ujjwal had also taken the names of Prakash and Belu before the police as the persons who



had fired at him. Ujjwal Bhardwaj died the same day during the course of treatment. Injured Ujjwal Bhardwaj was shot at from near the house of accused Belu Chaudhary.

16. 1. In his cross-examination he has stated that he has friendship with Sunil Sharma for last ten years. Sunil Sharma is uncle of deceased Ujjwal Bhardwaj. He has further stated that he had reached the place of occurrence 2-3 minutes after the occurrence. By that time 10-12 persons had gathered there whose names he does not know. He has stated that the moment he reached at the place of occurrence, Ujjwal Bhardwaj was lying on the earth unconscious and blood was oozing out of his body. Police had reached at the place of occurrence within 10 minutes of the occurrence and had taken him to hospital. The witness did not have talk with anybody. He has also stated that nobody cared to write down the version of Ujjwal Bhardwaj. He has denied to have deposed falsely being the friend of Sunil Sharma.

17. P.W. 4 Sunil Sharma is the uncle of Ujjwal Bhardwaj. He has stated that it was the day of Holi festival. He was at his residence. On the Hulla he came out and came to know that some boy has been shot at. He reached at the place of occurrence and saw that it was Ujjwal Bhardwaj who was shot



at. When he reached there, several persons were present there. He saw that Ujjwal Bhardwaj was writhing in pain and saying that Prakash and Belu had fired at him. Before police also, while being put into the jeep, he stated that Prakash and Belu had fired at him. Police took him to hospital. The witness also went to the hospital. The house of Belu Chaudhary was raided by the police in which bottles of liquor, glass, snacks and an empty cartridge was also recovered from near the gate which was seized and seizure list prepared which bears his signature.

17.1. In his cross-examination he has stated that he had gone to the place of occurrence at about 02:00 p.m. It took him five minutes to reach there. By that several shop-keepers and local residents were present there. Nobody cared to take down or record the statement of Ujjwal. Where Ujjwal was lying, a little amount of blood had spilled, but it was not scattered. Ujjwal was calling his father and mother. He has further stated that he does not know the names of the friends of Ujjwal. He has stated that police had arrived at the place of occurrence five minutes after he reached there. When he reached at the place of occurrence, Ujjwal was writhing in pain and saying that he cannot use his legs and call his father and mother repeatedly. Nobody tried to make him stand up.



18. P.W. 5 Deepak Kumar Sharma is the father of Ujjwal Bhardwaj. He and his family members were at their residence. At about 01:00 p.m. Prakash and Belu came to his house and his son went with them to the house of Belu Chaudhary which is situated within 100 metres to the south of his house. At about 02:00 p.m. he heard the sound of firing and uproar. When he came out, he saw Prakash was fleeing on an R.T.R. Motorcycle with a revolver. The witness rushed to the place of occurrence and saw from some distance that Belu kicked his son and fled away abusing. When he went near his son, he was writhing in pain. Bullet had hit his abdomen and he was lying on the earth. He was saying that Prakash had fired at him and Belu had also assaulted him. In a very short while, his wife and other family members had also come there. Police from Town P.S. reached there and took Ujjwal in police jeep to hospital. He had also boarded the jeep. They took the injured to the Medical College and, on being referred, to Maa Janki Hospital, Bairiya. During the transit, Ujjwal disclosed that Prakash, Belu and three other unknown boys had assaulted him. S.H.O. of Twon P.S. wrote down the same on a plain paper on which the witness put his signature. The witness furnished the said paper to the Court.



18.1. In his cross-examination, he has stated that Darogaji has recorded his statement at Maa Janki Hospital and he had put his signature on the same after going through it. The document which he was producing was handed over to him by Darogaji in presence of D.S.P. on 07.03.2015. He had given the photo copy of the statement of his son written by Darogaji to the Investigating Officer, but he did not give any receiving of the same. He has further stated that before he reached the place of occurrence, almost 10 persons of the locality had gathered there, but he cannot tell their names. After he reached Pinku, Dwarkaji and several others reached, but he cannot tell their names. Police came after about 10 minutes. He did not inform the police about the accused at that place, but in the jeep at about 03:15-03:30 p.m. He is not aware whether police had interrogated anybody at the place of occurrence or not. Police remained at the place of occurrence for about five minutes. Local people were informing the police about the incident. He has stated that he had also stated before the police that when he came out he saw Prakash fleeing away with a revolver and also saw Belu kicking his son. He also saw that his son was writhing in pain and saying that Prakash had fired at him and Belu had also assaulted him. The witness states that he cannot tell how many boys named Prakash



live in the locality. His son had friendship with Prakash and Belu. He cannot tell who were his enemies. He had denied the suggestion that he had not seen any occurrence nor he had heard Ujjwal saying anything. He has also denied that his son was not in a position to say anything because of his injuries and he has falsely implicated the accused to extract money.

19. PW-6 is SHO Manoj Kumar Singh. He has stated that the occurrence is of 06.03.2015. It was Holi festival. He along with other police personnel was on patrolling duty. At 03:00 in the afternoon, he got information that firing is going on in Yadupati lane at New Bazar and someone has received injuries. On such information, when he reached there he saw that a boy had received bullet injury and people were gathered there. He along with his personnel, father of the injured and some local people took the injured to Sadar Hospital in jeep and, on being referred, to SKMCH. Treatment was given at SKMCH. After getting him admitted there, he again returned to the place of occurrence. In jeep, Ujjwal Sharma was in semi-conscious state and was repeating that Prakash had fired at him and Belu was also his accomplice. He has stated that the document which was produced by the informant was in his pen and signature which he had written next day of the occurrence at the house of



the informant. He had just written down as stated by Ujjwal Sharma on way. He identifies the same and the same is marked Exhibit-2.

19.1. In his cross-examination, he has stated that he had sent the formal FIR in the Court on 08.03.2015. He has not furnished any explanation for sending the formal FIR after a delay of 24 hours. He did not register any *sanha* on the information received and he reached at the place of occurrence at about 03:00 PM. Though 40-50 people had gathered at the place of occurrence before he reached, no one detailed the occurrence to him. He also admits that though the father of the injured was very much there but he could not take his *fardbeyan* as he refused to give any statement on the pretext that the condition of his son is deteriorating. Even when he returned from SKMCH, he did not register any FIR or *sanha*. However, police personnel from Ahiyapur PS recorded the statement of the father of the deceased. He was not there at the time of recording the statement. There is no written application about the involvement of Prakash in firing nor he had taken the statement of any one before registering the FIR. He had not made recording of the statement of the deceased. He had not either told anybody in jeep to write down the same. The



statement was not recorded on a mobile. On the next day of occurrence, on the request being made by the local people, he wrote down the version given by Ujjwal Sharma and in presence of DSP, handed it over to the informant. At that moment, investigating officer of the case was also present. He had not mentioned the place and time on the document handed over to the informant. Blood had spread in a radius of 1<sup>ft</sup>. He had not gone to the roof of the house. When he returned from hospital, he went to the roof and found blood there also. He had gone to the place of occurrence second time at about 05:15 p.m. Though he had conversation with the local people but he did not register any FIR. He had denied the suggestion that actually Ujjwal was not in a state to say anything and he had not said anything before him and in collusion with the father of the deceased he had concocted the document and prepared an ante dated FIR.

20. PW-7 is Sunil Kumar Singh. He has just stated that he was accompanying the police party and when he reached at the place of occurrence, a boy was writhing in pain and he was taken to hospital in police jeep. During transit, the boy was taking the names of assailants but he could not decipher the names.

20.1. In his cross-examination, he has stated that



50-100 persons had gathered at the place of occurrence, when he reached. While being put into the jeep the boy was in an unconscious state and was writing in pain and he remained in the same condition till he reached to the hospital.

21. PW-8 is Shiv Pratap Singh. He has stated that on the day of last Holi, he was on law and order duty with SHO Manoj Kumar Singh. A call was received on the mobile phone of the S.H.O. that firing has been made in Yadupati Lane. When they reached there they saw a boy was injured and some local people gathered around. With the help of those persons, the injured was rushed to Hospital in police van. On the way, the boy was taking the names of the assailants as Prakash and Belu.

21.1. In his cross-examination, he has stated that 10-12 persons had gathered at the place of occurrence before he reached out of whom none was of his acquaintance. The injured was in unconscious while being put into the jeep and he remained so till he reached hospital.

22. P.W. 9 is Dr. Vijay Kumar Prasad who had conducted *post mortem* on the dead body of the deceased. He found following *ante mortem* injuries in the body:-

1. One over wound 3/4" x 1" x cavity deep over 2" below umbilicus.
2. wound were inverted and surrounding by blackening



i.e. entry wound.

3. On decescion of abdomen the bullet puncturing the under line muscle, blood vessel and large intestine.

4. Abdomnel cavity was filled with blood and Bullet was recovered and it was seild and handed over to accompanise Chowkidar.

Opinion: The deceased died due to haemorrhage and shock as a result of above mentioned injuries.

Injury caused by fire arm.

Time death: Within 2 to 12 Hrs.

He has further stated that approximately 2 to 3 hours after death Rigour mortis starts.

Rigour mortis complete approximately 12 to 24 hours after death.

23. P.W. 10 Md. Nasim Ahmad is the investigating officer. He has stated that on 06.03.2015 he was posted as Sub-Inspector of Police, posted at Muzaffarpur Town P.S. It was Holi festival. At about 01:30 p.m., an information was received that in Yadupatti, New Bazar, someone has been shot at. Upon such information, he along with S.H.O. Manoj Kumar Singh and police party reached the place of occurrence, took the injured to Sadar Hospital in police jeep from where he was referred to S.K.M.C.H., Muzaffarpur for better treatment. During the course of treatment, the injured died. *Fardbeyan* was received from Ahiyapur P.S. of Deepak Kumar Sharma based on which Town P.S. Case No. 169 of 2015 was registered. The *fardbeyan* received from Ahiyapur P.S. was paginated by S.H.O. Manoj Kumar Singh and the witness put his signature on the same. He identifies the pagination to be done in the pen and signature of



Manoj Kumar Singh. The same is marked as Exhibit-5. He has also identified the signature of S.H.O. Manoj Kumar Singh at two places on the formal F.I.R. The same is marked as Exhibit-6. He has further stated that inquest report was also made available by Ahiyapur P.S. On taking the charge of investigation, he went to the place of occurrence. He signed the seizure list prepared by Baneshwar Kishku. He inspected the place of occurrence is the under constructed three-storied East facing building of Belu Chaudhary, son of Amarnath Chaudhary, from where several articles including two liquor bottles, a glass, snacks were recovered. Outside the gate an empty cartridge was recovered on which K.F. 7.65 was engraved. The same was duly seized in presence of the witnesses and a seizure list was prepared. It was informed by the local witnesses and the informant that in the said under constructed Prakash Kumar and Belu Chaudhary assaulted and injured the victim boy by shooting at him. He has also stated that he again recorded the statement of the informant. Thereafter he recorded the statements of witnesses Sunil Kumar Sharma, Shri Raj Narayan Jha, Girja Devi, Santosh Balribal and Nunu Mishra. He also recorded the statement of S.H.O. Manoj Kumar Singh and other SAP constables. Then he received the *post mortem* report of the



deceased Ujjwal Kumar.

23.1. In his cross-examination, he has stated that he does not remember as to when the information was received at the police station about the incident. He has stated that seizure list was prepared by Daroga Ji of Ahiyapur P.S. before the *fardbeyan* was recorded. He did not record statement of any treating doctor nor he procured any document regarding treatment. He did not mention the timing of recording of statement of any of the witnesses. During the course of investigation, he did not receive any written letter by the S.H.O. He had not found any blood-stain or spot at the place of occurrence. He did not recover/discover the pistol allegedly used in the crime. No figure print was obtained found the place of occurrence. He could not ascertain whether the informant side and defence side were on inimical terms or not. He did not seize the cloth with which the dead body was covered. He has denied the suggestion that witness Deepak Kumar Sharma had stated before him that when he came out, he saw that accused Prakash was fleeing with a revolver on an RTR Motorcycle. He has denied the suggestion that he had conducted a faulty investigation and that he had himself at his own written the statement in the name of witnesses.



24. PW-11 is Akhishleshwar Sharma, he has stated that on 06.03.2015, he was posted as ASI at Ahiyapur P.S.. On that day, he was on deputation at Janki Hospital. He has admitted to have recorded the *fardbeyan* of Deepak Kumar Sharma, father of deceased Ujjwal Bhardwaj. He had read over the same to the informant and finding the same correct, the informant put his signature on the same as also his brother Sunil Sharma. The witness also put his signature on the *fardbeyan* which he identifies as Ext.-7. Since, the incident had taken place within the jurisdiction of Town P.S., Muzaffarpur, the *fardbeyan* was forwarded to SHO, Town P.S., Muzaffarpur. He also identifies the forwarding note on the *fardbeyan* to be in his pen and signature as Ext.-7/1. The inquest report of the deceased was prepared at Maa Janki Hospital on his instruction by Jamadar R.K. Singh on which two independent witnesses had put their signatures. The said inquest report was prepared through carbon process. He has put his signature on the inquest report with date. He has identified the same at Ext.-8.

24.1. In his cross-examination, he has stated that before recording the present *fardbeyan*, he had recorded *fardbeyans* of so many other persons. He had interrogated the family members of the deceased before preparing the *fardbeyan*.



He has denied the suggestion that he had recorded the *fardbeyan* in collusion with the informant. He has also stated that the inquest report which he has identified in the court is the carbon copy. Where is the original copy, he doesn't know. He had seen the bullet mark on the body of the deceased at the time of preparing the report. Para 5 of the inquest report deals with the injury covered with bandage and para 8 describes the cause of death to be by gun-shot injury. He had not seen the actual injury under the bandage. He has also stated that the Investigating Officer had not taken his statement. He has denied the suggestion that the inquest report given by him is false and misleading.

25. DW-1, Pintu Kumar @ Pintu Panwala has stated that on the day of Holi, he was at his betel shop. On hearing the sound of firing, he went to the place of occurrence. When he reached near the temple, he saw that Ujjwal was lying unconscious and local people had gathered around. Someone informed the police on which police arrived and took Ujjwal. He knows 2-3 boys by the name of Prakash in New Bazar. As long as, he was present near Ujjwal, Ujjwal was unconscious and was not speaking anything and was lying injured.

25.1. In his cross-examination, he has stated that he



has not received any notice from the Court. He had come to depose on the request made by Deepak Chaudhary, brother of Prakash. He had come to depose in the case lodged in connection with the murder of Ujjwal. He has stated that Prakash is in custody for allegedly killing the deceased Ujjwal. He has denied the suggestion that he had come to depose in collusion with either side. He had not met any police official on the day of occurrence. When he reached the place of occurrence, 30-40 persons were present. He had denied the suggestion that he had deposed with a view to help Prakash.

26. DW-2, Virendra Kumar, has stated that on 06.03.2015, he was at his house. In the afternoon, he heard an uproar. He went to the place of occurrence which is near the house of Belu Chaudhary and saw that near the temple, a boy was lying injured and unconscious. He saw Pintu Panwala and Pappu Dhobi present there. Thereafter, police arrived. He came back home. He had also stated that there are 3-4 boys in the locality named Prakash. He had not seen Prakash, who is in custody, with Ujjwal that day.

26.1. In his cross-examination he has stated that he had not received any notice from the Court. Police had not taken his statement. He had come to depose being called by the



brother of Prakash. He heard that Ujjwal has died due to being shot at. The boy who had received gun-shot was lying on the place of occurrence. He had denied the suggestion that he had come to depose with a view to save Prakash on the instruction of his brother.

27. DW-3, Anil Chaudhary, has stated that accused Prakash is his cousin nephew (*Bhagina*). Prakash had gone to the house of his maternal uncle on 02.03.2015. The witness had met him. On 03.03.2015, Prakash suddenly fell ill as he suffered loose motions. He was taken to the clinic of Dr. Harishankar Chaudhary. The witness had also gone with him. He was discharged on 08.03.2015.

27.1. In his cross-examination, he has stated that he had not received any notice for giving his evidence. He was not recorded by the police. He had come to depose in a 302 case in which Prakash is the accused. He has denied the suggestion that he had given false deposition. He has denied the suggestion that on the day of occurrence, Prakash was at Muzaffarpur and he had fired at Ujjwal due to which he died. He has also denied the suggestion to have given false deposition being the relative of Prakash.

28. DW-4 is Pawan Chaudhary. He has stated that



Prakash is his sister's son. On 02.03.2015, he had come to his house. Except this, he has just repeated the version of DW-3.

29. DW-5 is Dr. Harishankar Chaudhary. He has stated that he is the owner of Sanjeevani Chikitsalaya situated near Punjab National Bank, Sonapur. Patients are admitted in exigency. On 03.03.2015, Prakash was admitted there. He was running loose motions. He was admitted for two days. He was discharged on 04.03.2015. He had again come to his clinic on 08.03.2015. He has identified the prescription to be in his pen in signature. He also identified the patient present in the Court. The prescription is marked as Ext.-A.

29.1. In his cross-examination, he has stated that Sanjeevani Chikitsalaya runs in a rented house. It bears three rooms. Name of the owner is Vijay Singh. He shows his inability to produce any rent slip. He has denied to have any further knowledge about the present occurrence. He does not know whom Prakash has killed and that Prakash is in Jail. He has denied the suggestion that he had not at all treated Prakash Kumar and had given a false prescription to favour the accused. He has also denied the suggestion that he has given false deposition as he knew Prakash Kumar from before.

30. It would emerge from the evidence that



*fardbeyan* of the informant was recorded on 06.03.2015 at about 17:45 hours at Maa Janki Hospital, Bairiya, Distt- Muzaffarpur. From the *fardbeyan* it is revealed that the informant is not an eye-witness to the occurrence and he got the information from his neighbours. After getting the information with regard to the assault being made on his son, informant along with his family members reached at the place of occurrence and it is stated that when they reached at the place of occurrence, his son Ujjwal informed him that Prakash Bhardwaj came at the place of occurrence with four unknown persons and he shot fire. It is also revealed from the *fardbeyan* that thereafter the police jeep came at the place of occurrence and the injured was taken to S.K.M.C.H., Muzaffarpur in the said jeep and from there shifted to Maa Janki Hospital, Bairiya, Distt- Muzaffarpur for further treatment and during the course of treatment his son died.

31. It is relevant to note that the said information was given on 06.03.2015 which was registered as formal F.I.R. However, from the record it is further revealed that the concerned Magistrate Court received the copy of the F.I.R. on 08.03.2015. Thus, there is a delay in sending the F.I.R. to the concerned Magistrate Court and it is the specific case of the defence that the F.I.R. is back dated wherein he has been falsely



implicated. It would further reveal from the record that though the informant has not given the name of one Belu Chaudhary in the *fardbeyan*, during the course of the trial, some of the prosecution-witnesses have deposed before the Court that injured Ujjwal gave the name of Prakash Kumar (appellant) and one Belu Chaudhary. P.W. 1, mother of the deceased, has for the first time stated before the Court in her examination-in-chief that after hearing the Hulla when she came out from her house, she had seen that Prakash Kumar (appellant) fled away from the place with the revolver and one Belu Chaudhary was giving fist blows to Ujjwal and thereafter Belu Chaudhary also fled away from the place. It is pertinent to note that the informant has not stated about the aforesaid aspect in the *fardbeyan* which was recorded after a few hours of the occurrence.

32. It would further reveal that P.W. 2 has not supported the case of the prosecution and he was declared hostile. P.W. 3 and P.W. 4 are near relatives of the informant and the deceased. P.W. 3, who is a friend of the uncle of the deceased, has admitted during cross-examination that when he reached at the place of occurrence, he found Ujjwal lying on the earth and he was unconscious. Blood had also spilled on the earth and within 10 minutes police reached at the place of



occurrence. P.W. 4 is uncle of the deceased and brother of the informant. The said witness, in his examination-in-chief, has stated that when he reached at the place of occurrence, Ujjwal was writhing in pain and saying that Prakash and Belu had shot at him. Ujjwal has also given the names of the assailants to the police. The said witness has specifically admitted during cross-examination that when Ujjwal had narrated about the occurrence, nobody bothered to reduce the same into writing or record the voice.

33. From the deposition given by the informant, P.W. 5, it is revealed that the said witness has improved the version and, for the first time, before the Court he has stated that when Ujjwal was taken to the hospital in jeep, he had given the name of Prakash Kumar, Belu Chaudhary and three other unknown persons and the S.H.O. of Muzaffar Town Police Station has written the same on the plain paper and also signed the same. The said writing was produced before the Court for the first time by the said witness. During cross-examination, the said witness has admitted that on the next day Darogaji handed over the said paper to the informant in presence of D.S.P. He has further admitted that when police reached at the place of occurrence, he did not inform about the name of the assailants



and on the way in the jeep he told about the name of the assailants.

34. P.W. 6, who is S.H.O. of Muzaffarpur Town Police Station who took the injured Ujjwal to the hospital in his jeep, has admitted during cross-examination that he had sent the formal F.I.R. to the Court on 08.03.2015 and he has not given any explanation for sending the F.I.R. after 24 hours. He has also stated that the personnel of Ahiyapur P.S. had recorded the statement of the father of the deceased at S.K.M.C.H., Muzaffarpur. The said witness further stated in cross-examination that at the place of occurrence blood was found in 1<sup>ft.</sup> radius and when he returned from the hospital, and examined the place of occurrence, he also found blood on the roof. The said witness has also stated that Ujjwal was in semi-conscious condition.

35. P.W. 7 and P.W. 8, who are also police officers who have travelled with the S.H.O., P.W. 6, in the jeep and reached at the place of occurrence, have admitted during cross-examination that when the injured was loaded into the jeep, he was unconscious and he remained so till they reached to the hospital.

36. P.W. 10, the Investigating Officer, has stated



that when he had gone to the place of occurrence, he had seized certain articles, including one empty cartridge on which K.F. 7.65 was written. The said witness has stated during cross-examination that he had not recorded the statement of the doctor who had given treatment to the deceased nor he had collected the medical papers with regard to treatment given. He did not find any blood stain at the place of occurrence. He did not seize the clothe of the deceased. He has specifically stated that during the course of investigation it was not revealed that the accused was having any enmity with the accused or not.

37. P.W. 11 has stated in cross-examination that at the time of preparation of the inquest report, he found mark of injury with bullet and there is reference in para-5 of the inquest report about the wound being covered with a bandage.

38. D.W. 1, who is an independent witness, has reached at the place of occurrence and he has stated in his deposition that Ujjwal was unconscious. At this stage, it is pertinent to note that P.W. 1, who is mother of the deceased, has referred the name of this witness, i.e. Pinku Panwala, in para-5 of her deposition wherein she has stated that Pinku Panwala Pappu Dhobi also reached at the place of occurrence.

39. Thus, from the aforesaid deposition of the



prosecution-witnesses, we are of the view that there are major contradictions and improvement in the deposition of the prosecution-witnesses. The independent witnesses like police officers and defence witnesses have stated that the injured was unconscious when they reached at the place of occurrence. Thus, a *bona fide* doubt is raised with regard to the oral dying declaration given by the injured Ujjwal before the informant or other prosecution-witnesses. There are two versions with regard to the time of the occurrence as well as the place of occurrence. The Investigating Officer has also stated that the incident took place in an under constructed property and the S.H.O., P.W. 6, also found blood on the roof of the under constructed building. However, as per the case of the informant and other relatives of the deceased, the occurrence took place in the lane. P.W. 6 has stated that blood was seen in a radius of 1<sup>ft</sup>. at the place of occurrence. However, P.W. 10, the I.O., did not find any blood at the said place. It is also pertinent to note that the S.H.O. has specifically stated that he had written on the paper on the next day i.e. on 07.03.2015 about the manner of occurrence as described by the injured to him, whereas some of the prosecution-witnesses have stated that it was written in the jeep by the S.H.O. and one of the prosecution-witnesses has stated



that nobody had reduced the version of injured Ujjwal in writing on a paper nor the voice was recorded. It is also required to be noted that even this aspect of so-called oral dying declaration given by injured Ujjwal before the witnesses was not put to the appellant accused when his statement was recorded under Section-313 Cr.P.C. and it is the specific contention taken by the defence that because of the same great prejudice has been caused to the accused appellant.

40. It is an admitted position that there is no eye-witness to the occurrence in question and, therefore, the motive to kill the deceased by the appellant accused assumes importance. However, the prosecution has failed to prove the motive on the part of the appellant to kill the deceased. Even the weapon/pistol from which alleged firing took place was also not recovered/discovered by the Investigating Agency. Further, the empty cartridge and the bullet which was recovered from the dead body of the deceased were also not sent for necessary analysis to the F.S.L.

41. 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/accused beyond reasonable doubt, despite which the Trial Court has recorded the



impugned judgment of conviction and order of sentence. As such, the same are required to be quashed and set aside.

42. Accordingly, the impugned judgment of conviction dated 30.08.2017 and order of sentence dated 07.09.2017 passed by the learned District and Sessions Judge, Muzaffarpur, in connection with Sessions Trial No. 562 of 2015 (arising out of Muzaffarpur Town P.S. Case No. 169/2015) are quashed and set aside. The appellant, namely Prakash Kumar, is acquitted of the charges levelled against him by the learned Trial Court.

43. Since the appellant is in jail, he is directed to be released from custody forthwith, if his presence is not required in any other case.

44. The appeal stands allowed.

**(Vipul M. Pancholi, J)**

**(Sunil Dutta Mishra, J)**

K.C.Jha/-

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