

IN THE HIGH COURT OF JUDICATURE AT PATNA

Mani Kant Singh @ Tunna Singh

v

State of Bihar

Criminal Appeal (DB) No. 210 of 2014

18 August, 2023

(Honourable Mr. Justice Vipul M. Pancholi and
Honourable Mr. Justice Chandra Shekhar Jha)

Issue for Consideration

Whether the conviction of the appellant under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act was sustainable in view of the evidentiary inconsistencies and credibility of witnesses.

Headnotes

The Investigating Officer had not sent an important paper for necessary examination to F.S.L. He had also not sent the soil with blood stains collected from the place of occurrence and empty cartridges for necessary analysis to the F.S.L. (Para 34)

Investigating Officer has not prepared the map/sketch of the place of incident and he has not enquired about the distance between the house of the first informant and the place of occurrence. - Story put forward by the prosecution that the first informant and his brother are the eye-witnesses cannot be believed. (Para 37)

Prosecution has failed to prove the case against the appellant beyond reasonable doubt. Appeal is allowed. (Para 38, 40)

Case Law Cited

Virendra v. State of Madhya Pradesh, AIR 2022 SC 3373; Raja Ram v. State of Rajasthan, (2005) 5 SCC 272; Bahal Singh v. State of Haryana, AIR 1976 SC 2032; Assoo v. State of Madhya Pradesh, (2011) 14 SCC 448; Javed Masood and Anr. v. State of Rajasthan, AIR 2010 SC 979

List of Acts

Indian Penal Code, 1860 – Section 302 read with Section 34; Arms Act, 1959 – Section 27; Code of Criminal Procedure, 1973 – Section 374(2)

List of Keywords

Murder; Eye-witness credibility; Chance witness; Delay in FIR; Hostile witness not declared; Evidentiary contradictions; Forensic lacunae; Acquittal

Case Arising From

Belsand P.S. Case No. 126 of 2011, District Sitamarhi, arising out of the conviction order dated 21.01.2014 and sentence order dated 27.01.2014

passed by the 1st Additional Sessions Judge, Sitamarhi in Sessions Trial No. 168 of 2012/47 of 2013.

Appearances for Parties

For the Appellant: Mr. Ajay Kumar Thakur, Ms. Vaishnavi Singh, Mr. Ritwik Thakur, Ms. Kiran Kumari, Mr. Tejendra Sinha, Advocate

For the State: Mr. Binod Bihari Singh, Addl. P.P.

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.210 of 2014**

Arising Out of PS. Case No.-126 Year-2011 Thana- BELSAND District- Sitamarhi

Mani Kant Singh @ Tunna Singh S/O Ratneshwar Singh Resident Of Village-
Madhkaul, P.S.- Belsand, District- Sitamarhi

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Ms. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate Ms. Kiran Kumari, Advocate Mr. Tejendra Sinha, Advocate
For the State	:	Mr. Binod Bihari Singh, Addl. P.P.

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 18-08-2023

The present appeal has been filed by the appellant/convict under Section 374(2) of the Code of Criminal Procedure, 1973 challenging the order of conviction dated 21st January, 2014 and order of sentence dated 27th January, 2014 passed by learned 1st Additional Sessions Judge, Sitamarhi in S.Tr. No. 168 of 2012/47 of 2013 arising out of Belsand P.S. Case No. 126 of 2011, whereby the concerned Trial Court has convicted the present appellant for the offences punishable under Sections 302 read with Section 34 of I.P.C. and under Section 27 of the Arms



Act, 1959. The appellant has been sentenced to undergo imprisonment for life and fine of Rs. 20,000/- in default of R.I. for 1 year for the offence under Section 302/34 and R.I. for 3 years and fine of Rs. 5,000/- in default R.I. for 3 months for the offence under Section 27 of the Arms Act, 1959. Both the sentences have been ordered to run concurrently.

2. The prosecution case in brief is as under:-

“The prosecution case, in nut shell, is that on 01.12.2011 at 08.45 A.M., father of the informant namely Hari Shankar Prasad had gone to take betel. All of a sudden, four miscreants namely Upendra Singh, Sudistha Singh, Manikant Singh @ Tunna Singh and Nitish Singh variously armed with pistol came there and seeing his father, one miscreant Upendra Singh order to kill him on which miscreants fired upon his father by their pistols which hited on panjara, left side abdomen, left side arm and right thigh. His father received injuries and fell down. On halla, the miscreants tried to flee away by making firing from their pistol. Two other miscreants were also with them. It is also mentioned in the fardbeyan of the informant that the miscreants have previous enmity with his father due to previous Mukhiya election. The injured was taken to S.K.M.C.H. Muzaffarpur for treatment by the informant, his brother Suresh Gautam and other where he was declared dead by the doctor.”

3. On the basis of the information given by the complainant, F.I.R. bearing Case No. 126 of 2011 dated 01.12.2011 came to be registered with Belsand Police Station for the alleged offences punishable under Section 302 read with Section 34 of the I.P.C. and under Section 27 of the Arms Act, 1959.



4. After registration of the F.I.R., the Investigating Agency carried out the investigation and during course of the investigation, the Investigating Officer recorded the statement of the witnesses. Dead body of the deceased was sent for *post mortem* and after the investigation was over, the Investigating Officer filed the charge-sheet against the present appellant.

5. At this stage, it is pertinent to note that the F.I.R. came to be registered against the two named accused and two unknown persons. The present appellant was shown as accused No. 3 in the F.I.R. As the other co-accused were not available for trial, the trial of the present appellant was separated. During the course of the trial, the prosecution had examined 14 witnesses and also produced documentary evidence. Thereafter, further statement of the appellant/accused came to be recorded under Section 313 of the Code of Criminal Procedure, 1973 and after conclusion of the trial, the Trial Court passed impugned order whereby the present appellant/accused has been convicted, as observed hereinabove.

6. Heard Learned Advocate Mr. Ajay Kumar Thakur for the appellant and Mr. Binod Bihari Singh, learned Additional Public Prosecutor for the Respondent-State.

7. Learned counsel for the appellant has referred to the depositions given by PW-1 to PW-6 and, thereafter, contended that



the aforesaid prosecution witnesses are natural witnesses and their presence at the place of incident was natural. The said witnesses have not given the name of the present appellant as an assailant. In spite of that, the Trial Court has convicted the present appellant. It is pointed out from the record that PW-1 to PW-6 were not declared hostile by the prosecution and, therefore, their deposition is binding to the prosecution. In support of the said contention, learned counsel has placed reliance upon the recent decision rendered by the Hon'ble Supreme Court in the case of **Virendra Vs. State of Madhya Pradesh** reported in **AIR 2022 SC 3373**. Learned counsel has particularly placed reliance upon Para 7 of the said decision. At this stage, the learned counsel has also relied upon the decision rendered by the Hon'ble Supreme Court in the case of **Raja Ram Vs. State of Rajasthan** reported in **2005 (5) SCC 272** and the decision rendered in the case of **Bahal Singh Vs. State of Haryana** reported in **AIR 1976 SCC 2032**. Learned counsel has also placed reliance upon **Assoo Vs. State of Madhya Pradesh** reported in **2011 (14) SCC 448** and the decision rendered in the case of **Javed Masood and Anr. Vs. State of Rajasthan** reported in **AIR 2010 SC 979**.

8. Learned advocate for the appellant, thereafter, referred to the deposition given by PW-7 to PW-9. After referring



to the deposition of the said witnesses, it is mainly contended that all the aforesaid witnesses are chance witnesses and their presence at the place of occurrence is unnatural. Even otherwise, there are major contradictions and omissions in the depositions given by the said witnesses and, therefore, the Trial Court has committed an error while placing reliance upon the said witnesses.

9. Learned advocated for the appellant thereafter submits that PW-10 i.e. Suresh Gautam who is the son of the deceased and brother of the original first informant as well as PW-11 namely, Ganesh Gautam who is also the son of the deceased and the original first informant, though are not eye-witnesses to the incident in question, but have been projected as eye-witnesses by the prosecution. Learned counsel referred to the deposition of the said witnesses and also referred to the depositions given by PW-13, Basudeo Prasad Yadav, Investigating Officer and thereafter submitted that the Investigating Officer had not prepared the sketch/map of the place of occurrence. It is also pointed out that, as per the deposition given by the prosecution witnesses, the first informant was residing in the flat on ground floor and, therefore, it was difficult for the first informant and his brother i.e. Suresh Gautam to witness the incident in question from their house.



10. Learned advocate Mr. Ajay Kumar Thakur for the appellant would, thereafter, submit that as per the case of the prosecution and deposition given by PW-13, Investigating Officer, the concerned Police Officer reached at the place of incident at 08:45 a.m. immediately when the incident in question took place and the said officer even chased the assailants. However, though the said Police Officer was present at the place of occurrence from 08:45 a.m., the F.I.R. came to be registered at 06:00 p.m. During the said period, nobody had disclosed the name of the assailants, including the present appellant, to the Investigating Officer.

11. Learned counsel, at this stage, also submitted that though the so called eye-witness, PW-10 Suresh Gautam, son of the deceased, was present at the place of occurrence and, as per his deposition, his deceased father had taken out piece of paper and sketch pen and, thereafter, written the name of the assailants, including the present appellant in the said piece of paper. Surprisingly, the said fact was not disclosed by him to the original first informant i.e. Ganesh Gautam. In the F.I.R. filed by PW-11 Ganesh Gautam, he had not referred to the so called chit written by his deceased father, wherein, the names of the assailants are disclosed. It is further submitted that the said chit allegedly written by the deceased was handed over to the Investigating Officer after



a period of 21 days and, therefore, it can be said that the said document is a concocted document.

12. Learned counsel, therefore, urged that though the prosecution has failed to prove the case against the appellant beyond reasonable doubt, the Trial Court has passed an order of conviction against the appellant. Learned advocate, therefore, urged that the impugned order be quashed and set aside and the present appeal be allowed.

13. On the other hand, Learned APP has vehemently opposed this appeal. Learned APP would mainly submit that PW-7, PW-8 and PW-9 are the eye-witnesses to the incident in question. They have specifically named the present appellant and the said witnesses who identified him. It is further submitted that PW-10 and PW-11, who are the sons of deceased, are also eye-witnesses to the incident in question and the first informant PW-11 had specifically given the name of the appellant in the F.I.R. itself.

It is further submitted that the deceased himself has written the name of the assailants on the piece of paper and the said document is produced by the prosecution during course of trial before the Trial Court. It is further submitted that merely because PW-1 to PW-6 did not specifically deposed against the appellant, the case of the



prosecution cannot be discarded when there are other eye witnesses who have fully supported the case of the prosecution. Learned APP, therefore, urged that no error is committed by the Trial Court while passing the impugned order of conviction against the appellant and, therefore, this Court may not entertain the present appeal.

14. We have considered the submissions canvassed by the learned counsel appearing for the parties. We have also perused the deposition given by the witnesses and the documentary evidence produced before the Trial Court. At the outset, it is pertinent to note that the alleged incident took place at about 08:45 a.m. on 01.12.2011 near the betel shop of PW-1 Mangal Sahni. Though there are alleged eye-witnesses to the incident in question, the F.I.R. came to be registered at 06:00 p.m. on 01.12.2011. Thus, there was a gross delay in lodging the F.I.R. The first informant has stated in the F.I.R. that on 01.12.2011 at 08:45 a.m., his father had gone to betel shop and he reached near the said shop situated near Vakalatkhana Gate. Suddenly all the accused named in the F.I.R. came at the place of occurrence and accused Upendra Singh asked the other accused to kill the father of the first informant. Thereafter, all the four accused opened fire and in the said firing, the father of the first informant sustained injuries. The first



informant has also stated that the incident had taken place because of the election of *Mukhiya*. He had further stated in the F.I.R. that his injured father was taken by him and his brother Suresh Gautam for necessary treatment to S.K.M.C.H, Muzaffarpur and during the course of treatment, the concerned Doctor declared him dead.

15. PW-1, Mangal Sahni, who is the owner of betel shop, has stated in his examination-in-chief that when he was at his shop on the date of incident at 09:30 a.m, Harishankar Prasad (deceased) came to his shop and sat on the bench after eating betel leaf. At that time, four persons came on two different motorcycles and the person who was sitting as pillion rider on second motorcycle opened firing on Harishankar Prasad. The said witness had specifically stated that the assailant had put on a helmet and he did not identify the assailant.

16. PW-2, Shambhu Kumar was coming to his medical shop. At that time, he heard the sound of firing and he had seen that Harishankar Prasad sustained injuries. However, he did not identify the assailant. The said witness has specifically stated that the appellant/accused was not present at the place of occurrence.

17. PW-3, Raushan Kumar, who was working in the Dispensary of Doctor, had deposed that at about 09:00 to 09:30 in the morning at the betel shop of Mangal Sahni, persons came on



two different motorcycles and opened fire and in the said incident Harishankar Prasad *Mukhiya* died. The said witness also identified the signature on the Seizure List (Exhibit-1). The concerned Police Officer prepared the *panchnama* of the place of incident and collected the blood stained soil and six empty cartridges. However, the said witness specifically stated that he knows the appellant Tunna Singh who is present in the Court. However, he had not identified the assailants of Harishankar Prasad *Mukhiya*.

18. PW-4, Harishchandra Sahni was having grocery store at the place of occurrence. The said witness had deposed that total four persons came at the place of occurrence on two different motorcycles. Harishankar Prasad *Mukhiya* was sitting on the bench near the betel shop and the person who was sitting as pillion rider on the second motorcycle opened fire in which the bullet hit *Mukhiyaji*. The said witness further stated that he knows accused Tunna Singh, who is a resident of Belsand. However, he was not the assailant.

19. PW-5, Ashok Thakur is the owner of a box shop. The said person also heard the sound of firing which took place near shop of Mangal Sahni and the assailants opened fire in which Harishankar Prasad *Mukhiya* sustained injury. The said witness



had also not identified the assailants. The said witness is not aware as to who were the assailants.

20. PW-6, Rajesh Kumar Rakesh is the witness to the *panchnama* (Exhibit 1/1). By way of the said *panchnama*, the concerned Police Officer collected the empty cartridges and blood stained soil from the place of occurrence.

21. PW-7, Daroga Sahni, has stated in examination-in-chief that on the date of occurrence, he had gone to Belsand market for the purpose of purchasing fertilizer. He had seen that *Mukhiyaji* was sitting on the bench near betel shop. At that time, on two different motorcycles, six persons came at the spot. The said witness had also given the name of the four assailants including the appellant. He further stated that after *Mukhiyaji* sustained injuries, all the assailants fled away from the spot on the motorcycle and, thereafter, injured *Mukhiyaji* was taken to Belsand Hospital. Elder son of *Mukhiyaji* went to call the Doctor. At that time, *Mukhiyaji* had taken out the piece of paper and written something on it. However, the said witness has further stated that he is uneducated and, therefore, he did not know what is written by the *Mukhiyaji*. He has further stated that the said piece of paper was given by *Mukhiyaji* to his younger son and, thereafter, *Mukhiyaji* was taken to Muzaffarpur. Thereafter, he came to know



that *Mukhiyaji* died. During cross-examination, the said witness had specifically stated that he is not having any agricultural land and he has been doing labour work. His village falls within Rupauli *Panchayat* and the deceased was *Mukhiya* of the said *Panchayat*. He was having relation with *Mukhiyaji* (deceased). The said witness in his cross-examination had specifically stated that when he reached to the place of occurrence near *Mukhiyaji*, *Mukhiyaji* fell down on the ground. At that time, except him, nobody else was present. He further stated that *Mukhiyaji* was in an unconscious position. He has further specifically deposed that after he reached at the place of occurrence, both the sons of the deceased came there and the said witness informed the sons of the deceased about how the incident took place. He has also stated that the piece of paper which was given by the deceased to his son was handed over to the Police after 10-11 days. At that time, the said witness was also present.

22. PW-8, Satyendra Sahni is a witness who has claimed that he was present at the shop of photocopier. He has deposed that Harishankar Prasad *Mukhiyaji* came to the betel shop of Mangal Sahni and, thereafter, he sat on the bench near the betel shop. At that time, persons came on three different motorcycles and the said persons started firing on *Mukhiyaji* in which he sustained injury.



The said witness also gave name of the four assailants, including the present appellant. During cross-examination, the said witness has specifically stated that immediately after the incident had taken place, he reached near the said place. However, at that time except him, nobody was present. He reached at the place of incident after 6-7 minutes. At that time, *Mukhiyaji* was unconscious. After he reached to the place of occurrence, son of *Mukhiyaji* came at the said place.

23. PW-9, Prabhu Sahni had stated in examination-in-chief that he had gone to the medical shop for purchasing medicine. At that time, he had seen that four persons came at the place of occurrence on two different motorcycles. He had given name of the present appellant and three others as the person who had opened fire and, after the incident took place, son of *Mukhiyaji* and other persons came at the said place. Thereafter, injured was taken to the hospital. The said witness in cross-examination stated that when he reached near *Mukhiyaji*, he was telling something and, thereafter, he was taken to the Hospital.

24. PW-10, Suresh Gautam is the son of the deceased and brother of the first informant. The said witness has stated in his examination-in-chief that at the time of the incident on 01.12.2011, he was residing in the house of one Sharmaji as a



tenant. His father had gone to betel shop of Mangal Sahni and when he heard the noise of firing, he saw that the assailants were firing on his father. The said witness has also given the name of the assailants. The said witness had specifically stated that his injured father was initially taken to Hospital at Belsand and when his brother went to call the Doctor, his father took out a piece of paper and wrote names of the four persons. Thereafter, Doctor came and informed that the injured be taken to S.K.M.C.H., Muzaffarpur. Thereafter, his father was taken to the said hospital where his father was declared dead. The said witness has also stated about the motive on the part of the accused to commit the crime i.e. the election of *Mukhiya*. However, the said witness during cross-examination had specifically admitted that the appellant/accused Tunna Singh was not having any enmity with his father. He had further stated that the primary treatment was given to his father in Belsand Hospital and that his father was semi-conscious when he had written on the piece of paper. The said witness did not inform to his brother that his father had written the name of the assailants on the piece of paper. Even when the first information was given before the Police, the said aspect was not disclosed by him.



25. PW-11, Ganesh Gautam, is the son of the deceased and the first informant. He has stated in his examination-in-chief that incident took place at 08:45 A.M. on 01.12.2011. His father had gone to the betel shop of Mangal Sahni. At that time, four assailants came at the place of occurrence and when Upendra Singh asked the other assailants to kill his father, all the four persons took out the pistol and opened fire in which his father sustained injury on various part of his body. Thereafter, his father was taken initially to the Government Hospital at Belsand. The concerned Doctor referred him to S.K.M.C.H., Muzaffarpur and when they reached the Hospital at Muzaffarpur, his father was declared dead. When he returned from Muzaffarpur, his brother informed him that his father had written name of the assailants on a piece of paper and the said piece of paper was also shown to him. However during cross-examination, the said witness had stated that they were residing on the ground floor of three-storeyed building. He has also admitted that there were a number of constructed houses in between his house and the shop of Mangal Sahni.

26. PW-12, Dr. Bipin Kumar was working in the Hospital at Muzaffarpur. The said witness had performed the *post*



mortem of the deceased. The said witness has specifically narrated about the injury sustained by the deceased as under:-

“Dead body was identified by 05/03 chawkidar Sukhdeo Ram.

Dead body was of obsessive and rigor mortis was present in upper limbs following *ante mortem* injury:-

1. One oval wound over left lower part of chest 1”x 1/2”x cavity deep with surrounded blackening and inverted margin entry wound of the fire arm.

2. One oval wound over left side of middle of back of chest 1 1/2 x 1/2” with everted margin exit wound of fire arm. Injury No.-1 and 2 were continuous with each other projectile in its cover fracture the ribs and lacerated the lower part of lungs, chest cavity was filled with blood.

3. One oval wound over left part of abdomen one inch below and four inch lateral to umbilicus with surrounded blackening and inverted margin 1” x 1/2” x cavity deep entry wound.

4. One oval wound over right lower part of abdomen.

Two inch above right illiac crest – 2” x 1” with everted margin exit wound.

Injury Nos.-3 & 4 were continuous with each other and projectile in its common pierces with intestine at various point and medial side through wound No.-4. Abdominal cavity was filled with blood.

5. One oval wound 1 1/2 x 1/2” over left upper arm over outer surface 3” above elbow joint with surrounded blackening with everted margin entry wound.

6. One oval wound 2” x 3/4” over medial side of left arm. Six inch above elbow joint with everted margin.



Opinion:- The deceased died due to hemorrhage and shock, as a result of above mentioned injuries caused by fire arm, may be by pistol.

These injuries are sufficient for death in ordinary course of nature.

Time elapsed since death within 2 to 12 hrs. from the time of examination.”

27. PW-13, Basudeo Prasad Yadav was working as S.I. in Belsand Police Station on the date of incident. The said witness has stated in examination-in-chief that the F.I.R. was registered on 01.12.2011 at 06:00 p.m. He had prepared Inquest Report and sent the dead body of the deceased for *post mortem*. He has further prepared the Seizure List and collected empty cartridges and blood stained soil from the place of occurrence. The said witness has specifically stated that on 22.12.2011, Suresh Gautam, son of Harishankar Prasad produced the piece of paper on which the deceased had written name of the assailants in his own handwriting. The said document was produced at Exhibit-7. The said witness has also stated in cross-examination that the Belsand Police Station is situated 200 to 250 yards from the place of occurrence. He has further stated that information with regard to the incident of firing was received in the Police Station at 08:45 a.m. and he immediately reached to the spot and examined the place. He also chased the assailant and, thereafter, prepared the *panchnama* of the place of incident. However, he has specifically



stated that he did not prepare maps/sketch of the place of occurrence. He has further specifically admitted that before the F.I.R. was registered at 06:00 p.m. on 01.12.2011, nobody had given the name of the assailants. He has further admitted that the piece of paper allegedly written by the deceased was given on 12.11.2011. However, he did not send the said letter to F.S.L. for necessary opinion. He also did not send the empty cartridges and blood-stained soil for analysis to the F.S.L.

28. PW-14, Raj Kishor Prasad Singh was working at Ahiyapur Police Station. He has recorded the information given by Ganesh Gautam in the Emergency Ward of S.K.M.C.H., Muzaffarpur. The *fardbeyan* is in his handwriting.

29. From the deposition of the aforesaid prosecution witnesses, it can be said that PW-1 to PW-6 are natural witnesses who were present at the place of occurrence in natural course. PW-1, as observed hereinabove, was the owner of the betel shop, whereas PW-2 was the owner of medicine shop. PW-4 is the owner of grocery shop, whereas PW-5 is the owner of box shop. All the shops are situated near the betel shop of PW-1 Mangal Sahni. If the depositions of all these witnesses are carefully examined, it is revealed that none of these witnesses had stated that the present appellant/accused was present at the place of occurrence. At this



stage, it is pertinent to note that all these witnesses are prosecution witnesses and the said witnesses are not declared hostile by the prosecution.

30. At this stage, the decision rendered by the Hon'ble Supreme Court in the case of **Virendra (supra)** is required to be considered. In **Paragraph-7** of the said decision, the Hon'ble Supreme Court has observed as under:-

“Both the courts shifted the burden on the defence. The evidence rendered by the prosecution witnesses was rejected, either as that of indifferent witnesses or as irrelevant evidence. We may note that these are all prosecution witnesses who were not treated as hostile. No attempt whatsoever was made either to treat them as hostile or to re-examine them except that of PW10. Not even a suggestion was put to them on the presence of PW15. In such a scenario, the statement made by the prosecution witnesses in favour of the accused would certainly inure to his benefit. Our view is fortified by the decision of this Court in Raja Ram v. State of Rajasthan, (2005) 5 SCC 272 : (AIROnline 2000 SC 474):”

31. In the case of **Javed Masood and Anr. (supra)**, the Hon'ble Supreme Court has observed that if the witness is not declared hostile by the prosecution, his evidence is binding on prosecution.

32. In the case of **Assoo (supra)**, the Hon'ble Supreme Court has made the similar observation.

33. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the facts of the present case are



examined, it can be said that the deposition of PW-1 to PW-6 is required to be considered by this Court, wherein, they have specifically stated that the appellant was not present at the place of incident and he was not the assailant.

34. So far as the deposition given by PW-7 to PW-9 is concerned, it is pertinent to note that the said witnesses are residents of one village namely, Oilpur. All these witnesses have stated that they had gone near the place of occurrence for different purposes. All the said witnesses have stated that the deceased was sitting on the bench near the betel shop of Mangal Sahni. However, the first informant namely, Ganesh Gautam, has stated in the F.I.R., which was lodged at 06:00 p.m. after more than 9 hours, that when his father reached near betel shop situated near Vakalatkhana Gate, four accused named in the F.I.R. came at the said place. Thus, there is major contradiction in the deposition given by the prosecution witnesses. It is further required to be noted that PW-8 has stated that the assailants came on three different motorcycles, whereas PW-7, Daroga Sahni had stated that six persons came on two different motorcycles whereas PW-9 deposed that four persons came on two different motorcycles at the place of occurrence. If the deposition given by the aforesaid witnesses is carefully examined, it is revealed that PW-7 had



specifically stated that first of all he reached near *Mukhiyaji* when he fell down on the ground. At that time, except him nobody else was present and the *Mukhiyaji* was unconscious, whereas PW-8, Satyendra Sahni, has stated in his cross-examination that when he reached at the place of occurrence where *Mukhiyaji* fell down on the ground, except him nobody else was present and after sometime, two sons of the deceased and other persons came at the place of occurrence. It is further required to be noted that PW-7 had specifically stated that in his presence, *Mukhiyaji* took out a piece of paper and he had written something on the said piece of paper and, thereafter, it was given to his son. However, he did not disclose the said aspect to the Police when his statement was recorded. The said piece of paper was produced by PW-10 Suresh Gautam after a period of 21 days before the Investigating Officer. The said aspect is specifically admitted by the Investigating Officer, PW-13 Basudeo Prasad Yadav. The Investigating Officer further admitted that he had not sent the said piece of paper for necessary examination to F.S.L. He had also not sent the soil with blood stains collected from the place of occurrence and empty cartridges for necessary analysis to the F.S.L. Thus, we are of the view that PW-7 to PW-9 are chance witnesses.



35. Learned counsel for the appellant has further placed reliance upon the decision rendered by the Supreme Court in the case of **Bahal Singh Vs. State of Haryana** reported in **AIR 1976 SC 2032**. In **Paragraph-10** of the said decision, the Hon'ble Supreme Court has observed as under:-

“As to the presence of P.W.s 4 and 5 at the time and place of occurrence the trial Court entertained grave doubts. If by coincidence or chance a person happens to be at the place of occurrence at the time it is taking place, he is called a chance witness. And if such a person happens to be a relative or friend of the victim or inimically disposed towards the accused then his being a chance witness is viewed with suspicion. Such a piece of evidence is not necessarily incredible or unbelievable but does require cautious and close scrutiny. In the instant case, P.W.s 4 & 5 were agnatic relations of the deceased-one of them a close one. The reason given by them for being at the place of occurrence did not appear to be true to the trial Court. There was not any compelling or sufficient reason for the High Court to differ from the evaluation of the evidence of the two chance witnesses. It may well be as remarked by the High Court that the respondent was also their collateral but they appeared to be partisan witnesses on the side of the prosecution and hence their testimony was viewed with suspicion by the trial Judge.”

Thus, evidence of chance witnesses does require cautious and close scrutiny.



36. It is also relevant to note that the PW-13, Investigating Officer has specifically admitted that the Police Station is situated at a distance of 200 to 250 yards from the place of occurrence and when the information was received at 08:45 a.m. about the incident of firing, he immediately reached to the spot and chased the assailant. He has also prepared a Seizure List and empty cartridges and soil with blood stain was collected. However, the said witness in Paragraph-21 of the cross-examination has specifically admitted that till 06:00 p.m. when the F.I.R. was lodged, nobody had disclosed the name of the assailants.

37. From the evidence produced by the prosecution, it is further revealed that Investigating Officer has not prepared the map/sketch of the place of incident and he has not enquired about the distance between the house of the first informant and the place of occurrence i.e. shop of Mangal Sahni. A number of houses are situated between the house of the informant and the place of occurrence and, therefore, the story put forward by the prosecution that the first informant and his brother are the eye-witnesses cannot be believed. Further, if the son of the deceased got the piece of paper written by the deceased himself, wherein the names of the assailants were written immediately after the incident took



place, why had he not informed about the said piece of paper and the name of assailants to his brother namely, Ganesh Gautam, who is the first informant. The said chit was not given to the first informant and not to the Investigating Officer. Therefore, there is no reference about the said piece of paper in the F.I.R. lodged by the first informant Ganesh Gautam. Further, as per PW-8, *Mukhiyaji* became unconscious on the spot, hence it is not possible that he had written the names of assailant on the piece of paper.

Further, the PW-10, Ganesh Gautam specifically admitted in Para-33 of his cross-examination that the present appellant Mani Kant Singh @ Tunna Singh was not having any enmity with his father. Further, the prosecution has failed to produce the papers of the Belsand Hospital where primary treatment was given to the deceased as per the case of one of the prosecution witnesses.

38. Thus, we have re-appreciated the entire evidence produced by the prosecution before the concerned Trial Court and we are of the view that the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt. Thus, the Trial Court has committed an error while passing the impugned order of conviction against the appellant/accused and, therefore, the said order is required to be set aside.



39. The impugned judgment of conviction dated 21st January, 2014 and order of sentence dated 27th January, 2014 passed by learned Additional Sessions Judge-I, Sitamarhi in S.Tr. No.168 of 2012/47 of 2013 arising out of Belsand P.S. Case No.126 of 2011 is set aside. The appellant, namely, Mani Kant Singh @ Tunna Singh is acquitted of the charges levelled against him by the learned trial court. He is directed to be released forthwith, if not required in any other case.

40. The appeal stands allowed.

(Vipul M. Pancholi, J)

(Chandra Shekhar Jha, J)

Sachin/-

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