

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1217 of 2018

Arising Out of PS. Case No.-139 Year-2015 Thana- DURGAWATI District- Kaimur (Bhabua)

Sartaj Khan Son of Sardar Khan Resident of Village-Dumri, P.S. Durgawati,
Distt.-Kaimur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 126 of 2019
In
CRIMINAL APPEAL (SJ) No.4117 of 2018

Arising Out of PS. Case No.-139 Year-2015 Thana- DURGAWATI District- Kaimur (Bhabua)

TAUHID KHAN Son of Liyakat Khan Resident of Village - Dumri, P.S.-
Durgawati, District - Kaimur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance : (In CRIMINAL APPEAL (DB) No. 1217 of 2018)	
For the Appellant/s	: Mr. Ajay Kumar Thakur, Advocate Mr. Aquaib Khan, Advocate Mr. Manendra Kumar Sinha, Advocate
For the Informant	: Mr. Rajesh Kumar Singh, Sr. Advocate Mr. Manish Kumar Singh, Advocate Mr. Praveen Kumar, Advocate Mr. Uday Pratap Singh, Advocate
For the State	: Mr. Satya Narayan Prasad, APP
(In CRIMINAL APPEAL (DB) No. 126 of 2019)	
For the Appellant/s	: Mr. Ajay Kumar Thakur, Advocate Mr. Aquaib Khan, Advocate Mr. Shahrukh Shiddiqui, Advocate
For the Informant	: Mr. Rajesh Kumar Singh, Sr. Advocate Mr. Manish Kumar Singh, Advocate Mr. Uday Pratap Singh, Advocate
For the State	: Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 07-02-2025

The present appeals have been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the common judgment dated 31.08.2018 and order of sentence dated 11.09.2018, passed by learned Additional Sessions Judge-1, Kaimur (Bhabua) in Sessions Trial No. 345 of 2015, arising out of Durgawati P.S. Case No. 139 of 2015, whereby appellant Sartaj Khan has been convicted for the offence under Section-302 of I.P.C. and Section-27 of the Arms Act and sentenced to undergo life imprisonment and a fine of Rs. 20,000/- for the offence punishable under Section-302 of I.P.C. and to undergo R.I. for five years and a fine of Rs. 10,000/- for the offence punishable under Section-27 of the Arms Act. In default of payment of both fines, he has been sentenced to undergo further R.I. for six months. Further, appellant Tauhid Khan has been convicted for the offence punishable under Section-307 of I.P.C. and Section-27 of the Arms Act and sentenced to undergo R.I. for 10 years and a fine of Rs. 20,000/- for the offence punishable under Section-307 of I.P.C. and to undergo R.I. for five years and a fine of Rs. 10,000/- for the offence punishable under Section-27



of the Arms Act. In default of payment of both fines, he has been sentenced to undergo further R.I. for six months. Both the sentences have been directed to run concurrently.

2. Heard Mr. Ajay Kumar Thakur, learned counsel assisted by Mr. Aquaib Khan and Mr. Manendra Kumar Sinha, learned advocates for the appellant, Mr. Rajesh Kumar Singh, Sr. Advocate, assisted by Mr. Manish Kumar Singh, Mr. Praveen Kumar and Mr. Uday Pratap Singh, for the informant and Mr. Satya Narayan Prasad, learned APP for the State in Cr. Appeal (D.B.) No. 1217 of 2018. Also heard Mr. Ajay Kumar Thakur, learned counsel, assisted by Mr. Aquaib Khan and Mr. Shahrukh Shiddiqui, learned advocates for the appellant, Mr. Rajesh Kumar Singh, learned Senior Advocate, assisted by Mr. Manish Kumar Singh and Mr. Uday Pratap Singh, learned advocates for the informant and Mr. Sujit Kumar Singh, learned APP for the State in Cr. Appeal (D.B.) No. 126 of 2019.

3. As both the appeals arise out of the same judgment, they are taken up together and are being disposed of by this common judgment.

FACTUAL MATRIX

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



“The informant lodged an F.I.R. on 02.07.2015 stating therein that on 02/07/2015, at about 07:30 pm., the informant was sitting in the compound of Utkramit Urdu Secondary School, Dumri, Durgawati, when he received a call from accused Mohammad Tauhid Khan who started abusing him and threatening to kill him after which he followed the route of *Idgah* and reached home. When he reached home, he informed about the incident to his uncle Mohd. Kamruddin Khan. He said that his family members have gone to offer *Namaz* and he will enquire about the incident, once they return. Informant and others were taking rest at their door after taking meal when at about 10:00 PM, an illegal mob formed by the accused persons named in the F.I.R. reached there. Accused Nos.1 to 9 were carrying rifles and country-made pistols. Accused No.10 had his licensee pistol. Accused No. 11 had a pistol. Accused No. 12 had his licensee rifle. Accused Nos. 13 to 16 were having sticks and were abetting all other members of the illegal mob to shoot the informant side. At this, all the accused persons started firing bullets in which incident Sartaj Khan's bullet hit Mohammad Masaud Khan in the neck. He died on the spot and Nasiruddin Khan was shot in the neck by Mohammad Tauhid Khan, who is under treatment. Others



started attacking them with sticks, rods and rifles with intention to kill, in which Mohammad Nasiruddin Khan, Mohammad Hafiz Matloob Khan and Sarfaraz Khan were shot at and are undergoing treatment.”

5. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused persons. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 345 of 2015.

6. The prosecution examined 14 witnesses and also produced documentary evidence before the trial court.

7. Thereafter, further statement of the accused was recorded under Section-313 of the Code and after completion of the trial, the trial court passed the impugned judgment and order against which the appellants have preferred the present appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

8. Learned counsel for the appellants mainly submits that the prosecution has failed to prove the place of occurrence. Learned counsel referred the F.I.R. as well as the



deposition of prosecution-witnesses and thereafter submitted that, as per the F.I.R., the occurrence took place at Darwaja of Sarfaraj Khan, P.W. 9. However, as per the evidence of other prosecution-witnesses, it is revealed that different prosecution-witnesses have described the place of occurrence differently. Somebody has said that occurrence took place at Darwaja, a few others have said at Baithka, a few others have stated at Sahan and a few others have said at R.C.C. Road. Thus, there are four places of occurrence as per different versions given by the prosecution-witnesses. Thus, only on this ground, the prosecution-story be discarded. In support of the aforesaid contention, learned counsel has placed reliance upon the decision rendered by Hon'ble Supreme Court in the cases of **Munuwa @ Satish & Ors. Vs. State of Uttar Pradesh**, reported in (2023) 1 SCC 714, **Ram Narain Singh Vs. State of Punjab**, reported in (1975) 4 SCC 497, **Pohlu Vs. State of Haryana**, (2005) 10 SCC 196 and **Ganesh Datt Vs. State of Uttarakhand**, reported in A.I.R. 2014 SC 2521.

9. Learned advocate for the appellants would thereafter submit that the prosecution has suppressed the earliest version. In support of the said contention, learned counsel referred the deposition of P.W. 4 wherein he has stated that he



and others proceeded on Bolero vehicle and took Nasiruddin Khan for treatment. On Bolero they went to the police station and gave information. It is further submitted that P.W. 12, I.O., has deposed that when he received information about the incident, he made entry in the station diary. However, the same has not been produced. Thus, the prosecution has withheld the earliest version. Learned counsel, therefore, contended that there are all chances of false implication of the present appellants and, therefore, the appeals be allowed.

10. Learned counsel for the appellants further submits that, as per the case of the prosecution, the accused persons have an enmity with the informant, P.W. 9 Sarfaraj Khan and, as per the case of prosecution, P.W. 9 was also present at the place of occurrence. However, it is strange that none of the accused has made firing upon the informant and the said witness did not sustain any gun-shot injury. It is further submitted that there was no enmity with the deceased and, therefore, there was no occasion for the accused to assault the deceased or P.W. 8 Md. Nasiruddin Khan. Learned counsel, therefore, contended that the prosecution has failed to prove the motive on the part of the accused to kill the deceased.

11. It is further contended that the Investigating



Officer did not mention that he found any means of identification at the place of occurrence and except one witness no other witness has deposed about presence of any means of identification at the place of occurrence. At this stage, it is further submitted that there are major contradictions, inconsistencies and improvement in the deposition of the prosecution-witnesses and, therefore, the deposition given by the so-called eye-witnesses and the injured witnesses is required to be discarded.

12. At this stage, learned counsel would further contend that, in fact, P.W. 8 is not an injured witness, despite which the prosecution has projected him as an injured witness. Learned counsel referred the deposition given by P.W. 4 and submitted that the said witness has specifically stated that the nearest Government Hospital from his village is Durgawati, situated on G.T. Road which goes to Banaras and it is located at a distance of 5-6 k.ms. The said witness further stated that he took his father Md. Nasiruddin Khan to Kabirchoura Hospital where he was admitted and thereafter they came to Maxwell Hospital. It is contended that it is strange that P.W. 8 was not given even the first aid in the said hospital and the injured was firstly taken to Banaras at Kabirchoura Hospital and from there



he was taken to Maxwell Hospital. Learned counsel also referred the deposition given by P.W. 14, the doctor who had given treatment to P.W. 14 at District Hospital, Banaras. After referring to his deposition, it is contended that, in fact, the story put forward by the prosecution with regard to the so-called injured witness raises doubt and, therefore, the deposition given by the so-called injured witness cannot be relied upon. It is further submitted that no document of Kabirchoura Hospital or Maxwell Hospital has been brought on record.

13. At this stage, learned counsel submits that it is strange that when such large number of persons resorted to indiscriminate firing, how the prosecution made the specific allegation against two accused and, that too, at 10:00 p.m. at night when there is no means of identification on the road or in Sahan.

14. Learned counsel lastly submitted that, in the present case, the trial court has acquitted all the other accused and, so far as the appellants are concerned, they have been acquitted *qua* the charges levelled against them under Sections- 147, 148, 504, 149 and 506/149 of I.P.C. Thus, the trial court has disbelieved the version of the other injured persons. Thus, when the trial court has not accepted the story put forward by



the prosecution *qua* the co-accused, then the trial court has committed serious error while accepting the same story *qua* the present appellants. Learned counsel, therefore, urged that these appeals be allowed and thereby the appellants be acquitted of the charges levelled against them by quashing and setting aside the impugned judgment of conviction and order of sentence passed by the trial court.

SUBMISSIONS ON BEHALF OF THE
INFORMANT & STATE

15. On the other hand, learned senior counsel appearing for the informant has vehemently opposed both these appeals. Learned senior counsel has mainly submitted that the prosecution has proved the place of occurrence as well as the manner of occurrence by leading cogent evidence. It is contended that, as per the evidence of the Investigating Officer, the place of occurrence is the Sahan of the informant and, similarly, as per P.W. 9 and other witnesses, it is Darwaja, Sahan and R.C.C. road which is in front of Baithka and part of one complex. He, therefore, urged that there is no discrepancy *qua* the place of occurrence. It is further submitted that the manner of occurrence has been supported by all the prosecution-witnesses, including four injured witnesses. Their presence



cannot be doubted in view of the deposition given by P.W. 10 and P.W. 14 who have examined the injured witnesses. Learned counsel has also submitted that P.W. 11 has performed the *post mortem* on the dead body of the deceased who has also supported the case of prosecution.

16. Learned senior counsel thereafter contended that the prosecution has also proved the motive on the part of the accused to commit the alleged crime and the same has been established by the deposition of prosecution-witnesses. It is contended that it has been established that there was an enmity between the group of informant and group of accused with regard to handing over of charge of the post in the school. Learned counsel has referred the deposition of P.W. Nos. 1, 3, 4 and 9 in support of the aforesaid contention.

17. Learned senior counsel for the informant further submits that P.W. 14 Dr. Jaesh Mishra, who is a doctor at District Government Hospital, Banaras, has certified the injuries on the person of P.W. 8 at the neck from close range with firearm. The said injury has been supported by P.W. 8, injured, as well as the other prosecution-witnesses. Learned counsel, therefore, urged that when the injured witnesses have specifically deposed against the accused, the trial court has not



committed any error while convicting the appellants herein.

18. Thereafter, learned senior counsel for the informant submitted that from the deposition given by P.W. 1 it is clear that there was bulb light at the place of occurrence at the time of incident and, therefore, it is not open for the appellants to contend that there was no source of light at the place of occurrence for identification.

19. Learned senior counsel has placed reliance upon the following decisions rendered by the Hon'ble Supreme Court:-

1. Balu Sudam Khalde & Anr. Vs. The State of Maharashtra, reported in (2023) 13 SCC 365

2. State of Uttar Pradesh Vs. Naresh & Ors., reported in (2011) 4 SCC 324

3. Abdul Sayeed Vs. State of Madhya Pradesh & Analogous cases, reported in (2010) 10 SCC 259.

ANALYSIS OF ORAL EVIDENCE

20. 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.

21. At this stage, we would like to appreciate the



relevant extract of entire evidence led by the prosecution before the Trial Court.

22. Before the Trial Court, prosecution examined 14 witnesses.

23. P.W. 1 Md. Shahid Khan has stated in his examination-in-chief that the incident is of 02.07.2015. At about 10:00 at night, he along with others was sitting at the (door) *Baithka* when 16 persons named in the F.I.R. came variously armed from the eastern side and started abusing. When the informant side came out, accused Sartaz fired at Masood Khan which hit his neck causing his death on the spot. Tauhid Khan fired at his father Md. Nasiruddin which hit his neck. When the deponent approached his father to save him, Tausid Khan assaulted him with the butt of rifle on his head causing fracture. Thereafter Liakat Khan assaulted him with a stick which hit his hand. Then Shahid, Babar and Aslam Khan assaulted him with sticks on his back. Md. Matloob Khan was assaulted by Afroz Khan by means of butt of rifle on his head causing bleeding injury. Aslam Khan assaulted with *lathi*. Sharafat Khan assaulted Md. Sarfaraz with butt of rifle on his front face causing bleeding from below the eye. Taz Mohammad assaulted Md. Sarfaraz Khan with butt of rifle which hit his face and nose.



Taufique Khan, Turab Khan and Harun Khan assaulted Sarfaraz with butt of pistol on the back portion of his neck. Afsarul Haque Khan assaulted with butt of rifle on his face. Tanvir Khan and Saheb Raj Khan assaulted Sarfaraz with butt of *Katta* and also with fists and slaps. He further deposed that the reason for the occurrence was that Md. Sarfaraz Khan was made In-charge of Urdu Secondary School, Dumri in place of Tauhid Khan, who was the then In-charge. He has identified Tauhid Khan, Sartaj Khan, Shahir Khan and Tausid @ Gosib Khan, present in Court and claims to identify others by face. He has also stated that police had recorded his statement.

23.1. In his cross-examination, he has stated that he is not aware as to who was made In-charge at what point of time. His statement was taken by the police at his residence two days after the occurrence. He had not stated before the police that senior teacher Tauhid Khan was removed from the charge and another senior teacher Chandrabhan was given the charge. He had not either stated that on transfer of Chandrabhan Singh, the charge of the school was given to Sarfaraz Khan. In para Nos.7 & 8, he has detailed the location and ownership of the *Baithka*. He has further stated that when the accused persons arrived at *Sahan* resorting to firing, a bulb was on and it was a



moonlit night. He further states that 20-25 shots were fired. When he went to rescue his father, he was lying on the concrete road with his face upside. His brother Md. Masood Khan was also lying at a distance of about one hand from that place. The places where the injured persons were sitting, blood had spilled out. The occurrence continued for five minutes. He states that he cannot tell about the persons who came on the spot from the village. He has admitted to have stated before the police that when he went to his father, Taufique Khan assaulted him with butt of rifle on his head causing fracture. He has denied the suggestion that no such occurrence had taken place as stated by him and that his father and brother had received such injuries at another place and he had falsely deposed on being tutored by the informant.

24. P.W. 2 Jakariya Khan has supported the manner of occurrence described by P.W. 1.

24.1. In his cross-examination he has stated that blood had spilled over the place where the injured persons fell down. None of the members of prosecution-side who received injuries with butt of rifle/gun and *lathi/danda* had fainted. He had not gone to Hospital to see the injured patients. He met Darogaji in the next morning at the *Baithka*. He had showed



blood spilled on and beneath the wooden cot (*Chouki*). He had stated in his statement before Darogaji that at the time of incident Nasiruddin, Shahid, Matloob and Masaub were with him. He has denied the suggestion of giving false deposition on the request of his nephew and he was not present at the time of occurrence and that no such occurrence took place and he did not see the incident.

25. P.W. 3 Sarfuddin Khan has stated in his examination-in-chief that the incident took place on 2nd of July, 2015 at 10:00 p.m. He was sitting on his *Baithka* with several persons. He heard a commotion from the eastern side. Thereafter 16 persons came there variously armed. Accused Sartaj Khan fired from his rifle at his son Maqsood Khan who fell down injured and died on the spot. Tauhid Khan fired at Nasiruddin Khan from rifle, as a result of which he sat down. Tauhid Khan also hit Shahid with the butt of rifle causing bleeding. Liakat Khan, Babar and Tauhid Khan assaulted Shahid Khan with *lathi*, *danda* which hit his head and back. Taj Mohammad assaulted Sarfaraj with butt of rifle on his nose causing bleeding. The reason behind the incident is regarding giving charge of the school. He has identified the accused persons present and claims to identify others by face.



25.1. In his cross-examination, he has stated that his statement was recorded after 2-3 days of the occurrence at his door and not after a week. He was sitting at the Baithaka 15-20 minutes before the occurrence. He had gone to the Baithka with his brother and son. Others, 3-4 in number, were also sitting on separate wooden cots. Twelve members of the mob having firearms started firing followed by assaults by others who were having *lathi/danda*. Firing continued for 5-7 minutes. He stayed at the scene during the occurrence, but did not sustain any injury. He saw the blood spilled only near his son. He has also stated that he had not gone to the police station, rather he had gone to Bhabua with the dead body. He has denied the suggestion of giving false deposition.

26. P.W. 4 Md. Faruk Khan has deposed in his examination-in-chief that on the date of occurrence, i.e. on 02.07.2015, at 10:00 p.m. he was at his door with his family members and cognates. The accused persons came there variously armed and started abusing. Liakat Khan and Aslam Khan were raising slogans to kill them. On being asked by Masaud Khan about the reason, Sartaj Khan fired at him with his rifle and killed him. On this, Nasiruddin Khan proceeded ahead who was also shot at by Tauhid Khan on his neck. When



Shahid Khan went to his rescue, Tausif Khan assaulted him with butt of rifle on his head causing bleeding injury. He has further stated that injured Nasimuddin Khan was treated at Banaras and others were treated at Durgawati Government Hospital.

26.1. He has stated in his cross-examination that two persons sustained bullet injury in the incident of firing which went on for 3 minutes. He did not flee away during the firing. Both the injured were lying on the R.C.C. road beside the place where he and his uncle were standing and blood had spread on the R.C.C. road. A few injured were lying near the road and a few others were lying on the floor of Baithka. He proceeded to Banaras with the injured Nasiruddin Khan. Till then, all other injured were present at the Baithka. The nearest hospital from his village is at Durgawati, at a distance of 5-6 k.ms. beside the road leading to Banaras. Injured was not taken to Durgawati Hospital, which is situated near the police station. The police was informed about the occurrence, but he does not know as to who had given the information to the police. He took his father to Kabir Chouk Hospital, Banaras. After admitting, his father was referred to Maxwell Hospital where he received treatment for 20 days. During that period, police had gone there and recorded the statement of his father. The police recorded the



statement of the deponent a day after the occurrence. He has denied the suggestion of giving false deposition and that no such occurrence, as stated by him, had taken place.

27. P.W. 5 Md. Matloob Khan has stated in his examination-in-chief at para-1 that the incident is of 02.07.2015. At about 10:00 at night, he was sitting at his door. Thereafter, he has precisely supported the manner of occurrence as stated by P.W. 2. He has further stated that he was treated in a Government Hospital. From there, he was referred to Bhabua. He has identified accused Tauhid, Sartaj, Shahid and Tausid @ Mausid present in Court and claims to identify others by face.

27.1. In his cross-examination, he has stated that he went to Durgawati Hospital after the occurrence at about 11:30-12:00 at night along with Md. Shahid Khan and Md. Sarfaraz Khan in a vehicle. He had fallen on the wooden cot lying on the Baithka. He is not aware as to who had fallen on the cot besides him. On the date of incident, he had not seen any injury on the body of Taufique. He remained at Durgawati Hospital for a week. His statement was recorded by the Police on the next day of the occurrence. He has denied the suggestion that he had not received any injury in the incident in question and that no such occurrence, as stated by him, had taken place.



28. P.W. 6 Kamruddin Khan has stated in his examination-in-chief that on 02.07.2015, at 11:00 p.m. the inquest report of Masaud Khan was prepared by the police authority at the door of Sarfaraz Khan on which he had put his signature, which he identifies (Ext-1.).

28.1. In his cross-examination, he has stated that when the accused persons crowded at Baithka, they went to Sahan and stood there together. Amongst the accused persons, seven were having rifles, three were having *Kattas*, three were having pistols and others were armed with *lathi*, *danda*. When the accused persons fled away, no blood had fallen on the floor, rather it had fallen on the road. When the police reached, five persons were lying on the Baithka out of whom one had died and the rest were unconscious. Police rushed them to the police station. He cannot tell the time and manner in which the police took the injured to the police station. He had visited the hospital after four days, but he cannot say which hospital and the persons he met. He has denied the suggestion that no occurrence had taken place at Baithka and that he had deposed falsely as the informant is his nephew.

29. P.W. 7 Nisar Khan is an attesting witness to the inquest report. He has stated that his thumb impression was



taken on the inquest report of deceased Md. Masaud Khan. He has identified the signature of Kamruddin Khan on the inquest report. The police had interrogated him. He has identified accused Shahid and claims to identify others by face.

29.1. In his cross-examination, he has stated that Kamruddin Khan is his cousin brother. At 11:00 p.m. at the time of arrival of police a large number of persons were present. He cannot tell the exact number. Police remained there for half an hour. He did not leave the place during night. He has denied to have given false statement.

30. P.W. 8 Md. Nasruddin Khan has specifically stated in his examination-in-chief that on the instigation of Liakat, Aslam, Babar and Shahid, Sarfaraz fired at Md. Masaud in his neck resulting in his spontaneous death. Thereafter, Md. Tauhid Khan fired at the deponent with the rifle he was having, which hit the left side of his neck, as a result of which he sat there itself. Thereafter accused Shahid Khan and Matloob Khan assaulted Shahid Khan with the butt of rifle causing fracture in his head. He has further stated that he was treated at Kabir Chouk, Banaras. From there he was referred to Maxwell Hospital for further treatment. The bullet was taken out of his neck after operation. He remained admitted in the hospital from



03.07.2015 to 14.07.2015. Darogaji took the bullet with him. Police had recorded his statement at his house. He identifies accused Sartaj Khan, Tauhid Khan, Tausib Khan @ Gosib and Shahid Khan, who are present in Court and claims to identify others by face.

30.1. In his cross-examination, he has stated that during the period he was admitted, police had not recorded statements of any of his family members. He was unconscious while being operated upon and thereafter also. The doctor did not hand over the bullet to Darogaji in his presence. After receiving the bullet injury and until being operated upon, he was never unconscious. Before arrival of the police, his sons Danish Khan and Farooque Khan and nephews Jakaria Khan and Mashook Khan helped him in standing up. He has denied the suggestion that no such occurrence, as stated by him, had taken place and that the prosecution side had not received any injuries at the place of occurrence rather they received injuries at another place and that he had given false deposition as instructed by the informant.

31. P.W. 9 Sarfaraz Khan is the informant of this case. He has supported his version about the manner of occurrence as described in the F.I.R. He has specifically stated



that the accused persons having *lathi* were instigating the accused persons having firearms to kill the prosecution side. At this, Sartaj Khan fired at Masaud Khan which hit his neck causing his death on the spot. Tauhid Khan fired at Nasruddin Khan which hit his neck and he was rushed to Banaras for treatment. Shahid Khan while trying to help his father, Tausid Khan @ Gosib Khan assaulted him with the butt of rifle causing fracture injury in his head. The deponent was assaulted with the butt of rifle by Sarafat Khan causing injury under his left eye. Before he could balance himself, Taj Mohammad assaulted him with the butt of rifle on his face causing bleeding from his neck. Afsarul Haque assaulted him with the butt of rifle under the right ear and cheek causing bleeding injury. He has further stated that Sahan is situated in front of the door. Adjacent to the Sahan, there is R.C.C. cast lane where the incident took place. Police reached after half an hour, prepared *Panchnama* of Masaud Khan and took Shahid Khan, Hafiz Matloob Khan and him to the police station. The reason behind the occurrence is handing over of the charge of the school. He has identified accused Sartaj Khan, Tauhid Khan, Tausib Khan @ Gosib Khan and Shahid Khan, present in Court and claims to identify others by face.



31.1. In his cross-examination, he has stated that though police had seen his injuries, it did not submit written report with regard to the same to the hospital. Police took him to the police station in a jeep where he remained for half an hour. There the police prepared the injury report and then sent him for treatment. He went to Durgawati Hospital in a police van and remained there from 12:00 to 05:00 a.m. whereafter he was referred to the private hospital named Bhrigunath Memorial Hospital, Mohania. He was under treatment there for four days and thereafter returned home. Before leaving for home, police had interrogated him at the hospital.

32. P.W. 10 Dr. Khalid Raza has stated in his deposition that on 03.07.2015, he was posted at P.H.C. Durgawati as a Medical Officer. On that day, he examined injured Md. Shahid Khan and noted the following:-

i. Lacerated wound on the right parietal region of head of size 2"x1/8"x bone deep.

ii. Pain and Swelling on the right wrist.

A/I- within six hours.

Opinion- Above injuries caused by hard & blunt object, but opinion regarding nature of injury kept reserved because patient has been referred to higher center.

32.1. He has further given his opinion on the basis of



the paper received on 12.09.2015 and said that paper shows that injury on the right parietal region on head about 8 cm. muscle deep is caused by sharp cutting object. Therefore, injury No. 1 is grievous in nature and injury No. 2 is simple in nature.

On the same day he examined injured Matloob Khan S/o Sarfuddin Khan, R/o Vill.- 12:15 a.m. and found following injuries:-

i. Lacerated wound on right parietal region of the head, size 2"x1/8"x bone deep.

ii. Pain and swelling on the left forearm.

iii. Pain and swelling on the right leg.

M/I- healed wound mark on the left arm.

Opinion- Above injury caused by hard and blunt object but opinion regarding nature of injury is kept reserved because patient is referred for higher center.

32.2. He has also given supplementary opinion on the facts of paper of higher center on 12.09.2015 and stated that paper shows injury in the right temporal parietal region about six cm. by sharp cutting object. Therefore, injury No. 1 is grievous in nature and injury Nos. 2 & 3 are simple in nature.

32.3. On the same day, he examined Sharfaraj Khan at 01:45 a.m. and found following injuries:-

i. Cut on the lid of left eye with bruise below the eye with mild redness of the eye.

ii. Cut on the nose.



iii. Pain & swelling on the right cheek.

iv. Cut on the left knee.

v. Cut on the right knee.

vi. Complain of pain in whole body.

A/I- Within six hours.

Opinion:- Above injuries are caused by hard blunt object but opinion regarding nature of injury is kept reserved as patient has been referred to eye specialist. After receiving the supplementary report, he said that everything within normal limit. Therefore, injury has been considered as simple in nature caused by hard & blunt object like rifle butt, katta butt etc.

32.4. He has also proved the carbon copy of all the three injury reports which has been prepared by him and bears his signature. This report has been marked as Ext.- 2, 2/1 & 2/2 respectively.

33. PW-11 Dr. Binod Kumar has stated in his deposition that on 3rd July, 2015, he was posted at Sadar Hospital, Bhabhua. On that day, he received the dead body of Masaud Khan and recorded the following findings:-

On external examination:-

Rigor mortis present in all the four limbs, hair black, eye semi open, mouth close, dark red blood present in nostril, body & cloth smeared with blood.

Injury No. 1:- An inverted and tattooed margine, lacerated wound size about 1/4” in diameter communicated to injury No. 2 present over left side of



upper part of neck just below and adjacent to an angle of mandible on left side surrounding area of face and neck. The wound covered with gun powder spots.

Injury No. 2:- Averted margin lacerated wound about 1.5 inch in diameter communicated to injury No. 1 present over right side of cheek adjacent to angle of mouth on right side. It is wound of exit.

On dissection:-

Skull bone intact, brain matter intact and pale. Neck- In the way of injury No. I & II associated muscle vessels and viscerae lacerated mandible to injury No. 2 along with teeth, fractured into pieces, thoracic bone cage intact, both lungs intact & pale. Heart- intact & both chambers empty. Stomach- Full of semi digested food materials. Intestine- Small & large both contains gas, liquid and faeces. Liver- Spleen & both Kidney- intact. Urinary bladder- contain 120 ml of urine.

Opinion:- Above mentioned injuries are ante mortem caused by fire arm.

II- Death is due to renal cardio respiratory arrest due to excessive haemorrhage & shocks.

III- Time lapse between death & autopsy- within 24 hours.

All injuries are sufficient to cause death in ordinary course of nature. He has proved the injury report with his pen and signature which is Ext.-3.

34. P.W. 12 Pankaj Kumar is the Investigating Officer of the case. He has stated in his examination-in-chief



that he was posted at Durgawati P.S. on 03.07.2015. That day he received the written complaint of informant Sarfaraj Khan based on which Durgawati P.S. Case No. 139/15 was registered (Ext-4.). He had paginated the same which he identifies (Ext-4/1). He himself took the charge of investigation of the case. He prepared the inquest report of deceased Masaud Khan at the door of the informant at 11:00 p.m. which is in his pen and signature and bears the L.T.I. of witness Kamruddin Khan,(Ext-1/1). In para-4 he has described the place of occurrence. He further states that he arrested accused Sartaj Khan, Afroj Khan, Tahir Khan and Tausid @ Gosib Khan.

34.1. In his cross-examination, he has stated that he got the information about the incident of which he made entry in the station diary, but he did not mention it in the case diary. He proceeded for the place of occurrence at 22:10 at night. After he reached the place of occurrence, the informant prepared the written complaint. The same does not bear the signature of any of the injured or villager except Sarfaraj Khan. He did not mention at any place about the blood or blood stain, not even near the dead body. He has further stated that no wooden cots were found in front of Baithkha. He found wooden cot in the Verandah and Baithka of the informant. He did not find any



blood or blood stain either in Sahan, Verandah or Baithka. He recorded the statements of Shahid Khan and Matloob Khan at the police station at 7 O'clock. He has not mentioned in the case diary about finding any injury on their body. However, he has denied the suggestion that he has conducted a faulty investigation.

35. P.W. 13 Dhananjay Kumar has deposed that he was posted as S.H.O. of Durgawati P.S. He took over the charge of investigation on 16.08.2015 from A.S.I. Pankaj Kumar. He procured the post mortem report from local P.S. and recorded the same in the case diary. He also procured the supplementary injury reports of injured Matloob Khan, Shahid Khan, Nausif Khan and Sarfaraz Khan and recorded in the case diary. Thereafter, he submitted charge-sheet against Sartaj Khan, Afroz Khan, Shahid Khan, Tausib @ Gosib Khan and Md. Tauhid Khan under Sections- 147, 148, 149, 341, 307, 302, 504, 506 of I.P.C. and 27 of the Arms Act.

35.1. In his cross-examination, he has stated that all the accused persons were not arrested before he took over the charge of investigation. He had not arrested any accused except Tauhid Khan, who were arrested by his predecessor. He had submitted an application before the Court for obtaining an order



of attachment. He had not recorded the statement of any of the accused.

36. P.W. 14 Dr. Jaesh Mishra has deposed that on 03.07.2015, he was on night duty at Shri Shiv Kumar Gupta District Hospital, Varanasi as an Emergency Medical Officer and at 02:20 in the night, conducted the medical examination of Master Nasiruddin Khan who was brought by Dr. Umer Khan.

Description of injuries:-

1. A torn wound measuring 0.9 cm in length and 0.8 cm in width, depth could not be determined, located 5 cm above the middle part of the collar bone on the left side of the neck and 2.5 cm from the middle part of the body on the side. There was colour of abrasion and a black spot in the wound, Fresh blood was oozing out on pressing the wound. The injury was kept under observation and referred to the surgeon and radiologist for advice.

Note:- A bandage was tied around the said wound. The wound was seen after the bandage was removed.

Advice for X-ray was given and referred to the surgeon and radiologist for the expert opinion.

5. Duration of injury:- Fresh.

6. Weapon used:-

All the above injuries are possible from the fire arms.

36.1. He has further stated that the patient's family refused to admit and the patient was referred to a bigger centre for better treatment. He has stated that this injury report is in his handwriting and it bears his signature too which he recognizes and has been marked as Exhibit- 06. The LTI is also attested by



him. On the request of the relatives of the patient, the said patient was referred to a higher centre after giving him life saving medicines on the treatment slip which is in his handwriting and is marked as Exhibit 6/1.

36.2. In his cross-examination, he has stated that he did not know the injured person before his treatment. After seeing the patient, he told the attendant that it is necessary to admit him but his guardian refused. He had advised for X-ray to know the nature of the injury. The X-ray was not presented to him by the injured or his guardian. How old the injury was before the patient was examined is recorded. It is stated that the wound is fresh. The wounds of 6 to 8 hours duration are called fresh. It is not that the colour of the injury changes every 6 hours. The colour of such wounds changes in 24 hours. In medical, the colour of any wound is an important factor for determining its age or duration. The patient was his outdoor patient. The patient was brought at 2:20 on the night of 3.07.2015. The report was prepared after examination. It is not mentioned for how long the injured person was in the outdoor. The patient was given only emergency treatment. After examining the wound, the injured person was taken away. The patient was conscious at the time of examination of the patient.



The patient was not referred to him by any other doctor. The guardian's signature is not there on both the papers. At the time of preparation of the slip, the name of the patient was also recorded in the hospital register. Today, the hospital register is not available with him. It is not that the injury report is not scientific.

DISCUSSION & FINDINGS

37. Having heard learned advocates appearing for the parties and having gone through the trial court record as well as the evidence led by the prosecution, it transpires that, as per the *fardbeyan*, the incident took place at about 10:00 p.m. on 02.07.2015. The informant has specifically alleged in the *fardbeyan* that all the accused persons came at the place of occurrence with firearms and started firing bullets. It is further revealed that allegation has been levelled against the appellant Sartaj Khan that he fired bullet which hit deceased Md. Masaud Khan in the neck whereas accused Md. Tauhid Khan fired bullet which hit injured Nasiruddin Khan. From the evidence it would reveal that P.W. 1 Md. Shahid Khan is an eye-witness to the incident in question. He has specifically deposed in his examination-in-chief that accused Sartaj Khan fired at Md. Masaud Khan which hit his neck causing death on the spot. He



has further deposed that accused Tauhid Khan fired at his father Nasiruddin Khan which hit his neck and when P.W. 1 tried to save him, Tauhid Khan again assaulted him with the butt of rifle on his head. P.W. 2 Jakaria Khan has also supported the manner of occurrence described by P.W. 1. He is also an eye-witness to the incident in question. Similarly, P.W. 3 Sarfuddin is also projected as an eye-witness by the prosecution. The said witness has also specifically deposed that he was sitting on his Baithka with several persons and he heard a commotion from the eastern side and thereafter all the accused came there carrying firearms. The said witness has also supported the case of prosecution by narrating the manner in which the incident took place and the role played by the present appellants. Similarly, P.W. 4 and P.W. 5 are the eye-witnesses. At this stage, it is relevant to observe that P.W. 8 Md. Nasirudding Khan is also an injured eye-witness. P.W. 8 has specifically deposed that Md. Tauhid Khan fired at him with the rifle he was carrying which hit the left side of his neck, as a result of which he sat there itself. The said witness has further deposed that he was treated at Kabirchoura, Banaras. From there he was referred to Maxwell Hospital. The bullet was taken out after operation.

37.1. If the deposition given by P.W. 8 is read with



the deposition given by P.W. 14 Dr. Jaesh Mishra, it would reveal that P.W. 14 has deposed before the Court that on 03.07.2015 he was on night duty at District Hospital, Varanasi as an Emergency Medical Officer and at 02:20 in the night, he conducted the medical examination of injured Md. Nasiruddin Khan who was brought by Dr. Umer Khan. P.W. 14 has described the injuries sustained by P.W. 8. The said witness further stated that injury report has been written by him and the same has been signed by him. The said report is produced by Ext.- 6. The said witness further deposed that at the request of the relatives of the patient, the said patient was referred to higher centre for better treatment. This witness has also deposed that all the injuries are possible from firearms.

38. Thus, from the deposition given by P.W. 8 and P.W. 14, we are of the view that the prosecution has duly proved that P.W. 8 is an injured eye-witness who has sustained injuries in the incident in question. We cannot doubt the presence of P.W. 8 at the place of occurrence. At this stage, it is relevant to note that it has been contended by learned counsel for the appellants that from the deposition given by P.W. 4, it is revealed that the nearest government hospital from the village is Durgawati, situated at G.T. Road which goes to Banaras and



which is located at a distance of 5-6 k.ms. and it is claimed that P.W. 8 was not given the first aid in the said hospital and he was taken to Kabirchoura Hospital, Banaras. The contention that merely because Durgawati Hospital is situated at a distance of 5-6 k.ms. from the place of occurrence, the injured was required to be taken to the said hospital and when he was not taken to the nearest hospital and treatment was taken by him at Banaras, the story of prosecution is required to be doubted, is misconceived. We cannot accept the submission that when he was not taken to the nearest hospital and treatment was taken by him at Banaras, the story of prosecution is required to be doubted, in view of the deposition given by P.W. 14.

39. From the deposition given by P.W. 8, who is an injured eye-witness, as well as the other eye-witnesses, it is revealed that the said witnesses have narrated, in detail, about the role played by the present appellants. No doubt, there are certain discrepancies and exaggerations in the deposition given by the prosecution-witnesses and it is also true that the trial court has acquitted the other accused by not accepting the story put forward by the same prosecution-witnesses, however, merely because there are certain exaggerations/discrepancies in the evidence, entire story put forward by the prosecution cannot



be discarded, more particularly when P.W. 8, an injured witness, has fully supported the case of the prosecution and P.W. 14, the doctor who has given treatment to the injured witness, has also described about the injuries sustained by P.W. 8. At this stage, it is also required to be observed that learned counsel for the appellants has contended that, as per the prosecution-witnesses, there are different places of occurrence. Somebody said that occurrence took place at Darwaza, another said at Baithka, a few others said at Sahan and the Investigating Officer said about the R.C.C. Road. However, if the entire evidence led by the prosecution is closely examined, it can be said that Darwaza, Sahan and R.C.C. Road, which is in front of Baithka, are part of one complex and, further, from the deposition of P.W. 12, the I.O., it can be said that Neem tree is situated in Sahan and near to that there was Verandah (*Osara*). P.W. 6 has also said about the Baithka and verandah in his deposition. The dead body was found by the I.O. near the said Neem tree near R.C.C. Road. We are, therefore, of the view that the contention raised by the learned counsel for the appellants with regard to different places of occurrence is misconceived.

40. Learned counsel for the appellants has also submitted that the prosecution has failed to prove the motive on



the part of the appellants to kill the deceased and to injure P.W. 8. However, we are of the view that the said contention is also misconceived. From the evidence led by the prosecution, it is revealed that there was dispute with regard to handing over of the charge of post in the Utkramit Urdu Secondary School, Dumri, Durgawati and P.W. 9 Sarfaraj Khan is the informant. With regard to the dispute with regard to the rival group of the accused came to the place of occurrence with firearms and started firing and in the said firing P.W. 8 sustained injury and deceased Masaud Khan died on the spot. Prosecution-witnesses have, during the course of deposition, specifically deposed with regard to the same and, therefore, it cannot be said that the prosecution has failed to prove the motive on the part of the appellants.

41. It has been contended by learned counsel for the appellants that the first version given to the police has been suppressed by the prosecution. In support of the same, learned counsel has referred the deposition given by P.W. 4 who has stated during the course of his deposition that they proceeded in a Bolero car and information was given to the police station. However, the said version has been withheld. We have gone through the deposition of P.W. 4. Though the said witness has



deposed that information was given to the police, but who had given the said information is not known to him. It is relevant to note at this stage that, as per the case of prosecution, the incident took place at 10:00 p.m. on 02.07.2015 and immediately, during the night hours at 02:30 a.m., i.e. within four hours only, the F.I.R. has been lodged. Thus, we are of the view that, in the facts and circumstances of the present case, when there is no delay in lodging the F.I.R. and when in the incident in question one person died on the spot and other sustained gun-shot injury and, more particularly, in view of the deposition given by P.W. 8 and P.W. 14, it cannot be said that the present appellants have been falsely implicated, as contended by the learned counsel for the appellants by suppressing first version.

42. Further, from the deposition given by P.W. 1, it is clear that there was a bulb light at the place and time of incident and, therefore, the doubt raised by the defense with regard to the presence of source of identification cannot be accepted in view of the evidence led by the prosecution.

43. At this stage, it is also relevant to note that P.W. 11 is the doctor who had performed *post mortem* on the dead body of the deceased. P.W. 11 has specifically deposed with



regard to the injuries sustained by the deceased. The doctor has specifically given the opinion that the injuries are *ante mortem*, caused by firearms. Thus, we are of the view that the medical evidence also supports the case of P.W. 8 as well as other eye-witnesses. Hence, merely because the trial court has acquitted the other accused, the appellants herein cannot take an advantage of the said order rendered in favour of other accused.

44. In the case of **State of Uttar Pradesh Vs. Naresh & Ors.** (supra), the Hon'ble Supreme Court has observed in para-27 as under:

“27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.”

45. In the case of **Abdul Sayeed** (supra), the Hon'ble Supreme Court has observed in para-28 as under:



“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.”

46. In the case of **Balu Sudam Khalde** (supra), the Hon’ble Supreme Court has observed in para-26 as under:

“26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.



26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

47. Thus, from the aforesaid decisions rendered by the Hon'ble Supreme Court, it can be said that the evidence of injured witness has greater evidentiary value and, unless compelling reasons exist, his statement is not to be discarded lightly. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions. If there be any exaggeration or material embellishment in the evidence of an injured witness, then such part should be discarded from the evidence of injured, but not the whole evidence. Even the presence of an injured eye-witness at the place of occurrence cannot be doubted, unless there are material contradictions in his deposition.

48. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the evidence led by the prosecution in the present case is carefully examined, we are of the view that P.W. 8 is an injured eye-witness who has no reason to falsely implicate the present appellants and merely because there are certain discrepancies and exaggerations in the deposition of the prosecution-witnesses, evidence of injured



witness cannot be disbelieved. Further, in view of the deposition given by P.W. 14, the doctor who has examined P.W. 8 and narrated about the injury sustained by him, which suggests that P.W. 8 had sustained such injuries, evidence of P.W. 8 cannot be disbelieved.

49. At this stage, we would also like to examine the decisions referred by the learned counsel for the appellants. In the case of **Munuwa @ Satish & Ors.** (supra), Hon'ble Supreme Court has observed in para-32 as under:

“32. Having considered the matter in detail, and having noted that the prosecution failed to recover bloodstained materials from the place of occurrence, empty cartridges, pellets, or any other weapon used for commission of the crime, coupled with the contradictions and unnatural conduct of the eyewitnesses PW 1 and PW 6, and the inconsistencies in the two dying declarations, we believe that the prosecution has not proved the case beyond a reasonable doubt, and the accused are entitled to be given the benefit of doubt.”

50. We are of the view that the aforesaid decision would not render any assistance to the appellants looking to the evidence led by the prosecution.

51. Learned counsel for the appellants has further placed reliance on para Nos. 8 and 9 of the judgment rendered by the Hon'ble Supreme Court in the case of **Ram Narain Singh** and analogous case (supra). However, we are of the view



that in the said case there was no injured eye-witness and looking to the discrepancy with regard to the time and place of occurrence in the evidence of the prosecution, the Hon'ble Supreme Court has made certain observations in favour of the accused and thereby acquitted them. However, as discussed hereinabove, in view of the deposition given by the injured eye-witness, the case of the prosecution cannot be disbelieved or discarded.

52. Similarly, the decisions rendered by the Hon'ble Supreme Court in the cases of **Pohlu** (supra) and **Ganesh Datt** (supra) are also not helpful to the case of the appellants herein in view of the evidence led by the prosecution in the present case.

53. Thus, after re-appreciating the entire evidence led by the prosecution, we are of the view that the injured eye-witness, P.W. 8, who has also sustained injury in the incident in question and when the said witness has been examined by P.W. 14 doctor who has also found the firearm injury on the neck of P.W. 8, we cannot simply discard the deposition given by the said witness. Merely on the ground of certain inconsistencies and discrepancies in his deposition, entire evidence led by the prosecution cannot be disbelieved and discarded.



54. We have also gone through the reasoning recorded by the trial court while convicting the present appellants for committing the alleged offences and we are of the view that the trial court has not committed any error while passing the impugned judgment and order, so far as the present appellants are concerned.

CONCLUSION

55. In view of the aforesaid, we are of the view that the impugned judgment and order passed by the trial court requires no interference in the present appeals. Accordingly, both these appeals stand dismissed.

56. Appellant Tauhid Khan (in Cr. Appeal (D.B.) No. 126 of 2019) is on bail. His bail-bonds are cancelled and he is directed to be taken into custody forthwith.

(Vipul M. Pancholi, J)

(Alok Kumar Pandey, J)

K.C.Jha/-

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