

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.400 of 2017

Arising Out of PS. Case No.-256 Year-2014 Thana- KATEYA District- Gopalganj

Faiyaj Ali S/o Manir Ali, R/o vill. - Pipara, P.S. Majhagr, Distt. - Gopalganj

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

with

CRIMINAL APPEAL (DB) No. 241 of 2017

Arising Out of PS. Case No.-256 Year-2014 Thana- KATEYA District- Gopalganj

Heera Sahni S/o Deeplal Sahni, R/o Baraj Jagdish , P.S.- Uchkagon, District- Gopalganj.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

with

CRIMINAL APPEAL (DB) No. 413 of 2017

Arising Out of PS. Case No.-256 Year-2014 Thana- KATEYA District- Gopalganj

Raju Bind @ Rajalal Bind @ Raju Bin S/o - Late Triveni Bind R/o Vill. -Maksudpur, P.S. - Yadopur, Dist. - Gopalganj.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

Acts/Sections/Rules:

- Indian Penal Code (IPC) - Section 302, 307, 394, 411, 34
- Arms Act - Sections 25, 25(1-B)a, 26/35, 27(1)

Appeal - under Section 374(2) of CrPC - against conviction and order of sentence - conviction under Section 302 of IPC and Sections 25(1-B)a, 26/35 and 27(1) of Arms Act - Informant alleged in FIR that accused persons came to a liquor shop and looted the shop. Further, they it is alleged that they assaulted some persons and shot at one person during confrontation. The person who shot at, succumbed to injuries after 23 days.

Held - Seizure list was prepared not prepared in the presence of accused - TIP was not conducted by investigating agency - there are major contradictions and inconsistency in depositions given by prosecution witnesses - recovered pistols not sent for FSL analysis and opinion of ballistic expert - statement of deceased was not recorded by police- Doctor who had treated the injured not examined - IO did not find incriminating articles at place of occurrence - prosecution has not proved the case beyond reasonable doubt - Conviction set aside

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.400 of 2017

Arising Out of PS. Case No.-256 Year-2014 Thana- KATEYA District- Gopalganj

Faiyaj Ali S/o Manir Ali, R/o vill. - Pipara, P.S. Majhagr, Distt. - Gopalganj

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 241 of 2017

Arising Out of PS. Case No.-256 Year-2014 Thana- KATEYA District- Gopalganj

Heera Sahni S/o Deeplal Sahni, R/o Baraj Jagdish , P.S.- Uchkagon, Districg-
Gopalganj.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 413 of 2017

Arising Out of PS. Case No.-256 Year-2014 Thana- KATEYA District- Gopalganj

Raju Bind @ Rajalal Bind @ Raju Bin S/o - Late Triveni Bind R/o Vill. -
Maksudpur, P.S. - Yadopur, Dist. - Gopalganj.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 400 of 2017)
For the Appellant/s : Mr. Ajay Thakur, Advocate
Mrs. Vaishanavi Singh, Advocate
Mr. Nilesh Kumar, Advocate
For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 241 of 2017)
For the Appellant/s : Mr. Ajay Thakur, Advocate



For the State : Mrs. Vaishanavi Singh, Advocate
Mr. Amit Kumar Rakesh
Mr. Bipin Kumar, APP

(In CRIMINAL APPEAL (DB) No. 413 of 2017)
For the Appellant/s : Mr. Ajay Thakur, Advocate
Mrs. Vaishanavi Singh, Advocate
Mr. Nilesh Kumar, Advocate
For the State : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 19-01-2024

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 order of conviction dated 30th January, 2017 and order of sentence dated 6th February, 2017 passed by learned Additional Sessions Judge-I, Gopalganj in S.Tr. No.109 of 2016, arising out of Kateya P.S. Case No. 256 of 2014, by which all the appellants have been convicted for the offence punishable under Section- 302 of I.P.C., and Sections- 25(1-B) a, 26/35 and 27(1) of the Arms Act. For the offence punishable under Section-302 of I.P.C., they have been ordered to undergo R.I. for life with a fine of Rs.10,000/- each, for the offence punishable under Section- 25(1-B)a of the Arms Act, two years of R.I. with a fine of Rs.1000/- each, for the offence under Section-26/35 of the Arms Act, 3 years of R.I. with a fine of Rs.1000/- and for the offence



under Section-27(1) of the Arms Act, 5 years of R.I. with a fine of Rs. 1000/- each and, in default of payment of fine, the appellants have been further ordered to undergo six months' simple imprisonment. The sentences have been ordered to run concurrently.

2. Heard Mr. Ajay Thakur, Advocate assisted by Mrs. Vaishnavi Singh, Mr. Nilesh Kumar and Mr. Amit Kumar Prakash, advocates for the appellants and Mr. Sujit Kumar Singh, Mr. Bipin Kumar and Mr. Abhimanyu Sharma, learned A.P.P's. for the Respondent-State.

3. Prosecution story in brief is as under:

“On 01.11.2014, at about 9:00 p.m., the informant was at the liquor shop along with another sales man Sanjay Sah and Makardhwaj Chaudhary. Four persons came at the shop and three of them came in and one miscreant pointed his pistol on the temporal region of Sanjay Sah while another one assaulted Makardhwaj Chaudhary in which course he received injuries. Two others threatened not to raise alarm. In the meantime, one accused took out the amount collected from the cash box. In the meanwhile, one Anup Kumar Jaiswal came to the shop and tried to resist them on which one accused shot at him with his country-made pistol which proved fatal. Thereafter, all the accused persons started fleeing with cash and wine on their motorcycles. The injured was rushed to the hospital while the villagers started chasing the miscreants. When they were near Chhitauna School, police party also came there upon which they stopped chasing the miscreants and returned to the village. At 06:45 a.m. in the morning of 02.11.2014,



police brought the miscreants with two motorcycles, 12 live cartridges and looted cash. Eye-witnesses who are salesmen have identified the accused as the miscreants who have committed the offence alleged. The accused, upon interrogation, disclosed their identity as Heera Sahni, S/o- Deeplal Sahni, R/o- Village Barari Jagdish, P.S. Uchkagaon, Distt.- Gopalganj, Faiyaj Ali, S/o- Manir Ali, R/o- village Pipra Manjha, P.S. Manjhagarh, Distt.- Gopalganj, Raju Bin @ Rajalal Bin, S/o- Late Triveni Bin, R/o- village Khap Maqsoodpur, P.S. Yadopur, Distt.- Gopalganj and Rohit Kumar Singh @ Ashok Kumar Singh, S/o- Chandrika Singh, R/o- village Goplapur, P.S. Muffasil Siwan, Distt.- Siwan. It is specifically stated that firing upon Anup Kumar Jaiswal was made by accused Rohit Kumar @ Ashok Kumar Singh from his country-made pistol (*Katta*).”

4. Shri Ajay Kumar Thakur, learned advocate appearing for the appellants would submit that, as per the F.I.R., the occurrence took place on 01.11.2014 at about 9:00 p.m. and the informant along with other villagers chased four persons who came on two motorcycles. At that time, police also came there and, therefore, the informant and the other villagers returned from near the school situated at Chhitauna. It is further stated in the F.I.R. that at about 6:45 a.m. in the morning on the next day, police came with four persons who have allegedly committed the offence of robbery and also made firing from the country-made pistol (*Katta*). The said four persons have been identified by the informant and other three persons. It is further



stated that though the Police was present with the accused, it is surprising that the informant has given a written complaint to the police at 8:30 a.m. in the morning of 02.11.2014 narrating the entire details. It is further submitted that who had given information to the police and what was the said information was not brought on record by the prosecution. It is further submitted that it is surprising that the police after apprehending the four accused came to the place of occurrence and it is alleged that the informant and the other three persons have identified the accused as the miscreants who have committed robbery and made firing upon one Anup Kumar Jaiswal. It is further submitted that Test Identification Parade (hereinafter referred to as 'T.I.P.') was not conducted as per the provision of law and the identification of the accused in the presence of the police and without preparing any *Panchnama* cannot be accepted in evidence. The police authority ought to have concealed the identity of the accused and it was the duty of the police not to expose the identity of the accused to the so-called witnesses.

5. Learned advocate for the appellants would further submit that, though it is alleged by the prosecution that two motorcycles, twelve cartridges and an amount of Rs.7000/- was recovered from the accused, there is no evidence of seizure



of the firearms. Further, though the seizure-list is signed by two persons, the said seizure list witnesses have not been examined by the prosecution.

6. Learned advocate further submits that initially the F.I.R. was registered under Sections- 307, 394 and 411 of the Indian Penal Code (hereinafter referred to as I.P.C.) read with Sections- 27 and 25(1-B)(a) and 26 of the Arms Act, the injured died after a period of more than 23 days. However, the prosecution has failed to bring on record any evidence about the medical treatment given to the injured during the aforesaid period of 23 days. The Doctor who had given treatment to the injured was not examined by the prosecution. It is further submitted that charge-sheet was filed under Section-394, 302 and 34 of I.P.C. read with the provisions of the Arms Act. However, learned Trial Court has framed the charge under Sections-302/34 of I.P.C. and Section-27 and 25 of the Arms Act and not under Section-394 of I.P.C. Thus, learned advocate submits that the learned Trial Court has not believed the story of the prosecution with regard to commission of the offence punishable under Section-394 of I.P.C. It is further submitted that from the material placed on record and the allegation levelled by the prosecution, even the ingredients of Section-302



of I.P.C. are not made out, despite which the learned Trial Court has recorded the impugned order of conviction against the appellants. Learned counsel, therefore, urged that the impugned order be quashed and set aside.

7. On the other hand, learned A.P.P. Mr. Sujit Kumar Singh has opposed these appeals. It is mainly contended that the informant and two other prosecution-witnesses are the eye-witnesses. Initially, the informant was not aware about the names of the persons who came at the shop and committed the alleged offences. When the accused were apprehended by the police and brought to the village, the informant and two other eye-witnesses have identified the accused persons. Even the eye-witnesses have identified the accused who were present in Court during the course of trial. It is further submitted that the deceased died because of the firearm injuries sustained by him and, therefore, when the medical evidence supports the case of eye-witnesses, the learned Trial Court has not committed any error while passing the impugned order. Learned A.P.P., therefore, urged that these appeals be dismissed.

8. We have considered the submissions canvassed by the learned counsels for the parties.

9. We have also perused the materials placed on



record and the evidence led by the prosecution.

10. 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. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions.

11. From the record, it appears that the prosecution has projected five eye-witnesses, i.e. P.W.1 to P.W. 5.

12. P.W. 1, namely Makardhwaj Chaudhary has *inter alia* stated that the incident in question took place about one and a half years ago at 9:00 p.m. He along with Prabhu Nath Gupta and Sanjay Sah was present at the liquor shop of Shubh Narayan Chaudhary. Four unknown persons came there and one accused pointed his pistol on Prabhu Nath Gupta and another shot at the belly of Anup Sah. Accused also took away bottles of wine and cash. The witness and other villagers chased the accused and the accused were apprehended near Kalyanpur High School and looted articles were recovered from their possession. The witness claims to have identified the two accused present in Court but does not know their names.



12.1. In his cross-examination, the witness has stated that the police came after an hour of the incident. The injured were shifted to hospital before the police reached at the scene. He has further stated that Kalyanpur School is 7-8 k.ms. away from Jamunaha Bazar. A little amount of blood had spilled at the place where the fire was shot. Police came at the place of incident. He could not see the number of the motorcycle due to low visibility at night. The accused were apprehended 10 minutes after chasing them from the motorcycle.

13. P.W. 2, namely Sanjay Sah, has *inter alia* stated in his examination-in-chief that the incident took place about one and a half year ago at 9:00 p.m. He was on duty when four unknown persons entered the shop out of whom three came in. One of them pointed his pistol on the temporal region of Prabhuji Gupta and started assaulting him. On *hulla* when Anup Jaiswal came at the scene, one accused shot at him. During treatment he succumbed to injuries at P.G.I., Lucknow. When police arrived at the place of occurrence, the witness and others also chased the accused. Police apprehended the accused near Kalyanpur School and recovered two *Kattas*, bullets and an amount of Rs.12,000/-. He identified both the accused present in Court as the culprits who committed the alleged offence. He



does not know their names. He can identify the other accused by face.

13.1. In his cross-examination, he has stated that he cannot tell the denomination of the notes recovered. Daily sale of the shop was about Rs. 40,000/-. He has further stated that the accused took away the bottles in a ransack. He cannot describe the number and name the brands of wine bottles. He cannot say from which accused *Katta* and bullets were recovered. The accused were brought to the liquor shop where he identified them at 10:30-11:00 p.m.

13.2. In his cross-examination, on behalf of accused Heeralal Sahni, he has stated that information was given to the concerned police station on phone, but who had informed is not known to him. He cannot say what time did the police take to reach the place of occurrence. He cannot say whether police reached after one hour or three hours. Kalyanpur High School is 6-7 k.ms. away from Jamunaha Bazar. There was no special mark on either recovered money or on wine bottles.

14. P.W. 3, namely Rajan Jaiswal, has *inter alia* deposed that the incident in question took place about one and a half years ago at 9:00 p.m. Four accused came to the liquor shop on two motorcycles and three of them went inside the shop and



one stood outside. Two out of three pointed pistol on salesman Sanjay Sah and Prabhunath Gupta and the third accused started a scuffle with fists and slaps with Makardhwaj Chaudhary. One accused, in the meanwhile, took out bottles of wine and the money collected by selling wines. In the meantime, one accused fired at Anup Jaiswal which hit the left side of his abdomen, as a result of which, he fell down to the earth. He identifies both the accused present in Court by face and they were involved in committing the crime. Police came at the place of occurrence. Accused were chased and police apprehended them from near Kalyanpur High School. Looted wine bottles, amount looted from the cash box and motorcycles of the accused were seized. Accused were brought to the place of occurrence. Inquest report was prepared by the police. The witness put his signature on the same, carbon copy of which was marked as Exhibit-1.

14.1. In his cross-examination, he has stated that Kalyanpur is 5-7 k.ms. away from Jamunaha Bazar. He did not get opportunity to identify the accused in the police station. He was not present in the police jeep. He was following the jeep.

15. P.W. 4, namely Jawahar Keshri, has *inter alia* stated in his examination-in-chief that on the date of incident four accused came on two motorcycles to the liquor shop. Three



of them went inside the building and one stood at the gate. Accused persons pointed country-made pistols on two salesmen and one accused started keeping wine bottles and cash in a big gunny bag. One accused came out of the shop, started assaulting Anup Jaiswal and finally fired at him which hit his abdomen. He has further stated that police chased and apprehended them with two firearms, live cartridges, wine bottles and cash looted from the shop. He identifies both the accused present in the dock but does not know their names. He has stated that Anup Jaiswal died due to firing made on him.

15.1. In his cross-examination, he has stated that the liquor shop was run in a brick-built building and there was only one gate in the shop. There were several shops nearby. He has deposed that he was not with the police while chasing the accused. He was also not there when the articles seized from the accused were brought to the shop. He had not gone to the Kateya Police Station. He denies to have deposed falsely.

16. P.W. 5, namely Prabhunath Gupta, has stated that at the relevant time he was a salesman in the shop in question and selling wine. Salesmen Sanjay Gupta and Makardhwaj Chaudhary were also present with him. Four accused came there. One of them stayed at the gate while other



three entered the shop. One accused pointed country-made pistol on him and on Sanjay Gupta. They started altercation with Makardhwaj Chaudhary and one of the accused started collecting bottles of wine, pouches and also the amount of Rs.7000/- collected by selling wine. By that time, Anup Jaiswal reached there and resisted this act of robbery. At this, he was also assaulted and the accused who had pointed his pistol on him, fired at Anup Jaiswal in his abdomen. He died in the firing made by the accused. Thereafter the accused started fleeing away and the witness informed the police about the incident. After an hour police arrived at the place of occurrence and apprehended the accused and brought them to the shop from whose possession an amount of Rs. 7000/- was recovered with two firearms and 10-11 bullets. After this, he got a written application prepared and submitted it in the police station. He has identified his signature on the same which has been marked as Exhibit-2. He identifies the two accused involved in the crime by face, but does not remember their names.

16.1. In his cross-examination, he has stated that the accused had fled away before the police reach the spot. He had gone towards *Bazar* on foot with some other local people and he met the policemen near Chhitauna School after about an



hour. Police party went ahead of Chhitauna School and again came to the shop in question. No document was prepared in his presence. He has stated that an amount of Rs. 7000/-, two firearms and bullets were recovered. He does not remember the colour of the bullets nor the denomination of the notes. The distance of the school from the place of occurrence is about 1.5-2 kms. He was not knowing the accused from before. He does not know how to drive a motorcycle.

17. P.W. 6, namely Mahendra Kumar has stated in his examination-in-chief that on 02.11.2014 he was posted as the Station House Officer of Kateya Police Station. He got information at 9:15 p.m. that four accused persons have committed robbery in the Government Liquor shop and have injured one person by shooting at him. On getting this information, he proceeded to the place of occurrence with the police force and his subordinate staff. At the place of occurrence he got the information from the local people that the accused have fled away towards Bathua Bazar on motorcycles. When he reached near Kalyanpur High School, he found the accused repairing the headlight of the motorcycle. When police jeep reached there, they started fleeing away, however, upon chase they were apprehended. On search, a loaded country-made



Katta was recovered from accused Raju Bind, a loaded country-made *Katta* and two live cartridges from accused Rohit Kumar, three live cartridges from accused Faiyaj and three live cartridges and the amount of Rs. 7000/- from accused Heera Sahni. A seizure-list of the seized articles was prepared in presence of two independent witnesses, namely Bhola Jaiswal and Chhatthi Kesri and a copy was handed over to the accused. He has identified the seizure-list to be in his handwriting and signed by Bhola Jaiswal. The same is marked as Exhibit-3. He claims to identify all the accused and identifies the two accused as Faiyaj and Rabu Bind present in Court.

17.1. In his cross-examination, he has stated that he does not have the call details, but he had received a phone call from the Government liquor shop. He and others had started for the place of occurrence after 4-5 minutes and reached Jamunaha Bazar in 25 minutes. The distance of the school from Jamunaha is 10-12 kms. One motorcycle was out of order as its headlight was damaged at that very moment. There were two notes of denomination 500 and thirty-six of denomination 100. He does not remember the numbers of the notes. He does not know any of the accused from before. He does not know even the Bhola Jaiswal and Katthu Kesri. He denies the suggestion that he had



apprehended the accused from their house and falsely implicated them in the present case.

18. P.W. 7. Dr. Sanjiv Kumar is the treating doctor. He has stated that on 27th November, 2014 he was posted at Sadar Hospital GPJ as M.O. A medical Board was constituted of several doctors of which he was a member. The *post mortem* examination on the dead body of Anoop Kr. Jaiswal was conducted by the Medical Board and the following injuries were found:

“On external examination-

- I. Rigor mortis was present all four limbs, but disappearing.
- II. Sutured wound over epigastrium to umbilicus and left subcostal region.
- III. Nasogastric tube in situ.
- IV. C.V.P. Line in situ and left I.J.V.
- V. Ileostomy tube in situ.
- VI. Colostomy tube in R.I.F.
- VII. Sutured wound in left Mid back with viliary leak.
- VIII. Two tube drains having out from Left sub costal and Rt. Lumbar quadrant.

On dissection:-

(i) Head and neck – Skull intact membranes, Brain pale and intact.

Thorax:- Wall intact, lungs pale. Both chamber of heart empty.

Abdomen:- 1. Stomach and intestine empty tear in left



alom diaphragm gangrene jejunum with feeding tube insitu. Sub diaphragmatic abscess present with file stain. Bile stain pus present in Abdominal cavity.

Spleen absent. Urinary bladder empty.

Time since death- Within 24 to 48 hours.

Opinion- There was history of three operations following alleges. Fire arms injury in abdomen and chest. Operation was done K.J.M.C. Lucknow vide their discharge summary.

Cause of death- Due to septicemic of shock following multiple surgery allegedly done for fire arm injury.”

18.1. In his cross-examination, he has stated that he is now aware of the date and time of injury and he denied to have submitted the report on guess and the same is not true.

19. P.W. 8 Udai Kumar Singh is the officer to took over the charge of investigation. He has stated that, on 02.11.2014, he was posted at Kateya Police Station as an Inspector of Police. On the written complaint of Prabhunath Gupta, charge of investigation was handed over to him. He has identified the written complaint submitted in the pen and signature of Prabhunath Gupta and the same be marked as Exhibit-2/2. He received the seizure list and marked it in the case diary. He recorded the re-statement of the complainant and the statement of witnesses Sanjay Sah and Makardhwaj Chaudhary. He inspected the place of occurrence which is an



east facing one room brick-built and cast Government liquor shop No.1. In the north side there is a road, in the south is the building of Makardhwaj Chaudhary, in the east there is a lane and in the west there is medicine shop of Shambhu Sah. He has further stated that he recorded the confessional statement of accused Heera Sahni and he identifies his handwriting and signature on the same. The same be marked as Exhibit-5. He prepared the inquest report of deceased Anup Kumar Jaiswal was prepared through carbon process. He identifies the carbon copy of the same to be in his handwriting and signature. The same is marked as Exhibit-6. He has further stated that due to his transfer on 03.01.2015, he handed over the charge of investigation to the Station House Officer Shri Mahendra Kumar.

19.1. In his cross-examination, he has stated that he took over the charge of investigation on 2nd of November, 2014 and he was the 1st investigating officer. He had recorded the statements of the complainant Prabhunath Gupta and witnesses Sanjay Sah, Makardhwaj Chaudhary and Mahendra Kumar. He has further stated that he received the seizure-list in the police station. He had recorded the statements of Sanjay and Makardhwaj at the police station. Witnesses had not shown him



the stock register of sale of liquor. While inspecting the place of occurrence, he did not find any incriminating circumstantial evidence which could prove the commission of crime. He denies the suggestion that he had taken the confessional statement of accused Heera Sahni under threat and by using force. He has also denied the suggestion that he conducted a faulty investigation.

20. P.W. 9 Chandrashekhar Azad is another Investigating Officer. He has stated that he took over the charge of investigation from Mahendra Kumar Singh on 06.01.2015, preserved the original documents, perused the case diary and on 08.01.2015 visited the place of occurrence and recorded the statements of witnesses Rajan Jaiswal and Jawahir Kehri. On 27.01.2015, in compliance of the court order received the ballistic expert report and recorded the same in the case diary. He also produced the amount of Rs. 7000/- with country-made pistol (*Katta*), 4 misfired bullets, 4 live cartridges and 2 Samsung mobiles, 1 Nokia mobile and one Lava mobile which were marked as Exhibits-I to IV/3 respectively. Thereafter, he submitted the charge-sheet against accused Heera Sahni, Raju Bind, Rohit Kumar, Faiyaj Ali under Sections- 302, 394, 411 of I.P.C. and Sections- 27, 25(i)(a), 26 and 35 of the Arms Act.



20.1. In his cross-examination, he has stated that there was no special mark on the notes. He had got the *Katta* examined and there was no mark of any company. He had not obtained call details of the mobile. There is no mention of call detail in the case diary. The name of the owner of the mobile is not mentioned in the diary nor he has mentioned the company of the SIM in the case diary. He had not verified the recovered wine from the stock register of the shop. He does not know the distance of the place from which *Katta* was recovered from the shop. He had not recorded the statements of the nearby people of the school. All the bullets were of the same colour. He had not inquired the distance of the house of any of the accused from there. He has denied the suggestion of false implication of the accused and that actually they were dragged from their house and booked in the present case and the articles recovered were not seized from their possession rather the police had arranged the recovery.

20.2. In his further examination-in-chief, he has stated that on 27.01.2015 his In-charge senior Anil Kumar Malhotra has submitted ballistic expert report in Kateya P.S. Case No. 256/14 and the same is in the pen and signature of Anil Kumar Malhotra which he identifies. The same be marked



Exhibit-7.

20.3. In his further cross-examination, he has stated that the report was not prepared in his presence. It bears the initial of his In-charge junior.

21. We have re-appreciated the entire evidence led by the prosecution before the learned Trial Court. It would emerge from the record that the written complaint was given to the police station officer, Kateya, Gopalganj by P.W. 5, the informant, for the alleged occurrence which took place on 01.11.2014 at about 9:00 p.m. It is alleged that four unknown persons came to the liquor shop with two country-made pistols, gave threats to the informant and two other persons who were present in the shop.

22. It is revealed from the F.I.R. that the informant and the villagers chased the accused upto Chhitauna School. At that time, police came at the said place and, therefore, the informant and other village people returned from the said place. It is further stated in the written complaint that at about 6:45 a.m. on the next day, i.e. on 02.11.2014, police came with four persons who fled away from the spot on two motorcycles. The said persons were arrested with two country-made pistols, 12 live cartridges and the amount which was looted from the said



shop. It is further stated that the informant and other persons have identified the four persons as the persons who have committed the robbery and one of which has fired from his country-made pistol on Anup Kumar Jaiswal, as a result of which, he sustained injuries. At this stage, it is surprising to note that though the police came with the accused persons at the place of occurrence what was the necessity for the informant to give written complaint to the police. The police has not recorded the *fardbeyan* of the informant. Instead, written complaint was taken from him. It is further revealed that the distance between the place of occurrence and the place from which four accused were apprehended is only 7-8 kms. It is the case of the prosecution that the accused were repairing the headlight of the motorcycle on the main road and from the said place, the police apprehended all the four accused. The said story is also not believable. From the seizure list prepared by the officer who chased the accused, it is revealed that the said seizure list was prepared at 12:10 hours during night hours of 01.11.2014. However, the police brought the four persons at the place of occurrence at 6:45 a.m. in the morning of 02.11.2014. Further, it is an admitted fact that the T.I.P. was not conducted by the investigating agency and, surprisingly, the accused were



brought to the place of occurrence and in the presence of the police, so called eye-witnesses have identified them. It is also pertinent to note that there are major contradictions and inconsistency in the depositions given by the prosecution-witnesses. The informant in the written complaint has stated that the amount which was looted was recovered from the accused. However, he has not given the exact figure, whereas P.W. 2 has stated in his cross-examination that Rs.12,000/- was recovered from the accused. P.W. 5 has stated during cross-examination that Rs.7000/- were recovered from the accused. Similarly, P.W. 6, the police officer who has chased and apprehended the accused, has also stated in his examination-in-chief that Rs.7000/- was recovered from the accused Heera Sahni. Even the charge-sheet was filed against the accused for the offence punishable under Section-394 of I.P.C. However, at this stage, it is further relevant to note that the learned Trial Court has not framed the charge under Section-394 of I.P.C. against the accused. Thus, the theory of the prosecution that the four accused persons came at the shop of the informant and committed robbery and for the said purpose, when one person came to the shop, he was shot dead by the accused is not required to be believed. Thus, the motive attributed by the



prosecution for commission of the offence punishable under Section-302 of I.P.C. with regard to committing robbery is not, in fact, placed before the learned Trial Court. Thus, when the offence punishable under Section-394 of I.P.C. is not pressed into service before the learned Trial Court by the prosecution, then we fail to understand as to what was the intention of the accused to come to the place of occurrence and kill the deceased.

23. From the material placed on record, it further transpires that the T.I.P., as per the provisions of law, was also not conducted by the investigating agency. Instead, the accused were directly brought to the place of occurrence where the so-called eye-witnesses have identified the accused in presence of the police. Such a practice adopted by the police authorities is unknown to the law.

24. It is further revealed from the record that distance between the place of occurrence and the place from which accused were apprehended is only 7-8 kms. As per the informant, police came within 25 minutes. At that time, they were near Chhitauna School. That means the police came at the said place at about 9:30-9:45 p.m. and if the distance between the said place from the place from which the accused were



found repairing the headlight of the motorcycle is only 5-7 kms., the police could have reached the said place at about 10:00 to 10:15 p.m. However, from the seizure *Panchnama*, it is revealed that the seizure *Panchnama* was started at about 12:10 hours during night hours and it is surprising that at 6:45 a.m. on the next day, the police came with the accused to the place of occurrence. What happened between 12:10 to 6:45 a.m. is not at all explained by the prosecution. It is also surprising that though the accused were brought to the place of occurrence by the police and the informant was also present, his *fardbeyan* was nor recorded and the written complaint of the informant was obtained by the police authority.

25. Further, from the deposition of P.W. 8, the Investigating Officer who has carried out the investigation, it is revealed that during cross-examination he has admitted that though he had visited the place of occurrence and examined the same, he did not find any incriminating articles at the said place. It is further revealed from the record that though two country-made pistols were recovered from the accused, with empty and live cartridges, the said pistols were not sent for necessary analysis by F.S.L. and for getting opinion of the ballistic expert. It is further revealed that the injured sustained injuries and was



immediately shifted to the hospital, he died after a period of more than 23 days. During the said period, his statement was not recorded by the police nor anything is brought on record about his health condition. what was the treatment given to the said injured is also not brought on record. The Doctor who had given the treatment to the injured is also not examined by the prosecution.

26. Looking to the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellants/accused beyond reasonable doubt, despite which the learned Trial Court has passed the impugned order and, therefore, the said order is required to be quashed and set aside.

27. Accordingly, the impugned common judgment of conviction dated 30.01.2017 and order of sentence dated 06.02.2017 passed by learned Additional Sessions Judge-I, Gopalganj, in connection with Sessions Trial No. 109 of 2016, (arising out of Kateya P.S. Case No. 256 of 2014) is quashed and set aside. The appellants, namely, Faiyaj Ali, Heera Sahni and Raju Bind @ Rajalal Bind @ Raju Bin are acquitted of the charges levelled against them by the learned Trial Court.

28. Since all the appellants named above are in jail,



they are directed to be released from custody forthwith, if their presence is not required in any other case.

29. All the appeals stand allowed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	25.01.2024
Transmission Date	25.01.2024

