IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.876 of 2017

CNR No. BRHC010500032017

Arising Out of PS. Case No.-76 Year-1991 Thana- DARIYAPUR District- Saran

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Manoj Kumar Singh @ Anirudh Singh, S/o- Late Bimal Singh, Resident of Village- Mujauna, P.S.- Dariyapur, District- Saran at Chapra.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Birendra Kumar Singh, Adv.
For the Respondent/s : Mr. Shashi Bala Verma, APP.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH

C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE RANA VIKRAM SINGH)

Date : 28-10-2026

Assailing the judgment of conviction dated 06.07.2017 and order of sentence dated 12.07.2017 passed by Sri Umesh Chandra Shrivastava, learned Trial Judge of First Track Court No. II, Saran at Chapra in Sessions Trial No. 1772 of 1994 arising out of Dariyapur P.S. Case No. 76 of 1991 whereby appellant has been held guilty and convicted under Section 302 of the Indian Penal Code and has accordingly been sentenced to undergo life imprisonment with a fine of Rs. 25,000/- with default clause of failure in payment to fine will make him to undergo simple imprisonment for three months, the present appeal has been preferred.

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2. The factual matrix of prosecution case, shorn of unnecessary details could be summed up as follows:-

i) Informant Lal Babu Singh gave his *fardbeyan* to the police on 28.07.1991 at 02:15 alleging *inter alia* therein that at about 04:00pm while he was sitting at Brahma Asthan, his younger son Jalaj Kumar @ Mukul came and informed him that Anirudh Singh (appellant herein) and his wife have been assaulting his mother.

ii) The informant hearing this news rushed to his house where he saw the appellant, his wife and his son, Bhola @ Nitish were variously assaulting his wife with fists and slaps.

iii) On being objected to by informant, the appellant went inside the room and came out with his licensed gun and fired on Pankaj, son of informant, who fell down and when informant approached his injured son, wife of appellant injured him with back side of *farsha,* causing injury on his head.

iv) Thereafter he was assaulted with sickle (*hashua*) by wife of appellant causing injuries on his left knee and right wrist.

v) The reasons for the occurrence allegedly on account of dispute between the ladies of two families and the said occurrence was witnessed by Baijnath Singh, Bachhu Singh, Jagdish Singh and others.

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vi) The appellant Anirudh Singh @ Manoj is the full brother of the informant and when the injured son of informant was taken to hospital, he was declared dead by the doctor.

vii) On the basis of aforesaid *fardbeyan*, an FIR at Dariyapur P.S. Case No. 76 of 1991 dated 28.07.1991 for the offences punishable under Sections 341, 323, 324, 307, 302 and 34 of the Indian Penal Code as well as Section 27 of the Arms Act was registered.

3. Having registered the case, the police commenced investigation and after thorough investigation submitted charge-sheet against the accused under Sections 323, 324, 307 and 302 of the Indian Penal Code as well as Section 27 of the Arms Act and having perused the same and the materials available on record, the learned Chief Judicial Magistrate, Saran took cognizance of offences under Sections 302, 323, 324 and 307 of the Indian Penal Code and Section 27 of the Arms Act vide order dated 08.06.1994 and thereafter committed the case to the Court of Sessions vide order dated 27.07.1994.

4. Accordingly, on 28.07.1991 charges under Section 302 of the Indian Penal Code and Section 27 of the Arms Act were framed, which were read over and explained to the appellant in Hindi, to which he pleaded not guilty and claimed to be tried and hence, the trial commenced, where in order to

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bring home the charges, the prosecution produced and examined in all ten prosecution witnesses and in support thereof, two exhibits *viz*. signature of the informant on the *fardbeyan* (*exhibit 1*) and post-mortem report (*exhibit 2*) were exhibited.

5. Out of ten prosecution witnesses, P.W. - 4, P.W. - 5, P.W. - 6, P.W. - 7 and P.W. - 8 turned hostile.

6. At this stage, consideration and appreciation of the prosecution witness becomes expedient in the interest of justice in order to find out as to whether the prosecution has been able to prove the case against the appellant beyond all reasonable doubts.

7. P.W. - 1 is not an eye witness to the occurrence and whatever has been stated by him is on account of him having heard from others. In essence he has given hearsay account of the occurrence on the basis of information received from others, so his evidence is not worthy of giving much credence to.

8. P.W. - 2 is the daughter of the informant. Her evidence is important in certain respects and if her evidence is examined *viz-a-viz* the allegation levelled in the FIR, certain things becomes evident leading to expose the flaws in the prosecution case, such as:-

i) According to *fardbeyan*, informant was informed by his younger son, Jalaj @ Mukul that his mother was being

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assaulted by appellant and his wife, but P.W. - 2 in her examination-in-chief at paragraph no. 1 has categorically stated that appellant had only pushed her mother and she has not stated anything regarding assaulting her mother.

ii) According to *fardbeyan*, informant asked the appellant and his wife not to abuse his wife. It has virtually been contradicted by P.W. - 2, who is none else but the daughter of the informant in paragraph no. 16 of the cross-examination, where she has categorically stated that when her father i.e. informant reached house, her aunt (wife of the appellant) had already stopped abusing. Further in paragraph no. 17 of cross-examination she has stated that her father (informant) having reached the home, was standing at the door and he only came inside the house after his brother was hit by bullet.

In other words, informant reached the place of occurrence after gun shot injury to Pankaj (deceased), son of the informant. It clearly establishes that the informant did not see the actual act of firing and this creates doubt over the first version of the occurrence as recorded in the *fardbeyan*.

iii) P.W. - 3 being wife of the informant has also not supported the first statement of the informant that she was being assaulted by appellant and his wife, which is evident from paragraph no. 2 of examination-in-chief, where she had stated

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that she was being abused and there was fight between children of both the families and when she attempted to pacify the children, the appellant pushed her. Further in paragraph no. 24 of her cross-examination, the P.W. - 3 has categorically stated that at the time of firing, the informant was not there, he was outside the house and thereafter he came inside the house.

This very categorical statement of wife of informant, contradicts the very first statement of informant and casts serious doubt over the prosecution version.

iv) P.W. - 9 is the informant himself. In his evidence he has stated that the appellant had the licensed gun but neither the gun nor the license was produced by the prosecution. His statement in the *fardbeyan* that his wife is being assaulted but his very statement has been contradicted by none else than his wife and daughter who have categorically stated that informant reached the place of occurrence after the firing had already taken place. It has also come in evidence that informant was outside the house when the firing had taken place. So, he has not seen who had fired. Thus the very credibility of the first information given to the police by the informant becomes seriously doubtful.

From deposition of P.W.-9 it also becomes evident from paragraph no. 8 of his cross-examination that the dispute

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was going on between the children of two families on account of some balloon and the defence has categorically suggested that informant had assaulted Kanchan, the son of the appellant with sharp cut instrument in which he suffered grievous incised injury on his head, which finds corroboration from the injury report and on the very statement of Kanchan, the son of appellant, Dariyapur P.S. Case No. 80 of 1991 was lodged against the present informant i.e. P.W. - 9, for the occurrence said to have taken place on that very day i.e. 28.07.1991 at 02:00pm that is prior to the occurrence as alleged by informant which took place at 03:45pm.

The most glaring aspect of the fact which goes to the root of the prosecution case is that in the *fardbeyan* which is the basis of the FIR instituted by informant as Dariyapur P.S. Case No. 76 of 1991 implicating the appellant is that he gave his fardbeyan to the police at 02:15pm for the occurrence which alleged to have taken place at 03:45pm i.e. 1 hour 30 minutes subsequent to the recording of the *fardbeyan*.

How is it possible that the informant gave his *fardbeyan* at 02:15pm regarding the occurrence which said to have taken place 1 hour 30 minutes thereafter to 03:45pm. This also brings to the fore, the falsity and concoctedness of the instant prosecution case where the information to police

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precedes the actual occurrence. Further P.W. - 9 was also given a suggestion that the appellant has no licensed gun to which he feigned ignorance and he also feigned ignorance regarding institution of Dariyapur P.S. Case No. 80 of 1991 against him. Further in paragraph no. 7 of the cross-examination, the informant has himself stated that when he reached the place of occurrence, then the quarrel between the families had already subsided, which renders the *fardbeyan* unworthy of trust and credence.

v) The investigating officer in this case has not been examined. Even place of occurrence has not been established. Neither the gun was produced nor the cartridges alleged to have been recovered from the place of occurrence.

9. Further the weapon of crime i.e. the gun alleged to have been used by the appellant from which son of informant was shot, was never recovered by the police and hence, it was not seized. Further no empty cartridge was recovered from the alleged place of occurrence.

10. Further it is the not the case of the prosecution that after firing the fatal shot, the accused fled away from the place of occurrence with the gun. Had it been a case, then there could have been a possibility of the alleged gun from which crime was committed could not have been recovered or seized. On the

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contrary, from the cross-examination of the P.W. - 9 i.e. informant of the case, it is evident that the defence has put up a strong case that informant assaulted Kanchan i.e. son of the appellant with sharp cut instrument, causing grievous incised injury, which is evident from the injury report and on the very statement of the victim, the son of the appellant, a case at Dariyapur P.S. Case No. 80 of 1991was instituted on same date i.e. 28.07.1991. But the informant has simply showed himself to be unaware of causing any injury on the person of Kanchan i.e. son of the appellant.

11. Further the defence has also put up a case in course of cross-examination of P.W. - 9 that it is the informant who tried to kill Kanchan, the son of appellant by fire arm but by mistake his own son received gun shot injury which ultimately proved to be fatal, causing death of the son of the informant.

12. Learned Additional Public Prosecutor appearing on behalf of the State supporting the prosecution case and the judgment delivered by the learned Trial Judge submits that the P.W. -1, 2, 3 and 9 have categorically supported the prosecution case and the prosecution case finds support and corroboration from the post-mortem report which justifies the conviction of the appellant under Section 302 of the Indian Penal Code.

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13. Heard learned Advocates appearing on behalf of the respective parties.

14. At this stage, it becomes expedient in the interest of justice to keep in mind the legal principle that mere fact that a witness is related to deceased, is not a sufficient ground for discarding his testimony, as Hon'ble Supreme Court has repeatedly drawn a distinction between a "related witness and interested witness". The evidence of related witness must be a assessed on its own merit since relationship is a circumstance for scrutiny and not a ground for rejection. In the case of ***Dalip Singh & Ors. vs State of Punjab*** reported in ***AIR 1953 SC 364*** and ***State of Rajasthan vs. Kalki*** reported in ***(1981) 2 SCC 752.*** The Hon'ble Supreme Court has held as follows:-

> *"7. As mentioned above the High Court has declined to rely on the evidence of PW 1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an "interested" witness. She is related to the deceased. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a*

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> *litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested". In the instant case PW 1 had no interest in protecting the real culprit, and falsely implicating the respondents."*

15. The aforesaid principle applies with full force in the case at hand. The evidence of P.W. - 1, P.W. - 2 and P.W. - 4 could not be discarded only on account of them being related to the deceased. But the central issue is whether the testimony when examined at the background of the allegations as levelled in the FIR, there connection with the counter case and the objective circumstances emerging from the investigation inspires the degree of confidence required to sustain a conviction for murder.

P.W. - 1 is not a witness to the actual firing or the actual occurrence. He has over heard about the occurrence of initial fighting, beating of wife of informant and thereafter incident of firing which killed the son of informant. He could at best be said to be a hearsay witness, who primarily divulged the details as post occurrence situational backdrop. He himself said he had not witnessed the occurrence. Further he deposed he did not see the occurrence as he heard that he was at Brahma Asthan at the time of occurrence and he has also heard about the

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occurrence in which the appellant shot the son of informant and he further deposed that he heard about the dispute between the two parties over balloon.

Secondly, P.W. - 2 is the daughter of informant who categorically deposed that wife of appellant was abusing her by levelling allegation that she had taken balloon of appellant's son and she also categorically stated that when her mother tried to intervene, she was pushed by the appellant. Whereafter, Kanchan Kumar, son of informant, started quarelling. Informant in her *fardbeyan* given to police has categorically stated that her wife was being slapped and beaten by the appellant and his wife but P.W.-2, his daughter, has categorically denied any such occurrence by stating that her mother was simply pushed. Further P.W. - 2 has stated that when the informant reached the house, the quarrel between the parties had stopped and wife of appellant was not abusing at that time. The serious contradiction between the evidence of P.W. - 2, who is own daughter of the informant and the statement given by informant to the police are at variance with each other and as such, makes the prosecution case as made out in the FIR extremely doubtful in respect to the mode and manner in which the occurrence alleged to have taken place. Further when testimony of P.W.- 3, P.W. - 2 and P.W. - 9 are seen, examined and appreciated conjointly, then the

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contradiction with respect to the mode, manner, place and time of occurrence becomes more glaring which does not inspire confidence with respect to he allegation attributable to the appellant. The evidence of P.W. - 2 and P.W. - 3, who are none else than the daughter and wife of the informant respectively, virtually make the deposition of P.W.- 9 with respect to the mode, manner and place of occurrence regarding crime unworthy of any credence and trust.

16. In the backdrop of the entire gamut of evidence discussed hereinabove, the prosecution case becomes extremely doubtful in view of the following unimpecheable facts :-

(i) *Fardbeyan* was recorded at 02:15pm on 28.07.1991 whereas occurrence alleged to have taken place at 03:45pm, i.e. *fardbeyan* was recorded one and half hour prior to the actual time of occurrence.

(ii) P.W. - 2 and 3 have virtually demolished the case put up by the P.W. - 9 i.e. informant, both in *fardbeyan* as well as in his deposition in course of trial.

(iii) None examination of investigating officer proves to be very fatal to the prosecution case because place of occurrence is not established nor is there any evidence with respect to whether the empty cartridge was seized from the alleged or claimed place of occurrence or as to whether any gun

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was recovered or any licence of the gun was produced or seized.

iv) The prosecution has failed to explain how the injury was caused on the person of Kanchan. Even the informant, who was the prime suspect and the main accused for having injured Kanchan, feigned ignorance regarding his implication in a crime recorded by P.S. Case No. 80 of 1991 for causing injury on the person of Kanchan.

17. Genesis of the present case arising out of Dariyapur P.S. Case No. 76 of 1991 as well as Dariyapur P.S. Case No. 80 of 1991 lodged against the informant for causing injury on the person of Kanchan was same, but the informant denied having any hand in assault on Kanchan, who was the son of the appellant.

18. Thus, the aforesaid factual evidence renders the entire prosecution case doubtful, unworthy of any credence, which does not inspire confidence with respect to the culpability of the appellant. At this stage, it becomes imperative to understand the implication of non-examination of investigating officer. The Hon'ble Supreme Court in ***Behari Prasad vs. The State of Bihar*** reported in ***(1996) 2 SCC 317*** in paragraph no. 23 has held as follows:-

"23. It, however, appears to us that the entire case diary should not have been allowed to

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> *be exhibited by the learned Additional Sessions Judge. In the facts of the case, it appears to us that the involvement of the accused in committing the murder has been clearly established by the evidences of the eyewitnesses. Such evidences are in conformity with the case made out in FIR and also with the medical evidence. Hence, for non-examination of Investigating Officer, the prosecution case should not fail. We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross-examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal strait-jacket formula should be laid down that non-examination of Investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the sentence."*

19. It becomes evident that merely non-examination of investigating officer in every case is not fatal to the prosecution case, but where the place of occurrence is not fixed or established and there are dichotomous evidence of the prosecution witnesses with respect to the place of occurrence, then the examination of investigating officer becomes must, mandatory and necessary in order to reach a just and proper conclusion with respect to the guilt or culpability of the accused.

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20. In the present case, the prosecution witness nos. 2, 3 and 9 have given different account with regard to the place of occurrence, where P.W. - 2 and 3 are claimed to be the eye witnesses of the occurrence and P.W. - 9, the informant, who alleged to have reached the place of occurrence after actual commission of crime, have given different versions with respect to the place of occurrence. So in order to ascertain, fix and establish the place of occurrence, the evidence of investigating officer was necessary and essential in the case at hand and, as such, non-examination of the investigating officer in the case at hand is fatal to the prosecution case, since place of occurrence has not been established.

21. In view of the discussions made hereinabove, it can be said that in view of the serious contradictions between the three prosecution witnesses on whose evidence, the appellant has been convicted, it can be held that the evidence of P.W. - 9 is not of a sterling character. What amounts to a sterling character of witness has been authoritatively settled by the Hon'ble Supreme Court in the case of ***Rai Sandeep @ Deepu vs. State of NCT of Delhi*** reported in ***(2012) 8 SCC 21*** at paragraph no. 22 is as follows:-

"22. In our considered opinion, court the "sterling witness" should be of a very high quality

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and calibre whose version should, therefore, be unassailable. The considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt ax to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact

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> *while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."*

22. The above-mentioned decision was subsequently followed in a very recent judgement passed by the Hon'ble Supreme Court in ***Nirmal Premkumar and Anr. v. State Rep. By Inspector of Police*** reported in ***2024 SCC Online SC 260***.

23. Thus in view of the discrepancies between the evidence of P.W. - 2, P.W. - 3 and P.W. - 9, we are not in a position to hold that P.W. - 9 is a witness of a sterling character.

24. Thus, in the conspectus for factual legal discussions made hereinabove, we are not convinced with the reasonings given by learned Trial Court for convicting the appellant and, as such, the findings recorded by learned Trial Court holding the appellant guilty for the charges under Section 302 requires interference on account of it being not based on proper appreciation of the evidence produced during the trial.

25. Since the learned Trial Court has not found any evidence with respect to the commission of offence under Section 27 of the Arms Act and, as such, the learned Trial Court has not passed any judgment convicting the appellant for the

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offences committed under Section 27 of the Arms Act. This Court does not interfere with the aforesaid finding of the learned Trial Court regarding Section 27 of the Arms Act.

26. As a consequence the appeal stands allowed.

27. The judgment and order of conviction and sentence dated 06.07.2017 and 12.07.2017 respectively, passed by learned Fast Trach Court No. - II, Saran at Chapra in Sessions Trial Case No. 1772 of 1994 are hereby set aside and the appellant is directed to be released forthwith, if not wanted in any other case.

28. Issue release order at once.

(Rana Vikram Singh, J)

Bibek Chaudhuri, J : I agree

(Bibek Chaudhuri, J)

Supratim/-

AFR/NAFR	NAFR
CAV DATE	16.09.2026
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