

IN THE HIGH COURT OF JUDICATURE AT PATNA

Sharma Ram

vs

The State of Bihar

Criminal Appeal (DB) No. 465 of 2017

18 August ,2023

(Hon'ble Mr. Justice Ashutosh Kumar and

Hon'ble Mr. Justice Alok Kumar Pandey)

Issue for Consideration

Whether the conviction of the appellant under Sections 302 and 307 IPC was sustainable on the basis of evidence adduced.

Headnotes

If there is any faulty investigation, then it can be treated as laches of I.O. which does not affect case of prosecution adversely where direct, ocular and reliable evidence available on record. (Para 20)

Appellant has acted to hit informant's mother on the chest and informant's brother on the back by pasuli and there are other injured persons whose versions are quite consistent with the story of prosecution regarding the time of occurrence, manner of occurrence and place of occurrence. Moreover, the postmortem report has also supported the factum of time of death, number of injuries, place of injury and nature of injury. PW-7 has also identified the place of occurrence and boundary of place of occurrence which cannot be disbelieved. (Para 30)

Intention of the appellant has been proved with regard to commit the offence under Sections 302 and 307 of the I.P.C.(Para 35)

Appeal is dismissed. (Para 37)

Case Law Cited

Allarakha K. Mansuri v. State of Gujarat, **2002 SCC (Cri) 519**; Takdir Samsuddin Sheikh v. State of Gujarat, **AIR 2012 SC 37**; Brahm Swaroop v. State of U.P., **AIR 2011 SC 280**; Ranjit Singh v. State of Madhya Pradesh, **AIR 2011 SC 255**; State of M.P. v. Imrat, **(2009) 2 SCC (Cri) 558**; Lachman Singh v. State of Haryana, **(2006) 10 SCC 524**; Sadakat Kotwar v. State of Jharkhand, Cr. Appeal No. 1316/2021

List of Acts

Indian Penal Code, 1860: Sections 302, 307, 323, 324, 341, 504, 34; Code of Criminal Procedure, 1973: Section 313; Indian Evidence Act, 1872: Section 134

List of Keywords

Double murder; Attempt to murder ;Injured witness testimony; Pasuli weapon; Medical corroboration ; Defective investigation ; Reliability of sole witness ;Concurrent sentence

Case Arising From

Judgment of conviction dated 23.02.2017 and order of sentence dated 27.02.2017 passed by the learned Additional Sessions Judge-III, Siwan in Sessions Trial No. 446 of 2014 arising out of Hussainganj P.S. Case No. 96 of 2014.

Appearances for Parties

For the Appellant: Mr. Raghav Prasad, Advocate

For the Respondent: Mr. Dilip Kumar Sinha, APP

Headnotes Prepared by Reporter: Amit Kumar Mallick, Advocate

Judgment/Order of the Hon'ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.465 of 2017**

Arising Out of PS. Case No.-96 Year-2014 Thana- HUSSAINGANJ District- Siwan

Sharma Ram Son of Ramaji Ram Resident of Village- Jurkan, P.S.-
Hussainganj, District- Siwan.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Raghav Prasad, Adv.

For the Respondent/s : Mr.Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 18-08-2023

1. The present appeal has been directed against the judgment of conviction dated 23.02.2017 and order of sentence dated 27.02.2017 passed by learned Additional Sessions Judge-III, Siwan in Sessions Trial No. 446 of 2014 arising out of Hussainganj P.S. Case No. 96 of 2014 whereby the sole appellant has been convicted for the offences punishable under Sections 302 and 307 of the I.P.C. and accordingly, he has been sentenced to suffer life imprisonment for murder of each of deceased Gangiya Devi and Santosh Kumar Ram under Section 302 of the I.P.C. The sole appellant has further been sentenced to fine of Rs. 2,500/- for murder of deceased Gangiya Devi and Rs. 5,000/- for murder of deceased Santosh Kumar Ram under Section 302 of the I.P.C. The



appellant has further been sentenced to suffer life imprisonment for making attempt to commit murder of injured Ramashanker Ram along with a fine of Rs. 4,000/-, ten years imprisonment and a fine of Rs. 1,000/- for making attempt to commit murder of injured Bacchi Kumari and ten years imprisonment and a fine of Rs. 1,000/- for making attempt to commit murder of injured Manjit Kumar (informant) for the offence punishable under Section 307 of the I.P.C. The sentences have been ordered to run concurrently.

2. According to fardbeyan (Ext. 11) of informant (PW-2), the occurrence is of 16.04.2014 at near about 9:00 PM for which fardbeyan was recorded by S.I. Satyendra Prasad of Hussainganj police station District Siwan at emergency ward of Sadar Hospital, Siwan on the same day at 11:45 PM and immediately whereafter FIR was registered.

3. The prosecution case, as stated by the informant, in brief, is that on the fateful day i.e. 16.04.2014 at 9:00 PM when informant reached to his house after doing work from Siwan, the appellant and others started abusing the informant at his residence situated at village Jurkan. At the relevant time, co-accused, namely, Hira Lal Ram, his wife, and Baby Devi began to assault the informant. Meanwhile, the informant's father Rama Shankar Ram (PW-1) and informant's brother Santosh Kumar Ram (since



deceased) came to rescue the informant (PW-2) but they were also abused. The informant's mother Gangiya Devi (since deceased) came and started to pacify the scuffle. Meanwhile, the appellant came with pasuli and pierced into the chest of informant's mother Gangiya Devi (since deceased). The appellant also pierced pasuli upon the back of informant's brother Santosh Kumar (since deceased). It is also claimed by the informant that appellant hit the informant's father (PW-1) as a result of which he sustained cut injury at four to five places. It is also claimed that all the three injured fell down on the ground and began to scream. It is also stated by the informant (PW-2) that appellant also assaulted on the informant's right hand due to which he sustained injury on hand. Thereafter informant ran towards the field and began to cry. On the arrival of villagers appellant and other fled away. It is asserted by the informant that when he reached at his house, his mother Gangiya Devi had died. The informant's brother Santosh Kumar Ram also died after being arrived in Sadar Hospital. It is claimed by the informant that informant's mother and brother have been concertedly killed by the appellant and others under conspiracy. It is further claimed by the informant that prior to this occurrence, family members of informant were assaulted by the appellant and others which was reconciled through panchayati.



4. On the basis of fardbeyan of the informant, Hussainganj P.S. Case No. 96 of 2014 dated 17.04.2014 was registered under Sections 341, 323, 324, 307, 504, 302/34 of the IPC. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, appellant and others came to be charge-sheeted under Sections 341, 323, 324, 307, 302, 504/34 of the IPC. The learned trial court took cognizance against the appellant and others under Sections 341, 323, 324, 307, 302, 504 of the IPC. Thereafter, the case was committed to the court of sessions after following due procedure. The learned trial court was pleased to frame charge against the appellant under Section 302 of the I.P.C. Furthermore, the learned trial court framed charges under Sections 302/34, 323/34, 341/34, 324/34, 504/34 and 307/34 of the IPC against the appellant and others. Charges were read over and explained to the appellant and others to which they pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of accused persons, prosecution has examined altogether seven witnesses. PW-1 Ramashankar Ram (injured), PW-2 Manjit Kumar Ram (informant cum injured), PW-3 Dr. Sunil Kumar Ranjan, PW-4 Prem Kumar Ram, PW-5 Tetri Devi, PW-6 Bacchi Kumari (injured) and PW-7 Satyendra Prasad (I.O.).



Prosecution has relied upon following documentary evidence on record:-

Ext. 1- Signature of informant on fardbeyan.

Ext. 2- Signature of informant on carbon copy of inquest report of deceased.

Ext. 3- Postmortem report of deceased Gangiya Devi.

Ext. 4- Postmortem report of deceased Santosh Kumar Ram.

Ext. 5-Injury report of injured Ramashankar Ram.

Ext. 6-Injury report of injured Bacchi Kumari.

Ext. 7-Injury report of injured Manjit Kumar Ram (informant).

Ext. 8- Signature of PW-4 on fardbeyan.

Ext. 9-Signature of PW-4 on the carbon copy of inquest report of deceased Gangiya Devi.

Ext. 9/1- Signature of Jitendra Yadav on the carbon copy of inquest report of deceased Gangiya Devi.

Ext. 10- Signature of PW-4 on the inquest report of deceased Santosh Yadav.

Ext. 11- Fardbeyan.

Ext. 12-Signature of the then S.H.O. Hussainganj P.S. Ashish Kumar Mishra on the formal FIR.

Ext. 13-Carbon copy of the inquest report of deceased Gangiya Devi.

Ext. 14-Carbon copy of the inquest report of deceased Santosh Kumar Ram.

Ext. 15-Seizure list of Pasuli.

Ext. 16-Injury letter of Manjit Kumar Ram prepared by police officer Baban Tiwari.



Ext. 17- Injury letter of Ramashankar Ram prepared by police officer Baban Tiwari.

Ext. I (Material Exhibit)-Pasuli of iron.

6. Defence has also produced four witnesses in his defence. DW-1 Jitendra Yadav, DW-2 Abhishek Kumar, DW-3 Satyendra Ram and DW-4 Lachan Manjhi.

Defence has also relied upon following documentary evidence on record which has been marked as under:-

Ext. 18-Signature of DW-1 Jitendra Yadav on the carbon copy of inquest report of deceased Gangiya Devi.

Ext. 19- Signature of DW-1 Jitendra Yadav alongwith signature of Abhishek Yadav on the search cum seizure list.

Defence of the appellant and others as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial.

7. After hearing the parties, the learned trial court was pleased to convict the appellant and to sentence him as indicated in the opening paragraph of the judgment. However, co-accused Ramji Ram, Hiralal Ram, Chandrawati Devi and Babi Devi stood acquitted by the learned trial court by the same judgment.



8. We have heard the learned counsel for the appellant at sufficient length of time. Following submissions have been made on behalf of learned counsel for the appellant:-

Learned counsel for the appellant submitted that inquest report was prepared earlier than fardbeyan. Learned counsel further submitted that inquest report itself indicates that same was prepared at 11.30 PM and FIR was lodged at 11:45 PM on the same day. PW-2 who is informant of the case is one of the witnesses of inquest report and it can easily be concluded that being a witness of inquest report, he was aware of the fact regarding nature of injury of the deceased and later on, being informant of this case recorded the fardbeyan and framed accusation against the appellant as there was no trigger point as to why the scuffle took place leading to death of two persons, namely, Gangia Devi and Santosh Kumar Ram. In this way, the facts narrated by the informant in fardbeyan is totally afterthought and imaginary in nature. Learned counsel further submitted that no blood was found at the place of occurrence. No blood was found at pasuli and pasuli was recovered from the house so manner of occurrence has not been proved by the prosecution and no motive behind the occurrence has been proved in the light of given facts and circumstances of the case. He further submitted that not a



single independent witness has been examined by the prosecution. All the witnesses are family members which creates doubt regarding the genuineness of prosecution story. He further submitted that in the statement recorded under Section 313 of the Cr.P.C., no question was asked regarding recovery of incriminating material from the house of the appellant which caused prejudice to the appellant. In support of his contention, learned counsel for the appellant has cited a decision reported in AIR 2000 SC 2207.

9. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor appearing for the State submitted that this is the case of double murder in which informant (PW-2) himself is injured person who sustained injury and he is eye witness of the alleged occurrence and he is a witness that comes with a built-in-guarantee of his presence at the scene of the crime and he is unlikely to spare his actual assailant in order to falsely implicate someone. He further submitted that informant (PW-2) has specifically and categorically supported that appellant pierced pasuli in the chest of his mother (Gangia Devi) as well as on the back of his brother (Santosh Kumar Ram). He further submitted that Gangiya Devi and Santosh Kumar Ram have been killed by the act of the appellant as the postmortem report totally supported and corroborated the story of prosecution on the point of injury



sustained by both of the deceased as both of them sustained sharp cut injuries and injuries found on the dead body of deceased persons are sufficient to cause death in ordinary course of nature. In this way, version of PW-2 is totally consistent with the postmortem report as opined by the doctor regarding death of two deceased. From perusal of deposition of PW-2 (informant), it is crystal clear that besides informant, other injured persons are PW-1 (informant's father) and PW-6 Bacchi Kumari. In the initial version of story of prosecution, it has already been narrated that PW-1 Ramashanker Ram sustained cut injuries at four to five places by the act of the appellant as fardbeyan is the initial version regarding the occurrence and same is quite evident from the injury report of PW-1 Ramashanker Ram (Ext. 5) which clearly corroborates the place of injury upon the body of victim caused by sharp cutting weapon. In this way, presence of PW-1 at the place of occurrence cannot be doubted regarding the story of prosecution. PW-1 has also supported the time of occurrence, place of occurrence and manner of occurrence and he has totally corroborated the version of PW-2 (informant). He further submitted that PW-4, PW-5 and PW-6 have also supported and corroborated the story of prosecution regarding the manner of occurrence, place of occurrence and time of occurrence. PW-7



who is investigating officer of the case, has identified the place of occurrence. PW-3 who was head of the medical board conducted the postmortem upon two dead bodies namely, Gangia Devi and Santosh Kumar Ram. The medical board headed by PW-3 also examined three injured, namely, Ramashanker Ram (PW-1), Manjit Kumar Ram (PW-2) and Bacchi Kumari (PW-6). Medical evidence has corroborated the story of prosecution regarding place of injury, manner of injury, nature of injury including weapon used in committing the said injuries. Time of death assessed by the doctor was within 6 to 24 hours as same is totally consistent with the story of prosecution regarding the time of occurrence. In this way, whole prosecution witnesses i.e. from PW-1 to PW-7 are quite intact and there is no reason to disbelieve the version of prosecution witnesses regarding the manner of occurrence, place of occurrence and time of occurrence. Lastly, he submitted that the impugned judgment of conviction and order of sentence passed by the learned trial court is quite tenable and hence, no interference is required.

10. We have perused the impugned judgment and trial court records. We have given our thoughtful consideration to the rival contention made on behalf of the parties as noted above.



11. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court in the light of the offence punishable under Sections 302 and 307 of the IPC.

12. It is necessary to analyze evidence of PW-2 (informant), who is one of the injured persons of the present case, has narrated the facts by recording the fardbeyan at emergency ward of Sadar Hospital by giving graphic description of entire facts. This witness has specifically and categorically stated that the sole appellant pierced pasuli in the chest of informant's mother (since deceased) and again appellant pierced pasuli upon the back of informant's brother (since deceased) and informant's father (PW-1) sustained cut injuries at four to five places by the act of the appellant and three injured persons fell on ground and began to scream. Again informant was attacked by the appellant as a result of which he sustained injury on right hand. The importance of said witness lies in the light of fact that he gave fardbeyan at emergency ward of Sadar Hospital and the initial version of story of prosecution has already been discussed in foregoing paragraphs. When we examine the testimony of said witness, it is found that his statement during examination-in-chief supported the story of prosecution regarding manner of occurrence, place of occurrence and time of occurrence and during cross-examination, his evidence



is quite intact and nothing has been elucidated in cross examination to make dent in the story of prosecution. In this way, he is reliable witness as he is the sufferer himself and thus, there would be no occasion for such a person to state an incorrect version of the prosecution, or to involve anybody falsely and in the bargain to protect the real culprit. Keeping in view the importance of the fact regarding occurrence as stated by this witness first in the point of time while recording fardbeyan has been supported by this witness during adducing evidence in the court. In this way, PW-2 has specifically and categorically supported the version of story of prosecution and this witness can be categorized as a star witness of this case.

13. PW-1 Ramashanker Ram is also one of the injured witnesses of the case as same is evident from the initial version of the prosecution story and which is corroborated by the injury report of PW-1 (Ext. 5). In this way, he is one of the best witnesses of this case whose presence at the place of occurrence cannot be disbelieved. This witness has also specifically and categorically supported the version of PW-2. This witness has elaborated during course of adducing evidence that how Gangia Devi and Santosh Kumar Ram have been killed by the appellant by means of pasuli and how he has been injured by the act of the



appellant. This witness has also stated that informant (PW-2) and Bacchi Kumari (PW-6) have also been assaulted by the appellant. This witness has also supported the time of occurrence, manner of occurrence and place of occurrence. Nothing is found in the cross examination of this witness to discredit the reliability of said witness.

14. PW-3 is Dr. Sunil Kumar Ranjan. This witness states that he was posted as Medical Officer, Sadar Hospital, Siwan and forwarded for conducting postmortem on the dead body of deceased Gangiya Devi and Santosh Kumar Ram and medical board was constituted by the Deputy Superintendent, Sadar Hospital, Siwan and the said medical board was headed by this witness. This witness conducted postmortem on 17.04.2014 at 7:30 AM on the dead body of Gangiya Devi and found following ante mortem injuries:-

(External Appearance) External Injuries:-

(i) Both eyes and mouth opened and bleeding from nostril.

(ii) Rigor mortis was present in all four limbs.

Injuries:-

(i) Incised wound of size 1 and 1/2"x 1/2"x 1 and 1/2" deep on left back of scalp

(ii) Incised wound 1"x1/2"x chest cavity deep on left mid subclavicular fossa.

On dissection:-



Skull Bone and brain intact, no haemotoma.

Neck and chest-Chest bone intact, haemotoma of size 10" x 10" underneath muscle of left mid neck.

Upper Chest-Blood and clot present on left chest cavity.

Incised wound 1/2"x 1/2"x 1" deep on mid zone of left lung. Right lung intact.

Heart-All chamber empty, big haemotoma size 5"x 10" in front of mid thoracic spine (3rd to 5th spine), incised wound 1/2"x 1/2"x vessel deep i.e. injury of arch of aorta.

Abdomen- All visceral organs pale and intact.

Stomach-Semi digested food particles present.

Small intestines-Fluid and gas present.

Large intestines- faeces and gass present

Urinary bladder-empty.

Time elapsed since death- within 6 to 24 hours.

Death due to haemorrhage and shock caused by above mentioned injuries due to heavy sharp substance (instrument) and injuries found on the dead body of Gangia Devi are sufficient to cause death in ordinary course of nature. This injury report is in his pen and signature and mark as Ext-3.

On the same day i.e. 17.04.2014 at 7:50 AM postmortem was conducted on the dead body of Santosh Kumar Ram and found following ante mortem injuries:-

(External Appearance) External Injuries:- Both eyes and mouth closed. Rigor mortis present in all four limbs.

Injuries:-



(i) incised wound 2" x ½" x cavity deep on left 2" paravertebral region at T9-10th (thoracic spine).

(ii) Incised wound 2½" x ½" x ½" deep left lower third of arm.

On dissection:-

Skull-Bone and meninges intact. Neck – No injury, Chest-Bony cage intact, left chest of cavity-full of blood. Incised wound ½" x ½" x ½" on left lower zone of lung. Right lung pale and intact. Heart- All chambers empty. Haematoma – 5" x 5" in front of thoracic spine 7th & 8th including injuries (incised wound) – 1/3" x ½" x vessel deep in venacava and associated artery, Abdomen – All visceral organs intact. Stomach – semi digested food particles present. Small intestine-food and gases present. Large intestine – faeces and gases present. Urinary bladder – partially full.

Time elapsed since death within 6 to 24 hours. Death due to above mentioned injuries due to hemorrhage & shock caused by heavy sharp cutting substance. The injuries found on the dead body of Santosh Kumar Ram is sufficient to cause death in ordinary course of nature. The postmortem report is in his presence & signature and same is marked as Ext-4.

15. From perusal of evidence of doctor, it is evident that time of death of both deceased was between 6 to 24 hours. Time of death as assessed by the doctor is totally consistent with the story of prosecution. So far as nature of injury of both deceased is concerned, it has been opined by the doctor that injuries found



upon body of the deceased are sufficient in ordinary course of nature to cause death and Ext. 3 (postmortem report of Gangiya Devi) and Ext. 4 (postmortem report of Santosh Kumar Ram) completely corroborate the story of prosecution.

Besides conducting two postmortem, the medical board has also examined Ramashankar Ram on 16.04.2014 at 10:05 PM and found following injuries:-

(i) incised wound – 2” x 1” x ½” deep over left upper arm.

(ii) incised wound 4” x 2” x muscle deep on left mid forearm.

(iii) incised wound 2½” x ½” x ½” deep 1” above left elbow joint.

(iv) incised wound 1½” x 1” x ½” deep over back of elbow.

(v) Incised wound – 2” x ½” x 1” deep with diffused swelling & haematoma on left mid axillary line of 12th & 13th intercostal space.

(vi) Incised wound 1” x ½” x ½” deep 2” left para umbilical region with profusion of fat.

Nature of injuries – 1, 2, 3, 4, 5 & 6 opinion reserved.

Injuries found on the person of Ramashankar Ram are caused by sharp cutting weapon. It has also been opined that if the investigation is not submitted within three months & six months, the nature of injuries may be treated as simple in nature. The injury report is in his pen and signature and the same is marked as Ext. 5.



On the same day, the doctor examined Bacchi Kumari and noted following injuries:-

i. incised wound $\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{2}$ " deep left upper part of arm.

ii. incised wound $\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{2}$ " deep over left flank.

iii. complain of bodyache.

Nature of injury:- 1, 2 & 3 opinion reserved

injury no. 1 & 2 is caused by sharp cutting substance and injury no. 3 is caused by hard & blunt substance.

Age of injury – within four hours.

It has also been opined that if the medical investigation advise is not received, the nature of injuries would be treated as simple in nature. The injury report is in his pen and signature and the same is marked as Ext. - 6.

On the same day the doctor examined Manjeet Kumar and noted following injuries:-

(i) incised wound – 6" x $2\frac{1}{2}$ " x $\frac{1}{2}$ " deep right lower third forearm.

(ii) superficial and abrasion – 1" x 1" over mid right forearm.

Nature :- injury no. i and ii are simple and caused by sharp cutting substance.

Age of injuries within two hours.



This injury report is in his pen and signature and the same is marked as Ext. 7.

16. Medical testimony is in complete consonance with ocular version of witnesses. Ext. 3 (postmortem report of Gangiya Devi) and Ext. 4 (postmortem report of Santosh Kumar Ram) completely denote that the injuries inflicted on dead bodies of Gangia Devi and Santosh Kumar Ram are sufficient in ordinary course of nature to cause death. F.I.R. goes to say that appellant pierced pasuli in the chest of informant's mother Gangia Devi and again appellant pierced pasuli on the back of informant's brother Santosh Kumar Ram. Informant's mother Gangia Devi died at the spot and informant's brother Santosh Kumar Ram died after being arrived in hospital. Medical evidence totally corroborated the manner of occurrence, place of injuries, weapon used for committing said injury as same is evident from initial version of story of prosecution. Apart from postmortem of two dead bodies, there are injured persons like PW-1, PW-6 and PW-2 as same is corroborated by Ext. 5 (injury report of PW-1 Ramashanker Ram), Ext. 6 (injury report of PW-6 Bacchi Kumari) and Ext. 7 (injury report of PW-2 Manjit Kumar Ram) respectively. All injuries are sharp cutting injuries except injury no. 3 of injured Bacchi Kumari. The intention of the appellant goes to say that he has



eliminated two persons of informant's family who are informant's mother Gangia Devi and informant's brother Santosh Kumar Ram and the intention of appellant has been gathered from the material available on record that apart from death of two persons, there are three injured persons and medical evidence supports the injuries that have been inflicted upon the injured like PW-1, PW-2 and PW-6 by the act of the appellant through pasuli which have already been narrated in the fardbeyan clearly focusing upon the authenticity of initial version of story of prosecution and same is consistently found in the deposition of all prosecution witnesses. In the present case, the appellant hit five persons by means of pasuli in which two persons died and remaining persons saved as being injured witness. On the basis of material available on record, it cannot be denied that injured persons are sufferer of the said occurrence and the act of the appellant clearly denotes that there was intention to kill remaining injured persons and the facts as mentioned in the fardbeyan and deposition of PW-2 go to show that if the villagers did not arrive at the place of occurrence, result would have been different and in the case of said nature, impossibility cannot be a defence as intention is clear cut. An attempt in order to be criminal need not be the penultimate act. It



is sufficient in law, if there is present an intent coupled with some overt-act in execution thereof.

17. PW-4 Prem Kumar Ram and PW-5 Tetri Devi have reiterated the version of PW-1 and PW-2 regarding time of occurrence, manner of occurrence and place of occurrence and their version is totally consistent with the version of PW-1 and PW-2 and there is no reason to disbelieve the version of PW-4 and PW-5.

18. PW-6 is Bacchi Kumari. From deposition of all the prosecution witnesses it is found that she is an injured witness and from perusal of injury report of this witness (Ext. 6), it is evident that two incised wound as well as complain of bodyache were found on her body. From deposition of PW-1, PW-2, PW-3, PW-4 and PW-5, it is evident that this witness is also sufferer of injury at the place of occurrence, though, it has not been mentioned in the fardbeyan and we can believe on the reason that F.I.R. cannot be presumed to be the inclusive of all the facts that have happened in the occurrence. PW-6 has reiterated the story of prosecution with regard to time of occurrence, manner of occurrence and place of occurrence. In this way, her version is quite consistent with the version of PW-1, PW-2, PW-4 and PW-5. During cross



examination nothing is found to disbelieve the version of this witness.

19. PW-7 Satyendra Prasad is I.O. of the case. He has identified the place of occurrence, recorded the re-statement of PW-2 and recorded the statement of PW-1 in Sadar Hospital, Siwan which is totally consistent with the statement of PW-1. This witness identified the boundary of place of occurrence and has also seized pasuli and made seizure list of the same. During cross examination this witness has stated that blood stained cloth was not recovered from the spot and no blood stained cloth was sent for forensic examination. He stated during cross examination that he searched the house of appellant and recovered pasuli which was stained with dried blood but he did not get examine the dried blood. He has further stated that pasuli is made up of iron and slightly curved and it was not toothed. This witness has specifically stated during cross-examination that in the re-statement, informant has supported the case of the prosecution. During the course of cross examination of said witness neither suggestion has been given nor has the attention been drawn by the defence with regard to the earlier statement of any prosecution witness which clearly supports the version of story of prosecution.



In this respect, deposition of all prosecution witnesses are quite intact and unimpeachable.

20. If there is any faulty investigation, then it can be treated as laches of I.O. which does not affect case of prosecution adversely where direct, ocular and reliable evidence available on record. On above point, Hon'ble Supreme Court has held in the case of **Allarakha K. Mansuri vs State of Gujarat** reported in **2002 Supreme Court Cases (Cri) 519** that defective investigation by itself cannot be made a ground for acquitting the accused.

21. The contention of counsel of the appellant regarding preparation of inquest report earlier than fardbeyan and other aspects of defence have been raised in earlier paragraph which are mostly related with the laches of investigating officer find no force keeping in view cogent and reliable evidence and material available on record. The judgment as cited by learned counsel for the appellant has no application in the light of facts and circumstances of the present case and contention of learned A.P.P. is quite tenable and sustainable as initial version of story of prosecution is supported by injured witnesses like PW-1, PW-2 and PW-6 and other factual witnesses like PW-4 and PW-5 and the same is corroborated by medical evidence.



22. It is a trite law by now that no body would avoid naming the correct person as the assailant and framing innocent person in his place.

23. DW-1 Jitendra Yadav has stated in para 1 of his examination in chief that on 16.04.2014 i.e. alleged date of occurrence he was not at his village and police has put his signature on plain paper on the second day after death of Gangiya Devi. From perusal of evidence of DW-1, it is crystal clear that at the relevant time he was not present at the place of occurrence. This witness is hearsay witness. In this way, the evidence of DW-1 cannot be relied upon.

24. DW-2 Abhishek Kumar also stated that he was at the house of his maternal uncle at the time of alleged occurrence and he returned at his house in the night of alleged occurrence and then he got information regarding the occurrence. From perusal of evidence of this witness, it is clear that he was not present at the place of occurrence at the relevant time. In this way, he is hearsay witness and hence, his evidence cannot be relied upon.

25. DW-3 Satyendra Ram has stated that he returned to his house on 17.04.2014 then he came to know about the occurrence. From perusal of evidence of this witness, it goes to say that he was not present at the place of occurrence at the



relevant time. In this way, he is hearsay witness and hence, his evidence cannot be relied upon.

26. DW-4 Lachan Manjhi states that he went to the place of occurrence on hearing hulla. He saw that Sharma Ram (appellant) and other were injured. This witness himself has stated that Gangia Devi and Santosh Kumar Ram had been taken to Sadar Hospital, Siwan before he reached at the place of occurrence. In this way, he is not eye witness of the occurrence and he made his presence after the occurrence.

In this way DW-1 to DW-4 are not eye witness of the occurrence and hence, their version cannot be relied upon.

27. In the present case, the version of prosecution story is quite evident that informant has narrated the fact that appellant pierced pasuli in the chest of informant's mother as a result of which she died. On the same day again appellant pierced pasuli on the back of informant's brother Santosh Kumar who died in hospital. The initial version of prosecution story is corroborated by PW-1, PW-2, PW-4, PW-5 and PW-6. Out of seven prosecution witnesses, there are five factual witnesses like PW-1, PW-2, PW-4, PW-5 and PW-6 who have deposed the story of prosecution what they have seen. Out of five factual witnesses, there are three injured witnesses like PW-1, PW-2 and PW-6 who have been



injured and their presence at the place of occurrence cannot be disbelieved. In this way, all the factual witnesses have supported the case of the prosecution. PW-3 who is doctor has also corroborated the story of prosecution. PW-7 who is I.O. of the case has categorically and specifically supported the story of prosecution by identifying the place of occurrence. Even though some discrepancy regarding investigation has been found but whole prosecution story cannot be thrown on the laches of I.O.

28. It is consistently and continuously held by the Hon'ble Supreme Court in several judicial decisions which are pertinent to cite:-

In ***Takdir Samsuddin Sheikh v. State of Gujarat and another*** reported in ***AIR 2012 SC 37***, the Hon'ble Supreme Court observed at para 10(ii) as follows:-

"10 (ii). This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a



ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence."

In Brahm Swaroop and another v. State of U.P., reported in ***AIR 2011 SC 280***, the Hon'ble Supreme Court at para 22 of the judgment held as follows:

"22. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."

In Ranjit Singh and others v. State of Madhya Pradesh, reported in ***AIR 2011 SC 255***, the Hon'ble Supreme court at para 17 of the judgment held as follows:-

"17. Under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction."



29. In the present case, there are three injured witness who sustained injury at the relevant time and hence there testimony cannot be disbelieved outrightly. PW-1, PW-2 and PW-6 have suffered injury at the place of occurrence and their presence at the place of occurrence cannot be disbelieved.

30. From initial version of prosecution story, it is evident that the appellant has acted to hit informant's mother on the chest and informant's brother on the back by pasuli and there are other injured persons such as PW-1, PW-2 and PW-6 and their version are quite consistent with the story of prosecution regarding the time of occurrence, manner of occurrence and place of occurrence. Moreover, the postmortem report has also supported the factum of time of death, number of injuries, place of injury and nature of injury. PW-7 has also identified the place of occurrence and boundary of place of occurrence which cannot be disbelieved.

31. In order to constitute an offence under Section 307 of the IPC, the following ingredients of the offence must be present;

(a. An intention or knowledge relating to commission of murder and



(b. Doing of an act towards it.

For the purpose of Section 307 IPC, what is the material is the intention or knowledge, and not the consequence of the actual act done for the purpose of carrying out the intention. The Section clearly contemplates an act which is done with the intention of causing death but which fails to bring intended consequence on account of initiation on account of intervening circumstances. The intention or knowledge of the cause must be such as a necessary to constitute a murder. In absence of intention or knowledge which is a necessary ingredient of Section 307 IPC, there can be no offence of attempt to murder.

32. Considering the aforementioned facts and circumstances, following judicial decisions are pertinent to cite:-

In State of Madhya Pradesh v. Imrat and another reported in ***(2009) 2 SCC (Cri) 558***, the Hon'ble Supreme Court at para 11 of the judgment observed as follows:-

"11. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."



In Lachman Singh v. State of Haryana reported in ***(2006) 10 SCC 524***, the Hon'ble Supreme Court at para 13 of the judgment observed as follows:-

"13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

In Sadakat Kotwar and another v. The State of Jharkhand passed in ***Criminal Appeal No. 1316 of 2021***, the Hon'ble Supreme Court held at para 4.1 as follows:-

"4.1. As observed and held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused. Considering the case on hand



on the aforesaid principles, when the deadly weapon-dagger has been used, there was a stab injury on the stomach and near the chest which can be said to be on the vital part of the body and the nature of injuries caused, it is rightly held that the appellants have committed the offence under Section 307 IPC.

33. In the present case, there are three injured witness such as PW-1, PW-2 and PW-6. PW-1 has sustained six injuries caused by sharp cutting substance. PW-2 has sustained two injuries caused by sharp cutting instrument. PW-6 has sustained three injuries and injury no. 1 and 2 are caused by sharp cutting instrument whereas injury no. 3 is caused by hard blunt substance.

34. In the light of material available on record, it is crystal clear that during course of occurrence, appellant eliminated two persons in which one died at the spot and another died after being arrived at the hospital. Three persons sustained injury in the said occurrence apart from death of two persons namely, Gangia Devi and Santosh Kumar Ram. Injury reports of injured namely, Ramashanker Ram (Ext. 5), Bacchi Kumari (Ext. 6) and Manjit Kumar Ram (Ext. 7) show that all the injuries are inflicted by sharp cutting weapon, except injury no. 3 of Bacchi Kumari. In this respect, we would like to say that an attempt in order to be



criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof. It is crystal clear that there are three injured persons who sustained injury by the act of the appellant. In the light of discussions made in foregoing paragraphs, the intention of the appellant is clear that he has already eliminated two persons of informant's family and further attempt made by the appellant clearly shows that he wanted to eliminate remaining injured persons i.e. PW-1, PW-2 and PW-6 which has already been discussed in foregoing paragraphs. The contention of learned Additional Public Prosecutor is quite forceful. So far as number of injuries, place of injury, weapon used in causing injury are concerned, opinion of doctor is quite consistent in this respect. The informant himself has stated that he ran away in the field and villager came and appellant and others fled away. Had the villager not been arrived at the place of occurrence, the result would have been different.

35. Keeping in view all the facts and circumstances of the case available on record and the evidence discussed in the foregoing paragraphs, to sum up, we can conclude that



intention of the appellant has been proved with regard to
commit the offence under Sections 302 and 307 of the I.P.C.

36. In the light of discussions made above, we find no
reason to differ with the findings given by the trial court on
the point of Section 302 and 307 of the I.P.C. Accordingly,
the impugned judgment of conviction and order of sentence
passed by the trial court is hereby affirmed.

37. In the result, this appeal stands dismissed.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

shahzad/-

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