

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.546 of 2017

Arising Out of PS. Case No.-133 Year-2014 Thana- JOGAPATTI District- West Champaran

Jatindra Sah son of Bishwanath Sah resident of village - Nawalpur, Police Station - Yogapatti Nawalpur, District - West Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 333 of 2017

Arising Out of PS. Case No.-133 Year-2014 Thana- JOGAPATTI District- West Champaran

Ashok Chaudhary Son of Shri Ramawtar Chaudhary Resident of Village- Bagaicha tola, Police Station- Bathuwariya, District- West Champaran,.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 546 of 2017)

For the Appellant/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr .Rakesh Kumar Sharma, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 333 of 2017)

For the Appellant/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr .Rakesh Kumar Sharma, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 22-10-2024

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 22.02.2017 and order of sentence dated 01.03.2017 passed in Sessions Trial No. 130 of 2015, arising out of Yogapatti (Nawalpur) P.S. Case No. 133 of 2014 by Shri Jitendra Kumar Dubey, learned 1st Additional District and Sessions Judge-cum-Special Judge, Bettiah, West Champaran by which appellants/convicts have been sentenced to undergo R.I. for life and a fine of Rs.25,000/- each for the offence punishable under Section- 302/34 of I.P.C. and, in default of payment of fine, to further undergo imprisonment for three months and for the offence punishable under Section-3(ii)(v) of the SC/ST (POA) Act they have been sentenced to undergo R.I. for life and a fine of Rs. 25,000/- each and, in default of payment of fine, to further undergo imprisonment for three months. Appellant/convict Jatindra Sah has also been sentenced to undergo R.I. for three months and a fine of Rs. 5000/- for the offence punishable under Section-27 of the Arms Act and, in default of payment of fine, he has further been sentenced to undergo imprisonment for one month. All the sentences have been directed to run concurrently. The entire amount of fine has been directed to be paid to the parents of the deceased.

2. Heard Mr. Ramakant Sharma, learned Senior



Advocate assisted by Mr. Rakesh Kumar Sharma for the appellants and Mr. Sujit Kumar Singh, learned A.P.P. for the respondent-State in both the appeals.

3. At the outset, learned senior counsel for the appellants informs that the appellant Ashok Chaudhary (in Cr. Appeal (D.B.) No. 333 of 2017) has expired during the pendency of the appeal. Learned A.P.P. has verified the said fact and supports the statement.

3.1. As such, Cr. Appeal (D.B.) No. 333 of 2017 stands abated.

4. The crux of the prosecution-case is as under:

“The informant has stated in his *fardbeyan* that, on 11.06.2014, when he reached a distance of 40-50 metres from the door of the bride at Nawalpur Bazar, West Champaran at 09:30 in the night with the marriage procession of his full brother Ranjeet Kumar Suman, Jatindra Sah of Nawalpur Bazar itself approached the vehicle of the groom along with 4-5 unknown persons and asked to see the groom. On seeing the groom, Jatindra Sah took out a pistol from his waist and fired at the forehead near his right eyebrow of Ranjeet Kumar Suman, as a result of which he died on the spot. There was a total chaos due to the commotion. Taking advantage of the same, the



accused persons managed to flee away. Witnesses namely Rakesh Kumar Suman, Shambhu Prasad, Sanjay Prasad, Sanjeet Kumar, Mrityunjay Kumar Suman along with other persons witnessed the incident. It is his strong apprehension that the bride Sapna Kumari herself is the kingpin behind this incident.”

5. 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 No. 130 of 2015.

6. Learned senior counsel for the appellant Mr. Ramakant Sharma submits that the present is a case of false implication and, in fact, the prosecution has miserably failed to prove the motive on the part of the appellant to kill the deceased. He referred the *fardbeyan* given by the informant in which it has been stated that the informant has expressed apprehension that the bride Sapna Kumari herself is the kingpin behind the incident. However, the prosecution has failed to



prove the said motive by leading cogent evidence and, therefore, she has been acquitted by the learned Trial Court. Thus, the learned Trial Court did not believe the story of the prosecution *qua* Sapna Kumari. However, surprisingly, the Trial Court has believed the version of the prosecution *qua* the present appellant. Learned senior advocate would thereafter submit that there are major contradictions, inconsistencies and discrepancies in the deposition given by the prosecution-witnesses. He has referred the deposition of the prosecution-witnesses and thereafter submitted that P.W. 1 Rakesh Kumar Suman, who was driving the vehicle of the groom, has specifically admitted that there was no street light near the place of incident. Further, P.W. 2 Sanjeet Kumar Suman has also admitted during cross-examination that it was dark all around. Similarly, P.W. 2 has deposed that the generator was not operational and there were no shops around the place where firing was made, rather there were 2-4 houses and it was dark all around. Once again, learned senior counsel has referred the deposition of P.W. 1 who has further stated that there was no arrangement of light in the vehicle of the groom. Thus, learned senior counsel submitted that it was difficult for the prosecution-witnesses to identify the assailants in the dark night



and, that too, in absence of any light.

7. Learned senior counsel thereafter submitted that the informant, P.W. 4, has admitted in his cross-examination that he was moving on foot at a distance of 5 steps ahead of the vehicle of the groom. He heard the sound of firing coming from behind and thereafter he turned around and rushed to the groom. Thus, from the aforesaid deposition, it can be said that the informant has not seen the assailants firing on the deceased. At this stage, learned senior counsel has referred the written report/complaint given by the informant to the police. It is contended that the said written complaint was addressed to the Officer-in-Charge of Nawalpur (O.P.). However, it has been pointed out that Nawalpur is an outpost and the main police station is Yogapatti. Thus, on 12.06.2014, S.H.O. of Nawalpur O.P. forwarded copy of the said written complaint to S.H.O., Yogapatti for institution of a case under Sections- 302, 120B and 34 of I.P.C. and 27 of the Arms Act. It has further been pointed out from the endorsement made on the written complaint that thereafter on 12.06.2014, Yogapatti P.S. Case No. 133 of 2014 dated 12.06.2014 came to be registered in Yogapatti (Nawalpur) Police Station and S.H.O. of Yogapatti i.e. Awadhesh Kumar further stated that S.I. Sudhir Kumar will



investigate this case. Learned senior counsel, therefore, urged that the First Information Report is *ante* dated and even before the registration of the F.I.R., S.I. Sudhir Kumar started the investigation at 10:30 p.m. on 11.06.2014 itself. At this stage, it has been pointed out that in the present case, inquest report has not been exhibited. Learned senior counsel, therefore, contended that the present appellant has been falsely implicated in the aforesaid incident.

8. Learned senior counsel, at this stage, has pointed out that the appellant is a resident of a different village which is situated at about 50-60 k.m's. away from the village of the informant and other prosecution-witnesses. Therefore, it is not possible for the prosecution-witnesses to identify the present appellant during dark night hours on the date of incident. At this stage, learned senior counsel referred the deposition given by P.W. 6 Sudhir Kumar who had carried out the investigation. The said witness, though deposed that he had collected the C.D.R. of mobile phone of the present appellant as well as that of another accused Sapna Kumari, however, the said C.D.R. has not been produced before the Court and the same has not been duly exhibited. It is also pointed out that the Investigating Officer has admitted that he had not recovered the murder



weapon. It is further contended that even there is discrepancy with regard to the written report given by the informant and about the person who has written the said complaint. Learned senior counsel further submits that the Investigating Officer recorded the statement of independent witness, namely Laurik Ram who is a local resident. However, the prosecution has failed to examine the said witness and, therefore, the defence has examined him as defence witness No.1. Thus, it has been contended by the learned senior counsel that only relatives of the deceased, i.e. only interested witnesses have been examined by the prosecution. Learned senior counsel, therefore, urged that when the prosecution has failed to prove the case against the appellant beyond reasonable doubt, the impugned judgment of conviction and order of sentence passed by the learned Trial Court against the appellant is not sustainable in the eye of law. Hence, the same be quashed and set aside and the present appeal be allowed.

9. On the other hand, learned Additional Public Prosecutor Mr. Sujit Kumar Singh has opposed the present appeal. He mainly submitted that there are eye-witnesses to the incident in question who have specifically alleged against the present appellant that he shot fire upon the deceased and the



medical evidence also supports the version of the eye-witnesses. Merely because there are minor contradictions and discrepancies in the deposition of the prosecution witnesses, their entire version may not be disbelieved and discarded only on that ground and benefit of the same may not be given to the convict/appellant. Learned A.P.P., therefore, urged that this appeal be dismissed.

10. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of the witnesses from both the sides and also perused the documentary evidence exhibited.

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

12. Before the Trial Court, prosecution examined 6 witnesses. Defence has also examined 2 witnesses.

13. P.W. 1 Rakesh Kumar Suman has stated, in his examination-in-chief, that the incident is of 11.06.2014 at around 09:30 p.m. He was driving the Maruti car bearing Regn. No. BR061/6803. He, the groom Ranjeet Kumar Suman and two others namely Mrityunjay Kumar Suman and Sanjeet Kumar Suman were present in the Maruti car. Ranjeet Kumar



Suman was sitting on the front seat. At a distance of 40-50 mts., 5/6 youths came there. Out of them, he identified Jitendra Kumar and Ashok Chaudhary. They said that they wanted to see the groom. Jitendra Kumar took out a pistol from his waist. Ashok Chaudhary caught hold of the neck of Ranjeet Kumar and asked Jitendra to shoot him upon which, Jitendra fired at Ranjeet Kumar Suman. The bullet hit above the left eyebrow. After killing, both of them fled away. Later, it came to knowledge that Sapna Kumari was the mastermind of the said incident as she had illicit relationship with Jitendra Kumar. Ranjeet Kumar Suman died instantaneously after receiving the bullet injury.

13.1. In his cross-examination, he has stated that he has been driving for last four years occasionally but he has no driving license. He has denied the suggestion that, on the date of incident, he was not driving the vehicle in question and someone else was driving it. He has stated that the Investigating Officer had recorded his statement four days after the incident. He has denied not to have stated before the Police that Ashok Chaudhary had ordered Jitendra to shoot. In Para-6, he has stated that he had not visited village *Bagaicha Tola* on the date of incident or before that. He has further stated that there was



no street light. In Para-9, he has stated that the glass pane was open on the side where the deceased was sitting. Bullet was fired from point blank range on the left upper side of the face. In Para-14, he has stated that the blood had spilled in the car. Neither the said vehicle nor any blood-stained article from inside the car was seized by the Police. The deceased was not taken out of the car at the place of incident. Nawalpur P.S. is situated 40/50 steps towards the east from the place of incident. The dead body of the deceased was not taken out at the Police Station. In Para-16, he has stated that his elder brother Ranjan Prasad Suman had got the F.I.R. registered in his presence. In Para-18, he has stated that it was gathered from the villagers on the date of incident itself that Sapna Kumari was having love-affairs with Jatindra Kumar @ Jitendra Kumar but he does not know the name of the villager. He has stated, in Para-32, that the informant is his cousin-brother. Three of his family members i.e. he, Sanjeet Kumar and Mrityunjay Kumar Suman are witnesses in the present case. Further, in Para-37, he has stated that he had seen the deceased sitting on the seat. The Police had seen the deceased in the vehicle itself and did the paperwork. The clothe of the deceased was thoroughly blood-stained. He had not seen whether there was any blood stain on



his shoes or not. He had seen the injury mark on the head of the deceased. The distance between the vehicle and the Police Station is more than 60/70 metres. As it was a dark night, he cannot describe the boundary of the place where the vehicle was standing. There was no arrangement of light in the groom's vehicle. In Para-52, he has stated that there was an uproar at 09:30 p.m. He was at the Police Station at 02:00 at night. He came to the Police Station at 10:00 p.m. Darogaji had recorded his statement in Hindi in which he had stated that since it was dark, the miscreants fled away through an unknown lane. He has denied the suggestion to have given false deposition being a member of the family of the informant and he had not seen any incident.

14. P.W. 2 Sanjeet Kumar Suman has stated, in his examination-in-chief, that the incident occurred on 11.06.2014 at 09:30 p.m. He was sitting on the front seat left seat of the car. It was the marriage ceremony of his younger brother Ranjeet Kumar Suman. His marriage was to be solemnized with Sapna Kumari. When they reached a distance of 40-50 steps from the house of the prospective bride, 5-6 persons came there and wanted to see the groom. He identified two of them, namely Ashok and Jitendra as he had met them on the occasion of



pujai. When they asked to see the groom, he opened the glass pane of the car. Ashok caught hold of the neck of his younger brother/groom Ranjeet Kumar Suman and fired at him. Taking advantage of the darkness, all of them fled away. On the way to the Hospital, the injured groom succumbed to the injuries. After that, they took the dead body to the Police Station.

14.1. In his cross-examination, he has stated that the distance of the Police Station from the place of incident is 50-60 meters. The distance of Police Station from Nawalpur More is 1 kilometer. There are shops on either sides of the road of Nawalpur Bazar. There are no shops around the place where the firing was made, instead there are 2-4 houses. The generator was not operational. There were people in the front and backside of the car. It was dark all around. People were not crossing by the side of car. Ashok Kumar got the glass pane opened and caught the neck of his deceased brother from his right hand and dragged him. Jatindra had also fired from a very close range from the left-hand side of Ashok. His brother tried to free his neck with his hands. He (the deponent) was sitting on the rear seat and he did not object. He tried to save his brother after he received bullet injury. He did not bring his brother out of the car. Blood was oozing out from his brother's head. The



deponent's had no blood stains. They went to the police station at about 10:30 p.m. while the incident had taken place at 09:30 p.m. During that period, they tried to take his brother to the hospital, but as his brother succumbed to the injury, they returned to the police station. He had not talked with anybody at the place of incident. He had no correspondence with Ashok Chaudhary nor any friendship with him. He had met him on the occasion of Pujai. He has denied that Ashok Chaudhary has been falsely implicated under a conspiracy. Further, he has stated that Darogaji had recorded his statement at his house. He had no role in registration of the F.I.R. S.H.O. Sudhir Kumar Yadav had drafted the written application. His brother Ranjan Prasad Suman had lodged the F.I.R. upon which he had also put his signature. He has also detailed the number and names of some persons of marriage party. He has further stated that his village is 50 k.m's. away from Nawalpur Bazar. After the incident of firing, the marriage party dispersed. It was dark all around. In Para-37, he has stated that the accused were among his marriage party. He has stated that he had stated to the police that before they could take any step, the miscreants managed to flee away. He has also stated that blood had not spilled over the ground rather it had spilled in the vehicle of the groom. He has



denied the suggestion that he was not a member of the said marriage party and being a family member of the informant he has given false deposition and that the accused persons are innocent.

15. P.W. 3 Mrityunjay Kumar has stated, in his examination-in-chief, that the incident took place about two years ago at 09:30 p.m. He was sitting in the vehicle carrying the groom behind the driver's seat. Ten steps before the house of the bride, Jitendra and Ashok came and got the vehicle of the groom stopped and asked to open the glass pane and enquired about the groom. Ashok caught the neck of the groom with his hands and Jitendra took out a pistol and fired at Ranjeet Kumar Suman on his head. Thereafter, both of them fled away. After the incident, he and others started for the hospital with the injured, but he succumbed to the injury on the way and they returned to Nawalpur Police Station. F.I.R. was registered. He remained at the police station that night. In the morning, the *post mortem* was conducted. Thereafter he went home.

15.1. In his cross-examination, he has stated that he was not present at the time of registration of the F.I.R. 10-15 minutes after they started for the hospital, the groom Ranjeet Kumar Suman succumbed to the injury. Within 10/15 minutes



thereafter, they reached to the police station. Rakesh Kumar Suman, Ranjeet Kumar Suman and he were present in the vehicle. The distance between the place of incident and the police station is about 50 steps. He has further stated that Ranjan Prasad Suman is his cousin brother. He does not remember as to who had submitted the written application in the police station. He does not even remember as to who had got the written application drafted. He was not present at the time of drafting of the written application. He had gone to the police station in the night of incident at 10:30 p.m. and stayed there upto 03:00 a.m. He had left the police station before Ranjan Prasad Suman. He had no talk with Ranjan Prasad Suman. Afterwards he came to know that Ranjan Prasad Suman had got an F.I.R. registered. Police had recorded his statement during investigation, but he cannot say how many days after the incident. He had stated before the police that he was stunned on receiving the information about the incident. He does not remember whether the police had seized the blood-stained clothe or not. He has no idea as to how a revolver and pistol looks like. He had not seen whether *Darogaji* had collected the blood-stained soil or not. He has denied the suggestion of giving false evidence being a family member of the informant.



16. P.W. 4 Ranjan Prasad Suman has stated, in his examination-in-chief, that the incident is of 11th June, 2014. He had gone with the marriage procession of his brother to Nawalpur. The incident took place at 09:30 p.m. at about 40/50 meters away from the house of the prospective bride. His brother was shot at by Jatindra Sah @ Jitendra Sah accompanied by Ashok Chaudhary which led to the death of his brother. The prospective bride Sapna Kumari is also behind the incident. Before firing, Jatindra Sah and Ashok Chaudhary abused him by his caste name.

16.1. In his cross-examination, he has stated that he is literate. He had got the written application drafted by giving dictation. While dictating the written application, Nand Kishor Sah, Sanjeet Kumar, Mrityunjay Kumar, Sanjay Kumar etc. were present there. He has specifically stated, in Para-7, that Ashok Chaudhary had not fired. He had only dragged his deceased brother by his neck and it was Jatindra Sah who fired at him. He was moving on foot at a distance of 5 steps ahead of the groom's vehicle. His statement was recorded during investigation 2/3 days after the incident. He doesn't remember the date. He has stated that he had stated before the Police that, before firing, Jatindra Sah and Ashok Chaudhary had abused



him by his caste name. Later on, he denies to have stated so. In Para-37, he has stated that the vehicle's registration No. was BR-06V-6802/3, he is not sure. He has specifically stated, in Para-39, that the written application was drafted at the place of incident at about 10:30 p.m. and submitted to the Police Station at that very time. He had heard the names of the accused persons with parentage when he had gone on the occasion of *pujai*. He cannot say the actual date. In Para-52, he has stated that he heard the sound of firing coming from behind. At this, he turned around and rushed to the groom. At that time, Jawahar Sah and Sanjay Kumar were with him. Further, he has stated that when he heard the sound of firing and rushed to the groom's vehicle, there was light at the place of incident coming from the door of the prospective bride. He had not seen mobile phone near his deceased brother. He has denied the suggestion that no such incident had taken place, rather his brother received bullet injury in celebratory firing and to save his kinsmen, in connivance with the Police party which caught them while fleeing with the dead body, they concocted a false story and implicated the innocent accused persons.

17. P.W. 5 Dr. Ashok Kumar Chaudhary has deposed that he was posted at M.J.K. Hospital, Bettiah on 12th



June, 2014. He conducted the *post mortem* examination of the dead body of the deceased and found following *ante mortem* injuries:-

“External Examination:-

Injury No.1 – one lacerated circular wound like whole over left side of fore head, above left eye brow with inverted margin and charring around the wound and face and forehead more in left side. Size of wound 02 cm. in diameter - wound of entry.

2 – One oval wound with everted margin in right occipital area of head size 03 cm. X 02 cm. X cranial cavity deep wound of exit.

On dissection:-

Injury No. 1 and 2 communicating to each other.

Skull bone – Frontal bone and occipital bone found fractured.

Brain tissues – Lacerated, blood clot and hemorrhage present in cranial cavity and tissue.

Heart – Both chamber empty.

Stomach – Empty, only mucoid secretion present.

Time elapsed since death – within 24 hours.

All above injuries were *antemortem* caused by fire arm.

Cause of death – shock & hemorrhage due to above injury caused by firearm.”

17.1. In his cross-examination, he has stated that if by close contact of body any gunshot be given, then there will be laceration also as per Modi’s Medical Book.



18. P.W. 6 Sudhir Kumar has stated, in his examination-in-chief, that on 11.06.2014 he was posted at Nawalpur O.P., Yogapatti P.S. as a Sub-Inspector. On the basis of written application submitted by Ranjan Prasad Suman, Yogapatti (Nawalpur) P.S. Case No. 133/2014 was registered. He took the charge of investigation on 11th June, 2014 by the order of S.H.O., Yogapatti (Ext.-3). Forwarding on the written application is in his pen and signature which he identifies (Ext.-4). In course of investigation, he recorded the re-statement of the informant Ranjan Prasad Suman. He also recorded the statements of witnesses Rakesh Kumar Suman, Sanjeev Kumar, Mrityunjay Kumar and Arun Kumar who supported the incident. He also prepared the inquest report of the deceased and inspected the place of incident. He also procured the C.D.R. of the mobiles of accused Jitendra Prasad Singh and Sapna Kumari and arrested accused Ashok Chaudhary. He submitted charge-sheet against all the three accused namely Jatindra Sah, Sapna Kumari and Ashok Chaudhary. He has stated in para-15 that he cannot say whether the written application was drafted in the police station or not. He has not mentioned about collecting blood sample either in the F.I.R. or in the inquest report. He has stated that the distance between Nawalpur Police



Station and the place of incident is 300 metres. In para-19 he has stated that the written application was drafted in his presence. He has not mentioned the time of recording statements of the witnesses from para-4 to 8. He has mentioned the mobile number of Sapna Kumari as 8651057646 in Para-72 of the case diary. The C.D.R. details run into 28 pages. C.D.R. contains the details of call made from Mobile No. 917352641583 to Mobile No. 918651057646 made on 11.06.2014 at 10:32:38. In his

18.1. In his cross-examination, he has stated that he took the charge of the investigation on 11.06.2014 at 10:30 p.m. He had not got prior information about the arrival of the marriage procession. He took the statements of only those witnesses who came and claimed to have seen the incident. He had not gone to Bhasurari during the course of investigation. All the witnesses, except Laurik Ram and Ramashankar Yadav are relatives of one another. The name of the driver of the groom's vehicle was Rakesh Kumar. He had not mentioned the name of Alok. He stated that he himself was driving the vehicle. In Para-39, he has stated that the written application was not drafted in his presence. He did enquire about the time of drafting the written application. As the F.I.R. is registered in Yogapatti



Police Station and not in Nawalpur O.P., he cannot say as to at what time, the F.I.R. was registered in Yogapatti Police Station. He had seen the dead body for the first time at Nawalpur P.S. and it was he who had prepared the *challan* of the dead body. He cannot say as to what time the watch of the deceased was indicating. The chain and ring of the deceased were not missing nor the informant had complained about missing of the said articles. He cannot say about any article missing from the body of the deceased as no such complaint was made by the informant. Further, he has stated that he had not interrogated as to which items of the persons from groom's party were missing. He had not recovered the murder weapon. He had conducted raid in the house of accused Jatindra but he cannot describe the boundary. He has not mentioned the names of members of the family in whose presence he had raided the house. The informant, in his statement, had stated about the chaos created after firing and that the accused fled away taking the advantage of night hours. The witness Rakesh Kumar Suman had also stated about 5/6 mischief mongers approaching the vehicle. He had also stated that they tried their best but could not locate/catch the miscreants. The witness Mrityunjay Kumar has also supported his version. He had also recorded the statement



of local resident Laurik Ram, an independent witness. The witness Ramashankar Yadav has given a hearsay version of the incident. He has denied the suggestion that he has conducted a faulty investigation and that the deceased received the bullet injury in cross firing among the members of the wedding party. The members of the wedding party were fleeing with the dead body of the deceased and when they were chased and caught by the Police party, to save them, this false case has been instituted and the accused persons have been falsely implicated in the case.

19. DW-1 Laurik Ram has stated, in his examination-in-chief, that he knows Shivpujan Sah of village Nawalpur. The wedding procession for his daughter was coming which was attended by him with others. The wedding party was bursting fire-crackers, fire-sparklers and making gun-shots as also were firing from *Katta* in which course, the groom received bullet injury. He had stated this fact before the police. The wedding party dispersed after the groom received gun-shot. When they were fleeing away with the groom, the *Chaukidar* caught them on the way.

19.1. In his cross-examination, he has stated that he does not know the name of the groom. Accused Jatindra Sah



resides in village Khatwa, Nawalpur. He was on visiting terms with accused Jatindra Sah. He has denied the suggestion of giving false deposition being his well-wisher.

20. D.W. 2 Sheshnath Yadav has stated, in his examination-in-chief, that he had not gone to see the wedding procession of Shivpujan Sah's daughter of Nawal, rather he was at his doorstep. He had not witnessed the marriage procession. Dance and singing was going on. Members of the procession were using fire-crackers and fire-sparklers. They were also making celebratory firing in which the groom received a gun-shot. When they were fleeing with the groom, Chaukidar caught them. He had not given his statement before the police.

20.1. In his cross-examination, he has stated that his house is situated 200 hands away from the house of Shivpujan Sah. He does not know Jatindra Sah. He has no acquaintance with him. The incident had taken place on the P.C.C. road in front of the house of Shivpujan Sah. He has further stated that as the incident is of two years ago, he does not remember where his statement was recorded by the police or not. He has denied the suggestion of giving false evidence.

21. We have considered the arguments canvassed



by the learned counsels appearing for the parties, re-appreciated the entire evidence led by the prosecution as well as defence and perused the typed copy of the depositions of the prosecution-witnesses supplied by the learned counsel for the appellant.

22. From the written complaint given by P.W. 4, informant, it is revealed that the said written complaint was given on 11.06.2014 to S.H.O., Nawalpur outpost. Therefore, on the said written complaint endorsement was made by S.H.O., Nawalpur that the said complaint is forwarded to S.H.O., Yogapatti for instituting a case under Sections- Sections- 302, 120B and 34 of I.P.C. and 27 of the Arms Act. The said endorsement was made on 12.06.2014 by S.H.O., Nawalpur. Further, one Awadhesh Kumar, S.H.O. of Yogapatti made further endorsement to register Yogapatti (Nawalpur) P.S. Case No. 133 of 2014, under Sections- 302, 120B and 34 of I.P.C. and 27 of the Arms Act. It is further stated that S.I. Sudheer Kumar will investigate this case. Thus, from the aforesaid endorsement, it can be said that the said police case has been registered at Yogapatti P.S. on 12.06.2014 at 07:30 a.m. However, from the deposition given by P.W. 6, I.O., it would reveal that the I.O. started the investigation at 10:30 p.m. on



11.06.2014 itself, i.e. before the endorsement was made by S.H.O. of Yogapatti namely Awadhesh Kumar. It is the specific case of the appellant that he has been falsely implicated and the F.I.R. is ante dated. It would further reveal from the written complaint that the informant has shown 5 persons as eye-witnesses out of which prosecution has examined only 3 witnesses as eye-witnesses. It further transpires from the written complaint that the informant has expressed apprehension against accused Sapna Kumari, i.e. the bride, by alleging that she is the kingpin behind the incident. Thus, the prosecution has attributed motive on the part of the present appellant and co-accused Sapna Kumari because of their relationship for committing the alleged incident of murder of deceased Ranjeet Kumar Suman. However, it is pertinent to note at this stage that the prosecution has failed to prove the said motive by leading cogent evidence. From the impugned judgment rendered by the Trial Court, it is revealed that co-accused Sapna Kumari has been acquitted by the Trial Court and thereby the Trial Court did not believe the story of the prosecution *qua* the said accused. Further, the prosecution has not challenged her acquittal.

23. From the deposition given by P.W. 1 Rakesh



Kumar Suman, it is revealed that the deceased Ranjeet Kumar Suman was sitting on the front seat of the car and the said witness was driving the car. It is the specific case of the prosecution that 5-6 youth came near the car. Out of them, he identified Jitendra Sah and Ashok Chaudhary. They said that they wanted to see the groom. Jitendra Sah (appellant) took out a pistol from his waist and Ashok Chaudhary caught hold of the neck of the groom and asked Jitendra to shoot him upon which Jitendra fired at Ranjeet Kumar Suman. Thus, it appears that 5-6 youth came at the said place. However, the investigating agency has failed to disclose the identity of the other youth who came with the present appellant and Ashok Chaudhary. It is further revealed from the evidence of the said witnesses that he has admitted that there was no street light at that place and it was a dark night and, therefore, he cannot describe the boundary of the place where the vehicle was standing. He has further deposed that there was no arrangement of light in the groom's vehicle. Similarly, P.W. 2 has stated during cross-examination that there were no shops around the place where firing was made. Instead, there were 2-4 houses. The generator was not operational. Thus, from the deposition of the aforesaid witnesses, it is revealed that it was a dark night and the



generator was not operational. There was no street light nor there was arrangement of light in the groom's vehicle. Further it would emerge from the record that the present appellant and Ashok Chaudhary are the residents of a different village which is situated at a distance of 50-60 k.m's. from the place of incident. Thus, it was difficult for the prosecution-witnesses to identify the present appellant and co-accused Ashok Chaudhary in such a dark night and that too in absence of any street light or any arrangement of light in the groom's vehicle.

24. At this stage, we would like to examine the deposition of P.W. 3 Mrityunjay Kumar who has stated that he was sitting in the vehicle carrying the groom behind the driver's seat. However, during cross-examination he has admitted that he was not present at the time of registration of the F.I.R. Further, he has stated that the distance between the place of occurrence and the police station is about 50 steps. Though he has stated that he had gone to the police station at about 10:30 p.m. and stayed there upto 03:00 a.m., he has stated that the police has recorded his statement during the course of investigation, but he cannot say how many days after the incident. He further deposed that he does not remember whether the police had seized blood-stained clothe of the deceased or



not. Further, he does not know as to how a pistol looks like. He has also stated that he had not seen whether *Darogaji* had collected blood stained soil or not.

25. Further, P.W. 4, informant, has specifically admitted during cross-examination that he was moving on foot at a distance of 5 steps ahead of the groom's vehicle. Further, he has deposed that he heard the sound of firing coming from behind and thereafter he turned around and rushed to the groom. Thus, from the aforesaid deposition of the informant, it can be said that the said witness has not seen the actual incident i.e. firing made upon deceased Ranjeet Kumar Suman by the present appellant.

26. It is relevant to note that the distance between the place of incident and the Nawalpur O.P. was just 50-60 metres. The incident took place at 09:30 p.m. on 11.06.2014 and thereafter written complaint was given to the police at about 10:30 p.m. It is the specific deposition of P.W. 1 that the police had seen the deceased in the vehicle itself and did the paper-work.

27. Now, keeping in view the aforesaid deposition of P.W. 1, if the evidence led by the prosecution is examined, it is revealed that the prosecution has failed to produce the inquest



report of the deceased. Further, P.W. 6, I.O., has admitted that he recorded the statements of only those witnesses who claimed to have seen the incident and he did not go to village Bhasurari during the course of investigation. All the witnesses have admitted that Laurik Ram and Sheshnath Yadav are relatives of the deceased. He has further admitted that Laurik Ram is an independent witnesses and a local resident whose statement was recorded by him. He has further admitted that he had not recovered the murder weapon. The Investigating Officer further admitted that witness Rakesh Kumar (P.W. 1) had also stated that 5-6 mischief mongers approached the vehicle. The Investigating Officer further admitted that they tried their best, but could not locate/catch the other miscreants. The Investigating Officer did not collect the blood-stained soil or clothe of the deceased.

28. In view of the aforesaid evidence led by the prosecution, we are of the view that the prosecution has failed to prove the case against the appellant beyond reasonable doubt. Thus, the Trial Court has committed grave error while passing the impugned judgment of conviction and order of sentence against the present appellant. Hence, the same are required to be quashed and set aside.



29. Accordingly, the judgment of conviction dated 22.02.2017 and order of sentence dated 01.03.2017 passed in Sessions Trial No. 130 of 2015, arising out of Yogapatti (Nawalpur) P.S. Case No. 133 of 2014 by Shri Jitendra Kumar Dubey, learned 1st Additional District and Sessions Judge-cum-Special Judge, Bettiah, West Champaran are quashed and set aside.

29.1. Since the appellant is in jail, he is directed to be released from custody forthwith, if his presence is not required in any other case.

30. Cr. Appeal (D.B.) No. 546 of 2017 stands allowed.

(Vipul M. Pancholi, J)

(Dr. Anshuman, J)

K.C.Jha/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	29.10.2024
Transmission Date	29.10.2024

