

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.573 of 2016

Arising Out of PS. Case No.-2 Year-2007 Thana- SANHAULA District- Bhagalpur

Suchit Mandal @ Sujeet Mandal Son of Shankar Prasad Mandal Resident of
village - Dovi, P.S. Amdanda, District - Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 683 of 2016

Arising Out of PS. Case No.-2 Year-2007 Thana- SANHAULA District- Bhagalpur

1. Binod Mandal son of Late Sushil Mandal,
2. Bilash Mandal, Son of Late Hari Mandal
3. Shaligram Mandal Son of Late Ganga Mandal All are resident of Village-
Dhobhi, P.S. Amdanda, District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 573 of 2016)

For the Appellant/s : Mr. Sudhir Kumar Mishra, Advocate

For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 683 of 2016)

For the Appellant/s : Mr. Ranjan Kumar Jha, Advocate

Mr. Chy. Prem Kr. Thakur, Advocate

Mr. Deepak Kumar, 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 : 18-11-2024



Both these appeals arise out of common impugned judgment of conviction dated 10.05.2016 and order of sentence dated 18.05.2016 passed by learned Additional District and Sessions Judge-1st, Bhagalpur in Sessions Trial No. 310 of 2008, arising out of Sanhaua P.S. Case No. 02 of 2007. Both these appeals are filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Code'), whereby the concerned Trial Court has convicted and sentenced the present appellants for the offences punishable under Section 302/34 of the Indian Penal Code and also imposed a fine of Rs. 2 lakhs each and, on failure to deposit the same, further 2 years imprisonment has to be served. As the impugned judgment and order is common, learned counsels appearing for the parties jointly requested that both these appeals be heard together and be disposed of by common judgment.

2. The prosecution story, in a nutshell, is as under:-

2.1. The informant has stated, in his *fardbeyan*, that on 01.01.2007, at about 06:30 in the evening, he was sitting in the courtyard in the sunlight. At that time, from the direction of Gerua River, Rishi Mandal, Bhola Mandal, Vidya Mandal and Bindu @ Binod Mandal came abusing him and asking about the whereabouts of Bhuksa. On hearing their voice, he hid himself behind the straw



fence of the house which was situated to the north of the house. The female members and children of the house also ran away. Upon seeing his wife running, they chased her firing by pushing the eastern door. His wife was caught by Bishun Dev Tanti. Rishi Mandal injured her by hitting on her face with *kunda* and the other persons caught her and then threw her on the ground. His wife Babli Devi (aged around 65 years) died on the spot. While beating, Bishun Tanti was asking them to leave her as she was an old woman but they did not pay heed to the same. Bishun Dev Tanti and his wife were also told to keep quiet. He was watching everything hiding nearby. After that, those people left by crossing Gerua River. On the next day morning, he came to know that the mother of Hareram Mandal and Mahadev Mandal have been murdered. He crossed the Gerua River to verify it. Pago Devi (aged about 60 years) was found dead. Meena Devi, who is the daughter-in-law of the deceased, told that, on 01.01.2007 at 05:30 p.m., Rishi Mandal, Subhash Singh @ Subba, Salil @ Shaligram Mandal, Suchit Mandal and Vilash Mandal all came to the courtyard abusing and told that she was instigating the village people against them. She does not favour them and that they will teach her a lesson for the same. Meena Devi told that she hid in a corner and witnessed the incident. After breaking the handle of the handpump of the



courtyard, Rishi Mandal killed his mother-in-law Pago Devi by inflicting kicks and punches upon her. He broke his mother-in-law's hands and legs. After this, he went to Mahadev Mandal's house and saw that Mahadev Mandal was lying dead and his wife Faguni Devi was lying injured on the cot. The deceased's daughter-in-law Archana Devi, aged about 32 years, told that last evening, at about 05:00 p.m., Rishi Mandal, Murari Mandal, Suchit Mandal, Bindu @ Binod Mandal, Salil @ Shaligram Mandal and Vilash Mandal entered the house abusing, with arms in their hands. The mother-in-law Faguni Devi was beaten and was injured and the father-in-law Mahadev Mandal was taken to the roof beating along and was shot in the forehead from a point blank range. His father-in-law died instantaneously. Then, he opened the other door and ran away. While running, he saw 2-3 persons outside the door whose names he did not know, but he can recognize them by face. After they left, he came back house. Rishi Mandal had forbidden everyone in the village that no one would give any telephonic conversation. Everyone was saying that he used to keep Hareram as his son-in-law in the house. The reason is that Rishi Mandal and his accomplices had carried out the incident due to the fight for supremacy in the village between Rishi Mandal and Hareram Mandal.



2.2. After registration of the F.I.R., the Investigating Officer started the investigation and, during the course of the investigation, he had recorded the statement of the witnesses and thereafter filed the charge-sheet against the appellants/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Trial No. 310 of 2008.

3. In Criminal Appeal (DB) No. 573 of 2016, we have heard Mr. Sudhir Kumar Mishra for the appellant (Suchit Mandal @ Sujeet Mandal), and Mr. Sujit Kumar Singh, learned A.P.P. for the Respondent-State.

3.1. In Criminal Appeal (DB) No. 683 of 2016, we have heard Mr. Ranjan Kumar Jha for the appellants (Binod Mandal, Bilash Mandal and Mr. Shaligram Mandal), assisted by Mr. Chy. Prem Kr. Thakur and Mr. Deepak Kumar and Mr. Sujit Kumar Singh, learned A.P.P. for the Respondent-State.

4. Before the Trial Court, the prosecution had examined following 11 witnesses:-

PW-1	Meena Devi
PW-2	Kaili Devi
PW-3	Anita Devi
PW-4	Shamli Paswan
PW-5	Renu Kumari



PW-6	Archana Devi
PW-7	Shivpujan Paswan
PW-8	Satyanarayan Mandal
PW-9	Jhaksu Paswan
PW-10	Jhanto Paswan
PW-11	Dr. Arun Kumar Singh

5. The defence has not produced any oral as well as documentary evidence in support of its case. Further, submission of the accused under Section 313 of the Code was recorded by the Trial Court and thereafter the Trial Court passed the impugned judgment and order as observed hereinabove. Against the impugned judgment, the concerned convicts have filed the present appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANTS:-

6. Learned counsel appearing for the respective appellants would mainly submit that there are major contradictions, inconsistencies and discrepancies in the deposition given by the prosecution witnesses. The prosecution has miserably failed to prove both the place and manner of occurrence beyond reasonable doubt. It is further contended that there is gross delay of 14 hours in lodging the F.I.R to which the prosecution has put forward different version. Therefore, doubt has been raised with regard to the correct version of the prosecution. At this stage, it is also submitted that there are three different places of occurrence, as per the case of



prosecution. So far as occurrence No. 1 is concerned, one Bishun Dev Tanti could have been the sole independent witness to the said occurrence. His presence has been substantiated by the *fardbeyan* and the deposition of the witnesses. However, the said independent witness has not been examined by the prosecution and thereby, the prosecution has suppressed the material fact. Further, from the deposition given by PW-4 (informant), doubt can be raised with regard to the presence of PW-9 and PW-10. Thus, though PW-9 and PW-10 are not the eye-witnesses, they are projected by the prosecution as eye-witnesses which is nothing but an afterthought. At this stage, it has been pointed out that, as per the case of the prosecution, occurrence took place at 06:30 p.m. during winter season when it was dark. However, the prosecution has failed to produce any material regarding the source of identification. It is also submitted that, as per the case of the prosecution, the accused including the appellants came at the place of occurrence and fired. However, the Investigating Officer, in his deposition, mentioned the absence of marks of violence and any bullet cartridge or evidence related to the presence of the appellants at the place of occurrence.

7. Thereafter, it has been contended that, as per the deposition given by PW-1 Meena Devi, the deceased was struck by the handle of a handpump. However, it is revealed, from the



deposition of the Investigating Officer, that the handpump was in a working condition and no blood or blood stained earth was found at the place of occurrence.

8. So far as the occurrence 3 is concerned, it has been contended that, as per the case of the prosecution, the deceased 3 was shot in the head. The said aspect was also reflected in the *fardbeyan*. However, from the deposition given by Dr. Arun Kumar Singh (PW-11), who had conducted the *post mortem* examination of the dead body of deceased 3, it is revealed that there was no gunshot injury, rather the injury was caused by hard and blunt substance on the head of the deceased 3, namely Mahadev Mandal. At this stage, it has been pointed out by the learned counsel that, as per the case of the prosecution, wife of deceased No. 3 (Mahadev Mandal), namely Faguni Devi, had also sustained injury in the said occurrence. However, the prosecution did not examine her as a witness. Thus, the prosecution has suppressed material fact.

9. Learned counsel, therefore, urged that when the prosecution has failed to prove the case against the accused beyond reasonable doubt, the Trial Court ought to have acquitted them, however, the impugned judgment and order has been passed by the Trial Court. Learned counsel, therefore, urged that both these appeals be allowed.



SUBMISSIONS ON BEHALF OF THE STATE:-

10. *Per contra*, learned A.P.P. has submitted that merely because there are minor contradictions and omissions in the deposition of the prosecution witnesses, benefit of the same may not be given to the appellants herein. In fact, the present is a case in which three persons died and the prosecution witnesses have supported the case of the prosecution. Even the medical evidence supports the version of the prosecution. There are eye-witnesses to the incident in question and, therefore, when the prosecution has proved the case against the appellants/accused beyond reasonable doubt, no error is committed by the Trial Court while passing the impugned judgment and order. Learned A.P.P., therefore, urged that both these appeals be dismissed.

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

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

**DISCUSSION WITH REGARD TO THE
DEPOSITION OF THE PROSECUTION WITNESSES:-**



13. PW-1 Meena Devi has stated, in her examination-in-chief, that the incident occurred on 01 January, 2007 at 06:00 p.m. Her mother was at house. Rishi Mandal, Pamiya Mandal, Vidya Mandal, Bhola Mandal, Subhash Singh, Vindo Mandal, Murari Mandal, Salil Mandal and Vilash Mandal altogether came to her house bearing guns and started abusing her and her mother-in-law Pago Devi. They objected to this. At this, Rishi Mandal pulled her mother-in-law Pago Devi's by hand and started beating her with the handle of a hand pump. She got injured on her feet, legs and forehead. All the accused persons beat her mother-in-law with sticks, fists and hands. Her mother-in-law Pago Devi fell down there after getting injured. She heard in the village on the same day that all these accused persons beat Mahadev Mandal and Babli Devi to death. She also heard that the accused persons also beat Faguni Devi. She has further stated that she went to the Police Station and filed the case. Her sister-in-law accompanied her to the Police Station. The Police interrogated her.

13.1 In her cross-examination, she has stated that she knows Pappu, who is the brother of Sujit. Pappu had died. Her husband went to jail. She cannot say that in which case her husband went to jail. She was not aware that her husband Hareram Mandal had gone to jail in the murder case of accused Sujit's



brother Pappu Mandal whose Sessions Trial No. is 04/96. She has not stated before the Police that her husband was in jail in the murder case of Hareram Mandal and Pappu Mandal. In Para-6, she has stated that she cannot say as to which accused was carrying a stick or gun. She was nearby at the time of incident. Her mother-in-law was beaten with the handle and fist. Her mother-in-law died after drinking water. She has further stated that her mother-in-law died in the courtyard. In Para-7, she has stated that she is the informant of the case who got the case registered and it is also true that Shamli Paswan is the informant of the case. Due to fear of miscreants, she hid next to *heet*. Further, she has stated that she had filed a case earlier against Vilash Mandal. She has stated that it is not the case that, because of an old case pending against Vilash Mandal, she has falsely implicated him.

14. PW-2 Kaili Devi has stated, in her examination-in-chief, that she knew about the murder of Pago Devi. On the same day, Mahadev Mandal and Babli Devi were also murdered. The incident occurred on 01 January, 2007 at 05:00 p.m. The accused people started threatening them with sticks, big weapons, guns and revolvers. She hid herself along with her children near the wall of the courtyard and watched the whole incident from there. Her mother-in-law Pago Devi was hit by Rishi Mandal. He hit on her



leg with the handle of the handpump. After that, all the accused hit her mother-in-law with the butt of the revolver. Her mother-in-law got serious injuries on her forehead, back, legs and hands as a result of which her mother-in-law became distraught and started writhing. The accused persons ran away after the altercation. In Para-2, she has stated that her mother-in-law succumbed to injuries after 2 hours. Police came after her sister-in-laws Meena Devi and Anita Devi complained and Samhati Mandal filed the case.

14.1 In her cross-examination, she has stated that she lives with her husband. Her husband has gone to jail once after marrying her. She had seen Sujit's brother Pappu Mandal. Pappu had died. Her husband went to jail in his murder case whose Sessions Trial No. is 04/96. In Para-5, she has stated that Pago Devi is her mother-in-law. At the time of her death, she brought water from the handpump outside and made her drink it. She has further stated that the Police recorded her statement at 06:00 in the morning. She has further stated that there was blood smeared on her mother-in-law's clothes. Blood was oozing from her mother-in-law's hands and legs. In Para-8, she has stated that Hareram Mandal is her brother-in-law. Rishi Mandal is Sujit's own brother. Her brother-in-law Hareram Mandal was accused in the murder case of Pappu Mandal. She does not know Tahani Mandal, who is the



brother of Shaligram Mandal. She had no knowledge whether Tahani Mandal had deposed against Hareram Mandal in the case lodged by Pappu Mandal. She has denied the suggestion of giving a false testimony and falsely implicating the accused.

15. PW-3 Anita Devi has stated, in her examination-in-chief, that the incident is of 01 January, 2007. She was at her house. Rishi Mandal, Vidya Mandal, Vindo Mandal, Sujeet Mandal, Vilash Mandal, Salil Mandal, Bhola Mandal and another person came to her house. All these people were carrying rifles, guns, 3.3 and sticks. Rishi Mandal and Vidya Mandal opened the handle of the handpump and started beating her mother-in-law Pago Devi. Her mother-in-law got hurt on her shoulders, forehead and both her legs. Her mother-in-law started bleeding everywhere because of her injury. Her mother-in-law fell on the *verandah* after being beaten. Her mother-in-law asked for water from Meena Devi. She died after drinking the water. In Para-3, she has stated that the accused persons had an altercation with Mahadev Mandal and his wife Faguni Devi in which Mahadev Mandal died. She had heard about murder of Mahadev Mandal. The accused murdered Babli Devi on the same day. She had heard about the murder of Babli Devi. Her statement was recorded before the Police.



15.1 In her cross-examination, she has stated that her mother-in-law's name was Pago Devi. She recognizes Sujeet Mandal. She also recognizes Sujeet's brother Pappu Mandal. Pappu died. Her husband was not made accused in Pappu's murder case. In Para-5, she has stated that she did not tell the Police that she ran out of the house with the child and when the old lady died, she came after hearing the sound of crying. She had told the Police that the accused persons had hit her mother-in-law on the shoulders, forehead and knees. She told the Police that her sister-in-law Meena Devi gave water to her mother-in-law Pago Devi and then she died.

16. PW-4 Shamli Paswan has stated, in his examination-in-chief, that he had filed this case in connection with the murder of his wife. The incident occurred on 01 January, 2007. He was at his house. Rishi Mandal, Vidya Mandal, Bhola Mandal, Pammiya, Bindeshwari Mandal, Shaligram Mandal, Subodh Singh, Vilash Mandal and other persons came to his house. Rishi Mandal caught hold of his wife Babli Devi and then turned the rifle upside down and hit her with the butt which hit his wife's mouth as a result of which, his wife fell down. Vidya Mandal also hit his wife with the butt of the gun which hit her shoulder. His wife fell and died due to the injury. Before his wife died, Bindeshwari Mandal hit her with a stick. Bhola Mandal also beat his wife with the butt of the



gun. Vidya Mandal also hit his wife with a stick. After that, he went to the Police Station and registered a case there. After the Police read over the *fardbeyan* to him, he affixed his thumb impression. He had heard in his village that, on that day itself, Rishi Mandal, Vidya Mandal, Bindeshwari Mandal, Shaligram Mandal, Bhola Mandal, Yogiya Mandal, Vilash Mandal and Subhash Singh had murdered Mahadev Mandal and Hareram Mandal's mother.

16.1 In his cross-examination, he has stated that he saw two wounds i.e. on face and shoulders of his wife. Blood was falling from the face wound. He has further stated that his wife's body was covered in blood. In Para-7, he has stated that there is nobody in his family except him in his house. In Para-9, he has stated that the criminal gangs of Rishi Mandal and Hareram Mandal were different. He was not on visiting terms with Hareram Mandal. His visits to the Rishi Mandal were very infrequent. He cannot say who were the miscreants in the Rishi Mandal gang. He also cannot say as to who were the miscreants in Hareram Mandal's gang.

17. PW-5 Renu Kumari has stated, in her examination-in-chief, that the incident happened in the year 2007 at 07:00 p.m. She was at her house. Rishi Mandal, Vidya Mandal, Bholwa Mandal, Shalik Mandal, Vilash Mandal, Binod Mandal,



Suva Mandal entered in her house and, after opening the handle of the handpump started beating her grandmother Pago Devi with it. On the day of incident, she had heard that the same accused persons had also killed Babli Devi and Mahadev Mandal.

17.1 In her cross-examination, she has stated that Hareram Mandal is her uncle. Her father's name is Jaldhar Mandal. Both his uncle Hareram and father Jaldhar Mandal are in jail in murder case. She cannot say in whose murder case her father and uncle are in jail. She did not see the murder of Mahadev Mandal and Babli Devi. In Para-5, she has stated that the incident occurred at 07:00 p.m. It was dark at that time. It was winter season. When the accused persons came to her house, her mother hid behind the wall. She also hid there with her mother. She heard the sound of bullet. When she heard the sound of bullet, she remained hidden with her mother due to fear. She remained hidden near the wall for five minutes. When she came out, she found her grandmother dead. The Police interrogated her for 4-5 days after the incident. Further, she has denied that she did not see the incident with her own eyes and was giving false testimony under the influence of her family members. In Para-6, she has stated that Binod Mandal hit her grandmother with an object. She has no knowledge as to what the object was.



18. PW-6 Archana Devi has stated, in her examination-in-chief, that the incident took place on 01 January, 2007 at 05:00 p.m. She was at her house. Apart from her, her mother-in-law Faguni Devi and father-in-law Mahadev Mandal were there. They were having tea in the *verandah* of his house when suddenly two shots were fired on the roof. The accused persons first dragged and took her father-in-law Mahadev Mandal to the roof and shot him in the ear at a point blank range, as a result of which he died. The accused persons took her mother-in-law Faguni Devi in the courtyard and beat her with the butt of the gun, fists and slaps. Her mother-in-law's tooth broke and there was an injury on the forehead also. After that, the accused persons left her house. On the same day, the accused persons also murdered Pago Devi and Shamli Paswan's wife Babli Devi.

18.1 In her cross-examination, in Para-5, she has stated that the accused persons took her father-in-law upstairs. She went upstairs with her father-in-law. All of them fired. She was not shot. Two bullets were fired at her father-in-law. A total of 5-6 round of shots were fired. She has further stated that she was not with her father-in-law but was watching the incident from the room. There is only one room on the terrace. Further, she had said that everyone had weapons in their hands but she cannot say as to



whose hand had a gun and whose hand had a revolver. In Para-7, she has stated that *Darogaji* came next day of the incident in the morning. There was no bullet mark on the terrace. After the incident, the clothes of her father-in-law were not torn to shreds. It was stained with blood. She was downstairs when the firing started and later came to the terrace. She was the first one to go to the terrace after hearing the sound of the bullet. She waited for five minutes on the terrace and then came out. After getting threatened by the accused, she went to another room which was downstairs. When she was in her room downstairs, it was getting dark. After 05:30 hours, she did not go upstairs. After 05:30 hours, she went to other person's house. She went on the terrace in the morning when the Police came. She saw the dead body of her father-in-law in front of *Daroga*. She has denied the fact that she did not see the murder of her father-in-law. She has also denied the fact that she was giving false testimony against the accused persons.

19. PW-7 Shivpujan Paswan has stated, in his examination-in-chief, that he had seen the dead body of Babli Devi. He had affixed his thumb impression on the Inquest Report.

20. PW-8 Satyanarayan Mandal is the Investigating Officer of this case. He has stated, in his examination-in-chief, that, on 02.01.2007, he was posted as an S.H.O. at Aamdanda Police



Station. On 02.01.2007 at 07:05 a.m., he got the information that a person was murdered in village-Dobhi. He registered *Sanha* No. 18 dated 02.01.2007 and went to village-Dobhi at the site of incident. He registered the *fardbeyan* of Sambhli Paswan which is in his handwriting and bears his signature. The witness Vishundev Tanti has also affixed his thumb impression on it. The *fardbeyan* was marked as Exhibit-1. After registering the *fardbeyan* of this case, he took over the charge of the investigation. During investigation, he prepared the Inquest Report of the deceased Babli Devi in presence of the witnesses. The Inquest Report of Babli Devi was marked as Exhibit-2. After that, he inspected the place of incident. The first place of incident was the cattleshed of Rupam Tanti which was situated at village-Chobhi. The dead body of Babli Devi was found lying face down in the east-west direction, at a distance of two cubits. In Para-5, he has stated that the second place of incident is the brick-roofed *pucca* house of Pago Devi situated at village-Dobhi. There is a room at the terrace of the two storied house. The main door of the house is fixed with a wooden frame and there is a handpump situated in the south-west direction of the courtyard. The handle of the handpump was found broken. There is a thatched hut to the north-east of the *verandah*. In this *verandah* towards the south, the dead body of Pago Devi was found on a cot. Further, in



Para-6, he has stated that he prepared the Inquest Report of the deceased Mahadev at the third place of incident. In Para-7, he has stated that when he went to the place of incident, he found Faguni Devi injured. He prepared her injury report and sent it for forensic examination. He found the dead body of Mahadev Mandal in a room on the terrace. In Para-8, he has stated that, during the investigation, he recorded the statements of witnesses, Mina Devi, Kaili Devi, Archana Devi, Renu Kumari, Bishundev Tanti, Pramila Devi, Arun Kumar Sah, Shiv Pujan Paswan, Ajay Mandal, Jaldhar Paswan, Mantu Paswan, Jhagsu Paswan, Faguni Devi etc. In Para-10, he has stated that, during the investigation, he obtained the *post mortem* report of the deceased Babli Devi, Mahadev Mandal and Pago Devi. He also obtained the injury report of the injured Faguni Devi.

20.1 In his cross-examination, he has stated that there are three places of incident in this case. All the three places of incident are in different directions at a short distance from each other and the boundary of all the three places of incident are also different. He did not find shoes-slippers, sweater, *gamcha*, *janeu* (sacred thread) of any of the accused at the three place of incident. He has stated that Archana, Renu, Anita Devi all belong to the same family and Hareram Mandal is the family member of the



deceased Phago Devi's son. Hareram Mandal is the accused named in the murder of Pappu Mandal. He is not aware about this. Further, in Para-12, he has stated that Anita Devi deposed that after seeing the accused, she ran away from the house and came house again on hearing the sound of crying and found her mother-in-law dead. Anita Devi did not deposed in front of him that she saw Mina Devi giving water to her mother-in-law. In Para-13, he has deposed that in Para-6,9 and 11 of the case diary there is mention of all the three incidents. He did not find any trace of blood at the three incident sites and he also did not find any bullet casings. In Para-14, he has stated that, during the investigation, he did not record the statements of the neighbouring people situated next to the second place of incident because they were not found in their houses. He has not mentioned in the diary that the people residing near boundary area were not in their houses. He has also not recorded the statements of the people residing near the boundary of the third place of incident. He has denied the suggestion that without going at the place of incident, he had done the investigation. Further, in Para-15, he has stated that he had not recorded the statement of the son of accused Binod Mandal. The witness Mantu Paswan, Pramila Devi had mentioned the name of Binod Mandal as an accused.



21. PW-9 Jhaksu Paswan has stated, in his examination-in-chief, that the incident took place on 01.01.2007 at 06:00 p.m. On hearing *hulla*, he went home and saw that Risiya, Vidya, Surjeet, Vilash, Vinod, Subhash, Bhola and Shaligram were abusing him. The accused persons threw his mother and then beat her. They hit her with the butt of the weapon. When Bishundev protested, the accused persons beat him also. His mother died near Bishundev's house. The accused persons then fled back to their village crossing the river. The accused persons killed Mahadev Mandal and Pago Devi there. In Para-3, he has stated that it was dark when he left the house. His house is surrounded from all sides. He has denied the suggestion that he has falsely implicated Sujeet in the case at his wife's behest and has given a false testimony.

21.1 In his cross-examination, he has stated that he has testified before the Court for the first time and he has not given any statement before.

22. PW-10 Jhantoo Paswan has stated, in his examination-in-chief, that the incident took place on 01.01.2007 at 06:00 p.m. Further, he has stated that, at the time of incident, he ran away towards *banswadi*. His house is at a distance of 25-50 cubits.

23. PW-11 Dr. Arun Kumar Singh has deposed that, on 03.01.2007 at 11:15 p.m., he conducted the *post mortem*



examination of the dead body of Babli Devi, aged 65 years, and found following *ante mortem* external internal injuries:-

“(i) One lacerated w. 1”x1/4”x bone deep size on left lower eye lid.

(ii) One abrasion of 4”x3” on left side of face eye lid two” from left ear.

(iii) One abrasion of 2”x1” on rt. side of trachea 1/2” rt. eye brow and 1.5” rt. from middle eye.

On dissection- Blood was found in the chest cavity. Sternum was found fractured at 4th costo condral in heart and lungs were found lacerated from 1st to 7th on left side of chest and from 2nd to 7th ribs on rt. side were found fractured. Stomach contained about 250 gm semi digested food. Uterus was found normal and non pregnant. Haematoma under scalp was found left from parietal temporal region. Sub dural Haematoma was found on left side of brain.

All viscera was found pale.

Opinion- Time since death 24 to 48 hours.

Cause of death- Haemorrhage and shock and head injury.

Nature- Hard and blunt object.”

23.1. On the same day, at 11:45 hours, he conducted the *post mortem* examination of the dead body of Mahadev Mandal, aged about 70 years, and found following *ante mortem* injuries:-

“(i) One L.W. 1/2”x1/4”x muscle deep on the rt. side of head.

(ii) One bruise 5”x3.5” on rt. side of forehead and face with fracture of underline maxila and nasal bone.



(iii) One bruise 5"x4" on left side of forehead and face with fracture of underline bones.

On dissection- Haematoma under scalp was rt. side frontal temporal parietal region and left side frontal and temporal region one linear fracture 2" length extending from left ear to behind 4" left from midline subdural haematoma was found on the left side of brain. In general, viscera was found congested.

Time since death- 24 to 48 hours.

Cause of death- head injury.

Nature of weapon- Hard and blunt substance."

23.2. On the same day, at 12:15 p.m., he conducted the *post mortem* examination of Pago Devi, aged 60 years, and found following injuries on her dead body:-

"(i) One L.W. 1"x3/4"x bone deep on medial aspect of left index finger.

(ii) One bruise 1.5"x1" on rt. forearm 4" above elbow fracture underlying bone.

(iii) One L.W. 1/5"x1/5" muscle deep on upper part of back of left leg.

(iv) One L.W. 3.5"x1"x bone deep on left leg with fracture.

(v) One L.W. 1.5"x1/2"x bone deep on the interior surface of ankle.

On dissection- viscera was found and pale. Heart was empty stomach contained 200 gm. Semi digested food, uterus was found normal and non pregnant.

Time since death- 24 to 48 hours.

Cause of death- Shock and hemorrhage.

Weapon- Hard and blunt object."



23.3. In Para-4 of his cross-examination, he has stated “*None of the above injuries have been caused by sharp cutting weapons and firearms.*” In Para-5, he has stated “*No injury has been found caused by curved weapon.*”

OBSERVATION AND REASONING:-

24. From the evidence led by the prosecution, it would reveal that the first occurrence, as per *fardbeyan*, took place at 06:30 p.m. on 01.01.2007 for which *fardbeyan* of the informant came to be recorded on 02.01.2007 at 08:00 a.m. i.e. after almost 14 hours. As per the case of prosecution, three persons died in three incidents at three different places, the details of which are as under:-

(i) Occurrence No. 1:- The first place of occurrence (P.O.1) is the land belonging to Bishun Dev Tanti where deceased 1 Babli Devi got hit by butt of the gun and was thrown to the floor by the accused persons. The time of occurrence was approximately 06:30 p.m. The witnesses of this occurrence include PW-4 (Shamli Paswan), PW-9 (Jhaksu Paswan) and PW-10 (Jhanto Paswan).

(ii) Occurrence No. 2:- The second place of occurrence (P.O.2) is the courtyard of the house of the deceased i.e. the deceased 2 Pago Devi who got hit by the handle of the handpump by the accused Rishi Mandal and other accused scuffled. The time



of occurrence was approximately 05:30 p.m. The witnesses of this occurrence are PW-1 (Meena Devi), PW-2 (Kaili Devi), PW-3 (Anita Devi) and PW-5 (Renu Kumari).

(iii) Occurrence No. 3:- The third place of occurrence (P.O.3) is the roof of the house of the deceased where the deceased 3, Mahadev Mandal, was shot by gun on his head. The time of occurrence was approximately 05:00 p.m. The witness of this occurrence is PW-6 (Archana Devi).

25. Learned counsel appearing for the appellants have, at the outset, contended that there is a delay of 14 hours in lodging the F.I.R. and, for the incidents which took place between 05:00 p.m. to 06:30 p.m., F.I.R. was lodged on 02.01.2007 at 10:00 a.m. It is also submitted by the learned counsel that, from the evidence led by the prosecution, it is revealed that PW-1 (Meena Devi) has filed separate F.I.R. However, the prosecution has suppressed the version given by PW-1. With a view to appreciate the aforesaid contentions taken by the learned counsel, we have perused the evidence led by the prosecution and it is evident that there is a delay of approximately 14 hours in lodging the F.I.R. The F.I.R. indicates that the distance between the Police Station and the place of occurrence is 8 kms. The prosecution has presented a different account concerning the lodging of F.I.R. From the



deposition given by the informant (PW-4), it is revealed that when his wife died, he, at that time, went to the Police Station and the dead body was taken to the Police Station. Thus, the F.I.R. was immediately lodged after the death of his wife. Similarly, PW-1 (Meena Devi) has specifically stated, in her examination-in-chief, that she went to the Police Station and she had lodged the case. At that time, her sister-in-law was also present with her. The Police inquired with her. Thus, from the aforesaid aspects, it can be said that PW-1 (Meena Devi) had also lodged the F.I.R. However, what was the version of Meena Devi has not been placed on record and thereby, the prosecution has suppressed the material fact. Similarly, witness Jhanto Paswan (PW-10) also deposed that when he reached after an hour of his mother's (Babli Devi) death, there were ten persons and Police were present for an hour and, at 08:00 a.m., he returned from the Police Station. However, from the record, it transpires that the Inquest Report of all the deceased were prepared at the place of occurrence at 09:00 a.m. on 02.01.2007. Thus, from the aforesaid aspects, it can be said that there is a delay in lodging the F.I.R. and actual initial version of the prosecution witnesses has been suppressed. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of ***Kishan Singh Vs. Gurpal Singh & Ors.***, reported in ***(2010) 8 SCC 775***,



wherein the Hon'ble Supreme Court has observed, in **Para-21**, as under:-

“21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Vide Sahib Singh v. State of Haryana [(1997) 7 SCC 231 : 1997 SCC (Cri) 1049 : AIR 1997 SC 3247] .)”

26. Similarly, in the case of **Thulika Kali Vs. State of Tamil Nadu**, reported in **(1972) 3 SCC 393**, the Hon'ble Supreme Court has observed, in **Para-12**, relevant extract thereof is as under:-

“12.....First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or



concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.”

27. Keeping in view the aforesaid decisions rendered by the Hon’ble Supreme Court, if the aforesaid facts, of the present case, are examined, we are of the view that there is a substantial delay in lodging the F.I.R. and the deposition of the witnesses regarding the filing of separate complaints which are not brought on record suggest that the allegations, in the present F.I.R., is a coloured version of the case. Therefore, in the facts of the present case, the inordinate delay is fatal to the prosecution.

DISCUSSION WITH REGARD TO P.O.1:-

28. At this stage, we would like to refer the deposition of the prosecution witnesses with regard to the place of occurrence 1, where the deceased Babli Devi died. *Fardbeyan* given by PW-4 (informant) has been marked as Exhibit-2. In the said *fardbeyan*, it has been mentioned that the deceased 1 got caught by the appellants at the cattleshed of Bishun Dev Tanti and, when Bishun Dev Tanti tried to defend the deceased, he was scolded by the accused. It is relevant to note that Bishun Dev Tanti is the signatory to the *fardbeyan* who could have provided an accurate account of the case, as an independent eye-witness. The said independent eye-witness has not been examined by the



prosecution. The prosecution has failed to give any justifiable reason for non-examination of this material witness. Thus, looking to the facts, of the present case, non-examination of such material witness also raises doubts regarding the suppression of material facts by the prosecution. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of ***Takhaji Hiraji Vs. Thakore Kubersing Chamansing & Ors.***, reported in ***(2001) 6 SCC 145***, wherein the Hon'ble Supreme Court has observed, in ***Para-19***, relevant extract thereof is as under:-

“19.....if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be



positive then only a question of drawing an adverse inference may arise.....”

29. At this stage, it is also pertinent to mention that the occurrence 1 took place at about 06:30 p.m. on 01.01.2007. In fact, PW-4 (informant) has deposed that it was dark then and further mentions nothing about the source of light. The said aspect has been stated by Jhaksu Paswan (PW-9), who is son of the deceased. Thus, it was a winter time and, during winter, the sun sets at about 05:00-05:15 p.m. There is nothing coming out from the evidence led by the prosecution that any source of identification was present. Thus, in absence of any source of identification, it is not possible for the prosecution witnesses to identify the accused. Thus, the identification of the accused appellants, in absence of any source, can be said to be doubtful.

30. PW-9 and PW-10 are the sons of PW-4 (informant). Their presence at the place of occurrence is also doubtful. In fact, PW-4 (informant) has deposed, in Para-1 of his examination-in-chief, that, at the time of occurrence, he was in his house and the accused came at the said place and caught his wife Babli Devi and thereafter blow from the butt of the rifle was given to Babli Devi. In Para-7 of his cross-examination, the informant has specifically admitted that, at the time of incident, he alone was



present and none of his family members were present. Thus, looking to the inconsistency in the deposition given by PW-4, PW-9 and PW-10, it can be said that sons of the informant i.e. PW-9 and PW-10 were not present at the place of occurrence. At this stage, it is also relevant to note that, in the *fardbeyan*, given by the informant, there is no mention regarding the presence of PW-9 and PW-10 as eye-witnesses to occurrence 1. Thus, we are of the view that PW-9 and PW-10 cannot be termed as eye-witnesses.

DISCUSSION WITH REGARD TO P.O.2:-

31. Now, we would like to examine, at this stage, the evidence led by the prosecution with regard to the deceased 2 Pago Devi at the place of occurrence 2 is concerned, the alleged murder weapon was the handle of the handpump. From the deposition given by PW-1 (Meena Devi), it is revealed that it is the specific case that the accused Rishi Mandal killed her mother-in-law with the handle of the handpump. At this stage, we have examined the deposition given by PW-8 Satyanarayan Mandal (Investigating Officer). The said witness, in his deposition, has stated that the handpump was in a working condition and he did not find any blood or blood-stain on the handpump. As per PW-1 (Meena Devi), after her mother-in-law sustained injuries, she gave water to her, whereas PW-2 (Kaili Devi) deposed that she gave



water to her mother-in-law and after 2 hours, she died. She had further stated that her sister-in-law Meena Devi and Anita Devi informed the Police and, therefore, on the next day morning, Police came at their place. She has further stated, in cross-examination, that her statement was recorded by the Police at 06:00 a.m. Thus, looking to the inconsistencies in the deposition given by the aforesaid so called eye-witnesses, it can be said that even the place of occurrence, as narrated by the aforesaid witnesses, is doubtful and such a fundamental defect casts reasonable doubt as to the genuineness of the case of the prosecution. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of *Syed Ibrahim Vs. State of Andhra Pradesh*, reported in *(2008) 10 SCC 601*, wherein it has been held that when the place of occurrence itself has not been established, it would not be proper to accept the version of the prosecution. Thus, looking to the aforesaid aspects and major inconsistencies in the testimony of the prosecution witnesses coupled with non-finding of blood-stains or blood-stained earth on the alleged murder weapon at the alleged place of occurrence too makes the case doubtful, which is fatal to the prosecution.

DISCUSSION WITH REGARD TO P.O.3:-



32. At this stage, we would also like to examine the evidence led by the prosecution with regard to the deceased 3 Mahadev Mandal at the place of occurrence 3. It is relevant to note that, with a view to prove the case against the accused with regard to the deceased 3 Mahadev Mandal, the prosecution had examined PW-6 (Archana Devi) and also examined Dr. Arun Kumar Singh (PW-11), who had conducted the *post mortem* examination of the dead body of the deceased. PW-6 (Archana Devi) has deposed, in her examination-in-chief, that the incident took place on 01.01.2007 at 05:00 p.m. She was at her house. Apart from her, her mother-in-law Faguni Devi and father-in-law Mahadev Mandal were also present. The accused person first dragged and took her father-in-law Mahadev Mandal to the roof and shot him in the ear at a point blank range, as a result of which, he died. The accused persons took her mother-in-law Faguni Devi in the courtyard and she was beaten with the butt of the gun. Her mother-in-law sustained injury on her mouth and on the forehead. Now, at this stage, when deposition given by PW-8 Satyanarayan Mandal (Investigating Officer), is carefully examined, it is revealed that he found the dead body of the deceased 3 at the roof of his house. However, from the *post mortem* report, it is found that there is no gunshot injury on any part of the body of the deceased. At this stage, it is also pertinent to note that



Faguni Devi, who has allegedly sustained injury and can be termed as injured witness, has not been examined by the prosecution. Thus, it can be said that non-examination of a material witness, who could provide essential information or fill gaps in the prosecution case, may lead the Court to draw an adverse inference against the prosecution. Even non-examination of Faguni Devi has caused prejudice to the appellants/accused. Further, from the deposition given by PW-11 (Dr. Arun Kumar Singh), who had conducted the *post mortem* examination of the dead body of the deceased, it is revealed that cause of death is head injury and nature of weapon used is hard and blunt substance.

33. At this stage, it is very important to observe that two other co-accused including the main accused Rishi Mandal have been separately tried before the concerned Trial Court. The concerned Trial Court passed judgment of conviction and sentenced the main accused Rishi Mandal and Subhash Singh. Both the aforesaid accused persons filed separate Criminal Appeal (DB) No. 636 of 2016 and Criminal Appeal (DB) No. 521 of 2016 respectively. The Coordinate Bench of this Court, vide judgment and order dated 16.10.2023, allowed both the aforesaid appeals and the judgment of conviction and order of sentence passed against the aforesaid co-accused persons have been quashed and set aside. We



have perused the reasoning recorded by the Coordinate Bench in the said case. It is also relevant to note that the evidence led by the prosecution in the aforesaid case against the aforesaid two accused is almost similar. We have inquired from the learned A.P.P. Mr. Sujit Kumar Singh, who is appearing on behalf of respondent-State as to whether the State or informant has challenged the aforesaid decision rendered by this Court by filing proceedings before the Hon'ble Supreme Court or not, the learned A.P.P., on the basis of instructions, submitted that the aforesaid order passed by the Coordinate Bench has not been challenged and thereby, the aforesaid judgment and order has attained finality.

34. 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 present appellants beyond reasonable doubt despite which, the Trial Court has passed the impugned judgment and order and, therefore, the same is required to be quashed and set aside.

CONCLUSION:-

35. Accordingly, the impugned judgment of conviction dated 10.05.2016 and order of sentence dated 18.05.2016 passed by learned Additional District and Sessions



Judge-1st, Bhagalpur in Sessions Trial No. 310 of 2008, arising out of Sanhaura P.S. Case No. 02 of 2007 are quashed and set aside.

36. The appellants are acquitted of the charges levelled against them by the learned Trial Court. They are directed to be released from jail custody forthwith, if their custody is not required in any other case.

37. Both the appeals stand allowed.

(Vipul M. Pancholi, J)

(Dr. Anshuman, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	30.11.2024
Transmission Date	30.11.2024

