

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.917 of 2017

Arising Out of PS. Case No.-146 Year-2014 Thana- DESARI District- Vaishali

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Anjani @ Anjani Kumar Singh @ Raushan Son of Umesh Singh @ Narayan Ji Kumar Singh, R/o Village Rampur Baghail, P.S. Desari, District Vaishali at Hajipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant	:	Mr. Ajay Kumar Thakur, Advocate
		Mr. Nagendra Kumar Singh, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP
For the Informant	:	Mr. Nazmul Hoda, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

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

Date : 04-07-2024

This appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘the Code’) against the judgment of conviction dated 22.05.2017 and order of sentence dated 25.05.2017, passed by learned Additional Sessions Judge-IV, Vaishali, Hajipur in Sessions Trial No.101 of 2015, arising out of Desari P.S. Case No.146 of 2014 whereby the court has convicted the appellant for the offences punishable under Sections 302/34 and 120B of the Indian Penal Code as well as under Section 27 of the Arms Act and he has been sentenced to undergo imprisonment for life and a fine of Rs.15,000/- under Sections 302/34 and 120B of the Indian Penal Code and in default



of payment of fine, he is further sentenced to undergo simple imprisonment for six months. The appellant has further been sentenced to undergo imprisonment for seven years and a fine of Rs.10,000/- for the offence punishable under Section 27(2) of the Arms Act and in case of default of payment of fine, he is further sentenced to undergo simple imprisonment for five months. The sentences have been directed to run concurrently.

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

2.1 *Fardbeyan* of Surjmani Kumar @ Chhotu Kumar came to be recorded on 11.06.2014 at 08:35 hours wherein the informant has stated that on 11.06.2014 at 06:45 hours, he alongwith his uncle, namely, Vinod Kumar Singh proceeded for his village from *Guru Chowk* by motorcycle of his uncle bearing registration number BR-31J 9633 having sacks of rice and fruits. His uncle was sitting behind him with the goods. As soon as he reached at the door of Kali Singh, one black coloured CBZ motorcycle overtook his motorcycle, which was being driven by Tarkeshwar Singh and appellant, Anjani @ Raushan was a pillion rider. It is alleged that Anjani @ Raushan shot fire at his uncle which hit him between right eye and eyebrow. After sustaining gunshot injury, his uncle fell down on the ground with goods and died instantaneously. Thereafter both the accused fled away after parking their CBZ motorcycle near the house of Mantu Singh



Mukhiya. The CBZ motorcycle belongs to Mantu Singh Mukhiya. The reason behind the occurrence is that 20 days before, Anjani Kumar @ Raushan, Tarkeshwar Singh @ Major and Guddu Singh dragged the daughter-in-law of his uncle from her house to Hajipur and tried to lodge a case of dowry and harassment against Vinod Kumar Singh so that his family would go to jail or abscond from the village and after grabbing his land the accused persons would make a lane on that land. The said plot is situated in front of the house of Tarkeshwar Singh. When the case could not be registered in court due to some reason, the case under Dowry Act was lodged in Sahdev O.P. Tarkeshwar Singh @ Major gave Rs.88,000/- to the cousin of the informant, namely, Jitendra Kumar for the purpose of constructing house but Jitendra Singh after ten months returned Rs.90,000/- to Tarkeshwar. Thereafter Tarkeshwar told that he had lent the money for the plot situated in front of the house. He further told that either register that plot or return that money with interest @ 5% otherwise someone would be killed from his family. For this reason, his uncle has been killed.

2.2 After registration of the formal FIR on the basis of the aforesaid *fardbeyan*, the Investigating Agency started investigation. During course of investigation, the Investigating Officer recorded the statement of the witnesses, collected the evidence and thereafter filed charge-sheet against the appellant.



2.3 The case was exclusively triable by court of sessions and, therefore, the learned Magistrate committed the same to the concerned sessions court where the same was registered as Sessions Trial No.101 of 2015.

2.4 During course of trial, the prosecution had examined 11 witnesses. The defence has also examined 4 witnesses. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court convicted the appellant for the aforesaid offences as stated hereinabove.

2.5 Against the judgment of conviction and order of sentence passed by the learned Trial Court, the appellant has filed the instant appeal.

3. Heard Mr. Ajay Kumar Thakur, learned counsel for the appellant Mr. Sujit Kumar Singh, learned APP for the State as well as Mr. Nazmul Hoda, learned counsel appearing on behalf of the informant.

4. Mr. Ajay Kumar Thakur, learned Advocate for the appellant submits that *fardbeyan* of the informant was recorded at the place of incident at 08:35 p.m. However, it is not coming out from the record that who had informed the police about the incident and on what basis the police arrived at the place of occurrence. It is further submitted that from the deposition given



by the prosecution witnesses, it is revealed that except informant (P.W.6), there is no eye witness to the incident and other witnesses reached at the place of incident after the incident took place. At this stage, it is submitted that prosecution has failed to examine the independent witnesses whose presence would be natural at the place, i.e., the persons who were residing near the place of incident.

4.1. Learned Advocate for the appellant further submits that ASI, Ashok Kumar Singh had recorded the *fardbeyan* of the informant. However, the said witness has not been examined by the prosecution and, therefore, prejudice has been caused to the defence. It is also contended that the Investigating Officer (P.W.10), Binay Kumar Singh, who carried out the investigation, has specifically admitted during cross-examination that he did not seize the blood from the place of incident nor had he received the blood stained clothes of the deceased as well as the informant. Even the two motorcycles referred by the informant in the *fardbeyan* have also not been seized by the investigating agency. At this stage, it is also submitted that the Investigating Officer did not find any sack of rice at the place of incident. Learned counsel for the appellant, therefore, urged that the prosecution has failed to prove the case against the appellant beyond reasonable doubt. It is further submitted that the Investigating Officer has seized one 9



mm empty cartridge from the place. In fact, the said cartridge can be used in automatic weapon whereas as per the case of the informant/eye witness, firing was made from pistol.

4.2. Learned counsel for the appellant thereafter referred the deposition given by Dr. Krishna Chandra (P.W.7) who has conducted postmortem on the dead body of the deceased. It is contended that two external injuries were found on the body of the deceased. The second injury is one lacerated wound with inverted margin of approximately 3" diameter. It is also submitted that injuries no.1 and 2 are not corresponding to each other. Learned counsel, therefore, contended that the medical evidence does not support the case of the so called eye witness.

4.3. Learned counsel thereafter contended that because of the admitted land and family dispute between the parties, the appellant herein has falsely been implicated. Learned counsel, therefore, urged that the present appeal be allowed and the impugned judgment of conviction and order of sentence may be quashed and set aside.

5. On the other hand, Mr. Sujit Kumar Singh, the learned APP for the State as well as Mr. Nazmul Hoda, learned counsel appearing on behalf of the informant have vehemently opposed this appeal. It is jointly submitted by learned APP as well as the learned Advocate for the informant that the informant is the



eye witness to the incident in question. The deposition given by the said witness is trustworthy and the said witness can be said to be sterling witness. The other prosecution witnesses have also supported the case of the prosecution who had reached at the place of occurrence immediately after the incident took place. Further, the medical evidence supports the version given by the eye witness and the injury was found on the body of the deceased as described by the informant. It is further submitted that the Investigating Officer also found blood at the place of incident and one empty cartridge was also found. Thus, merely because there is some lacuna on the part of the Investigating Officer in conducting the investigation, benefit of the same may not be given to the accused. It is also submitted that the appellant has got criminal antecedent and he has also been convicted by the Trial Court in another case. Learned APP as well as learned Advocate for the informant urged that this appeal be dismissed.

6. We have considered the submissions canvassed by learned counsel appearing for the parties, we have also perused the materials placed on record, the evidence led by the prosecution and the defence before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined 11 witnesses. The defence has also examined 4 witnesses.

7. P.W.1, Jitendra Kumar Singh has stated in his



examination-in-chief that the occurrence took place on 11.06.2014. Vinod Kumar Singh was his uncle. He went to Guru Chowk with Suryamani Singh on motorcycle for purchasing rice. When they were returning and reached in front of the door of Kalika Singh, Raushan Singh and Tarkeshwar Singh came there with a CBZ motorcycle. Tarkeshwar Singh was driving the motorcycle and Raushan Kumar Singh shot fire at his uncle and his uncle died. His uncle was killed due to land dispute.

7.1 During cross-examination, the said witness has stated that land dispute was going on between Vinod Kumar Singh and Tarkeshwar Singh. His uncle had no enmity with Raushan Kumar Singh. When he reached at the spot after hearing noise, he saw his uncle lying dead. When he reached at the spot, his father, uncles and other villagers were present. They did not bring the deceased in the hospital. The police recorded his statement at about 04:00 p.m. at his door one day after the occurrence. The police did not record statement of anyone at the place of incident in his presence. They came to Sadar Hospital, Hajipur with the dead body alongwith police. 15-20 houses are situated near the place of incident. Ramesh Singh, Rajeshwar Singh, Tuntun Singh, Shambhu Singh and others reached at the spot.

8. P.W.2, Parmeshwar Kumar has stated in his examination-in-chief that the occurrence took place on 11.06.2014.



He was near Durga *Mandir* (temple) situated in his village. It was 7 O'clock in the evening. After hearing the sound of firing, he went to the place and saw that Tarkeshwar Singh was driving motorcycle and Anjani Kumar @ Raushan was sitting behind him. Anjani Kumar shot fire at Vinod Singh. Vinod Singh fell down on the road after sustaining gunshot injury. The bullet hit on the upper part of right eye of Vinod and he died. The occurrence took place due to a land dispute.

8.1 During cross-examination, this witness has stated that the police recorded his statement on 28.06.2014 at the place of occurrence. His statement was recorded at the place of occurrence at 10 O'clock in the morning. Bipin Kumar and Vijay Singh were also present at the place of incident. When he reached at the place of incident, 100 persons were present there. The dead body was soaked in blood. There was blood on the ground as well. This witness had not stated before the police that the house of Guddu Singh was situated just in front of the place of incident and he was talking on phone standing there. He had also not stated that after murder he went into his house and closed the door. He had not stated that Guddu Singh is innocent. He had stated before the police that land dispute was going on between Vinod Singh and Tarkeshwar Singh. He had not stated before the police that Suryamani informed him that Anjani @ Raushan shot fire.



Suryamani @ Chhotu and many persons also arrived after his arrival.

9. P.W.3, Satendra Singh has deposed in his examination-in-chief that the occurrence took place on 11.06.2014 at about 07:00 p.m. He was walking on the village road at that time. Suryamani was coming from Guru Chowk on motorcycle and sack of rice was kept behind. When they reached in front of the house of Kali Singh, another CBZ motorcycle overtook them and Raushan Kumar Singh shot fire at Vinod Singh. Tarkeshwar Singh was driving the CBZ motorcycle. Vinod Singh died at the spot. This witness further deposed in his examination-in-chief that police came and prepared the inquest report and he had signed on it. The reason for the occurrence is land dispute.

9.1 During cross-examination, P.W.3 stated that the police came at 09:00 p.m. and prepared the inquest report at 09:30 p.m. The police had mentioned in the inquest report that blood and hole was found in the cloth. This witness also stated in his cross-examination that Vinod Kumar Singh was his brother. Raushan @ Anjani has no personal enmity with his uncle. The motorcycle fell on the left side of the road. Blood was found on the shirt of Suryamani Kumar in the back side. He found blood on the earth in 3-4 feet diameter. The body of Vinod Kumar Singh was soaked in blood. Many people assembled at the place of occurrence.



Parmeshwar Kumar, Jitendra Kumar, Raghuvansh Prasad Singh, Ranjeet Kumar Singh, Vijay Kumar Singh etc. arrived at the place of incident after his arrival. The police had not seized the motorcycle.

10. P.W.4, Vijay Kumar Singh has deposed on the same line in his examination-in-chief regarding date and time of the occurrence. This witness further deposed that he was returning to his home from Mahnar. When he reached at the door of Kalika Singh, he saw that Suryamani was driving motorcycle and Vinod Singh was sitting behind him and they were going towards their home. He further deposed that Tarkeshwar was driving another CBZ motorcycle and Anjani @ Raushan was pillion rider. Tarkeshwar overtook the motorcycle of Suryamani and Anjani @ Raushan shot fire at Vinod Singh which hit him on the upper part of his right eye resulting into his death.

10.1 During cross-examination, this witness has stated that the police came at the place of incident at 09:00 p.m. The police prepared the inquest report in his presence. Voter I-Card, money and spectacles were recovered from the dead body and he cannot say that police prepared the seizure list of recovered article. His statement was recorded before the police on 12 at 05:00 p.m. at the place of occurrence. Statements of Satyendra Singh, Jitendra Singh, Bipin, Parmeshwar etc. was recorded prior



to recording of his statement. Blood also fell on the earth. This witness further stated in his cross-examination that he cannot say that Anjani @ Raushan had personal enmity with Vinod Kumar. There is no enmity between Anjani and him. Blood was found on the cloth of Suryamani in the back side. Head of Vinod Singh was in the southern direction and his leg was in the northern direction. He has denied the suggestion that he had stated before the police that when he was at his home, he reached at the place of occurrence after getting information and saw Vinod Kumar lying dead.

11. P.W.5, Bipin Kumar has deposed in his examination-in-chief that he was returning from his shop to his home at the relevant point of time and when he reached near the house of Kali Singh, he saw a CBZ motorcycle which was being driven by Tarkeshwar Kumar and Anjani Kumar was pillion rider. They overtook the motorcycle of Vinod Singh and shot fire at him. The motorcycle of Vinod Singh was being driven by his nephew Suryamani.

11.1 During cross-examination the said witness stated that he knows Suryamani Singh, the informant of this case. The police recorded his statement one day after the occurrence. He has denied the suggestion that he had not stated before the police that he was returning from his shop to his house and when he reached



near the house of Kali Singh, he saw that Tarkeshwar Singh was driving a motorcycle and Anjani Kumar was pillion rider and they overtook the motorcycle of Vinod Singh and shot fire at him and Vinod Singh died after sustaining gunshot injury. This witness further stated in his cross-examination that Anjani is a shooter and he also threatened him. When he started returning from the shop of Lakhan Sah, he heard the sound of firing. Blood was found on the body of Vinod.

12. P.W.6, Surajmani Kumar Singh @ Chotu is the informant of this case. This witness has stated in his examination-in-chief that occurrence took place on 11.06.2014 at 06:45 p.m. He was returning with his uncle Vinod Kumar Singh from Guru Chowk after marketing to his home. He was driving the motorcycle and his uncle was sitting as pillion rider. When they reached near the house of Kali Singh, Tarkeshwar Singh overtook their motorcycle and Raushan Kumar Singh shot fire at Vinod Singh which hit him in the middle portion of his right eye. Vinod Singh fell down after sustaining gunshot injury and died within 1-2 minutes. Tarkeshwar Singh and Raushan Singh were on black coloured CBZ motorcycle which motorcycle belonged to Shiv Kumar Mantu Singh. The accused parked the motorcycle at the door of Mukhiya Ji and fled away. Daroga Ji, namely, Ashok Kumar came at the place of occurrence and recorded his statement.



His father Late Raghuvansh Singh was also present there and he also put his signature. His father is no more. The police recorded his re-statement on the next day at 02:30 p.m. When the police recorded his statement, at that very time, the police also prepared inquest report and he had signed on it.

12.1. The said witness, i.e., the informant has stated in his cross-examination that he saw the motorcycle of the accused but he does not know its number. The police could not seize that motorcycle. S.I., Ashok Kumar Singh is alive now. The police did not seize motorcycle, sack and polythene. After sustaining gunshot injury, his uncle fell down on the ground and blood also fell on the ground. His motorcycle was ahead of the motorcycle of the accused and they overtook my motorcycle and shot fire. The shooter shot from the front. His vehicle was stopped at the time of shooting. The accused also shot after parking their vehicle. The accused had no enmity with him or his uncle. I have no driving licence.

13. P.W.7, namely, Dr. Krishan Chandra is the doctor who has conducted postmortem on the dead body of the deceased. The doctor found the following antemortem injuries:

- (1) In the head a circular lacerated wound of approx 1" diameter with aborted margins associated with blackening and charring in the inner side of right eye brow.
 - (2) One lacerated wound with inverted margin of approx 3" diameter was seen on the left side of the occipital, bone just below the left ear.
- No external injuries found on neck, chest,



abdomen.

(3) On dissection – In Head – skull bone were fractured with laceration of meninges and brain tissues.

A small stone piece of approx 1” x 1” was intertongued in the right occipital hair lock.

Neck muscles – intact

Chest – lungs and pleura intact

Heart – All chambers empty

Abdominal viscera – intact

Stomach – containing some digested particles.

Small gut containing semi digested food and large gut contains foul smelling liquid and gas.

Private parts – NAD

No bullet found

Opinion – In my opinion the cause of death is come due to above mentioned injuries to skull and brain.

13.1. The doctor has stated in his cross-examination that the dead body was not identified by any relative of the deceased. Fire arms generally causes two injuries one exit wound and one entry wound. He has not specifically written about the entry wound and the exit wound, but both the wounds were present.

14. P.W.8 is Shiv Kumar who has deposed in his examination-in-chief that he knows S.I. Ashok Kumar Singh. Ashok Kumar Singh has prepared the inquest report on 11.06.2014.

14.1. P.W.8 has stated in his cross-examination that he had gone to his relative's place in connection with a case. He cannot remember the number of the case. It is not true that he has falsely deposed.

15. P.W.9, Nirbhay Kumar has deposed in his



examination-in-chief that he was posted as In-charge of Sahdeyi (O.P.) on 19.06.2014. He took charge of investigation of Desari P.S. Case No.146 of 2014 on 19.06.2014 from Binay Kumar Singh. He raided the houses of Anjani @ Raushan, Tarkeshwar Singh @ Major and Guddu Singh. They were found absconding. He recorded the statement of independent witness Parmeshwar Kumar @ Pancham on 28.06.2014 and this witness has supported the case of the prosecution. On 26.08.2014 Anjani @ Raushan surrendered in the police station and confessed his guilt. Anjani @ Raushan disclosed that he has thrown the pistol in Ganga. Criminal antecedent was found against him. He identified the writing and signature of ASI Ashok Kumar. The seizure list is in handwriting and signature of ASI Ashok Kumar.

15.1. P.W.9 has stated in his cross-examination that he has recorded the re-statement of the informant. He has not inspected the place of incident. He has recorded the statement of an independent witness Parmeshwar Kumar. He has recorded the re-statement of the informant without inspecting the place of occurrence. He has recorded the statements of prosecution witnesses. This witness has stated in his cross-examination that Parmeshwar had stated in his statement that when he reached there, Vinod Singh was lying dead. Chhotu @ Suryamani told that Anjani shot fire.



16. P.W.10 is Binay Kumar Singh who has deposed in his examination-in-chief that on 12.06.2014 he was posted as Police Sub Inspector in Sahdeyi O.P. (P.S. Deoki). On 12.06.2014 he took charge of investigation of the case. He recovered spectacles, Voter I-Card, Bihar, Identity Card, *Khaini* (tobacco) and one 9 mm empty cartridge from the deceased Vinod Kumar. He prepared the seizure list of the aforesaid articles. The empty cartridge was deposited in *Malkhana* and other articles were handed over to the brother of the deceased. He recorded the re-statement of the informant. He recorded the statement of Raghuvansh Singh. This witness inspected the place of incident. In the middle of the road, there is mark of blood. At this place, the deceased was killed by the appellant. He has recorded the statement of Satyendra Singh. This witness also recorded the statements of Jitendra Kumar Singh, Ramesh Singh, Vijay Kumar, Anil Kumar, Bipin Singh, Mukhiya Shiv Kumar, Kaliya Singh, Ranjeet, Kamakhya Narayan Singh, Manjeet Singh and Arvind Singh.

16.1. P.W.10 has stated in his cross-examination that Jitendra Singh had stated in his statement that on 11.06.2014 at 07:15 p.m., Suryamani came running and informed that Anjani Kumar @ Raushan shot fire at his uncle while he and his uncle were coming on a motorcycle resulting into his death. This witness



further stated that Satyendra Singh had stated that on 11.06.2015 at 07:15 p.m. when he was at his home, Suryamani Kumar @ Chhotu told him that Anjani Kumar @ Raushan shot fire at his uncle while he and his uncle were coming on a motorcycle resulting into his death. It is further stated by this witness in his cross-examination that Vijay Kumar had stated in his statement that on 11.06.2014 at the time of occurrence, he was returning from Mahnar. When he arrived at his home, he after getting information went to the place of incident and saw that Vinod Kumar Singh was lying dead on the road. He inquired from the informant and the informant told him the whole story. This witness further stated in his cross-examination that Vijay Kumar had stated before him in his statement that land dispute was going on with Tarkeshwar. Bipin Singh had stated in his statement that after getting information about the incident, when he reached at the place of occurrence, he was informed by Suryamani Kumar @ Chhotu that he was returning to his village with his uncle, deceased Vinod Kumar Singh, by a motorcycle after purchasing rice etc. It is further stated by this witness, in his cross-examination, that in re-statement of the informant, Suryamani, it was not stated that Raushan Kumar Singh shot fire at his uncle in the middle portion of his right eye. P.W.10 has further stated that he did not seize the motorcycle from which firing was made. He did not inquire about the motorcycle



from which firing was made. Blood was found at the place of incident. He did not seize the blood. The clothes of the deceased were not seized. The informant, Suryamani did not give his cloth to him. At the time of so called incident, the clothes, which were worn by the informant, were neither handed over to him nor seized by him. The houses of Chandeshwar Singh and Umesh are situated near the place of occurrence in the eastern side. They did not give statement. Houses of Ashok Singh and Prem Chand Singh are situated in western side. He did not record their statement. He has recorded the statement of Arvind.

17. P.W. 11, Arjun Kumar is an Advocate Clerk who has deposed in his examination-in-chief that the informant Suryamani Kumar filed a protest petition against the investigating officer which was typed by one Anil and Suryamani Kumar @ Chhotu had signed on it.

18. As stated above, the defence has also examined 4 witnesses. D.W.1 Hareram Singh has deposed in his examination-in-chief that on 11.06.2014 he went to P.M.C.H., Patna. The wife of Anjani Singh was admit in P.M.C.H., Patna. Anjani Singh is an accused in the present case. Raj Kishore, Anirudh Singh, Sanjay Singh, Chandra Prakash Singh, Subodh Singh, Anil Singh and Arvind Singh were present there. Anil Singh also went with him. Anjani Singh was with him throughout his stay. Anjani Singh took



care of his wife in the hospital. The wife of Anjani died on 09.07.2014. It is lastly deposed by this witness in his examination-in-chief that Anjani Singh was at P.M.C.H. at the time of incident.

18.1. This witness has stated in his cross-examination that he is named accused in Desari P.S. Case No.99 of 2014 and he is not on bail rather S.P. found him innocent in his supervision. Investigation is going on against him. He has no documentary evidence that he went to P.M.C.H. on the aforesaid date. There is one more case against Anjani besides the present one.

19. D.W.2 is Raj Kishore Singh who has deposed in his examination-in-chief that he lives in Pakur district. On 11.06.2014, he went to P.M.C.H., Patna. The wife of Anjani was ill and she was admit in P.M.C.H., Patna. He went there to give money for the purpose of her treatment. Anjani, Subodh, Anirudh, Mandal etc. were present there. The wife of Anjani died on 09.07.2014. Later, he came to know that someone had killed Vinod Singh and Anjani Singh was implicated. This witness further deposed in his examination-in-chief that Anjani had nothing to do with the murder of Vinod Singh. On the date of incident, Anjani was at P.M.C.H. with his wife.

19.1. D.W.2 has stated in his cross-examination that Anjani (accused) is his nephew. He has no documentary proof regarding his presence at P.M.C.H. on 11.06.2014. He also has no



document to prove that he had given money to Anjani. When he reached at P.M.C.H., 4-5 persons of his village were present there. He knows that there is another case against Anjani besides the present one. It is not so that he has deposed falsely as he is uncle of Anjani.

20. D.W.3 is Dinesh Kumar who has deposed in his examination-in-chief that on 11.06.2014 he had gone to P.M.C.H., Patna. He reached P.M.C.H. in the evening. He met Anjani and his wife in P.M.C.H. He also met Rajkishore Singh, Hareram Singh and Anil Singh besides Anjani and his wife. Lastly, wife of Anjani died on 09.07.2014.

20.1. D.W.3 has stated in his cross-examination that Anjani is his villager. After the incident, he did not give information to the S.P. or police station that on the date of occurrence Anjani was at P.M.C.H., Patna with him. He did not give statement to Daroga Ji. I have no proof that I went to P.M.C.H. and gave money to Anjani.

21. D.W.4 is Amod Kumar Singh, who has deposed in his examination-in-chief that he went to P.M.C.H., Patna on 11.06.2014 where treatment of the wife of Anjani was going on. Anjani and others were present there. He got information in the hospital that Vinod Singh died. It is further deposed that Anjani was falsely implicated.



21.1. D.W.4 has stated in his cross-examination that after getting information of death of Vinod Singh, he came to his village. He cannot disclose the mobile number of Anjani. He has no documentary proof to show that on 11.06.2014 he went to P.M.C.H. He did not write to S.P. or local police that Anjani is not involved in the murder of Vinod. Accused Anjani is his nephew. It is not true that he has deposed falsely as he is his uncle.

22. We have re-appreciated the entire evidence led by the prosecution and defence. From perusal of the evidence led by the prosecution, it would reveal that P.W.6 is the informant, who is the eye witness to the incident in question. The said witness has specifically deposed that when he was returning from the market on motorcycle with his uncle Vinod Kumar Singh, the appellant herein with co-accused Tarkeshwar Singh also came on the motorcycle. The said motorcycle was driven by Tarkeshwar. When the informant and his uncle reached near the house of Kali Singh, Tarkeshwar Singh overtook their motorcycle and Raushan Kumar Singh shot fire at Vinod Singh which hit him in the middle portion of his right eye. Vinod Singh fell down after sustaining gunshot injury and died within 1-2 minutes. Tarkeshwar Singh and Raushan Singh were on black coloured CBZ motorcycle which motorcycle belonged to Shiv Kumar Mantu Singh. The accused parked the motorcycle at the door of *Mukhiya Ji* and fled away.



Further, during the cross-examination of the said witness, he specifically stated that the shooter shot from the front. His vehicle was stopped at the time of shooting. The accused also shot after parking their vehicle. The accused had no enmity with him or his uncle. Thus, the informant (P.W.6) has specifically narrated and described the manner in which the incident took place. Further, P.W.1, who is nephew of the deceased, has also stated about the enmity between Vinod Kumar and Tarkeshwar Singh. P.W.2 has also stated that after hearing the sound of firing, he immediately reached at the place and he saw that deceased was lying on the road and the present appellant shot fire. The other prosecution witnesses also reached at the place of incident. Thus, they have also supported the version given by the informant/eye witness.

22.1. From the deposition given by P.W.7, Dr. Krishna Chandra, it is revealed that two injuries were found on the dead body of the deceased. However, during cross-examination, the said witness has specifically stated that though he has not written about the entry wound and exit wound but both the wounds were present, therefore, the contention taken by learned counsel for the appellant that there was no exit wound is misconceived.

22.2. From the deposition of P.W.10, the Investigating Officer, it is also revealed that he found blood at the place of incident and one empty cartridge was seized by him from



the place. It is true that the said witness has admitted that he did not seize the blood stained soil or clothes of the deceased and the informant. It is also true that the said Investigating Officer has not seized the two motorcycles which are referred to by the informant in the FIR. However, merely because there are certain lapses on the part of the Investigating Officer while conducting the investigation, in the facts and circumstances of the present case, benefit of the same cannot be given to the appellant-accused.

23. At this stage, we would like to refer the decision of the Hon'ble Supreme Court in the case of **Karnel Singh Vs. State of M.P.**, reported in (1995) 5 SCC 518, wherein the Hon'ble Supreme Court has observed in paragraph-5 as under:

5. Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. Any investigating officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements of the two witnesses and would have drawn up a proper seizure-memo in regard to the 'chaddi'. That is the reason why we have said that the investigation was slipshod and defective.



24. In the case of **Dhanaj Singh alias Shera & Ors. Vs. State of Punjab**, reported in **(2004) 3 SCC 654**, the Hon'ble Supreme Court has observed in paragraphs-5 and 8 as under:-

5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See *Karnel Singh v. State of M.P.*

8. The stand of the appellants relates essentially to acceptability of evidence. Even if the investigation is defective, in view of the legal principles set out above, that pales into insignificance when ocular testimony is found credible and cogent. Further effect of non-examination of weapons of assault or the pellets, etc. in the background of defective investigation has been considered in *Amar Singh case*. In the case at hand, no crack in the evidence of the vital witnesses can be noticed.

25. The Hon'ble Supreme Court in an another decision in the case of **Dakkata Balaram Reddy and Another Vs. State of Andhra Pradesh and Another**, reported in **2023 SCC OnLine SC 474** has observed in paragraph-22 as under:

22. Undeniably, there are some discrepancies and contradictions in the prosecution's case. There is no clarity as to the sequence of events at the scene of offence on the fateful night. Witnesses gave differing versions of the time of the



arrival of the police and as to what they saw and said. There is no corroboration of PW-1's statement that it was PW-7 who informed him of the accused entering and exiting his house, as PW-7 said nothing to that effect. Further, recovery of the clothes worn by the accused at that time is also shrouded in doubt. One version is that they were still wearing them at the police station and they were seized there by the police, after providing them other clothes, while the other is that A1 handed over blood-stained clothes to PW-26 along with the bag of ornaments at his house. However, some differences in the testimonies of witnesses as to what they saw and said are to be expected given the passage of time. Be it noted that the subject incident occurred on the night of 21.08.2008 and the depositions of the witnesses were recorded by the Trial Court in the later part of 2015. In any event, as already noted hereinbefore, this Court would not undertake a roving inquiry on factual issues or reappreciate the evidence, unless it is brought out that there is some perversity in appreciation of evidence by the Trial Court or the High Court, leading to manifest miscarriage of justice. Trivial defects in investigation or process are not enough, in themselves, to disbelieve the prosecution's case. To acquit solely on the ground of defective investigation would be adding insult to injury [See Karmel Singh v. State of M.P. ((1995) 5 SCC 518)]

25.1. From the aforesaid decisions, it can be said that trivial defects in investigation or process are not enough, in themselves, to disbelieve the prosecution's case. To acquit solely on the ground of defective investigation would be adding insult



to injury. Even if the investigation is defective, that pales into insignificance when ocular testimony is found credible and cogent.

26. Thus, from the aforesaid evidence, it can be said that P.W.6, the informant, is the eye witness. Relying upon the sole testimony of the eye witness, conviction can be recorded even in absence of any corroboration. However, the Court has to satisfy that the said witness is credible and his deposition is trustworthy. If the deposition of such witness is of sterling quality or if he is a sterling witness, relying upon such witness, conviction can be recorded. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Takdir Samsuddin Sheikh Vs. State of Gujarat & Anr.**, reported in **(2011) 10 SCC 158**, wherein the Hon'ble Supreme Court has observed in paragraph-13(ii) as under:-

(ii) This Court has consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number, the quantity, but the



quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. [See *Vadivelu Thevar v. State of Madras*, *Sunil Kumar v. State (Govt. of NCT of Delhi)*, *Namdeo v. State of Maharashtra* and *Bipin Kumar Mondal v. State of W.B.*]

27. The Hon'ble Supreme Court in the case of **Rai Sandeep alias Deepu Vs. State (NCT of Delhi)**, reported in **(2012) 8 SCC 21** has observed in paragraph-22 as under:

22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the



consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve



the other supporting materials for holding the offender guilty of the charge alleged.

28. The Hon'ble Supreme Court in an another decision in the case of **Phool Singh Vs. State of Madhya Pradesh**, reported in **(2022) 2 SCC 74** has observed in paragraphs-9 and 10 as under:-

9. In Pankaj Chaudhary [State (NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575 : (2019) 4 SCC (Cri) 264] , it is observed and held that as a general rule, if credible, conviction of the accused can be based on sole testimony, without corroboration. It is further observed and held that sole testimony of the prosecutrix should not be doubted by the court merely on basis of assumptions and surmises. In para 29, it is observed and held as under : (SCC p. 587)

“29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra]. It is well settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from



medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan v. N.K].”

10. In *Sham Singh v. State of Haryana* [*Sham Singh v. State of Haryana*, it is observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paras 6 and 7, it is observed and held as under : (SCC pp. 37-38)

“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it



may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See *State of Punjab v. Gurmit Singh* (SCC p. 403, para 21).]

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault



alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See *Ranjit Hazarika v. State of Assam.*)”

28.1. Thus, from the aforesaid decisions, it can be said that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. Thus, it is open to a competent court to fully and completely rely on a solitary witness and record conviction.

29. Keeping in view the aforesaid decisions rendered by the Hon’ble Supreme Court, if the facts and the evidence of the present case, as discussed hereinabove, are carefully examined, we are of the view that the deposition given by P.W.6 is trustworthy and that the said witness can be said to be sterling witness, therefore, we are satisfied that the deposition of the said witness can be accepted. Further, in the present case, medical evidence also supports the version given by the informant/eye witness and the other prosecution witnesses have also supported the case of the prosecution, therefore, we are of the view that the Trial Court has not committed any error while recording the judgment of



conviction and order of sentence against the appellant.

24. Accordingly, the appeal is dismissed.

(Vipul M. Pancholi, J.)

(Ramesh Chand Malviya, J.)

Sanjay/-

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