

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.716 of 2019**

Arising Out of PS. Case No.-73 Year-2016 Thana- TARAPUR District- Munger

MD. TANVEER Son of Late Md. Kamaluddin Resident of Khanpur, P.S.-
Tarapur, District- Munger.

... .. Appellant

Versus

The State of Bihar.

... .. Respondent

Appearance :

For the Appellant	:	Mr. Ajay Kumar Thakur, Advocate Ms. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate Ms. Kiran Kumari, Advocate
For the State	:	Mr. Ajay Mishra, 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 : 20-09-2024

The instant 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 15.04.2019 and order of sentence dated 22.04.2019, passed by learned Additional Sessions Judge-I, Munger in Sessions Trial No.268 of 2017 (C.R. No.268/2017), arising out of Tarapur P.S. Case No.73/2016 dated 13.07.2016 whereby the court has convicted appellant for the offences punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and has been sentenced to undergo R.I. for life under Section 302 of the Indian Penal Code and to a pay fine of Rs.500/- (Rs.



Five Hundred only) and in default of payment of fine, the appellant has to undergo S.I. for a period of three months. For the offence under Section 27 of the Arms Act, the appellant is sentenced to undergo R.I. for three years and to pay a fine of Rs.500/- (Rs. Five Hundred only) and in default of payment of fine, the appellant has to undergo S.I. for a period of three months. All the sentences have been directed to run concurrently.

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

2.1 *Fardbeyan* of Md. Nehal came to be recorded on 13.07.2016 at 06:30 A.M. in Sub-divisional Hospital, Tarapur wherein the informant has stated that on the previous night at about 22:15 hours, his brother Md. Tanjeer was sitting on the side of the road after taking meal. At the same time, the brother (संझला भाई) of the informant, i.e., the present appellant and the son of the appellant, namely, Sabbir came outside from the house of Md. Imtiyaz and shot dead Md. Tanjeer. Thereafter Md. Tanjeer was brought to Sub-divisional Hospital, Tarapur where the doctor declared him dead. It is alleged that due to land dispute, this incident took place and Md. Tanveer alongwith other co-accused Md. Sabbir, Imtiyaz



and Md. Naseem committed the murder of his brother Tanjeer.

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 documentary evidence and thereafter filed charge-sheet against the appellants.

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.268 of 2017.

2.4 During course of trial, the prosecution had examined 5 witnesses, namely, PW-1 Parwej Alam, PW-2 Md. Gufran, PW-3 Md. Nehal, PW-4 Dr. Ram Pravesh Prasad and PW-5 Jasu Joseph Minj. 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 and Mr. Ajay Mishra, learned APP for the State.

4. Learned counsel for the appellant would mainly contend that in the present case, the prosecution has examined five witnesses out of which PW-1 and PW-2 have not supported the case of the prosecution and they have turned hostile. It is contended that PW-1 is brother of the informant and PW-2 is son of the informant despite which they have not supported the case of the informant. It is thereafter contended that the case of the prosecution rests on the deposition of only one witness, PW-3, i.e., the informant. Learned counsel referred the *fardbeyan* given by the informant as well as deposition of the informant, i.e., PW-3 and thereafter contended that the informant has placed different version before the court for the first time. It is submitted that in the *fardbeyan*, allegations were levelled against the present appellant and his son Sabbir that both shot dead the deceased and thereafter alleged that the present appellant, his son, Md. Imtiyaz and Md. Naseem hatched a conspiracy and committed the alleged offence. However, while giving his deposition before the court, PW-3 has stated that Naseem gave knife blow and Imtiyaz caught hold the deceased. It is further contended



that from deposition of the Investigating Officer also, it can be said that there are contradictions, inconsistencies and discrepancies in the deposition of the informant, PW-3. It is further submitted that medical evidence does not support the version given by the informant, therefore, the informant cannot be termed as sterling witness. Thus, the informant is not an eye witness though he projected himself as an eye witness and, therefore, simply relying upon his version, conviction cannot be recorded.

4.1. Learned counsel for the appellant further submits that PW-3 has admitted during cross-examination that his father sold the land to him and in fact the appellant, who is also brother of the informant and brother of the deceased, has specifically stated before the court while giving his further statement under Section 313 of the Code with regard to land dispute between him and the informant. It is submitted that the sale deeds which have been executed in favour of the informant by the father of the appellant are also produced and are duly exhibited and the said sale deeds were executed after the incident in question. Learned counsel, therefore, submitted that appellant has falsely been implicated by the informant with a view to grab the land.



4.2. Learned counsel for the appellant thereafter submitted that as per the case of the informant in *fardbeyan*, incident took place at 10:15 P.M. on 12.07.2016, however, the *fardbeyan* was given by him on 13.07.2016 at 06:30 A.M. At this stage, it has been pointed out from the deposition of PW-3, the informant that when the injured was brought to Sub-divisional Hospital, Tarapur, police reached there. However, who had given the information to the police is not brought on record. Further, though the police was present in the night, *fardbeyan* was recorded on the next day morning at 06:30 A.M. It is also contended that as per the deposition of PW-3, there was a lot of blood spilled at the scene of occurrence. However, PW-5, the Investigating Officer specifically admitted during cross-examination that he did not find a single drop of blood at the place of incident.

4.3. Learned counsel for the appellant, therefore, urged that the prosecution has failed to prove the case against the appellant beyond reasonable doubt and, therefore, the instant appeal be allowed and the impugned judgment of conviction and the order of sentence be quashed and set aside.

5. On the other hand, the learned APP for the State has opposed the present appeal. He would mainly submit that



though PW-1 and PW-2 have not supported the case of the prosecution, PW-3, who is the informant and brother of the appellant as well as the deceased, has fully supported the case of the prosecution. It is submitted that PW-3 is an eye witness who has made specific allegation against the present appellant. The said allegation is supported by the medical evidence and therefore, merely because there are minor contradictions and inconsistencies in the deposition of prosecution witnesses, it cannot be said that prosecution has failed to prove the case against the appellant beyond reasonable doubt. Learned APP further submits that if this Court is of the opinion that deposition given by PW-3 is trustworthy then relying upon the same, conviction recorded by the Trial Court be confirmed and the present 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 five witnesses.

7. Deposition of PW-1, Parwej Alam and PW-2, Md. Gufran need not be examined in detail as they have not



supported the case of the prosecution and have been declared hostile.

8. PW-3, Md. Nehal is the informant of the case and has deposed in his examination-in-chief that the occurrence took place on 13.07.2016 at about 10:00 P.M. and he was present in his house. His brother Tanjeer was on the road after taking meal. After hearing the noise of verbal altercation, he came on the road and saw that Tanveer fired upon Tanjeer. When he wanted to raise alarm, the son of Tanveer, namely, Sabbir fired second bullet upon Tanjeer and Naseem gave knife blow to him. Imtiyaz caught hold Tanjeer. When some people gathered at the place of incident after hearing alarm, the accused persons fled away from there. They brought Tanjeer to Tarapur Sadar Hospital where police reached and inquired into the matter. He claims to have identified his signature on the *fardbeyan* (Ext.1).

8.1. During cross-examination, PW-3 stated that his father had 8 *bighas* of land. As long as he was alive, he took the income from that land and during his lifetime, he had divided the lands among all his sons. It is further stated by this witness in his cross-examination that his father gave 1.5 *bighas* each to all his sons and rest 2 *bighas* of land was kept



by his father. His father had been resided with Md. Tanveer since last nine years. After the incident, his father lived with him till his last breathe. After the incident, his father sold the entire land. He does not remember how much land he purchased from his father after the incident. He does not remember how much money he paid to purchase the land from his father. He also does not remember the area of the land purchased by him from his father. Md. Tanveer resided in his in-laws' house for 20 days before the incident and he came one day before the occurrence and committed the crime. It is further stated that the deceased sustained first bullet injury near his back and he fell down. The deceased was also shot in his head. There was a lot of blood spilled at the scene of occurrence. The deceased wore shirt and lungi. The shirt was completely stained with blood. It is further stated that they brought the deceased to the hospital from the place of occurrence. His brother Parwej and other villagers were with him. His pant and shirt were also stained with blood. They reached Sadar Hospital, Tarapur at 10:00-10:15 P.M. His brother died before reaching the hospital. The police themselves reached the hospital. They did not inform the police. Two papers were prepared and he signed both the



papers but he did not know the contents of the papers. He did not show the place of occurrence to the police as he was in the hospital. This witness further stated in his cross-examination that he did not hand over his blood stained clothes to the police. The deceased was brought to the hospital by rickshaw. He does not remember the name of the rickshaw puller. Parweij brought the deceased to the hospital on the rickshaw. At the time of giving statement to the police, he did not state the date and time. This witness claims to have stated before the police that his brother Tanjeer was on the road after taking meal. After hearing noise of verbal altercation, he came on the road and saw that Tanveer fired upon Tanjeer. When he wanted to raise alarm, the son of Tanveer, namely, Sabbir fired second bullet upon Tanjeer and Naseem gave knife blow to him. Imtiyaz caught hold Tanjeer. He also claims to have stated before the police that when some people gathered at the place of incident, the accused persons fled away from there. It is also stated by this witness in his cross-examination that when he reached at the place of occurrence, accused Naseem was standing there. This witness has denied the suggestion that due to family dispute, he has falsely implicated Md. Naseem.

9. PW-4 is Dr. Ram Pravesh Prasad who has



deposed in his examination-in-chief that he was posted as Medical Officer at Sadar Hospital, Munger on 13.07.2016 and he found following ante-mortem injuries on the body of the deceased during *post-mortem* examination:

“(I) A circular lacerated wound of size 1/2” in diameter deep to cranial cavity with inverted margin over left temporal region of skull.

(II) A lacerated wound of size 2” X 1/2” X soft tissue deep over left cheek.

(III) Wound of entry:-

A circular lacerated wound of size 1/2” diameter deep to chest cavity with inverted margin over left scapular region.

4. Rigor mortis was present in all limbs.

5. On dissection:- Blood and blood clots were found there present underneath tissues around above mentioned injuries. Left temporal bone was found fractured cranium was full of blood and blood clots with lacerated brain matter. Larynx trachea and esophagus was found lacerated. One bullet was recovered in neck region right side. Thoracic cavity was full of blood and blood clots with lacerated left lung and fracture of left scapula with fifth rib of left side. Right lung was found pale and one bullet was recovered in left lung. Both recovered bullet were sealed, signed and handed over to Police. Both chambers of the heart was empty. Semi digested food were present in the stomach.

6. Cause of death in our opinion was due to haemorrhage and shock and injury to vital organ as a result of above mentioned injuries caused by firearm. Injury No. 2 is caused by hard and blunt substance.

7. Time elapsed since death:- Within 24 hours.”



9.1. It is stated by the said witness in his cross-examination that it is correct that within 24 hours means in medical terminology between 18 hours to 24 hours. It is also stated that it is correct that profuse bleeding took place when injury will be caused by firearm and same will spread on surface. He has found three injuries on the body of the deceased. Injuries No.1 and 3 is entry wound and caused by firearm and Injury No.2 was caused by hard and blunt substance and there was no communicating injuries. Injury was not caused from close range, hence, no charring was found on the injuries. He cannot say exact distance from which injury was caused. It is lastly stated by this witness that he has not found any injury by sharp edged weapon on the body of the deceased.

10. PW-5, Jasu Joseph Minj is the Investigating Officer of the case and he has deposed in his examination-in-chief that on 13.07.2016, he was posted in Tarapur P.S. as Sub-Inspector. He took charge of investigation of Tarapur P.S. Case No.73/16 on 13.07.2016. After taking charge of investigation, he mentioned inquest report and seizure list in the case diary. He inspected the place of incident. He recorded about the description of the place of occurrence in para-1 of his



deposition. He recorded re-statement of the informant, Md. Nehal. He also recorded the statements of Md. Parwej Alam, Md. Saukat, Shamim and Md. Nijam. The said witness recorded the statement of accused Md. Imtiyaz Mansoori in para-12. He also recorded the supervision report of the Superintendent of Police in para-48.

10.1. During cross-examination the said witness stated that he has not recorded the *fardbeyan*. He has not written the time of arrival at the hospital in the diary and he has not recorded the statement of any person in the hospital. He did not inquire about the fact whether the deceased was admitted in the hospital or not. He was not personally informed by the family of the deceased or others. He went to the hospital on the orders of his superiors. He has not written in his diary from whom the officer recording the *fardbeyan* got the information and on whose orders he recorded the *fardbeyan*. He did not ask any official of the hospital whether the *fardbeyan* was recorded in the hospital or not. It is further stated by this witness in his cross-examination that he reached at the place of incident on 13.07.2016 at 11:30 hours. He had not recorded in the diary whether he found any sign of scuffle at the place of occurrence or not. He did not find a single drop



of blood at the place of incident. The place of occurrence was the side of the road. He has not recorded in his diary about the distance and direction of the place of occurrence from the house of the informant, the accused and the deceased. It is also stated that he inquired about the land dispute and Md. Nehal told him that accused Md. Tanveer took all the papers relating to land dispute with him and he has no any paper. During the course of investigation, the father of the informant and the accused was alive but he has not recorded his statement and he has not recorded in the diary that the father of the accused was not in a condition to give his statement. The informant had not stated before him that at the time of occurrence, he was in his house. The informant stated before him that at about 10:15 P.M., his brother Md. Tanjeer was sitting on the side of the road after taking meal but he did not say whether the deceased was standing or he was walking. The informant had not stated before him that Md. Naseem gave blow with knife to the deceased. The informant had also not stated before him that Md. Imtiyaz caught hold the deceased. He has not recorded about any title suit going on between the accused, the informant and the deceased.

11. We have re-appreciated the evidence led by the



prosecution before the Trial Court. We have also considered the submissions canvassed by learned counsel appearing for the parties. From the evidence led by the prosecution, it would emerge that the informant, PW-3 has given the *fardbeyan* on 13.07.2016 at 06:30 A.M. for the alleged incident which took place at 22:15 hours (10:15 P.M.) on 12.07.2016. In the *fardbeyan* it is specific case of the informant that the appellant and his son Sabbir came out from the house of Md. Imtiyaz and thereafter opened fire and in the said incident the brother of the informant as well as the brother of the appellant, namely, Md. Tanjeer sustained injuries and, therefore, he was taken to Sadar Hospital, Tarapur where the doctor declared him dead. It has further been stated in the *fardbeyan* that the appellant, his son Sabbir, Imtiyaz and Md. Naseem hatched a conspiracy and thereby killed Md. Tanjeer, the brother of the informant. Keeping in view the aforesaid *fardbeyan*, if the deposition given by PW-3, who has projected himself as an eye witness, is examined, it is revealed that in the examination-in-chief, PW-3, the informant has improved the version before the court. He has deposed that Tanveer as well as his son Sabbir shot fire and Tanjeer sustained bullet injuries. At that time, Tanjeer, the deceased, said that Tannu shot fire. At that time, Naseem gave



blow with knife to the deceased whereas Imtiyaz caught hold Tanjeer. Thus, it appears that the informant attributed specific role to all the four accused and thereby he had improved his version before the court. Further from the cross-examination of PW-3, it is revealed that father of the appellant as well as the informant was residing with the appellant since last nine years. However, after the incident in question, father of the appellant was residing with the informant till his death. The said witness further admitted that his father sold the land after the incident in question. He has further admitted that he had given the consideration for purchase of the land to his father. PW-3 further stated that there was a lot of blood spilled at the scene of occurrence and blood was found on the cloth of the deceased as well as on the cloth of the informant. He has also stated that they reached to the hospital at about 10:00 to 10:15 P.M. However, before they reach to the hospital, his brother succumbed to the injuries. The police reached to the hospital. However, he is not aware that who has given information to the police. The police prepared two documents on which he signed. However, he is not aware about the contents of the said documents.

12. At this stage, it is pertinent to note that the



prosecution has examined PW-1, Parwej Alam who has also signed the *fardbeyan* as a witness and who is also brother of the informant, the deceased and the appellant. However, the said witness has not supported the case of the prosecution and he was declared hostile. Similarly, PW-2, Md. Gufran, who is son of the informant, has not supported the case of the prosecution and he was also declared hostile. No other independent witness has been examined by the prosecution, therefore, the case of the prosecution rests upon the deposition of only one witness who claims to be the eye witness.

13. It is true that relying upon the deposition of only one eye witness, conviction can be recorded if his deposition is found to be trustworthy and if he is sterling witness. Even corroboration to the deposition given by such sterling witness is not required. Thus, we have examined and analyzed the deposition given by PW-3, the informant. We are of the view that PW-3 has improved his version before the court and thereby assigned specific role to other accused. The said witness has specifically deposed, as observed hereinabove, that one Naseem gave knife blow to the deceased and Imtiyaz caught hold Tanjeer (deceased). It is specific case that there was a lot of blood spilled at the scene of occurrence



and blood was also found on the cloth of the deceased as well as the informant.

14. At this stage, we would also like to consider the deposition given by PW-5, Jasu Joseph Minj, the Investigating Officer who has carried out the investigation. The said witness specifically admitted that he did not find any drop of blood at the place of incident. He has also specifically admitted that the informant had not stated before him that he was present at his house at the time of incident. The Investigating Officer further admitted that the informant stated before him that about 10:00-10:15 P.M., his brother Tanjeer was sitting near the road after taking meal. However, the informant had not stated before him that Md. Naseem gave knife blow to the deceased nor the informant had stated that Md. Imtiyaz caught hold the deceased.

15. Thus, we are of the view that there are major contradictions, inconsistencies, discrepancies and improvement in the deposition given by PW-3, the informant. At this stage, it is also relevant to note about the conduct of the informant. The informant has specifically admitted during cross-examination that father of the informant was residing with the appellant since last nine years. However, after the



incident in question, father of the informant started residing with him. In fact, in the *fardbeyan* itself, the informant had stated with regard to the land dispute between the brothers and, therefore, defence of the present appellant while giving his statement under Section 313 of the Code is also required to be kept in view. The appellant has specifically stated that that are four brothers. He had filed partition suit numbered as Suit No.26/16. His brother Nehal was looking after all the properties of his father and with a view to grab the land, the appellant and his son Sabbir have falsely been implicated. He has further stated that at the time of incident, he was in Jamui. It is further revealed from the record that the appellant had produced documentary evidence before the Trial Court, i.e., copy of the partition suit, copy of the sale deeds which have been executed by his father in favour of Md. Nehal (informant) and in favour of other relatives of the informant. Thus, it appears that incident took place in July, 2016 and in August, 2016 onward, father of the informant as well as father of the appellant herein has sold the land. Thus, looking into the aforesaid facts also, false implication of the appellant cannot be ruled out.

16. PW-4, Dr. Ram Pravesh Prasad who had



conducted *post-mortem* on the dead body of the deceased has deposed that Injury No.2 is caused by hard and blunt substance. At this stage, it is required to be recalled that as per the version given by PW-3, the informant, two shots were fired by two different accused and the third caused knife blow to the deceased. The said witness has specifically admitted during cross-examination that he had not found any injury by sharp edged weapon on the body of the deceased. Further, PW-4 has stated that post-mortem examination was conducted on 13.07.2016 at 10:30 A.M. He has further stated that time elapsed since death is within 24 hours and during cross-examination, he has further clarified that within 24 hours means in medical terminology between 18 hours to 24 hours. Further, PW-4 found semi digested food in the stomach. He has further stated that the food takes one hour to reach in the stomach. Further, he has admitted that it is correct that profuse bleeding took place when injury will be caused by firearm and same will spread on surface. Thus, from the deposition of PW-4, it can be said that death of the deceased was caused between 18 hours to 24 hours prior to 10:30 A.M. of 13.07.2016. However, as per the version given by the informant, the incident took place at 10:15 P.M. on 12.07.2016, i.e., within 12



to 14 hours. Further, as per the case of the informant, the deceased had taken meal and thereafter went outside to his house and immediately incident took place. However, from the deposition of PW-4, it can be said that semi digested food was found in the stomach. Further, no injury was found by sharp edged weapon whereas as per the case of the informant, one of the accused gave blow with knife. Further, Injury No.2 was caused by hard and blunt substance whereas it is not the case of PW-3, the so called eye witness, that any of the accused used any hard and blunt substance and gave blow with the same to the deceased. Thus, we are of the view that medical evidence does not support the version given by the so called eye witness.

17. In view of the aforesaid discussions, we are of the view that PW-3 cannot be termed as sterling witness and, therefore, simply relying upon the deposition given by the said so called eye witness, conviction cannot be recorded. Hence, we are of the view that the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt and this Court has no option but to quash and set aside the judgment of conviction and order of sentence.

18. Accordingly, the appeal stands allowed. The



impugned judgment of conviction dated 15.04.2019 and order of sentence dated 22.04.2019, passed by learned Additional Sessions Judge-I, Munger in Sessions Trial No.268 of 2017 (C.R. No.268/2017), arising out of Tarapur P.S. Case No.73/2016 dated 13.07.2016 are quashed and set aside. The appellant, namely, Md. Tanveer, is acquitted of the charges levelled against him by the learned trial court.

18.1. Since appellant is in jail, he is directed to be released from jail 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	26.09.2024
Transmission Date	26.09.2024

