

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1215 of 2018

Arising Out of PS. Case No.-85 Year-2015 Thana- KARJA District- Muzaffarpur

Shyam Kumar @ Gabbar Paswan Son of Ramashray Paswan Resident of Village-Chamarua,P.S. Karja Distt.-Muzaffarpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1207 of 2018

Arising Out of PS. Case No.-85 Year-2015 Thana- KARJA District- Muzaffarpur

Shambhu Paswan Son of Ramashray Paswan, Resident of Village- Chamarua, P.S. Karja, District Muzaffarpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 1215 of 2018)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Kiran Kumari, Advocate
Mr. Purushottam Kumar, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Ramakant Sharma, Sr. Advocate
Dr. Bipin Chandra, Advocate
(In CRIMINAL APPEAL (DB) No. 1207 of 2018)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Kiran Kumari, Advocate
Mr. Purushottam Kumar, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Ramakant Sharma, Sr. Advocate
Dr. Bipin Chandra, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)



Date : 30-07-2024

The present appeals have been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the impugned judgment of conviction dated 03.08.2018 and order of sentence dated 10.08.2018, passed by the 1st Addl. District & Sessions Judge, Muzaffarpur, in connection with Sessions Trial Nos. 425 of 2016 and 426 of 2016 (arising out of Karja P.S. Case No. 85 of 2015), whereby appellant Shambhu Paswan has been sentenced to undergo R.I. for life with fine of Rs. 10,000/- u/S-302/34 of I.P.C. and, in default of payment of fine, R.I. of 6 months. He has further been sentenced to undergo R.I. of 10 years and fine of Rs. 5,000/- u/S-307/34 of I.P.C. and, in default of payment of fine, further R.I. of 3 months. He has further been sentenced R.I. for life and fine of Rs. 10,000/- u/S- 120B of I.P.C. and, in default of payment of fine to further serve R.I. of 6 months. He has further been awarded 7 years of R.I. u/S- 4 of the Explosive Substance Act. All the sentences have been directed to run concurrently. Appellant Shyam Kumar @ Gabbar Paswan has been sentenced to R.I. for life and fine of Rs. 10,000/- u/S- 120B read with Section 302 of I.P.C. and, in default of payment of fine, to serve further R.I. of 6 months.



2. Heard learned counsel Mr. Ajay Kumar Thakur, assisted by Mrs. Vaishnavi Singh for the appellants, learned Senior Counsel Mr. Ramakant Sharma assisted by Mr. Bipin Chandra for the informant, and Mr. Sujit Kumar Singh, learned A.P.P. for the respondent State.

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

“On 30.07.2015 the informant was going with his brother on a motorcycle Braj Kishore Sharma to assist him in catching the vehicle for Civil Court, Muzaffarpur where he is a practising advocate. At 09:15 a.m. they reached petrol pump Chowk and as soon his brother Braj Kishore Sharma got down, accused Shambhu Paswan, son of Ram Ashray Paswan, Guddu Kumar, son of Late Ram Prit Rai, both residents of village-Chamrua, P.S. Karja, District-Muzaffarpur came there with three unknown. Accused Shambhu Paswan rebuked his brother for advocating against Gabbar Paswan and threatened to kill him. Saying this, Shambhu Paswan hurled a bomb targetting Braj Kishore Sharma, as a result of which his belly burst out and organs were split into pieces. When the informant left the vehicle and tried to flee, accused Shambhu Paswan hurled another bomb upon him with a view to kill him. Again accused



Guddu Kumar hurled a bomb which hit the child standing on the road named Ashik Kumar, son of Tuntun Mahto of village- Rautania, as a result of which the body of the child split into pieces and he died instantly. In the meantime, the informant's elder brother Nawal Kishore Sharma reached there to take diesel and witnessed the incident. Shortly police from Karja Police Station came at the spot and took the dead body to Muzaffarpur and on being declared by the Doctor, the police sent the dead body to S.K.M.C.H. for *post mortem*. The incident was witnessed by the people present there. After committing the crime, the accused persons fled away towards West. The reason behind the incident is the threat given by Gabbar Paswan in the court premises when he was produced in Court in connection with Karja P.S. Case No. 79 of 2013 lodged for committing the murder of Ravi Shankar Sah, son of Late Bhim Bali Sah of village- Bangri, P.S. Kauri, District- Muzaffarpur on 13.07.2015. On 13.07.2015 itself the informant's brother had informed about the threat given after returning from Court. The informant apprehends that Gabbar Paswan, who is in jail custody, has got his brother and the child murdered through his brothers Shambhu Paswan and Guddu Paswan and three unknown by hatching a criminal conspiracy."



4. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial Nos. 425/2016 & 426/2016.

5. Learned senior counsel for the appellants Mr. Ajay Kumar Thakur, at the outset, submits that there is gross delay of 27 hours in lodging the F.I.R. for which no plausible explanation has been given by the informant. It has been submitted that, as per the case of the informant, the incident took place at 09.15 a.m. on 30th July, 2015 whereas the F.I.R. came to be lodged at 12:40 p.m. on 31.07.2015. It has further been submitted that the prosecution has examined only relatives of the deceased who are interested witnesses. It is also contended that the witnesses, who are shown as independent witnesses in the charge-sheet, are not examined by the prosecution for which no explanation has been given. At this stage, learned counsel would further submit that the prosecution has also failed to prove the place of occurrence. It



is submitted that from the deposition given by the witnesses as well as the inquest report, it may be said that there are 3 different places of occurrence shown by the prosecution as places of occurrence and, therefore, the prosecution story may not be believed. Learned counsel submits that the police officer who came first at the place of occurrence has not been examined, as a result of which prejudice has been caused to the defense.

6. Learned advocate Mr. Thakur thereafter contended that, in fact, P.W. 1 to P.W. 5 are not eye-witnesses to the occurrence. However, they were projected as eye-witnesses. Learned counsel has referred to the deposition given by P.W. 1 to P.W. 3 and thereafter referred to the deposition given by P.W.7, the Investigating Officer. After referring to the same, it has been contended that P.W.1 to P.W.3 are not eye-witnesses and the said witnesses have, for the first time, deposed before the Court as if they have seen the occurrence in question. Learned counsel, therefore, urged that the deposition given by the said eye-witnesses be discarded.

7. Learned advocate Mr. Thakur would further submit that P.W.4 and P.W. 5 are brothers of the deceased. It is submitted that from the deposition given by the said eye-



witnesses, it appears that they were present at the place of occurrence and they are eye-witnesses. However, surprisingly, though the said witnesses were present and signed the inquest report of the dead body of the deceased Braj Kishore Sharma, they did not disclose the names of the assailants to the police. It is contended that P.W.4 and P.W. 5 both have admitted that after the incident took place, within 5 to 10 minutes, the police came at the place of incident despite which the names of the assailants were not disclosed to the police. It is also contended that inquest report was prepared at 10:30 a.m. and thereafter the *post mortem* was conducted at 12:10 p.m. on 30th July, 2015. However, the F.I.R. was lodged on 31.07.2015 at 12:40 p.m.

8. Learned counsel further submits that though the *fardbeyan* was given by the informant after 27 hours, as per the said *fardbeyan*, the cause for the incident was that the deceased, who was an advocate, had been appearing against the accused Gabbar Paswan and, therefore, on 13th July, 2015, when accused Gabbar Paswan was produced in Court, in Court campus itself he gave threat to the deceased and thereafter the incident took place. However, the prosecution-witnesses have deposed before the Court that a land-dispute was going on between the parties, as a result of which the incident took



place. Thus, prosecution has failed to prove the motive on the part of the accused to commit the alleged offence. No document has been produced by the prosecution with a view to prove that deceased was appearing as an advocate against accused Gabbar Paswan in any case. At this stage, learned counsel would submit that it is the specific defence taken by accused Shambhu Paswan that he was not present in the village, the place at which the occurrence took place. In support of the said contention, learned counsel has referred para Nos. 26 to 28 of the cross-examination of the Investigating Officer, P.W. 7. Learned counsel has also referred the deposition given by D.W. 1. It is also submitted that, admittedly, even as per the case of the informant, appellant/accused Gabbar Paswan was not present at the place of occurrence and he was in jail. The said accused has been implicated with the aid of Section-120B of I.P.C. However, prosecution has failed to prove, by leading cogent evidence, that there was a conspiracy hatched between accused Shambhu Paswan and Gabbar Paswan with a view to eliminate deceased Braj Kishore Sharma. Learned counsel, therefore, urged that the prosecution has miserably failed to prove the place of occurrence, manner of occurrence and the motive behind the incident, despite which the trial Court has



passed the impugned judgment of conviction and order of sentence. As such, the impugned judgment and order may be quashed and set aside.

9. On the other hand, learned Senior Advocate for the informant Mr. Ramakant Sharma, assisted by Mr. Bipin Chandra as well as learned Additional Public Prosecutor Mr. Sujit Kumar Singh have vehemently opposed both these appeals. Learned counsels would mainly submit that there are 5 eye-witnesses to the incident in question and all the eye-witnesses i.e. P.W. 1 to P.W. 5 have supported the case of the prosecution. P.W. 6, the Doctor who had conducted the *post mortem* of the dead body of the deceased, has also supported the version of the eye-witnesses. Thus, medical evidence supports the case of the prosecution. It is submitted that merely because there is delay in lodging the F.I.R., it cannot be said that the accused have been falsely implicated. It is submitted that the informant and his family members were shocked because of the incident in question and, therefore, they did not file any F.I.R. immediately. It is contended that the prosecution has proved the case against the accused beyond reasonable doubt and, therefore, the Trial Court has not committed any error while passing the impugned judgment and order and the



same require no interference by this Hon'ble Court. Therefore, both these appeals be dismissed.

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

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

12. Before the Trial Court, prosecution examined 7 witnesses. Defence has also examined 2 witnesses.

13. PW-1 Ravishankar Shah has stated in his examination-in-chief that the incident is of 30.07.2015. At about 09:00 a.m., he was at Rautania Chowk. There were two petrol pumps at that place. He was taking tea. At that time, he saw that Braj Kishore Sharma was brought on a motorcycle by his younger brother Ram Kishore Sharma. At the said chowk, Braj Kishore Sharma got down from the motorcycle. At that time, two motorcycles came there. There were three men riding on one motorcycle and two others were riding on the second motorcycle. Shambhu Paswan and Guddu Kumar stepped down from their respective motorcycles. Shambhu Paswan then told



Braj Kishore Sharma that as he was appearing as an advocate lodged against Gabbar Paswan, he will be finished. After saying this, they threw the bomb which hit Braj Kishore Sharma and his belly burst out. His body burst into pieces. Gabbar Paswan then threw another bomb on Shyam Kishore but it did not hit him as he had run away. Guddu hurled the third bomb which hit the child present there causing his death. After this, everyone ran away. It is stated that the threat was given in the Court premises on 13.07.2015.

13.1. In his cross-examination, he has stated that he had seen the incident with his own eyes. He saw the said incident from a distance of 20 feet. He has also stated that he is a witness in two cases against Gabbar Paswan. He was deposing against Shambhu Paswan for the first time. He was also deposing against Gabbar Paswan for the first time. He had not said in his statement before the Police that, on 30.07.2015 at around 09:30 a.m., there was an uproar that a bomb had been exploded at Rautania Chowk in which the lawyer was seriously injured. He had not even said in his statement that when he reached there, there was a huge crowd and the lawyer was taken to the Hospital. He had identified himself to the Police when inquired about the incident and came to know that, before



the bomb was exploded, Guddu Rai and Shambhu Paswan were seen near the chowk.

14. PW-2 Tuntun Mahto has stated in his examination-in-chief that on the day of incident, he was returning from his in-laws' house. He was with his wife Dharmshila Devi, son Bikki and a three month old son in his lap. He reached Rautania Chowk petrol pump at 09:00 a.m. At the same time, two bikes arrived there. There were three men on one bike and two on the other. Two persons got down from the bike. He identifies the two persons who got down from the bike. One was Shambhu and the other was Guddu. Shambhu threw a bomb on the lawyer. He did not know the name of the lawyer. The bomb hit the belly. One bomb was thrown on Munna which did not hit him. One bomb was thrown by Guddu which hit his son Bikki and he was blown into pieces. There was complete darkness due to bomb explosion. The people who threw the bomb ran away. The people who were nearby took his son and the lawyer to the Medical College where the Doctor declared them dead. The *post mortem* of his son and the lawyer was done. The same statement was given to the Inspector.

15. PW-3 Sheela Devi has deposed that, on the day of incident, she had come to her in-laws' house from her



mother's house. Her husband and her two sons were with her. When she reached near Rautania Chowk petrol pump at 10:00 a.m., at that very moment three miscreants came on a motorcycle. Two persons came on another motorcycle. Shambhu Paswan threw a bomb upon the lawyer. The lawyer's belly burst out and he died. Shambhu Paswan threw the second bomb which did not hit anybody. Guddu Rai also hurled a bomb which hit her son. Her son died due to bomb injuries. All the persons who threw bomb ran away. The *post mortem* of the lawyer was done. She only identifies Shambhu Paswan but not Guddu.

16. PW-4 Nawal Kishore Sharma has stated in his examination-in-chief that on the day of incident he left his home a few minutes past nine. He left home five minutes after the lawyer left. He was at a distance of 20-25 feet from the place where the incident took place. The bomb exploded a minute after he reached at the said place. He only identifies two accused persons out of five. He could not hear the conversation going on between the accused persons and the lawyer. His brother was also on the motorcycle. It was Hero Honda Splendor Plus. He does not remember the brand of his brother's motorcycle. There was a lot of smoke when the bomb



exploded. Shambhu Paswan threw the bomb, a minute after his arrival. The second bomb also exploded within a minute thereafter. After a minute and a half, Guddu Kumar also threw a bomb. He has further stated that they did not throw bomb at him. There is an ongoing land dispute between him and Gabbar Paswan.

16.1. In his cross-examination, he has stated that he, his deceased brother Braj Kishore and Shyam Kishore Sharma are the informants in the Karja Police Station Case No. 89/11. He has also stated that the papers of the land in dispute is in his name. He has stated that there are 5-6 shops near the place of incident. The accused persons were having conversation with the deceased at that time. The accused persons stopped the motorcycle at a distance of 15-20 feet from the place where he was lying. Both the motorcycles came there and were parked side by side. The accused persons got down from the motorcycle and then threw the bombs. Bombs were hurled from the side of the motorcycle. The accused persons threw the bomb from a distance of 3-4 feet which hit the deceased. He was 15-20 feet away when the bombs were exploded. It is stated that Shambhu Paswan was not riding a motorcycle but only sitting on it. Guddu Paswan was sitting on



another motorcycle. The child which was hit by bomb was 45 feet away from the place from where the bomb was hurled. Guddu threw the bomb from a distance of 45 feet from the deceased. The bomb hit the deceased from the front. Shambhu Paswan and Guddu Paswan were 1 foot away from each other while hurling bombs. When the bombs exploded, there were 7-8 people nearby. At that time, some shops were open and some were closed. It is stated that his deceased brother was wearing a white shirt and black pant. The deceased had told him that Gabbar had threatened him in the Court premises. The Police came 5-7-10 minutes after the incident took place. They had not informed the Police about the incident.

17. P.W.-5, Shayma Kishore Sharma, the informant, has stated in examination-in-chief that on 30.07.2015, at 09.15 a.m., he was at the Chowk near Rautania Petrol Pump with his brother Braj Kishore Sharma and Madan Sharma. In the meantime, five persons came there on two motorcycles. Three of them were sitting on one motorcycle and two on the other. He identified two of them, namely Shambhu Paswan and Guddu Paswan. Shambhu Paswan abused his brother and threatened him to kill as he was appearing against Gabbar Paswan in Court. Saying this he hurled a bomb on him



which hit his belly and his belly burst out. He fell down on the spot. Second bomb was hurled targetting the informant which did not hit him. Third bomb was hurled upon the informant by Guddu Kumar which missed the target and hit the child present there causing his death. After this, all the five miscreants fled away towards west. The informant and others were carrying the brother of the informant to the vehicle during which police van reached and police took the informant's brother to hospital. The child was taken to Maa Janki Hospital in another vehicle. Doctor, at the first sight, declared informant's brother dead and his *post mortem* was conducted in the medical college. The police took the informant's *fardbeyan* at 12:30 hours the next day. He has identified his signature on the *fardbeyan* (Ext.-1). He claims to identify all the accused persons.

17.1. In his cross-examination, he has stated that he had reached the place of occurrence at 09:15 a.m. with his brother. The miscreants reached there within one minute. He has further stated that he has a land-dispute with accused Gabbar Paswan and others since 2011. He has further stated that the inquest report of the dead body was prepared in his presence in the medical college. He doesn't remember whether he had signed on the same or not. In his cross-examination, he



has admitted that accused Gabbar Paswan did not threaten the deceased in his presence. At the relevant time, Gabbar Paswan was in jail. There is a petrol pump near the place of occurrence and there are 5-6 shops there. The motorcycle on which the informant took the deceased had not received any marks of bomb explosion. The motorcycle was not examined by MVI. The police reached at the place five minutes after the incident but did not prepare any document and simply returned with the dead body. He has stated that he had not told Daroga Ji that out of three riders on the first motorcycle, he had identified two. He has denied the suggestion that Shambhu Paswan had returned from Delhi on the date of incident and he was not present at the place of occurrence. He has denied the suggestion that due to the land-dispute, Gabbar and Shambhu Paswan have been falsely implicated in this case. Further, he has stated that the child who was injured by the bomb was at a distance of four hands from him and he was standing at a distance of four feet from deceased Braj Kishore Sharma. Parents of the child were beside the child. He has further stated that police recorded his statement at 12:30 p.m. next day. No complaint was filed for the threat given by Gabbar. He has a land-dispute with only Gabbar Paswan and not Shambhu



Paswan. He has denied the suggestion that at the time and on the date of occurrence, he was not present at the place of occurrence rather he was at Delhi. He has denied the suggestion that due to the land-dispute, he has filed a false case.

18. P.W. 6 Dr. Nipin Kumar has stated in his examination-in-chief that on 30.7.15 he conducted the *Post Mortem* examination of the dead body of Braj Kishore Sharma, Male, aged about 60 years, S/o Late Nandan Pd. Sharma, and found following *ante mortem* injuries:-

“One Ragged wound over right side of abdomen 16"x10" cavity deep. There was burning marks and blisters around the wounds with wound margin and surround tissues were black and brown in colour. There was protrusion of ruptured intestinal loop with rupture of liver. Cavity was filled with blood.

One ragged wound 6"x3.5" bone deep over left fore arm below elbow including palmar aspect muscle. Blood vessels were torn and ragged. Forearm bone were exposed. Wound margin and surrounding muscles having marks of burning and blackening with presence of foreign particles.”

18.1. He has opined that the deceased died due to hemorrhage and shocks because of above mentioned injuries. Injuries were caused by some explosive substance. Time since death 2 to 12 hours from the time of examination. He has identified the *post mortem* report to be in his pen and signature (Ext.-2).



18.2. He has further stated that on the same day at one P.M he also performed the *post mortem* examination over the dead body of Ashik Kumar, male Child, aged about 2.5 S/o Tuntun Mahto of Village Rataunia, PS Karja Dist- Muzaffarpur and found following injuries:-

“Ragged wound over abdomen pelvis and left thigh 12"x9" Cavity deep. There was marks of burning and blisters around the wound. Wound margin were black in colours at some places. There was rupture of intestinal loop and abdominal and pelvic structure with blacking of superficial tissues. Both cavity were filled with blood.

Ragged wound 4"x0.5" bone deep over upper part of left thigh. Muscle blood vessels were torn having presence of burning and blacking. Thigh bone was exposed. This part of limb was attached with the body with tags of muscle.”

18.3. He has opined that the deceased died due to hemorrhage and shocks because of above mentioned injuries casued by some explosive substance. Time since death 2 to 12 hours from the time of examination. He has identified the *post mortem* report to be in his pen and signature (Ext.-2/1).

18.4. In his cross-examination, he has stated that the injuries on the body of Braj Kishore Sharma might have been caused due to hurling of bomb from a distance of 1-5 feet. No remnants of bomb were found from the *ante mortem* wounds. There were injuries on two separate parts which may be caused by a single bomb or two bombs. The body of Braj



Kishore Sharma was not dismembered.

19. P.W.-7 Avani Bhushan Prasad Singh has stated in his examination-in-chief that on 30.07.2015, he was posted at Karja Police Station. On that date, he was informed on his mobile that miscreants had hurled bombs on two persons near Rautania Petrol Pump. He registered a Sanha in this regard and informing his Senior Officials about the incident proceeded towards the place of occurrence. The moment he reached at the place of occurrence, a crowd had gathered around. Some persons were trying to carry the injured on an auto. Instantly, the injured was taken to Muzaffarpur Hospital in police van. He prepared the inquest report of the dead body of the child Ashok Kumar, aged about 2.5 years. He has identified the inquest report which is in carbon copy (Ext.-5). He has also identified the inquest report of deceased Brajesh Kumar Sharma prepared by S.I. Girish Kumar Pandey (Ext. 5/1). He inspected the place of occurrence which is the paved road N.H. 102 near Rautania Petrol Pump. He recorded the statements of witnesses Kumkum Mahto and Sheela Devi. He also recorded the statements of witnesses Ravi Shankar Sah, Shyam Kishore Sharma, Nawal Kishore Sharma, Kishori Thakur and Haribudhan Thakur, who supported the FIR. He arrested accused Shambhu Paswan and



submitted charge-sheet against him. He also submitted charge-sheet against accused Shyam Kumar @ Gabbar Paswan. He has claimed to identify both the accused persons.

19.1. In his cross-examination, he has stated that he had written in para 1 of the case diary about registering Sanha on 30.07.2015, but the same is not before him. He had not enclosed copy of the Sanha in the case diary. He has further stated that he had not prepared the inquest report of Braj Kishore Sharma but the same bears the signatures of witnesses Nawal Kishore Sharma and Shyam Kishore Sharma. He had visited the place of occurrence on 30.07.2015 but he has not mentioned the date and time in the case diary. He had not found any remnant of bomb at the place of occurrence. Who had shown him the place of occurrence, is not mentioned by him in the case diary. He found no incriminating articles at the place of occurrence which could suggest that any untoward incident had taken place. He found no mark of violence or blood or any material exhibits at the place of occurrence. He has further stated that on 31.07.2015, the family members of the deceased did not contact him for giving their statement but he, at his own, as part of his duty, had gone to Goriyav to record the statement of Shyam Kishore Sharma and recorded his



statement at his door. He has stated that Madhusudan Prasad had stated before him that at the time of incident, Shambhu Paswan was travelling with him and he has been falsely implicated due to dirty politics. He had also furnished the papers of hotel where they stayed. He has further stated that he had procured their photographs on Whats App in which both are seen together, but the tower location of Shambhu could not be traced. In para 30 of his cross-examination, he has denied the statement given by Ravi Shankar Sah about the sequence and manner of events. Witness Tuntun Mahto had stated to him that after the incident, on getting the information from his wife, he went to the place of occurrence and saw that his son Ashok Kumar had died due to bomb injuries. Tuntun Mahto had not stated himself to be an eye-witness to the incident. Sheela Devi had stated herself to be an eye-witness. Sheela Devi had stated that when she had gone to purchase biscuit, the bomb exploded. She did not claim to identify any of the accused. He has further stated that he had recorded the statement of witness Nawal Kishore Sharma on 01.08.2015. Witness Shyam Kishore Sharma had not in his re-statement that Gabbar Paswan was trying to grab his land. He has denied the suggestion that his investigating was misdirected just to implicate innocent



persons.

20. DW-1 Madhusudan Prasad has stated in his examination-in-chief that he had gone to Delhi on 26.07.2015 with Shambhu Kumar and returned to Muzaffarpur on 30.07.2015 at about 04:00 hours. He identifies Shambhu Kumar. He has identified the computer generated railway tickets (Ext.-A and A/1).

21. D.W. 2 Anil Kumar Singh has deposed that on 13.07.2015 he was posted at Hazrat Court and had taken Shyam Kumar @ Gabbar Paswan from Hazrat to the Court of A.D.J. 4. He has further stated that Shyam Kumar had not talked with anybody inside or outside the Court. He identifies Shyam Kumar @ Gabbar.

22. We have considered the submissions canvassed by the learned counsels for the parties. We have re-appreciated the entire evidence led by the prosecution and the defence before the Trial Court and also perused the documentary evidence exhibited.

23. It would emerge from the evidence on record that, as per the *fardbeyan*, the incident took place at 09:15 a.m. on 30th July, 2015, whereas, admittedly, the *fardbeyan* of the informant was recorded at 12:40 p.m. on 31.07.2015 i.e. after



27 hours. The only explanation given by the informant is that he and his family members were shocked because of the incident in question. Therefore, the F.I.R. could not be immediately registered. However, from the evidence led by the prosecution, it is revealed that the said explanation cannot be said to be a plausible explanation. It is relevant to note that, as per the case of the prosecution, witnesses, P.W.1 to P.W. 5, were present and they are eye-witnesses to the incident. P.W. 1 is not a near relative of P.W. 4 and P.W. 5 or the deceased advocate and the deceased child. The said witness has also not given his *fardbeyan* with regard to the said incident. Further, son of P.W.2 and P.W. 4 also died in the said incident. They also did not file any F.I.R. with regard to the said incident. It transpires from the record that the police came at the place of incident within 5 to 10 minutes and, as per the case of the prosecution, all the prosecution-witnesses, who are projected as eye-witnesses, were present, but nobody informed the police with regard to the names of the assailants. Even the concerned police officer himself has not registered the F.I.R. with regard to the serious incident which took place wherein two persons lost their lives. It further transpires that inquest report of dead body of the child was prepared at the place of occurrence at



10:00 a.m. on 30th of July, 2015 and the inquest report of deceased Braj Kishore Sharma was prepared at Maa Janki Hospital, Muzaffarpur at 10:30 a.m. P.W. 4 and P.W. 5, who are brothers of deceased Braj Kishore Sharma, have signed the said inquest report, however, at that time also they did not disclose the names of the assailants. Thereafter, *post mortem* of the dead body of the deceased was performed/conducted at 12:10 p.m. on 30th July, 2015 and thereafter on the next day i.e. on 31st July, 2015 at 12:40 hours the *fardbeyan* was given by P.W. 5.

24. It would further emerge from the record that P.W. 1 has deposed before the Trial Court that at 09:15 a.m. in the morning on the date of occurrence, he was taking tea near the place of incident at Rautania Chowk and, therefore, he had seen the incident. However, from the deposition given by P.W. 7, the Investigating Officer, more particularly para-30, it is revealed that the said witness did not state about the said aspects while giving his statement under Section-161 of the Code before the police. Thus, it appears that, for the first time, P.W. 1 has claimed that he is an eye-witness to the incident.

24.1. Similarly, P.W. 2, who is father of another deceased i.e. child Ashik, has also deposed before the Court that he was present at the place and he has seen the incident. He



gave the names of the assailants also before the Court. However, from the deposition given by P.W. 7, the Investigating Officer, it appears that the said witness, i.e. P.W.2, reached at the place after the incident had taken place and his wife informed him about the incident. He is not an eye-witness to the incident.

24.2. P.W. 3 Sheela Devi, mother of deceased child, has also, for the first time, deposed before the Court that she had seen the incident and disclosed the names of the assailants. However, surprisingly, the said eye-witness has failed to identify accused Guddu who was present in Court. Further, from the deposition given by P.W. 7, I.O., more particularly para-34, it is revealed that the said witness had gone to purchase biscuit and thereafter a bomb exploded and she did not claim to identify the accused before the police.

24.3. Thus, from the aforesaid deposition given by the I.O., it is revealed that there are major contradictions, inconsistencies in the deposition of the aforesaid witnesses and, in fact, P.W. 1 to P.W. 3 are not eye-witnesses to the incident in question. P.W. 4 and P.W. 5 are near relatives i.e. brothers of the deceased namely Braj Kishore Sharma. From the deposition given by the said witnesses also, it is revealed that the story put



forward by the said witnesses cannot be believed and the conduct of the said witnesses was not natural. Though the police came at the place of occurrence within 5 to 10 minutes, the said witnesses did not disclose the names of the assailants before the police. It is stated by the informant in the *fardbeyan* that because of the shock, the members of the family could not lodge the F.I.R. immediately. However, the said explanation is not plausible because sufficient opportunity was available with the aforesaid witnesses when the police was present to give the name of the assailants. Even the parents of another deceased i.e. deceased child, have also not lodged the F.I.R. with regard to the incident in question as they were not aware about the names of the assailants. It is also pertinent to note that P.W. 4 and P.W. 5 have stated that they were present at the place and identified the assailants. As such, they could have immediately disclosed the same even to the parents of the deceased child. Even P.W. 1 is not near relative of the deceased. If that witness was also present, he could also disclose the name of the assailants to the police. However, he has not done the same. Further, the police officer himself could have registered the F.I.R. if the names of the assailants were disclosed by the so-called eye-witnesses to the police.



25. It is also pertinent to note that the police officer who reached to the place of incident was not examined by the prosecution. Even the other independent witnesses, who are the shopkeepers/owners and the employees of the petrol pump, whose presence was natural at the place of occurrence, have not been examined and thereby the prosecution has suppressed the material fact. Learned counsel for the appellants has specifically contended that even the independent witnesses whose names are disclosed in the charge-sheet are also not examined and, therefore, adverse inference is required to be drawn.

26. Further, the threat allegedly given by accused Gabbar Paswan is the motive shown by the informant in the *fardbeyan*. However, from the deposition given by the prosecution-witnesses, P.W. 4, P.W. 5 and P.W. 7, it is revealed that there was a land-dispute between the informant and accused Gabbar Paswan. Thus, the motive shown by the informant in the *fardbeyan* is not duly proved by the prosecution, rather it stands diluted by the admitted land-dispute between the parties.

27. So far the conviction under Section-120B of I.P.C. is concerned, accused Gabbar Paswan was, admittedly,



in custody at the relevant point of time. It was the case of the prosecution that the accused in jail hatched a criminal conspiracy with the other accused to kill the deceased, but the prosecution has produced no evidence to prove hatching of criminal conspiracy between accused Gabbar Paswan and Shambhu Paswan.

28. Thus, from the aforesaid deposition of the prosecution-witnesses, we are of the view that there are major contradictions and improvement in the deposition of the prosecution-witnesses and, as such, cannot be believed.

29. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt, despite which the Trial Court has recorded the impugned judgment of conviction and order of sentence. As such, the same are required to be quashed and set aside.

30. Accordingly, the impugned judgment of conviction dated 03.08.2018 and order of sentence dated 10.08.2018, passed by the 1st Addl. District & Sessions Judge, Muzaffarpur, in connection with Sessions Trial Nos. 425 of 2016 and 426 of 2016 (arising out of Karja P.S. Case No. 85 of



2015) are quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

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

31. Both the appeals stand allowed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	06.08.2024
Transmission Date	06.08.2024

