

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.860 of 2018

Arising Out of PS. Case No.-103 Year-2015 Thana- ALOULI District- Khagaria

Amar Yadav Son of late Hari Narayan Yadav, resident of Village Larhi, P.S.- Alauli, District- Khagaria.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 866 of 2018

Arising Out of PS. Case No.-103 Year-2015 Thana- ALOULI District- Khagaria

- 1. Daso Yadav and Anr S/o Ram Chandra Yadav, R/o Vill.- Bathnaha, P.S.- Alauli, District- Khagaria.
- 2. Rajo Yadav S/o Late Hari Narayan Yadav, R/o Vill.- Larhi, P.S.- Alauli, District- Khagaria.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 860 of 2018)
For the Appellant : Mr. Rajesh Kumar Singh, Senior Advocate
Mr. Shekhar Kumar Singh, Advocate
Mr. Buddhilal Yadav, Advocate
Mr. Rupesh Kumar Singh, Advocate
Mr. Amit Kumar Singh, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Lakshmi Kant Tiwary, Advocate
Mr. Nitesh Kumar, Advocate
(In CRIMINAL APPEAL (DB) No. 866 of 2018)
For the Appellants : Mr. Rajesh Kumar Singh, Senior Advocate
Mr. Shekhar Kumar Singh, Advocate
Mr. Buddhilal Yadav, Advocate
Mr. Rupesh Kumar Singh, Advocate
Mr. Amit Kumar Singh, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Lakshmi Kant Tiwary, Advocate
Mr. Nitesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN



ORAL JUDGMENT

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

Date : 12-12-2024

Both the appeals are filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment of conviction dated 24.05.2018 and order of sentence dated 25.05.2018, passed by the court of F.T.C.-1st., Khagaria in Sessions Case No.170 of 2015, Trial No.409/2017, arising out of Alauli P.S. Case No.103 of 2015, G.R. No.1182 of 2015, whereby the court has convicted the appellants for the offences punishable under Sections 302/34 of the Indian Penal Code as well as under Section 27 of the Arms Act and they have been sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- (Rs. Ten Thousand only) each for the offence punishable under Sections 302/34 of the Indian Penal Code and in default of payment of fine, the appellants have to undergo S.I. for a period of one year. The appellants are further sentenced to undergo R.I. for five years for the offence punishable under Section 27 of the Arms Act. Both the sentences have been directed to run concurrently.

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



2.1 *Fardbeyan* of Pramod Ram came to be recorded on 07.05.2015 at 13:00 hours at village Larhi wherein the informant has stated that on 07.05.2015 at about 08:30 in the morning, he was sitting near the Communist Party branch office in his village Lahri. His mother Bhago Devi was also sitting next to him. Just then, six persons, namely, Daso Yadav, Rajo Yadav, Amar Yadav, Lalo Yadav, Raban Yadav and Suresh Yadav came from the north on two motorcycles. Getting down from the motorcycle, Daso Yadav and Rajo Yadav asked his mother, "*Netaji* how are you?" Suddenly all six accused persons took out their weapons and started firing indiscriminately. All the accused fired several bullets on his mother's head and body. His mother fell down there and died. When he ran to save his life, two bullets were fired at him too but he escaped. After killing his mother, all the accused fled on their motorcycles towards north. While running away, about ten bullets were fired by the accused. He is sure that murder of his mother has been conspired by all the above accused besides Jai Jairam Yadav, Sandeep Yadav and Subhash Yadav alias Lambu. The reason for murder of his mother is that his mother was the informant and eyewitness of Alauli P.S. Case No. 220/13 in which Sukhdev Ram, a leader of C.P.I., Alauli was



murdered. The above-mentioned accused were also involved in this case. His mother was murdered with the aim of destroying evidence. Apart from him, his son Rajesh Kumar and Bhuneshwar Ram son of late Gali Ram and his sister Kari Devi, wife of Bhuneshwar Ram, have also witnessed this incident.

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 As the case was exclusively triable by court of sessions, the learned Magistrate committed the same under Section 209 of the Code to the concerned sessions court where the same was registered as Sessions Case No.170/2015.

2.4 During course of trial, the prosecution has examined 8 witnesses, namely, PW-1, Pramod Ram, PW-2, Bhubaneshwar Ram, PW-3, Karo Devi, PW-4, Ashok Ram, PW-5, Suresh Sada, PW-6, Mukesh Kumar, PW-7, Umashankar Rajak and PW-8, Dr. Md. Gulsanobar. 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 appellants, as stated hereinabove.

3. Heard Mr. Rajesh Kumar Singh, learned Senior Advocate, assisted by Mr. Shekhar Kumar Singh for the appellants, Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State as well as Mr. Lakshmi Kant Tiwary, learned counsel appearing on behalf of the informant.

4. Mr. Rajesh Kumar Singh, learned Senior Advocate appearing for the appellants would mainly contend that as per the *fardbeyan* given by PW-1/informant, the incident took place at about 08:30 a.m. on 07.05.2015 for which *fardbeyan* was recorded at 13:00 hours (01:00 p.m.). It is contended that, in the meantime, as per the case of the prosecution, the Investigating Officer reached to the place of occurrence at 08:45 a.m. on the basis of the telephonic information received by him. Though the police officers were present at the place of occurrence from 08:45 a.m., *fardbeyan* was given by the informant, who is son of the deceased, at 01:00 p.m. Thus, looking to the facts of the present case, there is delay in lodging the FIR wherein the present appellants have falsely been implicated. At this stage, it has been contended that as per the *fardbeyan*, the informant was sitting next to his



mother, i.e., the deceased. At that time, six persons named in the FIR came to the place of occurrence and started firing from the firearms which they were carrying and more than ten bullets were fired. However, surprisingly, the deceased sustained two firearm injuries but the informant did not sustain any injury. Learned Senior Advocate would further submit that specific allegation has been levelled by the informant in the *fardbeyan* that as the deceased was informant and eye-witness in P.S. Case No.220/2013, registered with Alauli police station in connection with the case of murder of C.P.I. Secretary, the six accused named in the FIR and three other accused, namely, Jai Jairam Yadav, Sandeep Yadav and Subhash Yadav, who were in custody at the relevant point of time, hatched a conspiracy and thereafter killed the mother of the informant. It is contended that the trial court did not believe the story with regard to conspiracy hatched by all the accused and, therefore, except the present three appellants, all other six accused have been acquitted by the trial court. Thus, the trial court has not believed the theory of conspiracy projected by the prosecution on the basis of the evidence led by the prosecution, However, surprisingly, the present appellants have been convicted for the alleged offence. At this stage, it has also been contended that



the State or the informant has not challenged the order of acquittal passed in favour of other six accused and thereby they have accepted the said order. Learned Senior Advocate, therefore, urged that the prosecution has even failed to prove the motive on the part of the present appellants to kill the deceased.

4.1. Mr. Singh, learned Senior Advocate further submits that though the prosecution has projected PWs. 1, 2, 3 and 5 as eye-witnesses, in fact, the said witnesses are not eye-witnesses and PWs. 1 to 3 are near relatives of the deceased and their presence at the place of occurrence was doubtful. At this stage, learned counsel referred the seizure list as well as inquest report and thereafter submitted that son of the informant, i.e., Rajesh Kumar has signed the seizure list which was prepared at 11:30 a.m. and inquest report which was prepared at 13:30 hours. Thus, from the aforesaid, it can be said that the informant was not present at the place of occurrence. It is further submitted that Rajesh Kumar, who is signatory of the two aforesaid documents, has not been examined by the prosecution. Even otherwise, it has been contended that there are major contradictions and discrepancies in the deposition of the so called eye-witnesses



with regard to the manner of occurrence and, therefore, their deposition be discarded.

4.2. It is also submitted that the medical evidence does not support the case of the prosecution.

4.3. Thereafter, learned Senior Advocate submitted that as per the case of the prosecution, *fardbeyan* of the informant was recorded at 01:00 p.m. However, the seizure list was prepared by the police officer, who reached at the place of occurrence after getting information on telephone, at about 11:30 a.m. It is further submitted that as per the case of the prosecution, one empty cartridge and one pellet were found from the place of occurrence. However, surprisingly, the Investigating Officer did not find any blood at the said place and in fact blood stained soil has not been seized by him. Further, in the seizure list, which was prepared at 11:30 a.m., FIR number has been mentioned. This creates doubt with regard to the story of the prosecution.

4.4. Even assuming that the Investigating Officer had seized one empty cartridge and one pellet even then, the said articles were not sent for necessary analysis to the FSL nor the investigating agency discovered or recovered the alleged firearms from any of the appellants. Thus, the entire



story put forward by the prosecution with regard to the involvement of the present appellants is nothing but an afterthought and in fact, prosecution has failed to prove the case against the appellants beyond reasonable doubt, despite which the trial court has passed the impugned judgment of conviction and order of sentence which requires interference by this Court.

5. On the other hand, learned counsel appearing on behalf of the informant has vehemently opposed both these appeals. Learned counsel would mainly contend that there are four eye-witnesses to the incident in question and they have supported the case of the prosecution. Merely because there was some delay in lodging the FIR, benefit of the same cannot be given to the accused and more particularly when the informant, who is son of the deceased and was present with the deceased at the time of occurrence, was shocked because of the incident which took place and, therefore, it is quite possible that he took sometime for giving his *fardbeyan* before the police. It is further submitted that presence of all the four eye-witnesses at the place of occurrence was natural. All the four eye-witnesses have specifically levelled allegation against the appellants herein and the version given by the eye-witnesses



and medical evidence, i.e., the deposition given by PW-8, the doctor, who had conducted the *post-mortem* on the dead body of the deceased, also supports the case of the prosecution. It is also contended that even assuming that there was a faulty investigation carried out by the first Investigating Officer, benefit of the same may not be given to the accused. It is also pointed out from the records that the first Investigating Officer was suspended and thereafter another Investigating Officer, PW-7 has taken over the investigation. It is also submitted that from the place of occurrence, the Investigating Officer found one empty cartridge and one pellet and, therefore, no doubt can be raised with regard to the place of occurrence. At this stage, it is pertinent to note that when this Court pointed out discrepancy in the seizure list which was prepared at 11:30 a.m., even before registration of the FIR, learned counsel for the informant has made another submission that the seizure list is a concocted document. We are surprised with these types of contradictory submissions. Learned counsel for the informant also referred the written notes submitted by him and thereafter contended that the prosecution has proved the case against the appellants beyond reasonable doubt and, therefore, merely because six other co-accused have been acquitted by the trial



court, the present appellants may not be acquitted and both these appeals be dismissed.

6. Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State has also supported the submissions canvassed by learned counsel for the informant.

7. We have considered the submissions canvassed by learned counsel appearing for the parties. We have also perused the materials placed on record and the evidence led by the prosecution before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined eight witnesses. At this stage, we would like to appreciate the entire relevant extract of the depositions of the prosecution-witnesses.

8. PW-1, Pramod Ram, who is informant of the case, has deposed in his examination-in-chief that the incident took place a year ago (07.05.2015) at 8:30 in the morning. He was sitting with his mother near the office of Communist Party. Six persons came on two motorcycles from the north and stopped the motorcycles at the gate of the party office. After getting down from the vehicle, six persons Rajo Yadav, Daso Yadav, Amar Yadav, Lalo Yadav, Suresh Yadav, Rabban Yadav asked his mother, "How are you Netaji?" As soon as she



raised her head, they started firing indiscriminately. He ran away from there. Two bullets were fired at him too but he somehow managed to escape. His mother sustained four bullet injuries. One bullet hit the left side of the forehead, second near the ear, third bullet in the left arm and fourth bullet in the right side of the brain. After firing, the accused ran away towards the north. His mother was a leader of the Communist Party. Two years ago, Sukhdev Ram was murdered by these accused. His mother was the informant in that case. The accused told his mother to file a petition in the said case, otherwise the consequences would be bad. The result was that his mother was murdered. The administration was informed. The head clerk came at 9:15 in the morning and took his statement at about one o'clock. He claims to identify Rajo Yadav, Daso Yadav, Amar Yadav, Ranjit Yadav, Subhash Yadav, Jai Jai Ram Yadav and Sandeep Yadav who were present in the court. He also claims to identify Lalo Yadav and Rakhen Yadav. His mother Bhago Devi and he had come to depose in the case of Sukhdev Ram but the testimony was not given and they were returning. Subhash told his mother to file the compromise petition or else it would be a bad situation.

8.1. The said witness has stated in his cross-



examination that his mother and he were sitting on the ground towards the west, a little away from the said hut. They were sitting at a distance of 2-4 yards from the east side of the *pucca* road. His mother was sitting facing west. He was sitting next to his mother at a distance of 1-1/2 cubit. After lodging the case, his statement must have been recorded about ten days later. His restatement was recorded at the police station. In the restatement, he told the police that Subhash had said to file a compromise petition or else the consequences would be bad. He has denied the suggestion that he was not present at the place of incident and that is why his signature is not there either on the inquest report or the seizure list. He had reported the incident to the police station on telephone. He had reported on 9431822794 which was the number of head clerk. He had also told the name of the accused to the head clerk. His mother sustained two bullet injuries in presence of him. Blood oozed out of her body. Blood had fallen on the ground at four places. Darogaji had seen the blood. It is not that no incident took place where it is said and blood was not found there. Many people had come to the place of incident. He cannot tell their names. Thousands of people saw the accused firing and running away. Firing must have continued for three to four



minutes. After the mother died, the accused ran away showing their rifles and guns. He has denied the suggestion that the names of the accused were not told to the police on the telephone. He does not know that his mother had any dispute with Tulasthan regarding land. This witness has denied the suggestion that Bhago Devi slept on a cot in her house and was murdered the same night on the day of the incident. The police saw his mother dead next to the Communist office. It is not true that the police saw Bhago Devi dead on a cot in her house. His sister and brother-in-law were present at the place of occurrence. Darogaji reached at the place of occurrence at 9:15 in the morning. His statement was recorded at 01:00 in the afternoon. It is not true that after arriving at 9:15 a.m., the police tried to record his statement but he did not give it. He has denied the suggestion that after the incident the sister and brother-in-law were called from Samastipur and after consultation he gave statement to the police. He does not know whether Subhash Yadav is accused in the murder of Sukhdev Ram or not. Subhash Yadav was going from the court with the police, then he threatened him and his mother. He was with his mother and heard the threat. He threatened to file a compromise petition or else the consequences would be bad. It



is not true that Lalo Yadav was in Begusarai jail on the day of the incident.

9. PW-2, Bhubaneshwar Ram has deposed in his examination-in-chief that the incident took place on 07.05.2015 at 8:30 in the morning. He was at his home. He was going towards the office of the Communist Party. Then two motorcycles came in which six persons were sitting. The vehicle was stopped in front of the party office. Rajo Yadav, Daso Yadav, Amar Yadav, Lalo Yadav, Suresh Yadav and Raban Yadav had come on the motorcycle. Six persons got down from the vehicle. Rajo Yadav and Daso Yadav asked Bhago Devi how she was. Meanwhile all the six persons started shooting at Bhago Devi. After Bhago was shot, Pramod Yadav who was sitting with Bhago Devi ran away from there. Two bullets were fired at him too but he did not get hit and he kept running. All the accused sat on the vehicle and fled away towards north. Bhago Devi was his mother-in-law. Bhago Devi was the informant in the murder case of Sukhdev Ram. Lanbo, Jai Jai Yadav and Sandeep Yadav threatened his mother-in-law to file a compromise petition in the said case or else the situation would be very bad. She did not file petition. That is why the accused murdered her. his house is at a distance of 10



lagga north-south of the Communist Party office. He claims to identify all the accused in court. This witness also claims to identify Raban Yadav, Suresh Yadav and Lalo Yadav who are not present in court.

9.1. The said witness has stated in his cross-examination that Alauli police station is 7-8 km away from Lahri. Pramod Ram had informed the police station about the incident on telephone. He was also present when he gave the information. He must have informed the police station at around 08:45 a.m. with his own mobile. Pramod Ram is his brother-in-law. On the day of the incident, he met the police at 03:15 hours. His statement was recorded by the police at 3:15 p.m. on 07.05.2015. He did not say to the police that a conspiracy was hatched to murder his mother-in-law from the jail. It is not true that he was in his village on the day of the incident. A day before the incident, wedding of daughter of Upendra Sad was held in Lahari village. There is no dispute between his mother-in-law and Upendra Sada. After the incident, he did not reveal the names of the accused to anyone in the society. He gave his statement to Darogaji at 03:15 p.m. Pramod and he also gave statements to Darogaji. Four accused shot at Bhago and two accused shot at Pramod. He saw them



shooting. Blood oozed out from the body of Bhago Devi. He did not get a chance to shout. There was blood on the ground. He was holding his mother-in-law after she died. There was no blood on my body and neither did it get on my clothes. He has denied the suggestion that no incident took place at the said place. It is also denied that no blood was spilled there and neither the police found any blood at the place of occurrence and hence there was no blood on his clothes. The witness has also denied that he was not present at the place of occurrence. He showed the blood to Darogaji. The police also saw the dead body. Darogaji prepared the papers. Darogaji had also seized the blood. He has denied the suggestion that he was in his village on the day of the incident and Pramod called me early in the morning and told him that some unknown person had killed his mother at night and he should come quickly. It is also wrong that he came on that information. The said witness has denied the suggestion that someone murdered Bhago Devi in her house at night and in the morning deliberately gave the names of the accused in this case to settle enmity.

10. PW-3, Karo Devi has deposed in her examination-in-chief that the incident took place one year and one month ago at about 08:30 in the morning. She was near the



party office. Her mother and brother Pramod Ram were also sitting there. Six accused persons came from the north on two motorcycles. They were Rajo Yadav, Daso Yadav, Amar Yadav, Lalo Yadav, Raban Yadav and Suresh Yadav. They stopped the vehicle in front of the party office and asked how are you, Netaji. When her mother raised her head, the above mentioned people started firing at her. Pramod Yadav ran away and she also ran. Her mother Bhago Devi died after being shot. Her mother was the informant in the murder case of Sukhdev Ram. Subhash Yadav, Jai Jairam Yadav and Sandeep Yadav had conspired from jail that if they kill Bhago, the murder case will be closed. This is the reason why the accused have committed this incident. The witness identifies nine accused in the court. She claims to identify the rest as well.

10.1. In his cross-examination, the said witness has stated that when the firing started, she ran. Six people fired indiscriminately. The bullets were fired from the north side. Mummy was sitting facing north. She tried to save my mother. But she ran away shouting out of fear. Due to fear no one came on her shout. Blood oozed out. The ground was also soaked in blood. She showed the blood to Darogaji. Darogaji came 10-15 minutes after the occurrence. She gave her statement at 03:00



hours. Her brother gave his statement at 09:00 hours. When her brother gave statement, she was unconscious. She gave her statement after regaining consciousness. About 25-30 rounds of bullets were fired.

11. PW-4, Ashok Ram has deposed in his examination-in-chief that he does not know anything about the incident. He heard about the murder of Bhago Devi who was murdered by Rajo Yadav, Amar Yadav, Daso Yadav and Lalu Yadav.

11.1. The said witness has stated in his cross-examination that he did not see Bhago Devi being murdered. There was *hulla* in the village. He does not know the name of the persons who were making *hulla*.

12. PW-5, Suresh Sada has stated in his examination-in-chief that the incident happened one year and three months ago at 8:30 in the morning. He was making a hut in front of the CPI party office. Six accused persons, namely, Rajo Yadav, Amar Yadav, Lallo Yadav, Daso Yadav, Suresh Yadav and Raman Yadav came on two motorcycles. Ranjit Yadav was talking on his mobile on the road. They asked what was happening and then shot her. The witness identifies all the above accused in the court. He also claims to identify others.



12.1. The said witness has stated in his cross-examination that his statement was recorded by the police. His statement was recorded near the party office half an hour after the firing. It is not true that his statement was never recorded by the police near the party office. He had told the police that the incident took place at 08:30 hours and he was working near the party office. He had also said that six persons had come on two motorcycles. He had also said that Ranjit Yadav was talking on mobile. The accused had asked how are you Netaji and then six persons shot her. It is not that he had told the police that he was at Haripur Chowk. It is not that he is a member of CPI and that he has given false testimony on their teaching. He met the police officer near the party office. He did not tell the police that on 07.05.2015 at around 10:00-11:00 in the morning, he heard that Bhago Devi was murdered. He has denied the suggestion that no incident took place as stated by him in his statement.

13. PW-6, Mukesh Kumar has deposed in his examination-in-chief that on 07.05.2015, he was posted as S.H.O. in Alauli Police Station. That day, he received information on his official mobile that criminals have shot dead a woman named Bhago Devi in village Larhi. On



receiving that information, he left for the spot along with police officers and armed forces. When he reached village Larhi, he saw that body of Bhago Devi was lying near a hut and the relatives of the deceased were crying there. The relatives had kept the dead body on a cot near the house of Bhago Devi. The inquest report of the deceased was prepared. The restatement of the informant was taken and the place of occurrence was inspected. The place of the incident is a thatched hut in village Larhi, the branch office of the Communist Party, which faces south. Bhago Devi was sitting on the west side adjacent to the hut. Two motorcycles came from the road on which six persons were riding. One empty cartridge of 303 bullet and one pellet were found at the place of occurrence. Both the above materials were seized and a seizure list was prepared in front of two independent witnesses. He came to the police station with fardbeyan and registered a case, then went to the place of occurrence. He recorded the statements of witnesses Kari Devi and Muneshwar Ram who supported the case of the prosecution. Raids were conducted at the houses of the named accused and they were found absconding. Then he was transferred on 09.05.2015 and he gave charge of the case to Uma Shankar



Rajak.

13.1. The said witness has stated in his cross-examination that when the occurrence took place, Sandeep Yadav and Subhash Yadav were in custody in Divisional Jail, Khagaria. He did not find any evidence with regard to conspiracy hatched from the jail. Jairam Yadav was also in custody in Divisional Jail, Khagaria when the occurrence took place. He did not record the statements of neighbours.

14. PW-7, Umashankar Rajak is the Investigating Officer of the case, who has deposed in his examination-in-chief that he took charge of investigation of the case on 09.05.2015 from Mukesh Kumar. He was posted in Alauli police station at that time. On 09.05.2015, he recorded the statement of Ashok Ram who said that accused Ranjeet Yadav was also involved in the case. On 10.05.2015, he recorded the statements of Suresh Sada and Sagar Yadav, who, apart from the accused in the FIR, also revealed the involvement of driver Manoj Kumar and vehicle owner Mukesh Kumar. On 11.05.2015, he arrested Mukesh Kumar and Manoj Kumar who confessed their involvement in their confessional statement. On 12.05.2015, he arrested the FIR named accused, Amar Kumar who disclosed the names of Bheem Sada and



Hare Sada apart from the involvement of the FIR named accused. He also arrested Daso Yadav and Rajo Yadav on 13.05.2015 who disclosed the names of Bheem Sada and Hare Sada in their confessional statement.

14.1. The said witness has stated in his cross-examination that he knew that Jai Jai Ram Yadav was already in jail. He did not know that Lalo was in jail. He had not recorded the statement of Jai Jai Ram. He had not written in the diary that he took charge of investigation. He did not see the names of accused Mukesh and Manoj in the *fardbeyan* as well as in the restatement. Witness Ashok Ram has only mentioned the names of accused Mukesh Yadav and Manoj in his statement. He did not find any evidence of murder against these two accused. It is mentioned in para-64 that the previous Investigating Officer was suspended and he does know the reason of his suspension. During the investigation, no evidence regarding the conspiracy was found from the jail.

15. PW-8, Dr. Md. Gulsanobar has deposed in his examination-in-chief that on 07.05.2015, he was posted as Medical Officer in Sadar Hospital, Khagaria and on the same day at 05:30 p.m., he had conducted the *post mortem* examination on the dead body of Bhago Devi and found



following *ante mortem* injuries on the person of the deceased:

(i) A lacerated wound on in front of left Pinna margin inverted charring present oval in shape with diameter 1/2"x3/4"x cavity deep dissected backward and medially. That is wound of entry.

(ii) A lacerated wound on left parital scalp with inverted margin charring present oval in shape size 1"x3/4"x cavity deep directed forward and medially. That is wound of entry.

(iii) A lacerated wound on right eyebrow oval in shape size 1"x1/2"x margin everted, cavity deep directed backward and medially, communicating with injury No (ii) i.e wound of exit.

(iv) A lacerated wound on left arm oval in shape 1"x3/4" diameter. Charring present margin inverted. cavity deep. All area around wounds blood stain present.

3. On internal examination

On dissection:-

(i) Brin lacerated. One bullet found in left arm and one in cranial cavity. Fracture left humerous middle one third. Rest all internal visceras are pale and intact. Heart- Right chamber empty and left contained blood and blood clots.



Stomach contained semi digested food and fluids. Small intestine contained fluid and gases. Large intestine contained faeces and gases.

4. Cause of death- Haemorrhage and shock leading to Cardiac and Respiratory failure due to above mentioned injuries caused by fire arm which are *ante mortem* in nature.

5. Time elapsed since death to P.M. examination within 24 hours.

15.1. The said witness has stated in his cross-examination that if a bullet is fired from a very close range it will pass through and through. The bullet can only be found in the body if it is fired from having resistance. It is further stated by this witness in his cross-examination that if someone takes food two hours before the death the semi digested food will be found. He cannot say what kind of food she had taken. It is further stated that death might have occurred prior to 24 hours of his *post mortem*. He cannot say which of the injuries was caused first and which was caused in the last. He cannot say which injury was the cause of death.

16. We have considered the submissions canvassed by learned counsels for the parties. We have also



perused the trial court records and re-appreciated the entire evidence led by the prosecution. It is specific case of the informant in the *fardbeyan* that the incident took place at 08:30 a.m. on 07.05.2015. For the said incident, he had given the *fardbeyan* at 13:00 hours (01:00 p.m.). In the *fardbeyan*, it is specific case of the informant that six named persons came at the place of occurrence, i.e., at the branch office of Communist Party situated at village Lahri on two motorcycles and thereafter all have started firing from the firearms which they were carrying and in the said incident, his mother sustained number of bullet injuries on her head as well as on her body and she immediately died. It is his case that he tried to flee away from the place and, therefore, the assailants fired two bullets upon him but the same did not hit him. The motive pointed out by the informant in the *fardbeyan* is that his mother (deceased) was informant and eye-witness to the murder of one Secretary of C.P.I., Alauli for which P.S. Case No.220/2013 came to be registered at Alauli police station. All the six assailants were also accused in the said case and, therefore, in connivance with two other accused, who were at the relevant point of time detained in custody, hatched a conspiracy and as a part of conspiracy, his mother has been



killed.

16.1. From the aforesaid *fardbeyan*, it can be said that the motive attributed by the informant that three other co-accused, who were in custody, hatched a conspiracy with the present appellants and others as mother of the informant (deceased) was informant and eye-witness in a particular case. However, it is relevant to note at this stage that the trial court has not believed the evidence of the prosecution *qua* hatching conspiracy by all the accused including the three accused, who were in custody. The trial court has also not believed the story of the prosecution and not relied upon the so-called eye-witnesses *qua* other six accused except the present appellants and, therefore, six accused have been acquitted by the trial court and till today, the State or the informant has not filed any acquittal appeal against the order of acquittal passed by the trial court in favour of six other co-accused.

16.2. Keeping in view the aforesaid aspect, now the deposition of PW-1, the informant, is examined, it is revealed that in para-3, the said witness has admitted that the police came to know about the incident and, therefore, at 09:15 a.m., the police came to the place of occurrence. Further, in para-21 of cross-examination, PW-1 has specifically admitted



that he informed the police on telephone. Mobile number has also been given by the said witness which was of the police officer. Further, PW-1 has specifically stated that he disclosed the names of the assailants to the police on telephone. Further, in para-28, the said witness has once again admitted that it is not true that he did not inform the police about the names of the assailants.

17. Now, keeping in view the aforesaid, deposition given by PW-2 is examined, it is revealed that in para-9 of cross-examination, this witness has also stated that information was given with regard to the incident in question to the police station on telephone. At that time, he was also present and such information was given on mobile phone. Further, the said witness has stated in para-30 that he had shown the blood at the place of occurrence to the investigating officer. The investigating officer seized the blood from the place of occurrence.

18. Now, PW-3, who is sister of the informant and daughter of the deceased, has admitted during cross-examination that within 10-15 minutes, the investigating officer reached to the place of occurrence and her brother gave statement at 09:00 a.m. However, when her brother gave



statement to the police, she was unconscious. Further, in para-20, the said witness stated that approximately 25-30 bullets were fired.

19. PW-5 is also projected as eye-witness. However, during cross-examination, the said witness has admitted that his statement was recorded by the police near party office half an hour after the occurrence. Suggestion was made to the said witness in para-10 about his statement given to the police under Section 161 of the Code. The said witness has stated that he did not state before the police that on 07.05.2015 at about 10:00-11:00 hours when he was in Harpur market, he heard about the murder of Bhago Devi.

20. Thus, from the deposition given by the aforesaid so-called eye-witnesses, it can be said that there are major contradictions and discrepancies in the deposition. It is pertinent to note that it is specific case of PW-1 that he informed the police on telephone with regard to the names of the assailants. It is specific case of the prosecution that police reached immediately after getting information on telephone at the place of occurrence at about 08:45 a.m. If the informant had disclosed the names of the assailants on telephone and if the informant was present at the place of occurrence with his



family members, what was the reason for not giving the *fardbeyan* immediately. It was the duty of the investigating officer to register the FIR on the basis of the information which he received because name of the deceased was known to him, names of the assailants were known to him and when police reached at the place, the manner of occurrence was also known to the police despite which the police officers who were present at the place of occurrence from 08:45 a.m. waited for the *fardbeyan* of the informant up to 01:00 p.m. Thus, we are of the view that in the present case, such a delay in lodging the FIR would be fatal to the prosecution and more particularly it is the specific case of learned senior counsel for the appellants that the appellants have falsely been implicated in the FIR in question and the informant has intentionally taken time for implicating number of persons in the FIR. It is also clear from the deposition given by PW-6 and PW-7, the investigating officers, that they did not find any evidence with regard to the conspiracy hatched by the accused including the accused, who were in custody at the relevant point of time. Further, from the reasoning recorded by the trial court, it is further clear that the trial court has not believed the allegation of the prosecution with regard to the conspiracy hatched by the accused and,



therefore, the trial court has acquitted six accused against which admittedly nobody has filed acquittal appeal.

21. It is relevant to observe at this stage that the seizure list has been produced by the prosecution vide Ext.3. However, if the time of preparing the seizure list is carefully seen, it is revealed that it was prepared at 11:30 a.m. wherein son of the informant had signed as a witness. Surprisingly, the FIR number has been mentioned in the said seizure list. It is relevant to note at this stage that in fact, the FIR was registered after 01:00 p.m. At this stage, it is also relevant to observe that as per the said seizure list, one empty cartridge and one pellet were seized from the place of occurrence, the said articles were not sent for necessary analysis to the FSL. Further, though the confessional statement of the accused were recorded by the investigating officer, there is no recovery or discovery of the alleged weapons/firearms from any of the appellants or even from other accused.

22. Further, it is revealed from the evidence led by the prosecution including the seizure list that the investigating officer did not seize the blood stained soil from the place of occurrence. It is the specific case of PW-2 in para-30 that he had pointed out the blood to the investigating officer and the



investigating officer seized the blood. However, there is nothing on record to suggest that the Investigating Officer had, in fact, seized the blood from the place of occurrence.

23. Further, the manner in which the occurrence took place, as per the case of the informant that all the six accused started firing from their firearms which they were carrying and more than 10 bullets were fired, surprisingly though the informant was sitting next to his mother (deceased) he did not sustain any bullet injury or firearm injury. Even otherwise, from the deposition given by PW-8, the doctor, who had conducted the *post-mortem* on the dead body of the deceased, it is revealed that the said doctor found two wounds of entry and one wound of exit that means two firearm injuries. Thus, it can be said that though all the six accused fired bullets from the firearms and more than 10 bullets were fired, two bullets hit the deceased. However, at this stage, if the seizure list is seen, it is revealed that only one empty cartridge and one pellet were found. It is also required to be observed at this stage that as per the so-called eye-witness, i.e., PW-3, who is sister of the informant, the said witness stated that approximately 25-30 bullets were fired. However, as observed hereinabove, except the aforesaid two articles, nothing was



seized by the investigating officer from the place of occurrence.

24. It further transpires from the record that inquest report as well as seizure list have been signed by one Rajesh Kumar, who is son of the informant. However, the said witness has not been examined by the prosecution. It is also relevant to note that two contradictory submissions are made by learned counsel for the informant with regard to the seizure list. On one hand, he has submitted that one empty cartridge and one pellet were seized from the place of occurrence and, therefore, it can be said that the incident took place at the said place and on the other hand when it has been pointed out by this Court that the seizure list was prepared at 11:30 a.m. even before registration of the FIR despite which the FIR number has been mentioned, at this stage, learned counsel for the informant contended that the seizure list is a concocted document. It is also relevant to note that on one hand learned counsel for the informant has argued that as the informant was shocked because of the death of his mother, there was some delay in lodging the FIR, however, on the other hand, it is the case of the learned counsel for the informant on the basis of the deposition given by PW-1 that the informant immediately



disclosed the names of the assailants to the police on telephone.

25. We have also gone through the deposition given by PW-8, who had conducted *post-mortem* on the dead body of the deceased. Two bullet injuries were found on the body of the deceased from which it can be said that the bullets were fired from a close range. However, from deposition of the prosecution witnesses and the version given by the prosecution witnesses with regard to the manner of occurrence, we are of the view that the medical evidence does not support the version given by the so-called eye-witnesses.

26. In view of the aforesaid discussions, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt. We have gone through the reasoning recorded by the trial court while convicting the present appellants and we are of the view that the trial court has committed grave error while convicting the present appellants and, therefore, the impugned judgment of conviction and order of sentence requires interference.

27. Accordingly, both the appeals stand allowed. The impugned common judgment of conviction dated 24.05.2018 and order of sentence dated 25.05.2018, passed by



the court of F.T.C.-1st., Khagaria in Sessions Case No.170 of 2015, Trial No.409/2017, arising out of Alauli P.S. Case No.103 of 2015, G.R. No.1182 of 2015, are hereby quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

27.1. Since all the appellants in both the appeals are in jail, they are directed to be released from jail custody forthwith, if their presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Dr. Anshuman, J.)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.12.2024
Transmission Date	20.12.2024

