

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.288 of 2015**

Arising Out of PS. Case No.-432 Year-1996 Thana- PURNEA SADAR District- Purnia

Pankaj Pathik @ Rahi @ Pankaj Pathik Rahi S/o Jay Narayan Yadav @ Jay Nandan Yadav Resident of Village Sondiha, P.S. Bhawanipur Akbrarpur, District Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Kamlesh Kumar, Adv. Ms. Kahkashan Alam, Adv. Mrs. Deepmala Kumari, Adv.
For the State	:	Mr. Sujit Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA)

Date : 12-01-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as 'Cr.P.C.') challenging the judgment and order of sentence dated 25.11.2014 passed by the learned Additional Sessions Judge 3rd, Purnea in Sessions Case No. 63 of 2011 arising out of Purnea (Sadar) P.S. Case No. 432 of 1996, whereby and whereunder, the concerned Trial Court has



convicted the appellant for the offences punishable under Sections 302 of the Indian Penal Code and Section 27 of the Arms Act and the appellant was sentenced to undergo Rigorous Imprisonment for life and also to pay a fine of Rs. 50,000/- and in default of payment of fine to further suffer Simple Imprisonment of six months for offence under Section 302 of the I.P.C. and Rigorous Imprisonment for four years and to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer Simple Imprisonment for six months for offence under Section 27 of the Arms Act. Both the sentences were directed to run concurrently. It was also directed that the period already undergone by the appellant in custody shall be set off against the total period of his sentence.

2. The prosecution's case, in brief, as contained in the *fardbeyan* of the Informant/Ishwardev Singh, recorded by Md. Qasim, O/c Sadar P.S. at 3 AM on 23.12.1996, is that on 22.12.1996 at about 8 P.M., when he along with his son Shishendra Narayanan Singh @ Rangu Singh, Shiv Narayan Singh, Vimal Singh @ Tuntun Singh, Manoj Sancheti, Ram Kishore Agarwal were sitting in a shop of fertilizer and seed, then Pankaj Pathik Rahi along with four persons came by a Maruti car bearing No. BR-14-9111 and started doing



highhandedness (Rangdari) with the persons sitting in the shop. Thereafter, there was exchange of words. Then, Pankaj Pathik Rathi gave threats that after 15-20 minutes, they would not see the sun of the next day and they went from there. They took it as mere threat and remained sitting there. After about 15 minutes, Pankaj Pathik Rathi along with his companions, armed with rifle arrived there and Pankaj Pathik Rathi fired on Shishendra Narayanan Singh (Rangu Singh) on his head. Thereafter, Shiv Narayanan Singh and Vimal Singh were fired. On receipt of fire-arm injury, Rangu Singh died at the spot whereas the remaining two injured persons were taken to Sadar Hospital, Purnea for treatment. They were treated at Sadar Hospital and, thereafter, for further treatment, they were sent to Siligudi. Then, he is recording his *fardbeyan*. The witnesses have seen the occurrence who will speak.

2.1 On the basis of the *fardbeyan* of the Informant, Purnea (Sadar) P.S. Case No. 432 of 1996 dated 23.12.1996 was instituted for offences under Sections 302, 307, 324/34 of the Indian Penal Code and Section 27 of the Arms Act.

3 The police, after investigation, initially submitted charge-sheet against one co-accused Nishi @ Nishi Kant Yadav under Sections 302, 307, 324, 120(B), 109/34 of the I.P.C. and



Section 27 of the Arms Act, keeping the investigation pending against others and consecutively submitted the supplementary charge-sheets against co-accused/Rama Yadav @ Ram Narayanan Yadav and Vikram Yadav @ Langra under Sections 302, 307, 324, 120(B), 109/34 of the I.P.C. and Section 27 of the Arms Act and lastly filed supplementary charge-sheet on 28.02.2006 under the aforesaid Sections against the present appellant, showing him absconder.

4. The appellant was earlier remanded before the Court of learned Chief Judicial Magistrate, Purnea where he was in custody in connection with Bhawanipur (Akbarpur) P.S. Case No. 258 of 1991 and then by the order dated 27.12.2010, he was committed to the Court of Sessions and stood for trial in Sessions Case No. 63 of 2011. Thereafter, the charges were framed against the appellant for the offences punishable under Section 302/34, 307/34 and 120(B) of the I.P.C. and Section 27 of the Arms Act for which the appellant pleaded not guilty and completely denied the same and claimed to be tried. The appellant in his statement made under Section 313 Cr.P.C. has also totally denied the whole occurrence.

5. During course of trial, the prosecution has examined altogether 12 witnesses viz. P.W.1/Sundar Lal



Sancheti, P.W.2/Amolak Sancheti, P.W.3/Surendra Kumar Giriya, P.W.4/Vimal Kumar Singh @ Tuntun Singh, P.W.5/Manoj Kumar Sancheti, P.W.6/Jitendra Kumar Singh, P.W.7/Shiv Narayan Singh, P.W.8/Fateh Narayanan Singh @ Feteah Bahadur Singh, P.W.9/Ram Kishor Agarwal, P.W.10/Ishwardev Singh (Informant), P.W.11/Doctor Ramdev Raman and P.W.12/Rajkumar Sahu (Investigating Officer).

6. The documents were also proved on behalf of the prosecution which are as hereunder; Exhibit 1 is the signature of Manoj Kumar on the *fardbeyan*, Exhibit 2 is the inquest report, Exhibit 2/A is the signature on Exhibit 2, Exhibit 3 is the signature of Feteah Narayanan Singh on the seizure list, Exhibit 3/a is the signature of A. Sattar, Exhibit 4 is the *fardbeyan*, Exhibit 5 is the postmortem report, Exhibit 6 is the signature of Md. Qasim, SHO on Exhibit 4, Exhibit 3/b is the seizure list, Exhibit 2/b is the handwriting of Exhibit 2, Exhibit 7 is the charge-sheet number 452/96 (certified copy), Exhibit 8 is the repetition of Exhibit 3/a and Exhibit 9 is the repetition of Exhibit 3/a.

7. Two witnesses were also examined on behalf of the defence viz. D.W.1/Haji Abdul Sattar and D.W.2/Dalo Yadav. The documents were also proved on behalf of the defence. The



statement of the appellant under Section 313 of the Cr.P.C. came to be recorded. After conclusion of the trial, the Trial Court passed the impugned judgment and order of sentence against which the appellant has filed the present appeal.

8. Heard Mr. Kamlesh Kumar, learned counsel for the appellant and Mr. Sujit Kumar Singh, learned A.P.P. for the Respondent-State.

9. Learned counsel for the appellant has submitted that the evidence of the prosecution witnesses are full of inconsistencies and contradictions on major points and differs from their earlier statements given in Sessions Case No. 841 of 2002 and, thus, not fit to be relied upon. He referred the deposition of the witnesses and thereafter has submitted that the alleged occurrence took place on 22.12.1996 at 8.30 PM in the shop and after a delay of seven hours, the *fardbeyan* was given on 23.12.1996 at about 3.00 AM by the Informant and the F.I.R. was instituted on 23.12.1996 at about 11.00 AM i.e. after delay of 14-15 hours of the occurrence without any valid explanation for such delay in institution of the case. He submits that though the *fardbeyan* was exhibited as Exhibit-4 but, the formal F.I.R. was not exhibited by the prosecution. Thus, the prosecution story is wholly concocted and a cooked story to falsely



implicate the appellant due to political rivalries. In support of his submissions, he has relied upon the judgments of the Hon'ble Apex Court in the case of *The State of Andhra Pradesh Vs. Madhusudan Ray*, (2008) 15 SCC 582; *Thalia Kali Vs. State of Ramil Nadu*, (1972) 3 SCC 343 and *The State of Punjab Vs. Ramdev Singh*, (2004) 1 SCC 421.

10. Learned counsel for the appellant further submits that the earlier Investigating Officer/Md. Qasim, who had recorded the *fardbeyan* of the Informant, visited the place of occurrence, prepared the seizure list of one cartridge and blood stains collected at the spot but, the same were not examined by the prosecution which cause serious prejudice to the appellant. He submits that as per prosecution, 4-6 rounds of firing was made by the miscreants but, only a single cartridge was recovered from the place of occurrence which falsifies the case of the prosecution. The cartridge and the blood stains, recovered from the place of occurrence, were also not sent for its examination to the Forensic Science Laboratory. He further submits that the inquest report prepared by the first I.O. was prepared without mentioning date and time which also prejudiced the appellant. Learned counsel for the appellant further submits that though two persons viz P.W.4/Vimal Kumar



Singh @ Tuntun Singh and P.W.7/Shiv Narayan Singh were also injured beside the deceased but, even the injury report of the two injured persons are not there on record to prove the prosecution. Even their statements were not recorded by the police at the hospital. Therefore, their presence at the place of occurrence is not established which falsify the prosecution version. He submits that the learned Trial Court has acquitted the appellant from the charges of Section 307 of the I.P.C. and hence, half of the prosecution story is disbelieved by the Trial Court and, thus, the entire prosecution story is demolished in its entirety.

11. Learned counsel for the appellant further submits that the first *fardbeyan*, which the Informant had given at the place of occurrence after coming back from the hospital, was not placed on record by the prosecution which creates major doubt of embellishment which proves the false implication of the appellant.

12. It is also submitted that in the *fardbeyan*, there is no whisper with regard to kidnapping of Ramu Agarwal but, all the prosecution witnesses including the Informant have deposed different story in their depositions which is contrary to the *fardbeyan* itself.



13. Learned counsel for the appellant submits that the P.W.12, the 2nd I.O. has deposed in his cross-examination that not a single prosecution witness stated before him or before the 1st I.O. that the Informant/P.W.10 was also present at the spot at the time of occurrence but, the P.W.10/the Informant himself has deposed in paragraph no.9 of his cross-examination that he was sitting in another room. So, the Informant/P.W.10 is not the eye-witness.

14. Learned counsel for the appellant further submits that the P.W.1 has deposed in the examination-in-chief that the criminals tried to kidnap Ramu Agarwal but, he further in paragraph no.6 of his cross-examination has stated that only criminals came there and started highhandedness with Ram Agarwal which is a major contradiction in his deposition. Likewise, he further submits that the P.W.7/Shiv Narain Singh, who claimed to be injured, has deposed in his examination-in-chief that he was present at the place of occurrence since first incident of kidnapping but, in paragraph no.4 of his cross-examination, he has stated that while he reached at the shop, two criminals got down from the car and started firing which is also contradictory in nature.

15. Learned counsel for the appellant submits the



P.W.8, who is the seizure list witness, has also not stated about the name of any culprit as well as the D.W.1, who is a witness of inquest report, has clearly stated that name of culprit was not known on 23.12.1996.

16. He further submits that the FIR was instituted on 23.12.1996 at 3.30 AM but, it reached to the learned C.J.M., Purnea on 25.12.1996 which is at a distance of 3 KM from the Sadar P.S. Therefore, the FIR was not instituted on 23.12.1996. Learned counsel for the appellant thus argued that inconsistencies in the prosecution case makes the prosecution's case doubtful and the appellant deserves the benefit of doubt and be acquitted from all the charges levelled against him. He further contended that the impugned judgment passed by the Trial Court suffers from legal as well as factual infirmities and the findings therein are perverse and are to be set aside and the appellant is liable to be acquitted from all the charges levelled against him.

17. Per contra, learned A.P.P. appearing on behalf of the Respondent-State supported the impugned judgment and order passed by the Trial Court and contended that the court below has rightly perceived and assessed the evidence on record. He further submits that the P.W.10/Informant and the



P.Ws. 4 & 7, who are the two injured witnesses in the present case, have fully supported the prosecution case. The deceased died to the fire-arm injury and all the prosecution witnesses have supported the prosecution case. There is a specific allegation against the appellant of firing due to which the deceased died at the spot. The evidence of the Informant and the two injured witnesses have also been corroborated by the evidence given by the Doctor. Thus, the prosecution has proved the case beyond reasonable doubt and there is no need for interference in the impugned order passed by the Trial Court. There is an evidence in the form of eye-witness and the case of the eye-witnesses has been supported by the medical evidence.

18. In order to appreciate the arguments advanced by the learned counsel for the rival parties and to determine the correctness of the conclusions recorded in the judgment passed by the Trial Court, it will be necessary to discuss the evidence adduced by the witnesses examined by the prosecution as well as defence.

19. P.W.1- Sundar Lal Sancheti claims to be an eye-witness to the occurrence. In his evidence, he has stated that on 22nd December, 1996 at 8.30 PM, he was at his fertilizer shop along with Ramu Agarwal, Vimal Singh, Ishwardev Singh, Shiv



Narain Singh, Manoj Sancheti and Rangu Singh. Pankaj Pathik, Langra and three unknown persons came from Maruti, Langra came out of Maruti then Pankaj Pathik. They called Ramuji and started abusing him out of the shop. Rangu Singh went there and prohibited them from abusing. The miscreants wanted to take away Ramu Agarwal in their vehicle and brought Ramu Agarwal at the shop. Thereafter, both the miscreants said to Rangu Singh that they will not allow him to see the sun of next day. Then they went away. After about 15 minutes, the same Maruti car arrived at his shop. At that time, Rangu Singh was standing in front of his shop. Pankaj Pathik came out of car having rifle and fired from his rifle which hit the head of Rangu Singh and he died. Langra also came out of the car and fired from his rifle which hit Shiv Narain Singh and the second shot hit Vimal Singh. The gun-shots destroyed both the eyes of Shiv Narayan Singh. The cartridge hit the leg of Vimal Singh. Beside the two miscreants, the three unknown persons were also with them. He identified Pankaj Pathik present in the court.

19.1 In course of cross-examination, he has stated that his fertilizer shop is at Gulab Bagh which is a big market. He further stated that after ten shops east of his shop, there is a shop of Ramu Agarwal. The accused persons came to take ransom



from Ramdev Agarwal. At the time of occurrence, Ishwar Singh was present at the place of occurrence. He has further stated that related to this occurrence, he had earlier deposed in Sessions Case No. 841 of 2002 but, as in that case, Pankaj Pathik was not accused, so he did not mention his name.

20. P.W.2 – Amolak Sancheti– This witness also claims to be an eye-witness of the case. In his evidence, he has stated that the occurrence took place at about 8.30 PM in December, 1996 when he was present at the shop of Manoj Sancheti along with Ishwardev Singh, Shiv Narain Singh, Vimal Singh, Rangu Singh, Ramu Agarwal, Manoj Sancheti and Sundar Sancheti. When Pankaj Pathik, Langra and some unknown came by a white Maruti car, Pankaj Pathik and Langra had rifles. During talk, Pankaj Pathik fired on the head of Rangu Singh. Next shot hit Vimal Singh below his waist. Shivnarayan Singh was hit in the eye. He and Ramu Agarwal took the injured to Sadar Hospital, Purnea and get them admitted. Rangu Singh died at the spot. He identified Pankaj Pathik present in the court.

20.1 During cross-examination, this witness said that he do not remember the day of occurrence as it is 14 years old. They were talking in the office of Manoj Sancheti from about 15 minutes. He saw that rifle was put on head and fired. Two



persons were carrying the rifles. Fire-shots were made from one rifle. He reached with the injured to hospital at about 10 PM. After the occurrence, he did not met the police. He further stated that the police arrived at the hospital during his stay but, he do not remember that his statement was recorded or not. He had also deposed in Sessions Case No. 841 of 2002. No question was asked about the arrival of Pankaj Pathik by car or that he had rifle so, he did not state about it.

21. P.W.3 – Surendra Kumar Giriya – This witness has stated in his examination-in-chief that on 22.12.1996 at about 8.30 PM, he was present at the shop of Manoj Sancheti along with Rangu Singh, Ishwardev Singh, Shiv Narain Singh, Vimal Singh, Ramu Agarwal and Manoj Sancheti when one white Maruti cara arrived. One person came down and hold him and asked as to he is Ramu Agarwal. He denied. Thereafter, next person came down and indicated towards Ramu Agarwal that he is Ramu Agarwal standing by his side. Next person hold Ramu Agarwal and wanted to take him away. Then Rangu Singh came and asked as to where they were taking him. There was a quarrel between both and exchange of filthy language. Then he came from there towards the Chowk. After some time, he heard the sound of firing. He went to the shop of Manoj Sancheti and saw



Rangu Singh, Vimal Singh and Shiv Narain Singh having gunshot injury. Rangu Singh had told him the name of person who came for taking as Pankaj Pathik, Rama Yadav and Langra. He identified Pankaj Pathik present in the court.

21.1 In his cross-examination, he has stated that the distance of shop of Manoj Sancheti from his house is 500-600 yards. His house is towards east of the shop. He had a shop of motor parts. He further stated that when the car arrived, he was standing outside the shop. Out of the remaining persons, three or four persons were standing outside and three or four persons were sitting in the shop. Presently, Ramu Agarwal does not live in Gulab Bagh. He used to come now and then. After some days of the occurrence, the police recorded his statement. He further states that he did not remember that he had stated in his deposition in Sessions Case No. 841 of 2002 that at the time of occurrence, Ishwardev Singh was also present. On the identification of Rangu Singh, he can say that the person present in the court is Pankaj Pathik. Prior to the occurrence or after the occurrence, he did not meet to Pankaj Pathik. After the occurrence, he is seeing Pankaj Pathik first time and he had no concern with Pankaj Pathik.

22. P.W.4 – Vimal Kumar Singh @ Tuntun Singh – He



is the one of the injured of this case. In his evidence, he has stated that the occurrence is of 22nd December, 1996 at about 8 to 8.30 PM. At that time, he was at the fertilizer and seed shop of Manoj Sancheti along with Manoj Sancheti, Prakash Sancheti, Sundarlal Sancheti, Mannan Giriya, Rangu Singh, Ishwardev Singh and brother of Wishwanath Agarwal. He further stated that there, Pankaj Pathik, Vikram Yadav and two or three others were quarreling and abusing with brother of Wishwanath Agarwal. As they wanted to take him away, Rangu Singh was protesting against it. Thereafter, giving threat, Pankaj Pathik, Vikram Yadav and others went away. They said that he would not see the sun of next day. They do not pay any heed to the threat. After about 15 to 20 minutes, Pankaj Pathik, Vikram Yadav and others came from a white Maruti car and came down having rifles and Pankaj Pathik fired on Rangu Singh by rifle which hit the head of Rangu Singh who at the spot. Pankaj Pathik fired next shot which hit his left hand. Pankaj Pathik again fired 3rd round which hit left side of his chest. Thereafter, they fired two or three rounds but, who became injured, he could not see. One shot hit Shiv Narayan Singh near his eyebrow. Thereafter, Pankaj Pathik went away. Thereafter, persons of the vicinity taken Shiv Narain Singh and him to



Purnea Sadar Hospital. After first aid, he was sent to Siligudi and Shiv Narain Singh was sent to Kolkata. He identified the accused in the court.

22.1 In course of cross-examination, he has stated that Pankaj Pathik is the relative of Pappu Yadav and was active in his election. He had no relation nor any concern with the Pankaj Pathik. He had no grudge with Pankaj Pathik. Darogaji recorded his statement after two months when he returned from hospital. He further stated that before his reaching there, Pankaj Pathik, Vikram Yadav had been abusing the brother of Wishwanath Agarwal. Pankaj Pathik and others came out of the car, proceeded two or three steps and started firing. They fired about six rounds. He had seen two rifles. Name of the brother of Wishwanath Agarwal is Ramdev Agarwal. When he reached there, he asked from Rangu Singh what is the matter on which he learnt from Rangu Singh that they came to kidnap Ram Agarwal. First shot hit him when he was in a standing position and the 2nd shot hit him when he was fleeing. He fell down near electric pole at the road. The injury of Shiv Narain was seen by him at the time of going to hospital in the vehicle. He further stated that he cannot say whether Shiv Narain and Rangu Singh had grudge against Pankaj Pathik.



23. P.W.5 – Manoj Kumar Sancheti – He happens to be the partner of the deceased Rangu Singh in the fertilizer/salt shop. In his evidence, he has stated that on 22.12.1996, he was at his fertilizer shop along with Shishendra Narain Singh @ Rangu Singh, Ram Kishor Agarwal, Bhanu Singh, Amolak Sancheti, Vimal Singh @ Tuntun Singh, Sundarlal Sancheti, Mannan Giriya, Abdul Sattar, Ishwardev Singh and others. Ramu Agarwal had come to him. 3-4 persons had come looking for him in a vehicle. Four persons came out of vehicle and they stated quarreling with him. Then and there, he and Rangu Singh told them that if they had any dispute with Ramu, they should go to his shop and quarrel with him. But the quarrel reached to the extent of exchange of filthy language. Rangu Singh told to Pankaj Pathik, Langra and others to went from there. They went from there and said that he will not see the sun of the morning. While they were just thinking over the incident then the Maruti car came and leaving the car in starting position, people came out of it. Pankaj Pathik and Langra came out and said who will save Ramu Agarwal. There was a fire which hit the face of Rangu Singh and he fell down. The next round was fired and the cartridge passed by the side of his ear and hit Shiv Narain Singh. The 3rd round hit Vimal Singh and one another round.



Langra and Pankaj Pathik fired and the accused went away by the vehicle. In this period, Rangu was seen dead. The injured Vimal Singh and Shiv Narain Singh were taken to Sadar Hospital. Seeing their serious position, the Doctor referred them to Siligudi. He did not know the name of Langra but, he heard that he is Yadav. He identified his signature on the *fardbeyan* which have been marked as Exhibit-1. He identified Pankaj Pathik present in the court.

23.1 In the cross-examination, he said that he did not went to Sadar Hospital but, he learn that the injured were sent to Siligudi. At that time, he was nervous. He further stated that the distance of Police Naka Gulab Bagh from his shop is 700-800 meters. He did not now that any one had informed at the Naka or not. He had phone but due to nervousness, he could not call at the police station but, his brother and other persons gave information to the police. After 5-7 days of the occurrence, the police interrogated him about the occurrence. Pankaj Pathik was known to him from $\frac{3}{4}$ years earlier to the occurrence. He, now and then, has been coming at Gulab Bagh. In course of some work of his uncle, he knew Pankaj Pathik. The place of occurrence is just adjacent to his shop. He further stated that in Sessions Case No. 841 of 2002, since no question was asked as



to who fired, he did not mention the name of the accused who had fired.

24. P.W.6 – Jitendra Kumar Singh – He happens to be the cousin brother of P.W.4/Vimal Kumar Singh @ Tuntun Singh. He has deposed in his evidence that the murder of Rangu was taken place in December, 1996 between 9 to 9.30 PM. At that time, he was at home when at about 9 to 9.15 PM, he received a phone call that there was firing at the fertilizer shop. On receipt of such information, he went to the fertilizer shop of Rangu Singh and saw Rangu Singh has received fire-arm injury and is lying on the ground whereas Vimal Singh and Shiv Narain Singh were taken to Hospital. Rangu Singh was dead at the spot. Darogaji arrived at the place of occurrence. He identified his signature on the inquest report which have been marked as Exhibit-2. Beside him, he identified the signature of Abdul Sattar which have been marked as Exhibit 2/a.

24.1 During cross-examination, he has said that he cannot say the name who had phoned at the home. Next day of the occurrence, his signature was taken. Rangu Singh is his cousin brother. Vimal Singh is also cousin brother and Shiv Narain is his caste man.

25. P.W.7 Shiv Narain Singh – He is the eye-witness of



this case and one of the injured persons. He told in his examination-in-chief that the occurrence had taken place on 22.12.1996 at about 8.30 PM. At that time, he was at the fertilizer shop of Manoj Sancheti. Beside him, Manoj Sancheti, Rangu Singh, Sundarlal Sancheti, Ishwardev Singh, Vimal Singh and some other persons were also present. Ramu Agarwal was also present. One Maruti arrived and some persons tried to take away Ramu Agarwal. Rangu Singh protested when Pankaj Pathik, Langra, Rama Yadav and others said that he would not see the sun of next day. Thereafter, they went away. After 15-20 minutes, they again arrived. Pankaj Pathik, Langra came out of the vehicle and they had rifle by which Pankaj Pathik fired which hit Rangu. Langra also fired which hit him. The cartridge hit his head. He was taken to Kolkata hospital till 14th January, 1997. He lost the eyesight of both the eyes. In court question, he said that prior to the occurrence, he had eyesight.

25.1 In course of cross-examination, he stated that the name of Pankaj Pathik was told to him by Rangu Singh. He had no talk nor meeting with Pankaj Pathik. His press is situated at Gulab Bagh market and his house is at Sardar Tola, Gulab Bagh. The distance of his house from press is about 60-70 steps. He had recorded his statement regarding the occurrence in



February, 1997. He stated before the police that on 22.12.1996 after shutting down his Press, he came home at about 8 PM and after taking dinner, he went to meet his friends. All these companions were of his age group. He met to his companies at the shop of Manoj Sancheti. As soon as, he reached there, Pankaj Pathik came out of the vehicle and started firing. He did not remember that he stated before that some persons came from Maruti and was taking away Ramu Agarwal, which was objected by Rangu Singh. Pankaj Pathik, Rama Yadav and Langra said that they would not see the sun of next day. Rangu Singh was not his kinsmen.

26. P.W.8 – Fateh Narayan Singh @ Fateh Bahadur Singh – He is not the eye-witness of the occurrence. In his evidence, he has stated that the occurrence is of 22.12.1996. Next day of the occurrence, he was in front of the shop of Rangu Singh where the police arrived. Darogaji prepared the seizure list at the place of occurrence and recovered one Khokha and blood stained soil. He identified his signature on the seizure list which have been marked as Exhibit-3.

26.1 During cross-examination, he has denied that the seizure list was prepared after putting his signature.

27. P.W.9 – Ramkishor Agarwal – He is also the eye-



witness of this case. In his evidence, he has stated that on 22.12.1996 at about 8-8.30 PM, he was at the shop of Rangu Singh for taking account. He went there at about 6.30-7 PM. At that time, his partner Manoj Sancheti, Sundar Sancheti, Shiv Narain Singh, Vimal Singh and Ishwardev Singh were also present. After sometime, a white Maruti arrived in which 4-5 persons were sitting. Son of Hansraj was standing near the car. They asked him to call Ramu Agarwal. That boy entered in the shop of Rangu Singh and told him that some persons are calling him outside. He and Rangu Singh saw outside. Rangu Singh and he went near the car. Those people were forced him to sit in the car but, Rangu Singh protested. They abused him and said that they will see him and went away. After 15-20 minutes, the car arrived and the people came out having fire-arms. Pankaj Pathik and Langra had rifle. Pankaj Pathik fired on the head of Rangu Singh who fell down. Shiv Narain and Vimal Singh came to save him and the accused persons fired on them also and both of them became badly injured. Thereafter, the accused persons boarded on the car and went towards Purnea. The injured were taken to Sadar Hospital, Purnea. He identified Pankaj Pathik present in the court.

27.1 During cross-examination, he has said that his



house is in Gulab Bagh by the side of NH31 at Sonaili Chowk. The distance of place of occurrence is 150 feet from his house. His shop is adjacent to his house. In the shop of Rangu Singh, the occurrence taken place. He is a distributor of fertilizer and Rangu Singh was retailer and used to take goods from him. On 22, he was at the shop of Manoj Sancheti and Rangu Singh. The distance of Gulabbagh Naka from the place of occurrence is half kilometer and Sadar police station is at 3 Km. He had not given information to the police. When he went near the car, the persons sitting in the car assaulted him by slap. He met to Pankaj Pathik prior to the occurrence one or two times. He came to hospital with the injured and did not stay there and came from there. He stayed there for five minutes.

28. P.W.10 – Ishwar Deo Singh – He is the Informant in the present case. During course of examination, he has stated that the occurrence took place on 22.12.1996 at about 8 to 8.30 Pm on Sunday. At that time, he was at the fertilizer shop. That shop belonged to Shishendra Narain @ Rangu and Manoj Sancheti. The occurrence taken place there. Pankaj Pathik, Ram Yadav, Vikram @ Langra and other one or two persons came by a Maruti car at the fertilizer shop of Rangu Singh and Manoj Sancheti. They started taking away Ramu Agarwal who was



sitting there. Ramu Agarwal had come there for taking accounts. The Informant's son protested the taking away of Ramu Agarwal. His name is Rangu Singh. On being protested by his son, Pankaj Pathik, Rama Yadav, Langra @ Vikram Singh started quarreling and by saying that he would not see the sun of next day, they went away from there. After 20 minutes, Pankaj Pathik, Langra @ Vikram Yadav, Rama Yadav and one or two unknown persons came at the shop and came down from the Maruti and started firing. Pankaj Pathik fired by rifle which hit the head of Rangu Singh who fell down. Vikram fired two shots by rifle on Shiv Narain Singh which hit his eye side and Rama Yadav shot by rifle which hit Vimal Singh. Thereafter, the accused persons fled away. His son died at the spot. Vimal Singh, Shiv Narain Singh were carried to Sadar Hospital, Purnea from where they were sent to Silugudi. At the time of occurrence, his son Rangu Singh, Manoj Sancheti, Ramanand Agarwal, Sundeer Lal Sancheti, Amour Sancheti, Shiv Narain Singh, Vimal Singh, Surendra Giriya were sitting at the shop. He recorded his statement at the place of occurrence which was recorded by S.I. Quasim Khan of Sadar Police Station. The statement was read over to him and finding the same correct, he put his signature on it. Manoj Sancheti also put his signature.



28.1 During cross-examination, he has stated that at the time of occurrence, there were eight persons at the shop and at the time of occurrence, he was sitting in the neighboring room. He further stated that four persons came out of the vehicle, out of them, three persons had rifle. As soon as they arrived, they started firing. Four shots were fired. Three persons were injured. Hearing the sound of firing, the neighboring persons arrived. He was sitting near his son. He had not given information anywhere at that time. Who informed the police or at his house, he cannot say because he was not in sense. He did not went to hospital. He remained there whole night. He did not take his son to hospital. He was taken for postmortem next day. He also went with it. He has further stated that after one and half hours, Darogaji arrived at the place of occurrence and he recorded his statement. Next day in the morning, the police arrived and taken his re-statement.

29. P.W. 11 – Dr. Ramdev Raman – He has conducted the postmortem on the dead-body of Rangu Singh. In his evidence, he has stated that on 23.12.1996, he was posted as Civil Assistant Surgeon at Sadar Hospital, Purnea and on that day, he did postmortem examination of the dead-body of Shishendra Narain Singh and found the following ante-mortem



injuries on his person, one lacerated circular wound with inverted margin at left infra orbital region, 1" from nose with charring of surrounding skin size 1/2"x1/2". This is the wound of entry. Lacerated wound on occipital region with fracture of occipital bone and brain matter coming out of skull with inverted margin 5"x3". This is the wound of exit. On dissection, skull fracture of left orbital margin and fracture of occipital bone, cranial cavity full of clots and blood and brain matter lacerated and coming out of occipital wound. Chest and abdomen – Heart - right side filled, left side empty, lung, liver, spleen and kidney are pale normal, stomach contains semi-digested food, urinary bladder empty. Cause of death-hemorrhage and shock due to fire-arm injury on skull. Time elapsed since death - 12 to 24 hours. Rigor mortis present in all four limbs.

29.1. In the cross-examination, he has stated that no foreign particle was found by him at the time of postmortem examination in the dead-body of the deceased.

30. P.W. 12 – Raj Kumar Sahu – He has stated in his evidence that on 24.12.1996, he was posted at Sadar Police Station as Officer-in-charge. He received the charge of investigation of Sadar P.S. Case No. 432 of 1996 from the



Officer-in-charge Md. Qasim. He has further stated that after taking the charge, he perused the case diary and taking into account of the restatement of the Informant, on 27.12.1996, he recorded the statement of Surendra Giriya, Ram Kishor Agarwal, Sundar Sancheti. On 05.01.1997, he recorded the statement of Amolak Sancheti, Chandra Bhanu Singh, Indradev Singh, Ram Singh and Saligram Singh. On 17.01.1997, he obtained the postmortem report of Rangu Singh. On 03.04.1997, he received the injury report of Shiv Narain and Vimal Kumar Singh. On 08.09.1997, he submitted the charge sheet under Section 302, 307, 324, 120(B), 109 of the I.P.C. and Section 27 of the Arms Act against Nishi Kant Yadav, keeping the investigation pending against Pankaj Pathik Rathi, Rama Yadav, Ramnarain Yadav, Vikram Yadav @ Langa and Deepak Kedia. On 24.06.1998, he was transferred and handed over the charge to the Officer-in-charge Niranjana Yadav. He further stated that the formal F.I.R. is in the handwriting of Inspector Kumar Ashok which bears the signature of the then SHO Md. Kasim. He identified the same. The Inquest Report is in carbon copy which is in the handwriting and signature of Md. Kasim. He further stated that the case was instituted on 23.12.1996 and he started investigation on 24.12.1996.



30.1. In the cross-examination, he has stated that he did not inspected the place of occurrence nor he prepared the inquest report. He recorded the statement of the witnesses at the house. The witness Surendra Kumar Giriya had not stated the presence of Ishwardev Singh at the shop.

31. The defence has also examined two witnesses, namely, D.W.1/Hazi Abdul Sattar and D.W.2/Dalo Yadav.

32. D.W.1 Haji Abdul Sattar – He is the seizure list witness. He has in his evidence stated that on 22.12.1996, he heard that the occurrence took place at Gulab Bagh at night. When he went to the fertilizer shop, he saw Rangu Singh was lying dead and his family members were present.

32.1 During cross-examination, he has said that he reached at 7 AM where Darogaji prepared the seizure list and recovered .315 empty cartridge and blood stained soil. He prepared the seizure list over which he put his signature to which he identified. Darogaji also prepared the inquest report of Shishendra Narain over which he put his signature to which he also identified.

33. D.W.2 Dalo Yadav – He in his evidence has stated that in 1996, he was at Gulab Bagh when Rangu Singh was shot dead. He heard about shooting. He did not know the name of



miscreants. Pankaj Pathik is his villager and earlier to the occurrence, there was MP election in which Pappu Yadav was an independent candidate and Uday Singh was candidate of Congress. Pankaj Pathik was with Pappu Yadav and there was dispute between Uday Singh and Pankaj Pathik. Pappu Yadav win the election and Uday Singh lost and, therefore, he falsely implicated Pankaj Pathik in this case.

33.1 During cross-examination, he has stated that he does not know that at which place, the murder of Rangu Singh was committed. He has no personal knowledge of the occurrence.

34. On re-appreciation of evidence of the prosecution witnesses, it is noted that the P.W.10, who is the Informant in the present case, has stated in examination-in-chief that the occurrence took place on 22.12.1996 at about 8 to 8.30 PM on Sunday. At that time, he was at the fertilizer shop. That shop belonged to Shishendra Narain @ Rangu and Manoj Sancheti. The occurrence taken place there. Pankaj Pathik, Rama Yadav, Vikram @ Langra and other one or two persons came by a Maruti car at the fertilizer shop of Rangu Singh and Manoj Sancheti. They started taking away Ramu Agarwal who was sitting there. Ramu Agarwal had come there for taking accounts.



The Informant's son protested the taking away of Ramu Agarwal. His name is Rangu Singh. On being protested by his son, Pankaj Pathik, Rama Yadav, Langra @ Vikram Singh started quarreling and by saying that he would not see the sun of next day, they went from there. After 20 minutes, Pankaj Pathik, Langra @ Vikram Yadav, Rama Yadav and one or two unknown persons came at the shop and came down from the Maruti and started firing. Pankaj Pathik fired by rifle which hit the head of Rangu Singh who fell down. Vikram fired two shots by rifle on P.W.7/Shiv Narain Singh which hit his eye side and Rama Yadav shot by rifle which hit P.W.4/Vimal Singh. His son died at the spot. Vimal Singh, Shiv Narain Singh were carried to Sadar Hospital, Purnea from where they were sent to Silugudi. After one and half hour, Darogaji came and recorded his statement. His statement was recorded by S.I. Quasim Khan of Sadar Police Station. Next day in the morning, police again arrived and taken his re-statement.

35. In this regard, the learned counsel for the appellant has submitted that P.W.10, who is the Informant in this case, has stated in evidence that his *fardbeyan* was recorded by Darogaji at the place of occurrence and in the cross-examination, he has stated that in para-11 that after the occurrence, Darogaji came at



the place of occurrence and *fardbeyan* was given to him and on the next day, another statement was taken by the Darogaji but, the prosecution story is that the *fardbeyan* was given at the police station at 3 AM.

36. From perusal of the prosecution case as well as the statement given by P.W.10 during course of trial, it falsifies the prosecution version and hence creates a doubt in the prosecution case.

37. It also appears from the prosecution case that the witnesses P.W.4/Vimal Kumar Singh @ Tuntun Singh and P.W.7/Shiv Narayan Singh were injured persons but, during course of trial, the injured witnesses, P.W.4 has stated that the appellant Pankaj Pathik shot first round which hit the deceased at his head. He again made second shot on the P.W.4 which hit him in his arm and again Pankaj Pathik made third shot which hit on the left side of his chest. Thereafter, the appellant again fired two or three rounds but, who became injured he could not see. P.W.7 in his evidence has stated that the appellant/Pankaj Pathik fired which hit Rangu. Langra also fired which hit him and he fell down. But, from the statement of the P.W.10, it appears that only the appellant had fired three shots.

38. In this case, the injury report of both the injured



persons i.e. P.Ws. 4 & 7 is not available on record as also the Doctor who had examined the injured persons has not been examined by the prosecution and, on the whole basis, half of the prosecution story is disbelieved by the Trial Court and acquitted the appellant under Section 307 I.P.C. Under such a situation, the entire prosecution story is demolished in its totality.

39. Further, in this case, the first Investigating Officer/Md. Quasim had initially visited the place of occurrence and recorded the *fardbeyan* of the Informant, made the inquest report and also collected one cartridge and blood stains from the spot but, the same were not examined before the Trial Court. Even the cartridge and the blood stains so collected were not sent to the F.S.L. for its examination. The first Investigating Officer has also not been examined by the Trial Court, causing great prejudice to the appellant. In this regard, reliance may be made to the judgment passed by the Hon'ble Apex Court in the case of *Munna Lal Vs. State of Uttar Pradesh* reported in 2023 *SCC OnLine SC 80* wherein the Apex Court has held as follows:-

“39. -----this Court holds the present case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the



prosecution case.”

40. From perusal of the evidences of the prosecution witnesses particularly the P.W.10/the Informant and P.Ws. 4 & 7, there were vital contradictions and inconsistencies in the examination-in-chief and the cross-examination. Thus, it appears that there is material discrepancies between the prosecution case and the prime witnesses in this case being the P.W.10/the Informant and the P.Ws. 4 & 7 respectively and, hence, the prosecution story is not reliable and is demolished in its totality. This Court also finds that the Trial Court has failed to differentiate between the minor and material discrepancies in the evidence of the prosecution witnesses and therefore, the Trial Court is not justified in passing the impugned order. The discrepancies which are not expected on the part of normal person are regarded as material discrepancies. Thus, the Court has to categorize whether the discrepancy, in question, is a material one or of a minor nature. Reliance in this connection may be made to the judgment passed by the Hon'ble Apex Court in the case of ***Sunil Rai alias Pauya & Ors. Vs. Union Territory, Chandigarh, (2011) 12 SCC 258***, Paragraph no.18, being relevant, is quoted herein below:-

“18. To our mind the vacillations in the deposition of PW 9 cannot be brushed aside as



“minor discrepancy” especially when it is to form the basis of life sentences to three persons.”

41. Thereafter, the Hon’ble Apex Court has considered the same issue in catena of judgments and the latest one is the judgment passed in the case of ***Md. Jabbar Ali & Ors. Vs. The State of Assam (Cr. Appeal No. 1105 of 2010)*** along with ***Md. Ajmot Ali Vs. The State of Assam (Cr. Appeal No. 1128 of 2010)*** decided on 17.10.2022 wherein the Hon’ble Apex Court, placing reliance on the case of ***State of Rajasthan Vs. Kalki & Anr.*** reported in ***(1981) 2 SCC 752***, has held as follows:-

“52. Further as already stated above, all the witnesses have given contradictory versions as to who gave the fatal blow to deceased Ekkabar Ali and the same amounts to material contradictions. It is reiterated that the testimony of PW-6 is inconsistent with the testimonies of PW-1, PW-2 and PW-5 This Court in the case of State of Rajasthan v. Kalki & Anr. (1981) 2 SCC 752, distinguished between the normal discrepancies and material discrepancies. This Court held that the Courts have to label as to which category a discrepancy can be categorized. The material discrepancies corrode the credibility of the prosecution’s case while insignificant discrepancies do not do so.”

42. Thus, in view of the observations of the Hon’ble Apex Court, this Court is of the view that the material



discrepancies were found in the depositions of the prime witnesses being P.Ws. 4, 7 & 10 as also even the other prosecution witnesses. Thus, the testimony of the above witnesses cannot be relied upon and cannot be regarded as trustworthy.

43. It is fundamental principle of criminal jurisprudence that it is the duty of the prosecution to prove any criminal case beyond reasonable doubt. If the prosecution fails to prove its case beyond all reasonable doubt then benefit of doubt will be given in favour of the accused person. This Court is of the view that since the prosecution has failed to prove its case beyond all reasonable doubt despite which the Trial Court has passed the impugned judgment of conviction against the appellant and, thus, the impugned judgment and order passed by the learned Trial Court is liable to be quashed and set aside.

44. In the result, the appeal filed by the appellant is allowed and the impugned judgment and order of sentence dated 25.11.2014 passed by the learned Additional Sessions Judge 3rd, Purnea in Sessions Case No. 63 of 2011 arising out of Purnea (Sadar) P.S. Case No. 432 of 1996 is hereby quashed and set aside. The appellant is acquitted of all the charges levelled against him in the instant case.



45. Since, the appellant, named above, is in custody, he is directed to be released from jail forthwith, unless his detention is required in any other case.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.01.2024
Transmission Date	19.01.2024

