

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.138 of 2017

Arising Out of PS. Case No.-179 Year-2014 Thana- VAISHALI District- Vaishali

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1. Ranjit Kumar
 2. Sanjit Kumar, Both sons of Pradeep Rai, Both residents of Village-
Raghunathpatti, P.S.- Vaishali, District- Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Akashdeep, Adv. Mr. Shyameshwar Kumar Singh, Adv. Mr. Upendra Yogesh, Adv.
For the State	:	Mr. Abhimanyu Sharma, APP
For the Informant	:	Mr. Lakshmindra Kr. Yadav, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 10-04-2025

Heard Mr. Akashdeep, learned counsel appearing for the appellants, Mr. Abhimanyu Sharma, learned APP appearing for the State and Mr. Lakshmindra Kumar Yadav, learned counsel appearing for the informant.

2. The present criminal appeal has been filed against the judgment of conviction dated 29.11.2016 and order of sentence dated 02.12.2016 passed by the court of learned Additional Sessions Judge-III, Vaishali at Hajipur, in Sessions Trial No. 455 of 2014 arising out of Vaishali P.S. Case No. 179



of 2014, whereby and whereunder the learned trial court has convicted the appellants for the offence under section 302 read with section 34 of the Indian Penal Code (in short 'IPC') and sentenced them to undergo life imprisonment and a fine of Rs. 5,000/- each has also been imposed upon the appellants and in default of payment of fine, the convicts/appellants have been directed to further undergo rigorous imprisonment for two months.

Prosecution Story :-

3. The substance of the prosecution story appearing from the FIR is as follows:-

As per the informant, Anil Kumar (son of the victim), on 17.07.2014 at about 5:00 P.M., his mother Leela Devi (deceased, hereinafter referred to as victim) was going to *chaur area* to look after her farm land (the term '*chaur*' denotes a place situated just outside the area of village), when she reached in *chaur area*, she found and saw the accused/convicts, namely, Ranjit Kumar and Sanjit Kumar assaulting each other, then his mother (victim) intervened to save them, then the accused Ranjit Kumar said that the victim was mainly responsible for all domestic clashes in his house, and she should be killed and thereafter, the convict/appellant Ranjit Kumar



caught hold of the shoulder of the victim and then the appellant Sanjit Kumar stabbed the victim with *hasua* (sickle) in her stomach, which resulted in her death on the spot, thereafter, both the accused tried to flee away with the sickle but the appellant Sanjit Kumar was caught by the people on chase and the appellant Ranjit Kumar managed to escape.

4. Describing the aforesaid prosecution story, the informant Anil Kumar, (examined as P.W.-7) filed a written application (Ext. - 1) at Vaishali police station, upon which two persons, namely, Umesh Kumar and Arvind Kumar made their signature as witnesses of the fact of lodging of the FIR and on that basis, the formal FIR bearing Vaishali P.S. Case No. 179 of 2014 dated 17.07.2014 was registered for the offence of murder under section 302 read with section 34 of IPC, which set the criminal law in motion and the investigation was started.

5. After completion of the investigation, the police chargesheeted both the appellants/convicts for the offence under section 302/34 of IPC. The learned Magistrate took cognizance of the same offence for which both the appellants were chargesheeted and thereafter, committed their case to the court of Sessions for trial.

6. Both the appellants stood charged for the offence



under section 302 read with section 34 of IPC. The charge was read over and explained to them in Hindi, to which they pleaded not guilty and claimed to be tried for the charged offence.

7. During the trial, the prosecution produced and examined the following ten witnesses :-

	Name	Nature as per prosecution	Relevancy
P.W.-1	Sakila Devi	Eyewitness	Gotani of the deceased
P.W.-2	Reeta Devi	Claiming to be an eyewitness	Daughter of the deceased
P.W.-3	Basudeo Rai	Hearsay witness	Husband of the deceased
P.W.-4	Sunil Kumar	Claiming to be an eyewitness	Son of the deceased
P.W.-5	Umesh Kumar	Hearsay witness	Relative of the informant
P.W.-6	Daroga Rai	Claiming to be a chance witness	Friend of the informant
P.W.-7	Anil Kumar	Informant	Son of the deceased
P.W.-8	Md. Rafique	Investigating Officer	Investigated the case
P.W.-9	Dr. Anil Kumar	Medical Officer	Observer of P.M.R
P.W.-10	Dr. Navin Kumar	Medical Officer	Conducted the autopsy

In documentary evidence, the prosecution proved the following documents and got them marked as exhibits which are as under : -

Ext. 1	The signature of one Umesh Rai on written application
Ext. 1/1	Written application filed by the informant
Ext. 1/2	An endorsement on the written application
Ext. 2	The signature of one Md. Rafique (I.O.) on the formal FIR
Ext. 3	The Signature of the Doctor Anil Kumar (P.W.-9) on the postmortem report
Ext. 3/1	Postmortem report

8. After completion of the prosecution’s evidence,



the statements of the appellants were recorded by the trial court under section 313 of the Code of Criminal Procedure (in short 'Cr.P.C.') giving them an opportunity for explaining the main circumstances appearing against them from the prosecution's evidences in which the appellants claimed themselves to be innocent while denying the incriminating circumstances appearing against them and they did not take any specific defence.

9. The appellants did not give any oral or documentary evidence in their defence.

10. While convicting the appellants, the learned trial court mainly placed reliance upon the testimonies of the P.Ws. no.-1, 2, 4 and 6 deeming them to be eyewitnesses of the alleged occurrence of murder and also placed reliance upon P.Ws. no.-3, 5 and 7 though, they were considered hearsay witnesses but their evidence was taken into account as corroborative to the evidences of other prosecution witnesses. Regarding the manner of assault, time of occurrence and the body part of the deceased upon which injury was inflicted, the medical opinion given in the postmortem report of the deceased was also taken into account as corroborative piece of evidence by the trial court. The learned trial court disbelieved the



appellants' the defence as to they having been framed in the alleged murder falsely by the prosecution party due to a land dispute running in between them considering the fact that enmity cuts both the ends. The evidence of P.Ws. no.-1, 2, 4 and 5 was deemed to be believable by the trial court despite these witnesses being relatives of the deceased. After analyzing the evidence of these witnesses, learned trial court deemed their evidence to be credible and consequently, convicted the appellants for the charged offence of murder with the aid of section 34 of IPC.

Submissions made on behalf of the appellants:-

11. Mr. Akashdeep, learned counsel appearing for the appellants submits that in the present matter, actually there is no eyewitness of the alleged murder which would be clearly evident from the evidence of prosecution witnesses, who claimed themselves as eyewitnesses of the commission of the alleged murder. The prosecution failed to establish the place of occurrence of which details has been given in the FIR. It is further submitted that as per the FIR, the alleged occurrence is said to have taken place at about 5:00 P.M. on 17.07.2014 but in view of the medical opinion given by medical expert in the postmortem report regarding the timing of death, the victim had



died much before 5:00 P.M. and further, there is serious contradiction in between the details of an external injury found on the body of the deceased (victim) by the Doctor concerned who conducted the postmortem examination and the details of the injuries which were sustained by the victim as per the witnesses who claimed to have seen the infliction of the assaults on the body of the victim by the accused/appellants. There is material discrepancy in the statements of the prosecution witnesses with regard to the number of persons who are said to have brought the victim from the place of occurrence to her home just after the commission of the alleged occurrence. The investigating officer failed to produce the *sanha* which was admittedly recorded by him when he got the first information of the alleged occurrence, so, the actual first information was intentionally suppressed by the police with *malafide* intention which completely goes against the prosecution and makes the prosecution's case highly doubtful. It is further submitted that the material witnesses upon which reliance was placed by the trial court while convicting the appellants, are relatives of the deceased so they were fully interested in getting the appellants convicted and the prosecution failed to produce the independent persons as witnesses despite the fact that there were some



villagers working nearby the place of occurrence and in this regard, the evidence of prosecution witnesses is relevant. It is lastly submitted that the alleged instrument used as a weapon was not produced by the prosecution party despite the appellant Sanjit Kumar was caught hold at the spot as per prosecution and in this regard, no explanation was given and further no attempt was made by the investigating officer to recover and seize the alleged weapon and the description of the external injury given by the medical expert in the postmortem report does not corroborate the allegation of causing an injury at the neck area of the deceased as revealed by some material witnesses of prosecution. The prosecution also failed to establish the strong motive on the part of the appellants to kill the victim.

**Submissions advanced by learned APP and
learned counsel for the informant:-**

12. On the other hand, learned counsel appearing for the informant as well as learned APP appearing for the State has argued that the medical evidence given by P.W.-10, who conducted the postmortem examination on the body of the deceased, fully corroborates the allegation of inflicting sickle attack at the stomach of the victim. The appellant Sanjit Kumar was caught at the spot and the testimonies of P.W.s No. 1, 2, 4



and 6 are completely reliable and they fully supported the case of the prosecution and the contradictions pointed out by the appellants' counsel in their testimonies with regard to the place of occurrence and the body parts of the victim at where sickle stabs were inflicted, are minor in nature and the FIR was registered immediately which makes it credible and the informant proved the FIR and there are sufficient number of witnesses to prove the commission of the alleged occurrence and the prosecution witnesses also described and proved the motive on the part of the appellants for killing the victim as they considered the victim as a *dayan* and held her responsible for all their personal problems, so the conviction of the appellants for the charged offences is proper and there is no need to interfere with the same.

Consideration and analysis of evidences :-

13. We have heard both the sides, perused the judgment impugned and gone through the evidences taken by the trial court during the trial of the appellants.

14. The prosecution placed the witnesses P.Ws No. 1, 2, 4 and 6 as eyewitnesses of the alleged occurrence whereas the appellants have mainly taken the defence that these witnesses are not eyewitnesses and in actual, none of the



prosecution witnesses saw the commission of the alleged occurrence. In the light of this plea of the prosecution as well as the defence taken by the appellants, we are going to appreciate the evidence of the said prosecution witnesses.

The FIR was registered by P.W.-7, Anil Kumar, the son of the deceased. If we take the entire contents of the FIR into account, it would be appear that P.W.-7 claimed himself to be an eyewitness of the alleged occurrence. But P.W.-1, Sakila Devi, who also claimed herself to be an eyewitness of the occurrence, deposed in the examination-in-chief that the deceased was going to field just ahead of her and then she saw the appellant Sanjit Kumar assaulting the deceased with *hasua* and stabbed the victim with *hasua* in the stomach and also assaulted at the neck of the deceased by the same instrument and then she caught hold of the assailant Sanjeet Kumar. The witness did not say anything about the presence of the informant at the place of occurrence when the occurrence was being committed. P.W.-2, Reeta Devi, daughter of the victim, also claimed herself to have seen the alleged occurrence of murder and she stated in her examination-in-chief that on the alleged day and time of occurrence, she was going with her mother (victim) towards *chaur* for cutting maize crop and reaping grass and at that time,



her mother was 50 *laggi* ahead of her (1 *laggi* = 2743.2 mm or 3 Gaj) but this witness did not reveal the presence of the informant at the place of occurrence at that time. But regarding the presence of this witness (P.W. -2), P.W.-1 did not say anything, The witness stated in paragraph No. 3 of her cross-examination that when the dead body of the deceased was brought at the door of her house then upon hearing *hulla*, several persons arrived and Sakila Devi (P.W.-1) and one Jagdish Rai also arrived there at that time. She further stated in the paragraph No. 4 of her cross-examination that his brother, Sunil Kumar (informant), run a grocery shop at Jangbahadur Chowk who was informed about the occurrence then he and one Basudeo came and then Sakila Devi (P.W.-1) told them about the occurrence. She further stated in the paragraph No. 6 that at the time of incident, her brothers Anil, Sunil and father were at the shop and P.W. 1 (Sakila Devi) told her about the acts of the accused and revealed that among them, who caught hold of the victim and who assaulted her.

P.W.-4, Sunil Kumar, son of the victim, though claimed himself as an eyewitness of the occurrence in the examination-in-chief but his own sister P.W. No. 2 made a contradictory statement to the said claim as discussed above and further, in the



FIR, the informant did not say anything about the presence of this witness at the place of occurrence at the time of commission of occurrence. It is relevant to mention that as per this witness, he has four sisters and their names are Anita Devi, Sunita Devi, Reeta Devi and Sangeeta Devi and all are married and live at their respective *sasuraal* and he accepted his and his brother's shops being situated at Subhai Chaur and Jangbahadur Chaur and as per P.W.-2, sister of this witness, at the time of alleged occurrence, the said witness (P.W. 4) and the informant were present at their shop and it is not the case of the prosecution that Jangbahadur Chaur is situated at very close to the place of occurrence.

P.W.-6, Daroga Rai, is also claimed to be an eyewitness of the alleged occurrence and he can be deemed to be very important witness of prosecution as he does not have any relationship with the deceased and her family members, so, he appears to be an independent witness. He stated in his examination-in-chief that on 17.07.2014 at about 5:00 P.M., he was going to meet one Ram Ikbali Rai through Bhagwanpur Chaur, in that course, he saw one person holding a lady and another person inflicting *hasua blow* in the stomach of the said lady. From this statement, it appears that at the time of



occurrence, the witness had no information about the name of the accused/appellants and he stated in his examination-in-chief that he later knew the fact that the appellants killed the mother of the informant by stabbing her with *hasua*. The witness stated in the cross-examination that he run a grocery shop at Sevai Market at where the informant's mobile shop is situated. From this fact, it appears that the informant was known to him when the alleged occurrence took place but he did not say about the presence of the informant at place of occurrence and he stated in the cross-examination that after the incident of stabbing, he left the place of occurrence and went to his shop and did not meet the informant at that time and did not say anything about the incident to the informant and after the incident, he regularly met with the informant but they did not talk about the incident. The said conduct of this witness appears to be highly suspicious as this witness and the informant were admittedly known to each other and doing the same nature of occupation but even then, no discussion was made in between them regarding the alleged occurrence despite this witness having claimed to be present at the place of occurrence when the alleged incident was being committed. Further, regarding the presence of this witness, other prosecution witnesses, P.Ws No. 1, 2 and 4 did not say anything.



To verify the reliability of this witness, the I.O. was cross-examined by the defence before the trial court in the light of the previous statement recorded by this witness during the investigation under section 161 of Cr.P.C. The I.O. (P.W.-8) stated in his cross-examination that the said witness (P.W.-6) did not say the fact that on the alleged day and time of occurrence he was going through the way of Bhagwanpur Chaur and at Raghunathpatti Chaur, he saw the accused assaulting the victim and according to the I.O., the witness P.W.-6 stated before him that at the time of occurrence, he was in the house of Raghuanth Rai and upon hearing *hulla* of the murder of a woman, he went there.

Accordingly, in view of serious contradictions regarding the presence of P.Ws No. 1, 2, 4 and 6 appearing from their own testimonies as discussed above, they do not appear to be eyewitnesses of the alleged occurrence though, regarding the presence of P.W.1(Sakila Devi), P.W.2 stated that the said witness was present at the time of occurrence at the alleged place but P.W.-2 does not appear to be reliable regarding her claim as an eyewitness and further, about the presence of P.W.-1, the other witnesses, who claimed themselves to have witnessed the commission of the alleged occurrence, did not say



anything and the most important thing is that the said witness (P.W. 1) stated in the examination-in-chief that the convict/appellant Sanjit Kumar firstly stabbed in the stomach of the victim with hasua and thereafter, inflicted the second blow with the same instrument at the neck of victim and in the cross-examination also, she remained firm on her stand. But in the postmortem report of the deceased, no any injury at her neck was found and further, P.W.4, P.W. 7 (informant), and P.W.-6 (Daroga Rai) did not say about the second blow by hasua at the neck of the deceased by the appellant Sanjit Kumar. Accordingly, in view of these contradictions, all these witnesses P.Ws No. 1, 2, 4 and 6 do not appear to be eyewitnesses of the alleged occurrence.

15. Now, we come to the place of occurrence. As per the FIR, on the alleged day and time of occurrence, the victim was going towards the *chaur* area to see her field and during that course, on a land situated in the *chaur* area, both the appellants committed the alleged occurrence with the victim and as per the FIR it is not the case of the prosecution that the alleged occurrence took place on a particular field belonging to the victim or someone. While as per P.W.4 (son of the deceased), the alleged occurrence took place on his field. The



I.O. inspected the alleged place of occurrence and on this point, he was cross-examined. He stated in his examination-in-chief that he inspected the place of occurrence which was a vacant field of one Nizam Mian and as per this witness, there was no any maize crop on that field and the informant's land was situated near the said field, upon which there was paddy crop. While as per P.W.2, daughter of the victim, her mother (deceased) was going to pluck maize and reap grass and as per P.W.-4, the alleged occurrence took place on the said field but the evidence of the I.O. (P.W.8) is completely against the said story and according to his evidence, there was no maize crop on the place of occurrence or on the land belonging to the deceased, which was situated near the place of occurrence. And as per this witness, the alleged occurrence took place on a field belonging to one different person namely Nizam Mian. The witness further stated in paragraph No. 5 of his cross-examination that there was no maize crop either on the place of occurrence or nearby fields and on the same day of occurrence, he visited and inspected the place of occurrence but he did not find any single drop of blood on the place of occurrence and also did not find any material or evidence or any sign to show the commission of the alleged occurrence at the alleged place



while as per the evidence of P.W.4, some blood of the victim fell down at the place of occurrence and as per this witness, blood from the body of the victim also fell at the gate of the informant's house where the dead body was brought and kept. The said evidence does not get corroboration from the evidence of I.O., who inspected the said places immediately after the occurrence. Here, it is important to mention that the informant (P.W.-7) stated in the cross-examination that he did not see the blood of the victim being fallen on the land of the alleged place of occurrence and later, he stated that at the place of occurrence where there was paddy crop, there was no any crushing of said paddy crop. All these evidences raise a serious doubt in the prosecution's claim as to the place of occurrence being the field of the victim and we are of the view that in this matter, the prosecution failed to establish the alleged place of occurrence which has been described in the prosecution's story. In every offence which is committed at a particular identified place, proving of such place is considered very material and failure of prosecution to prove such place of occurrence can be deemed to be fatal to the case of the prosecution and the same situation is available in the present matter and in this regard, we would like to refer the following judgments of the Hon'ble Apex Court.



In the case of **Syed Ibrahim vs. State of A.P.** reported in **(2006) 10 SCC 601**, the Hon'ble Apex Court observed that when the place of occurrence itself has not been established, it would not be proper to accept the prosecution version. Though, in this cited case, the material prosecution witness P.W.-1 indicated four different places to be the place of occurrence and such position is not present in the present matter but from the above discussed facts we find that there are sufficient materials to raise serious doubt about the place which is said to be the place of occurrence as per the prosecution witnesses and particularly, in view of the evidence of I.O. (P.W.-8), who did not find any sign of occurrence on the alleged place despite his immediate visit at the said place and also he did not find any trace of blood at the alleged place of occurrence and in this regard, the observation made by the Hon'ble Apex Court in the case of **Ramsewak and Ors. vs. State of M.P.** reported in **(2004) 11 SCC 259** in the paragraph '14' of the said judgment is relevant and in the cited case, the Hon'ble Apex Court doubted the alleged place of occurrence as no any trace of blood was found on the alleged place of occurrence relating to that matter. In the instant matter, the I.O. accepted that he did not find any trace of blood on the alleged place of occurrence and the



informant himself stated in the cross-examination that he did not see blood of the victim being fallen on the land of the place of occurrence whereas it is the case of the prosecution that the appellant Sanjit Kumar stabbed the victim with a *hasua* in her stomach resulting in her death on the spot. The relevant paragraphs of the above judgments containing the aforesaid observations are being reproduced as under : -

(i) In the case of ***Syed Ibrahim (supra)***, the relevant paragraph No. 11 :-

“11. In the background of principles set out above..... He has indicated four different places to be the place of occurrence. In his examination-in-chief he stated that the occurrence took place in his house. In the cross-examination he stated that the incident took place at the house of his wife, the deceased's mother. This is a very important factor considering the undisputed position and in fact the admission of PW 1 that he and his wife were separated nearly two decades ago, and that he was not on visiting terms with his wife. Then the question would automatically arise as to how in spite of strained relationship he could have seen the occurrence as alleged in the house of his wife. That is not the end of the matter. In his cross-examination he further stated that the incident happened in the small lane in front of the house of his wife. This is at clear variance with the statement that the occurrence took place inside the house where allegedly he, the deceased, his son, PW 2 and daughters, PWs 3 and 6 were present. That is not the final say of the witness. He accepted that in the FIR (Ext. P-1) he had stated the place of occurrence to be the house of the deceased. Though the



*FIR is not a substantive evidence yet, the same can be used to test the veracity of the witness. PW 1 accepted that what was stated in the FIR was correct. **When the place of occurrence itself has not been established it would not be proper to accept the prosecution version.***

(ii) In the case of **Ramsewak and Ors. (supra)**, the relevant paragraph No. 14 :-

“14. *The learned counsel for the State of M.P., however, contended that what was stated in the said part of the evidence of PW 1, was referable to the inquest report and not the FIR. We have examined the original which is in Hindi and the translation is admittedly correct. A reading of this part of the evidence shows that this witness was speaking about two reports. The first report which he refers to must be in regard to the inquest in regard to which he says that he does not remember if the police took his signatures after the spot inspection. The latter part of the evidence certainly refers to his complaint which he in specific terms states was written on the spot only. Even assuming that there is some doubt as to the interpretation of this part of his evidence since the same is not clarified by the prosecution by way of re-examination, the benefit of doubt should go to the defence which has in specific terms taken a stand that the FIR came into being only after the dead body was recovered. **We also notice that there is considerable doubt in regard to the place of incident also. From the medical evidence we notice that the deceased suffered 3 major incised wounds leading to the severance of the blood vessels and amputation of his hand near the wrist and the body in question was lying at the spot till the police came which was nearly 4 to 5 hours later but still the investigating agency was unable to find any blood on***



the spot. Of course, the prosecution has given an explanation that after the incident in question it had rained but even then it is difficult to believe that even traces of blood could not have been found on the soil in spite of the rain. The absence of any such material also supports the prosecution case that the incident in question might not have happened at the place of incident. In the background of these deficiencies in the prosecution case, we think the trial court was justified in coming to the conclusion that the prosecution has not established its case hence the trial court was justified in acquitting all the accused persons. Consequently, we are of the opinion that the High Court was not justified in taking a contrary view.”

16. Now, we come to the motive of the appellants to commit the alleged occurrence. In every offence, the motive of the offender plays a significant role, though, not always decisive, however, it can provide crucial circumstantial evidence, helping to establish why an accused person might have committed a crime, although in the matter of direct evidence, the motive is not a necessary ingredient for establishing the guilt. In the present matter, as per the prosecution's story, both the appellants were found assaulting each other when they were seen by the victim at the relevant time and then the victim intervened to save them. From this fact, one thing is quite clear that the victim had good feelings



towards the appellants at that time, otherwise, she would not have interfered in the quarreling allegedly being taken place in between both the appellants. Though, as per the FIR, the appellant Ranjit Kumar deemed the victim to be responsible for all his personal family clashes and it was deposed by P.W.-4, son of the deceased, that both the appellants used to call the victim as a *dayan* but the said fact does not seem reliable as the prosecution did not produce any material to show that a legal action in the past had been taken by the victim or her family against the appellants for calling the victim as a *dayan*, so, in the present matter, from the prosecution's evidences, a strong motive on the part of the appellants to kill the deceased does not appear and the said circumstance also goes in favour of the appellants.

17. Now, we come to the contradictions as to the body parts of the victim where the convict Sanjit Kumar inflicted *hasua* blow as pointed out by learned counsel appearing for the appellants. As per the FIR, the appellant Sanjit Kumar inflicted *hasua* blow only at the stomach of the victim and it is not the case of the prosecution that the second blow by the alleged same instrument was inflicted at other part of the body of the victim. But as per the evidence of P.Ws No. 1 and 2,



who claimed themselves to be eyewitnesses of the alleged occurrence, the appellant Sanjit Kumar inflicted two sickle blows on the body of the victim, first, in the stomach and second at her neck, which is clearly contradictory to the prosecution's story narrated in the FIR and also, to the evidence of P.W.4 and P.W.6, who did not say anything about the second blow by *hasua* (sickle) at the neck of the victim and according to them, only one blow by *hasua* was inflicted in the stomach of the victim by the appellant Sanjit Kumar and further, as per the postmortem report of the deceased, only one incised wound on the left diaphragmatic region in mid clavicular line was found as an external injury and the report does not show any external injury by *hasua* like instrument at the neck area of the victim. As such, there is serious contradiction in respect of the number of blows allegedly inflicted by the appellant Sanjit Kumar with *hasua* and the same also creates a serious doubt in the prosecution story.

18. Now, we come to the time of the alleged occurrence. As per the FIR, the alleged occurrence took place on 17.07.2014 at about 5:00 P.M., and all the material witnesses of the prosecution, who claimed themselves to have seen the occurrence, categorically stated that the alleged occurrence took



place at about 5:00 P.M. at the alleged place and the victim died on the spot, so, in view of this stand of prosecution, the time of the victim's death was between 5 P.M. and 5:15 or 5:30 P.M. The victim's postmortem examination was conducted on the same day at 9:45 P.M. within six hours of her death but as per the medical expert's opinion given in the postmortem report regarding the time of death of the victim, the death happened within 24 hours from the time of examination, which means that the victim had died at least 12 hours before from the time of conducting of postmortem examination. From the perusal of the facts stated in the cross-examination by the Doctor, it appears that if the victim had died within 6 hours from the time of postmortem examination then the medical expert would have opined the time since death 'within 6 hours' and on this point, P.W.-10 (Dr. Navin Kumar), who conducted the postmortem examination, was also cross-examined and he stated that if the postmortem is conducted within six hours from the death of a person then we write the time since death 'within six hours' and similarly, if the death happens within 12 hours from the postmortem examination, we write 'within 12 hours'. As per the medical findings given in the postmortem report, rigor mortis was present in all four limbs of the body of the deceased when it



was examined. As per the medical science, the rigor mortis begins to set in approximately two hours after death and is completed in about 8 to 12 hours and may last up to 24 hours or more. In the present matter, the postmortem examination on the dead body was conducted at 9:45 P.M. on 17.07.2024 and as per the prosecution's story, the alleged occurrence took place on 17.07.2014 at about 5:00 P.M., so, in such a situation, the rigor mortis was not possible in all four limbs of the body when postmortem examination was being conducted as there was a gap of only approx five hours in between the death of the deceased and the postmortem examination. By these medical opinions, it appears that the victim had died much before 5:00 P.M. on 17.07.2014, as such, there is a serious contradiction in respect of the time of death of victim disclosed in the prosecution's story and the time of death as opined by the medical expert, which also creates a serious doubt in the prosecution story.

19. Now, we come to the reliability of the first information report. In every criminal matter relating to an offence, the suppression of the first information regarding the commission of such offence can significantly impact the prosecution's case and if it is established that the actual FIR was



suppressed, it can lead to the dismissal of the prosecution's case. In present matter as per prosecution, the first information of alleged occurrence which was in the form of a written application, was filed on 17.07.2014 at 07:45 P.M. but as per the evidence of the investigating officer (P.W.-8), he had started the investigation before the registration of the FIR and he stated in the paragraph No. 3 of the cross-examination that he had received the information of the occurrence on telephone at 5:20 P.M., on that basis, sanha No. 370 was also entered. He further stated that he did not mention the complete details of the said sanha in the case diary nor file the copy of the sanha before the trial court. So, according to this statement, the I.O., who was Station House Officer (SHO) of the concerned police station at that time, had got the information of the alleged occurrence at 5:20 P.M. on 17.07.2014 and he also reduced that information into writing as Sanha No. 370 but the same was suppressed and not produced before the trial court and the said sanha can be deemed to be the actual first information of the alleged occurrence but the same was suppressed by the police. As per P.W.-7, the informant, he gave his written information to the SHO Vaishali. While as per P.W.-8, the written application was given by the informant to him at the door of the victim's house.



This contradiction as well as not producing the sanha No. 370 relating to the first information of the occurrence received by the SHO, Vaishali police station clearly shows that the actual first information of the occurrence was suppressed intentionally by the police, which casts a serious doubt in the prosecution's story and in this regard, we would like to refer the observation made in the judgment of the Hon'ble Apex Court passed in the case of **Nand Lal and Others vs. State of Chhattisgarh** reported in **(2023) 10 SCC 470** and the relevant paragraph No. 28 of this judgment is being reproduced as under :-

“28. We have already seen hereinabove the injuries sustained by Accused 11 Naresh Kumar. Much prior to lodging of the FIR at 3.15 a.m. on 4-11-2006 by Khomlal, the police had taken Accused 11 Naresh Kumar for medical examination. The memo forwarding Accused 11 Naresh Kumar for medical examination to medical officer mentions that Accused 11 had informed the police that at around 8.30 p.m., he was assaulted by Atmaram (PW 1). Undisputedly, the prosecution has suppressed information with regard to the said incident. The prosecution has also suppressed the FIR lodged by Atmaram (PW 1). It is thus clear that the prosecution has attempted to suppress the real genesis of the incident. Taking into consideration this aspect of the matter, coupled with the non-explanation of the injuries sustained by Accused 11 Naresh Kumar, we are of the considered view that Accused 11 Naresh Kumar is entitled to benefit of doubt.”

20. As per the prosecution story, the appellant Sanjit Kumar inflicted one *hasua* (sickle) blow in the stomach of the victim and he was caught at the spot by the people when



he was trying to flee but in the FIR, the names of the said people were not disclosed whereas it comes in the evidence of the prosecution witnesses that some persons were working in their field situated nearby the place of occurrence and P.W.-2 also stated that the assailant Sanjit Kumar was caught at the spot. The prosecution did not explain why the alleged hasua (sickle) was not seized or recovered by the investigating officer whereas the main assailant/appellant, who used that hasua in assaulting the victim, was caught at the spot and the said flaw in the investigation also creates a serious dent to the prosecution story. The I.O. (P.W.-8) stated in the paragraph No. 4 of the cross-examination that he prepared the inquest report of the deceased at 6:28 P.M., which shows that the same had been prepared before the registration of the formal FIR as the FIR is said to have been registered at 7:45 P.M. on 17.07.2014 and surprisingly, the said inquest report was also suppressed by the prosecution as the same was not produced and exhibited by the prosecution in documentary evidence, which casts a serious doubt in the prosecution's case.

Conclusion :-

21. After having discussed the prosecution's evidences and taking into account the submissions advanced by



both the sides and in the light of the facts and circumstances emerging from the prosecution's evidences, as discussed above, we are of the considered opinion that though, in this matter, the prosecution succeeded to prove the unnatural death of the deceased (victim) by an incised wound caused on left sub diaphragmatic region in mid clavicular line causing fatal injury to the left side of the heart of the deceased but the prosecution witnesses (P.W. 1, P.W. 2, P.W. 4 and P.W. 6), who claimed themselves as eyewitnesses of the alleged occurrence, do not appear to be eyewitnesses of the occurrence for the reasons discussed above and the place as well as the time of the occurrence, as described in the prosecution's story, are not established from the prosecution's evidences and the initial information which had admittedly been received by the S.H.O. of the concerned P.S. was withheld by the prosecution, which creates a serious doubt in the prosecution's allegation levelled against the appellants and also, taking into account the material discrepancies and contradictions appearing among the testimonies of the prosecution witnesses, we find that both the appellants are entitled to get the benefit of doubt and we are not persuaded to affirm the judgement of conviction of the trial court, therefore, the impugned judgment and order convicting



and sentencing the appellants for the charged offences are hereby set aside. The appellant No.2, namely, Sanjit Kumar is in judicial custody, so, he is directed to be released forthwith if his custody is not required in any other case. The appellant No.1, namely, Ranjit Kumar is on bail, so, he as well as his sureties are discharged from the liabilities of the bail bonds.

22. In result, the instant criminal appeal stands allowed.

23. Let the judgment's copy be sent immediately to the trial court as well as the jail authority concerned for information and needful compliance.

24. Let the LCR be sent back to the trial court concerned forthwith.

I agree (Shailendra Singh, J)

(Mohit Kumar Shah, J) (Mohit Kumar Shah, J)

annu/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.04.2025
Transmission Date	16.04.2025

