

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1095 of 2018

Arising Out of PS. Case No.-230 Year-2015 Thana- MUNGER MUFFASIL District- Munger

Rajesh Mahto, son of Late Jagdish Mahto, resident of Mohalla- Waris Tola,
Police Station- Naya Ram Nagar, District- Munger.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 971 of 2018

Arising Out of PS. Case No.-230 Year-2015 Thana- MUNGER MUFFASIL District- Munger

1. Anita Devi, Wife of Harish Mahto @ Haris Chandra Mahto @ Hari Shankar Mahton.
2. Juli Kumari, Daughter of Harish Mahto @ Harischandra Mahto, @ Hari Shankar Mahton,
both are resident of Warish Tola Nawagarhi, Police Station- Naya Ram Nagar, District- Munger.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1058 of 2018

Arising Out of PS. Case No.-230 Year-2015 Thana- MUNGER MUFFASIL District- Munger

Harish Chandra Mahton, S/o Late Jagdish Mahton, R/o Vill.- Warish Tola,
Nawagarhi, P.S.- Naya Ram Nagar, District- Munger.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1095 of 2018)

For the Appellant/s	:	Mr. Avinash, Advocate
		Mr. Ratneshwar Prasad, Advocate
		Ms. Nitu Kumari, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP
For the Informant	:	Ms. Sushmita Mishra, Advocate
		Mr. Surya Narayan Sah, Advocate



(In CRIMINAL APPEAL (DB) No. 971 of 2018)

For the Appellant/s : Mr. Yogendra Kumar Singh, Advocate
Mr. Avinash, Advocate
Mr. Ratneshwar Prasad, Advocate
Ms. Nitu Kumari, Advocate
For the State : Mr. Abhimanyu Sharma, APP
For the Informant : Ms. Sushmita Mishra, Advocate
Mr. Surya Narayan Sah, Advocate

(In CRIMINAL APPEAL (DB) No. 1058 of 2018)

For the Appellant/s : Mr. Yogendra Kumar Singh, Advocate
Mr. Avinash, Advocate
Mr. Ratneshwar Prasad, Advocate
Ms. Nitu Kumari, Advocate
For the State : Mr. Abhimanyu Sharma, APP
For the Informant : Ms. Sushmita Mishra, Advocate
Mr. Surya Narayan Sah, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 19-07-2024

All three appeals have been taken up together as they have been preferred against the same impugned judgment of conviction and order of sentence dated 31.07.2018 and 01.08.2018 respectively passed by learned Additional Sessions Judge-I-cum Special Judge, Munger in Sessions Trial No. 41 of 2016 arising out of Muffasil P.S. Case No. 230 of 2015, whereby all the appellants have been found guilty under Sections 302, 341, 342 and 504 read with Section 34 of the Indian Penal Code and sentenced to undergo R.I. for life and to pay a fine of Rs. 25,000/- under Section 302; to undergo S.I. for one month and to pay a fine of Rs. 500/- under Section 341; to



undergo S.I. for one year and to pay a fine of Rs. 1,000/- under Section 342 and to undergo R.I. for two years and to pay a fine of Rs. 5,000/- under Section 504 of the Indian Penal Code. The appellant/Rajesh Mahto has also been found guilty under Section 27 of the Arms Act and sentenced to undergo R.I. for three years and to pay a fine of Rs. 5,000/-. In case of default to pay the fines, they have been ordered to undergo additional S.I. for six months. All the sentenced have been directed to run concurrently.

2. The prosecution case as emerging from the *fardebayan* of the informant/Sanjeet Kumar, as recorded on 10.11.2015 at 06:30 PM by ASI/Arun Kumar Jha of Kotwali P.S. at emergency ward of Sadar Hospital, Munger is that the informant along with his brother Sanjay Kumar, wife/Kiran Devi and sister-in-law (Bhabhi)/Chandni Devi had gone to Nawagarhi market for making purchases for Diwali festival. From the market, they were returning at 05:30 PM and when they reached near Bajrangbali temple, all the appellants and one Dheeraj Kumar @ Shivam, who are their neighbors, surrounded them at N.H. 80 and started abusing. When his brother/Sanjay Kumar protested, the appellants/Rajesh Mahto, and Dheeraj Kumar, on exhortation by Harish Chandra Mahton, Juli Kumari



and Anita Devi, shot at his brother. Dheeraj Kumar fired one shot and the appellant/Rajesh Mahto fired two shots. Consequently, Sanjay Kumar got injured and started bleeding and fell down. Thereafter, all the appellants fled away. After some time, the Officer-in-charge of Nayaram Nagar Police Station along with the informant went to the Sadar Hospital, Munger where Sanjay Kumar was declared dead during treatment. The reason behind the occurrence is stated to be the dispute between the prosecution side and the appellants with regard to a street in front of their houses. Ten days prior to the occurrence, the appellants had threatened that they would be killed.

3. On the basis of the *fardebayan*, Muffasil P.S Case No. 230 of 2015 was registered on 10.11.2015 against all the appellants and one Dheeraj Kumar @ Shivam for the offence punishable under Sections 341, 342, 504, 302 and 109 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act.

4. After investigation, charge-sheet bearing no. 19 of 2016 was submitted against all the FIR named accused persons including the appellants. However, case of Dheeraj Kumar @ Shivam was transferred to the Court of Juvenile Justice Board



for inquiry. After cognizance, the case of the appellants was committed to the Court of Sessions and charges were framed against them on 17.05.2016 under Sections 341, 342, 504, 302 read with Section 34 of the Indian Penal Code against all the appellants and additional charge under Section 27 of the Arms Act was also framed against the appellant/Rajesh Mahto. The charges were read over to the accused persons which they pleaded not guilty and claimed to be tried.

5. During trial, the following eight witnesses were examined on behalf of the prosecution:

- (1) **P.W.-1** – Ranjit Mehta (brother of the informant)
- (2) **P.W.-2** – Sanjeet Kumar (Informant)
- (3) **P.W.-3** – Kiran Devi (wife of the informant)
- (4) **P.W.-4** – Chandni Devi (wife of P.W.-1)
- (5) **P.W.-5** – Dr. Ram Prit Singh (Doctor)
- (6) **P.W.-6** – Achinav Kumar Dubey (I.O.)
- (7) **P.W. 7-** Dr. Raman Kumar (who conducted postmortem on the dead body of the deceased)
- (8) **P.W. 8-** Shambhu Kumar Singh (formal witness)

6. The prosecution brought on record the following documentary evidences also:

- (i) **Ext. 1, 1/1 & 1/2-**Signatures on the fardebayan
- (ii) **Ext. 2** – Postmortem report
- (iii) **Ext. 2/1** – Signature on Postmortem report
- (iv) **Ext. 3** – writing and signature on endorsement of the inquest report
- (v) **Ext. 4** – Formal FIR
- (vi) **Ext.5** – Signature on the inquest report
- (vii) **Ext. 6** – Certified copy of FIR of Nayaram P.S. Case No. 158 of 2016
- (viii) **Ext. 7-** Certified copy of charge-sheet



(ix) **Ext. 8** – Destruction report

(ix) **Ext. 9.** - Sanha No. 287J/2015

7. After closure of the prosecution evidence, the accused persons were examined under Section 313 Cr.PC, during which they were confronted with incriminating circumstances which had come in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During the examination, they admitted that they had heard the evidence of the prosecution witnesses against them, but they did not explain any circumstances though they denied every charge and claimed innocence. They further stated that Bhabhi (sister-in-law) of the deceased, Kiran Devi, is *Upmukhiya* and they (the appellants) had not voted for her in the election and that is why the prosecution side was angry with them and hence, falsely implicated them. The deceased had criminal dispensation and had connection with anti-social elements who killed him.

8. The appellants, however, did not examine any witness in support of their defence. However, they exhibited the following two documents.

(i) **Ext. A** – Injury report of Sanjay Kumar in Nayaram Nagar P.S. Case No. 158 of 2016 without any objection.

(ii) **Ext. B** – Petition dated 20.10.2016 filed by informant without any objection.



9. The Trial Court, after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment and sentence, finding that the reason behind the occurrence was dispute between the prosecution and accused side in regard to street which is used by them as private road and political enmity between them. The prosecution had proved its case against the appellants beyond all reasonable doubts.

10. We have heard the learned counsel for the appellants and learned APP for the State.

11. On behalf of the appellants, it has been submitted that the impugned judgment and the order of sentence passed by learned Trial Court is not sustainable in the eye of law or on facts. The learned Court below has not applied its judicial mind and has failed to properly appreciate the evidence on record. They have claimed that the prosecution has failed to prove its case against the appellants beyond all reasonable doubts. There is no cogent evidence on record to fasten the appellant with guilt as alleged by the prosecution.

12. To substantiate their claim, they have submitted that all the private prosecution witnesses are related and interested witnesses and no independent witnesses have been examined, despite the fact that the occurrence took place at a



busy public place. They have also submitted that there are discrepancies and contradictions in the statements of the prosecution witnesses and hence, they cannot be relied upon for conviction of the appellants. They pointed out that as per the medical evidence, the deceased had received only one bullet injury, whereas as per the prosecution witnesses, the deceased was shot at thrice. They have also submitted that the appellants have been falsely implicated on account of political enmity. The deceased has been killed by someone else on account of enmity.

13. However, the learned APP defended the judgment. It was argued that there is no illegality or impropriety in the judgment. The prosecution has proved its case beyond all reasonable doubts.

14. Before we consider the evidence on record to assess whether prosecution has proved its case against the appellants beyond all reasonable doubts, it would be pertinent to state that as far as **non-examination of independent witnesses by the prosecution** is concerned, it is relevant to note that the people in general, more so, civilized people, are insensitive when crime is committed even in their presence. They keep themselves away from courts unless it is inevitable. This kind of apathy of the general public is indeed undesirable and



unfortunate, but it is there everywhere, whether it is village, town or city. One can not ignore this handicap with which investigation agency has to discharge its duties. Moreover, the prosecution is not bound to produce all the witnesses. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. In this context, it would be apposite to refer to observations of Hon'ble Supreme Court in the following authorities:

15. In Appabhai & anr. Vs. State of Gujrat, AIR

1988 SC 696, Hon'ble Supreme Court has held as follows:

“10.It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious



nature may react differently. Their, course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner.”

[Also refer to Darya Singh Vs. State of Punjab, AIR 1965 SC 328; Yogesh Singh Vs. Mahabeer Singh & Ors (2017) 11 SCC 195; Sheo Pujan Tiwari Vs. State of Bihar 2016 (2) PCCR 187 and Dalip Singh Vs. State of Punjab, AIR 1953 SC 364]

16. With regard to private witnesses of the Prosecution being relatives of the deceased, it may be pointed out that that there is no bar in law in examining family members or any other persons as witness who are related to the deceased. In fact, some times, only family members are found to be witnesses to an offence. Moreover, evidence of any family members cannot be discarded only on account of his or her relationship with the deceased. The evidence of such evidence has to be weighed on the touchstone of truth and at most a court is required to take care and caution while appreciating their evidence. Here observations made by Hon’ble Apex Court may be referred to in support of our view:

17. In Abhishek Sharma Vs. State (NCT of Delhi), 2023 SCC OnLine SC 1358, Hon'ble Supreme Court has held as follows:

“24. It is important to appreciate the law on interested witnesses as enunciated by this court. In **Hari Obula Reddy v.The State of Andhra Pradesh**, a three-judge



Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It cannot be laid down as an invariable rule that interested evidence can only form the basis of conviction if corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. Suppose on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable. In that case, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.”

18. In Yogesh Singh Vs Mahabeer Singh & Ors;

(2017) 11 SCC 195, Hon’ble **Supreme Court** has held as follows:

“28. A survey of the judicial pronouncements of this Court on this point leads to the inescapable conclusion that the evidence of a closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.....”

(Also refer to *Mano Dutt and another Vs. State of Uttar Pradesh*; (2012) 4 SCC 79; *Daulatram Vs. State of Chhattisgarh*, 2009 (1) JIJ 1; *State Vs. Saravanan*, (AIR 2009 SC 152); *State of U.P. v. Kishanpal*, (2008) 16 SCC 73; *Namdeo Vs. State of Maharashtra*, (2007) 14 SCC 150; *State of A.P. Vs. S. Rayappa*, (2006) 4 SCC 512; *Pulicherla Nagaraju Vs. State of A.P.*, (2006) 11 SCC 444; *Harbans Kaur Vs. State of Haryana*; (2005) 9 SCC 195; *Hari Obula Reddy and Ors. Vs. The State of Andhra Pradesh*, (1981) 3 SCC 675 and *Piara Singh and Ors. Vs. State of Punjab*, (1977) 4 SCC 452.



19. In regard to **contradiction and discrepancies** in the prosecution witnesses, it is again relevant to point out that it is the settled position of law that minor discrepancies on trivial matters, not touching the core of the case; hyper-technical approach by taking sentences taken out of context here or there from the evidence; attaching importance to some technical error committed by the Investigating Officer not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observations, normal errors of memory due to lapse of time, mental disposition, shock and horror at the time of occurrence and threat to the life. Therefore, it is the duty of the court not to attach undue importance to minor discrepancies unless they go to the heart of the matter and shake the basic version of the prosecution witnesses as the mental ability of a human being cannot be expected to be attuned to absorb all the details of the incident. Minor discrepancies are bound to occur in statements of witnesses. In fact minor discrepancies in deposition are indication that the witnesses are not tutored and they are truthful. In case of rustic witnesses coming from villages, court should



not be oblivious of the fact that their behaviour pattern and perceptive habits are not attuned to sophisticated approaches familiar in courts. In this context, observations of Hon'ble Apex Court may be referred to:

20. In C. Muniappan & others Vs. State of T.N., (2010) 9 SCC 567, it was held by **Hon'ble Apex Court** as follows:

“71. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.....”

[Also refer to State of U.P. Vs. Krishan Master, (AIR 2010 SC 3071); Appabhai & Anr. Vs. State of Gujrat, AIR 1988 SC 696; Shivaji Sahebrao Bobade & Anr Vs. State Of Maharashtra (1973 AIR 2622); Sanjay Kumar Vs. State of Bihar 2019 SCC OnLine Pat 1077; State of Madhya Pradesh Vs. Dal Singh: (2013) 14 SCC 159; Smt. Shamim Vs. State (GNCT of Delhi), 2018 (4) PLJR 160; S. Govidaarju Vs. State of Karnataka, 2013 (10) SCALE 454; Narotam Singh vs. State Of Punjab And Anr. (AIR 1978 SC 1542); Leela Ram Vs. State of Haryana, (1999) 9 SCC 525; Subal Ghorai and Ors. Vs. State of West Bengal, (2013) 4 SCC 607 and Yogesh Singh Vs. Mahabeer Singh & Ors., (2017) 11 SCC 195].

21. With regard to inconsistency between Ocular and Medical Evidence, it is a settled principles of law that the



evidentiary value of medical evidence is only corroborative and not conclusive and, hence, in case of a conflict between oral evidence and medical evidence, the former is to be preferred unless the medical evidence completely rules out the oral evidence. Here, In this regard, **Yogesh Singh Vs Mahabeer Singh & Ors., (2017) 11 SCC 195**, may be referred to wherein **Hon'ble Apex Court** has held as follows:

“43. The learned counsel appearing for the respondents has then tried to create a dent in the prosecution story by pointing out inconsistencies between the ocular evidence and the medical evidence. However, we are not persuaded with this submission since both the Courts below have categorically ruled that the medical evidence was consistent with the ocular evidence and we can safely say that to that extent, it corroborated the direct evidence proffered by the eye-witnesses. We hold that there is no material discrepancy in the medical and ocular evidence and there is no reason to interfere with the judgments of the Courts below on this ground. In any event, it has been consistently held by this Court that the evidentiary value of medical evidence is only corroborative and not conclusive and, hence, in case of a conflict between oral evidence and medical evidence, the former is to be preferred unless the medical evidence completely rules out the oral evidence.....

44. In the present case, we do not find any major contradiction either in the evidence of the witnesses or any conflict in medical or ocular evidence which would tilt the balance in favour of the respondents. The minor improvements, embellishments etc., apart from being far yield of human faculties are insignificant and ought to be ignored since the evidence of the witnesses otherwise overwhelmingly corroborate each other in material particulars.”



22. Now coming to the prosecution evidence, we find that the **informant/Sanjeet Kumar** has been examined as **P.W.-2**. In his **examination-in-chief**, he has supported the prosecution case by reiterating the statements made by him in the *faredebayan*. In his **cross-examination**, he has deposed that the P.O. is surrounded by road to the east and again by road to the west and shop of Rakesh Mahto to the north and home of Mahendra Sharma to the south and one betel shop. The bullet hit the head of the deceased leading to bleeding from his head. The ground measuring about six inches got soaked in his blood. At that time, the deceased was wearing black pant and white shirt and that his clothes also got blood drenched. The P.O was at the distance of five minutes from his home. However, he could not tell the exact distance. He also deposed that the appellant/Rajesh Mahto and one Dheeraj Kumar @ Shivam fired at the same time. He could not tell where the bullet had hit. At the time of firing, he was standing to the east and person firing was standing to the south. The occurrence took place for 4-5 minutes. He further deposed that three firings were done. He was not sure whether all the bullets hit the deceased. However, he again said that one bullet hit the head of the deceased and the other his cheek.



23. Ranjit Mehta (PW-1) is the brother of the deceased, who is not an eye-witness to the occurrence. He reached the P.O. after his brother had already been injured.

24. **P.W.-3** is Kiran Devi, who is the sister-in-law of the deceased, has supported the prosecution case. In her **cross-examination**, she has deposed that the accused persons had fired only at the deceased and not at anybody else. At the time of the occurrence, the deceased was wearing green shirt and black pant.

25. **P.W.-4** is Chandi Devi. She is Bhabhi of the deceased/Sanjay Kumar. She is also an eye-witness to the occurrence. In her **examination-in-chief**, she has supported the prosecution case. In her **cross-examination**, she has deposed that Kiran Devi was *Upmukhiya*. However, she denied the suggestion that on account of opposition to the candidature of Kiran Devi during election, they were falsely implicated. She further deposed that all the three shots were fired in the same direction from the front. The deceased was taken to the hospital by the Police who came on its own, without any information having been given in the P.S. They could not apprehend the assailants. Even the clothes of her husband and brother-in-law were smeared with blood. The deceased was declared dead in



the hospital. Some dispute with regard to a private street had taken place ten days prior to the occurrence. The appellants/accused persons wanted to encroach half of the street. The deceased was preparing for competitive examinations. She denied the suggestion that the deceased was in contact with criminals and that he was killed in an internecine fight and the appellants were falsely implicated on account of political enmity.

26. P.W.-5 is Dr. Ram Prit Singh. He was member of the Medical Board which conducted post-mortem examination on the deceased. The Medical Board found the following ante mortem injuries:

“(a) A circular wound of $\frac{1}{2}$ ” diameter on left cheek below the left eye with charring around the wound (**wound of entry**).

(b) A lacerated wound of size 2”× 2” over right side of occipital region communicating to injury no. 1 with protruded brain (**wound of exit**)

(c) **A grooved wound of 1”× $\frac{1}{2}$ ” into soft tissue** deep on left forehead with charring around.

(d) Abrasion on right side of right eye of size $\frac{1}{2}$ ”× $\frac{1}{2}$ ”

On Dissection :- Blood and blood clots were found present in cranial cavity left maxilla & occipital bone were found fractured.

Cause of Death :- The death was due to hemorrhage shock due to injury of vital organ that means brain. As a result of above mentioned **injuries caused by fire arm.**

Time elapse since death within 3-4 hours.”



27. In his **cross-examination**, he has deposed that no foreign article was found inside the body of the deceased. Injuries no. 1 and 2 were communicating to each other.

28. **P.W.-7**, Dr. Raman Kumar, was also a member of the Medical Board. In his deposition, he too has endorsed what was stated by P.W.-5.

29. **P.W.-6** is the Investigating Officer of the case. He had recorded the *fardebayan* and had prepared the inquest report. After recording the *fardebayan*, he proceeded to P.O. and inspected the P.O. The P.O. was found to be situated on the south flank of N.H. 80 at half kilometer to the west of Nawagarhi. There was also Bajrangbali temple at the distance of 30 feet to the north-west of the P.O. and rice-mill at the distance of 50 feet to north-west. P.O. was surrounded by tea stall of Rakesh Mahto to the north, house of Mahendra Sharma to the South. He further deposed that appellant/Rakesh Mahto had one criminal case against him bearing Nayaram Nagar P.S. Case No. 135 of 2001 registered for offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. He also identified his writing and signature on the inquest report. He did not find anything worthwhile to seize at the P.O. He had not mentioned about blood at the P.O. He also



deposed that the reason behind the occurrence was dispute regarding a passage.

30. P.W.-8, Shambhu Kumar Singh, is a formal witness, who has identified the signature of the appellant/Harish Chandra Mahto and Advocate Ravi Shankar Prasad on the *Sanha* (informatory petition) bearing No. 287J of 2015 dated 06.11.2015 filed in the Court of learned CJM, Munger by the appellant/Harish Chandra Mahto. In this *Sanha*, he had referred to the dispute regarding the passage (Ext.-9).

31. Coming to the defence evidence, we find that **Ext. B** is an application filed by Sanjeet Kumar (informant) in Sessions Case No. 41 of 2016. As per the application, the accused persons were extending threats to him and his witnesses for compounding the case. He had further stated that on 21.10.2016, the sister-in-law of the informant/Chandni Devi, had deposed before the Court and when she was coming out of Court campus, appellant/Rajesh Mahto had abused her. When she reached home, the appellants along with five unknown persons came to the house of the informant and started beating them as a result of which, he was injured.

32. As per **Ext. A**, Sanjeet Kumar, aged 36 years, S/o late Baldev Mahto was examined on 22.10.2016 at Sadar



Hospital, Munger. He had suffered a lacerated wound and an abrasion.

33. From the perusal of the evidence on record, we are convinced that the informant (P.W.-2), his brother (P.W.-1), his wife (P.W.-3) and his sister-in-law (P.W.-4) are eye-witness to the occurrence. They are natural witnesses to the occurrence. They along with the deceased were coming from market when the alleged offence was committed in front of them. They are consistent and trustworthy. There is no major contradictions/discrepancies in their statements. Their evidence is consistent not only in regard to the P.O, but even in regard to the manner of the occurrence. Their evidence regarding the P.O. is corroborated by the evidence of the I.O. and their evidence regarding manner of occurrence is corroborated by the medical evidence.

34. As per consistent evidence of the prosecution witnesses, two shots were fired at the deceased by the appellant/Rajesh Mahto, whereas one shot was fired by Dheeraj Kumar @ Shivam, whose case was transferred to the Juvenile Justice Board for inquiry. They have also deposed that one bullet hit the head, whereas another bullet hit the cheek of the deceased. This evidence is supported by the medical evidence, as



per which wound of entry and wound of exit caused by fire arm have been found on the head. One grooved wound on the forehead of the deceased was also found.

35. According to the postmortem report, the death was caused due to hemorrhage and shock on account of the aforesaid *ante mortem* fire arm injuries.

36. The motive behind the occurrence has also been proved. As per the evidence of the prosecution witnesses and Ext. 9 (informatory application), there was enmity between both sides. Such evidence is corroborated by the evidence of the I.O. also.

37. Hence, we clearly find that the prosecution has clearly proved its case against the appellant/Rajesh Mahto beyond all reasonable doubts as he was one of the assailants who shot at the deceased. However, with regard to the rest of the appellants, viz., Anita Devi, Juli Kumari and Harish Chandra Mahto, we find that only allegation against them, as per the prosecution case, is that they exhorted the appellant/Rajesh Mahto and one Dheeraj Kumar @ Shivam to kill the deceased. It appears that they have been roped in by the informant on account of strong enmity between the family of the informant and the appellants. There could be a possibility of false



implication of these appellants. Hence, appellants/Anita Devi, Juli Kumari and Harish Chandra Mahto are entitled to be given benefit of doubt.

38. Accordingly, **Criminal Appeal (DB) No. 1095 of 2018** is dismissed, upholding the impugned judgment of conviction and order of sentence against appellant/Rajesh Mahto.

39. However, **Criminal Appeal (DB) No. 971 of 2018** and **Criminal Appeal (DB) No. 1058 of 2018** are allowed, setting aside the impugned judgment of conviction and order of sentence against appellants/Anita Devi, Juli Kumari and Harish Chandra Mahton.

(Jitendra Kumar, J.)

I agree

(Ashutosh Kumar, J.)

Shoaib/S.Ali

AFR/NAFR	NAFR
CAV DATE	08.07.2024.
Uploading Date	
Transmission Date	

