

IN THE HIGH COURT OF JUDICATURE AT PATNA

Chandrika Rai and Others

vs.

The State of Bihar

CRIMINAL APPEAL (DB) No.341 of 2019

(with CRIMINAL APPEAL (DB) No. 412 of 2019 and

CRIMINAL APPEAL (DB) No. 438 of 2019)

24 August 2023

(Hon’ble Mr. Justice Vipul M. Pancholi & Hon’ble Mr. Justice Chandra Shekhar Jha)

Issue for Consideration

Whether judgment of conviction and order of sentence passed by the learned 1st Additional Sessions Judge, Sitamarhi in Sessions Trial No. 151 of 2014 and 586 of 2014/64 of 2015, arising out of Runnisaidpur P.S. Case No.195 of 2012 is correct or not?

Headnotes

Indian Penal Code, 1860—Sections 302, 149, 148 and 120(B)—Arms Act, 1959—Section 27—father of informant was shot dead by appellants—after the incident, all the accused fled away from the place of occurrence—incident took place because of the land dispute.

Held: medical witness is a witness of fact though he also gives an opinion on certain aspects of the case—value of a medical witness is not merely a check upon the testimony of eyewitnesses—it is also independent testimony because it may establish certain facts quite apart from the other oral evidence—if there is inconsistency or discrepancy between the medical evidence and the direct evidence or between medical evidence of two doctors, one of whom examined the injured person and the other conducted post-mortem on the injured person after his death or as to the injuries, then in criminal cases, the accused is given the benefit of doubt, and let off—from the evidence of so-called eyewitnesses, firing took place from the left side of the motorcycle on which deceased was sitting and the said firing took place from the distance of 7-9 feet—from the deposition of the doctor, it can be said that firearms were used from close range, i.e., within 1-3 feet and the firearms were used from the front side of the deceased—contradiction between the medical and the ocular evidence—Investigating Officer did not register the FIR on his own nor had he collected the blood-stained soil from the place of occurrence nor he seized the motorcycle on which the deceased was sitting nor found empty cartridges, bullet or pellet at the place of occurrence—prosecution has failed to prove the case against the appellants beyond reasonable doubt and, therefore, the learned Trial Court has committed grave error while passing the impugned judgment and order—appeals allowed—impugned judgment of conviction and order of sentence set aside—appellants are acquitted of the charges levelled against them and also they are discharged from the liabilities of their bail bonds. (Paras 2, 31 to 35)

Case Law Cited

State of M.P. vs. Ratan Singh, (2020) 12 SCC 630; Emperor vs. Nazir Ahmad, AIR (32) 1945 Privy Council 18; Krishnegowda vs. State of Karnataka, AIR 2017 SC 1657; Sanjay Khanderao Wadane vs. State of Maharashtra, (2017) 11 SCC 842—Relied Upon.

List of Acts

Indian Penal Code, 1860; Arms Act, 1959.

List of Keywords

Murder, gunshot injuries, medical evidence, ocular evidence, postmortem, cartridges, bullet or pellet, medical witness, FIR.

Case Arising From

From judgment of conviction and order of sentence dated 28.02.2019, passed by the learned 1st Additional Sessions Judge, Sitamarhi in Sessions Trial No. 151 of 2014 + 586 of 2014/64 of 2015, arising out of Runnisaidpur P.S. Case No.195 of 2012.

Appearances for Parties

(In CRIMINAL APPEAL (DB) No. 341 of 2019)

For the Appellants: Mr. Ajay Kumar Thakur, Advocate; Mrs. Kiran Kumari, Advocate Mr. Ritwik Thakur, Advocate; Mrs. Vaishnavi Singh, Advocate

For the State: Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 412 of 2019)

For the Appellant: Mr. Radheshyam Sharma, Advocate; Ms. Smiti Bharti, Advocate

For the State: Mr. Satya Narayan Prasad, APP

(In CRIMINAL APPEAL (DB) No. 438 of 2019)

For the Appellant : Mr. Ajay Kumar Thakur, Advocate; Mr. Imteyaz Ahmad, Advocate; Mr. Pravin Kumar, Advocate; Mr. Purushottam Kumar, Advocate; Mrs. Kiran Kumari, Advocate; Mrs. Vaishnavi Singh, Advocate

For the State: Mr. Abhimanyu Sharma, APP

Headnotes prepared by reporter: Abhas Chandra, Advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.341 of 2019

Arising Out of PS. Case No.-195 Year-2012 Thana- RUNISAIDPUR District- Sitamarhi

(1) Chandrika Rai, aged about 66 years (Male), Son of Late Jiya Rai
(2) Shyam Rai, aged about 62 years (Male), Son of Jiya Rai
(3) Krishna Kant Kesari, aged about 40 years (Male), Son of Shyam Rai
All residents of village Sirkhiriya, P.S. Runni Saidpur, District Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 412 of 2019

Arising Out of PS. Case No.-195 Year-2012 Thana- RUNISAIDPUR District- Sitamarhi

Chiranjivi Sagar @ Chiranjivi Bhagat, aged about 34 years, Male, Son of
Vindeshwar Bhagat, Resident of Village Haspurawa Baat, P.S. Runnisaidpur,
District Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 438 of 2019

Arising Out of PS. Case No.-195 Year-2012 Thana- RUNISAIDPUR District- Sitamarhi

Anil Singh @ Anil Kumar Singh, aged about 52 years (Male), Son of Late
Baliram Singh, Resident of Village Neuri, P.S. Runnisaidpur, District
Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 341 of 2019)
For the Appellants : Mr. Ajay Kumar Thakur, Advocate
Mrs. Kiran Kumari, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
For the State : Mr. Sujit Kumar Singh, APP



(In CRIMINAL APPEAL (DB) No. 412 of 2019)
For the Appellant : Mr. Radheshyam Sharma, Advocate
Ms. Smiti Bharti, Advocate
For the State : Mr. Satya Narayan Prasad, APP
(In CRIMINAL APPEAL (DB) No. 438 of 2019)
For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Imteyaz Ahmad, Advocate
Mr. Pravin Kumar, Advocate
Mr. Purushottam Kumar, Advocate
Mrs. Kiran Kumari, Advocate
Mrs. Vaishnavi Singh, Advocate
For the State : Mr. Abhimanyu Sharma, APP

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

Date : 24-08-2023

These appeals have been filed by the appellants/convicts under Section 374(2) of Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Code’) against judgment of conviction and order of sentence dated 28.02.2019 rendered by learned 1st Additional Sessions Judge, Sitamarhi in Sessions Trial No. 151 of 2014 + 586 of 2014/64 of 2015, arising out of Runnisaidpur P.S. Case No.195 of 2012, whereby the appellants have been convicted for the offences punishable under Sections 302, 149, 148 and 120(B) of the Indian Penal Code and under Section 27 of Arms Act, in which the appellants, namely, Anil Singh, Chandrika Rai, Krishnakant Kesari and Shyam Rai have been sentenced to undergo imprisonment for life and to pay a fine of Rs. 20,000/- each for the offence punishable under Sections 302 and 149 of IPC; to



undergo R.I. for 3 years for the offence punishable under Section 148 of IPC and to pay a fine of Rs. 2,000/- each. Appellant Chiranjivi Bhagat @ Chiranjivi Sagar has been sentenced to undergo imprisonment for life and to pay a fine of Rs.20,000/- for the offence punishable under Section 302 of IPC; to undergo R.I. for 3 years and to pay a fine of Rs.2,000/- for the offence punishable under Section 27 of Arms Act. Appellant Chiranjivi Bhagat @ Chiranjivi Sagar has further been sentenced to undergo R.I. for 3 years and to pay a fine of Rs.2,000/- for the offence punishable under Section 148 of IPC. In default of payment of fine, the appellants have to suffer R.I. for one year. The sentences have been ordered to run concurrently.

2. The case of the prosecution in a nutshell is as under:-

The fardbeyan of one Nitesh Kumar was recorded by S.I., R.K. Singh of Ahiyapur police station, District-Muzaffarpur on 02.07.2012 at about 09:15 p.m. at SKMCH, Muzaffarpur emergency ward, wherein the first informant had stated that his father Kamta Rai went to Sirkhiria market for purchasing vegetables on 02.07.2012 and when he was returning to his house, one Kailash Rai and Ramanand Rai were also with



him. At about 04:00 p.m., one tempo was parked in the market near the road which was going towards western side. It is alleged that Chiranjivi Bhagat, his cousin brother, Mantu Rai and Bindeshwar Bhagat while armed with pistols sneaked past the said parked tempo and thereafter Chiranjivi Bhagat opened fire and the bullet hit on the chest of the father of informant, similarly, Mantu Rai also fired upon the father of informant and the bullet hit on his left hand wrist, the cousin brother of the Chiranjivi also fired from his pistol and the bullet hit on the left thigh of the informant's father. Thereafter, Bindeshwar Bhagat fired in air from his pistol. It is also alleged that Anil Singh, Chandrika Rai and Shyam Rai were also planning to kill the father of the first informant and they were giving threats to the father of the informant that he will be killed with the help of firearm. It is also stated that after the incident, all the accused fled away from the place of occurrence on the southern side of the market. It is the case of the prosecution that the incident in question took place because of the land dispute which was going on between Chiranjivi Bhagat, Shyam Rai and Kailash Mahto. It is further stated that after the incident, the injured father of the first informant was taken to SKMCH by tempo. However, when they reached to the said hospital, the father of the informant



succumbed to the injuries and died.

3. On the basis of the aforesaid fardbeyan given by the first informant, FIR was lodged on 03.07.2012 at about 11:30 a.m. for the offences punishable under Sections 302 read with Section 34 of the IPC against all the named accused. The Investigating Officer thereafter started the investigation and during the course of investigation, recorded the statement of the witness and collected the documentary evidence and after investigation was over, filed the chargesheet against co-accused Bhantu Rai @ Mantu Rai. The other accused were not available and, therefore, they were shown as absconders, however, it is pertinent to note that thereafter some of the accused were arrested and separate charge-sheets were filed against the other co-accused persons. The trial against the said co-accused was also separately conducted by the concerned trial Court.

4. The Investigating Officer filed the charge-sheet as observed above against co-accused Bhantu Rai @ Mantu Rai before the concerned Magistrate Court. However, as the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same under Section 209 of the Code to the concerned Sessions Court.

5. During the course of the trial, the prosecution



examined eight witnesses and produced the documentary evidence including the inquest report and the postmortem note of the deceased. Further statement of the appellants/accused under Section 313 of the Code was also recorded and after conclusion of the trial, the trial Court passed the impugned order as observed herein-above. Against the order of conviction, the appellants have preferred the present appeals, which were admitted and today, the same were taken up for final hearing.

6. Heard Mr. Ajay Kumar Thakur and Mr. Radheshyam Sharma, learned counsel for the appellants and learned APP for the respondent-State.

7. Learned Advocate for the appellants submitted that though the prosecution had examined five so called eye-witnesses to the incident in question, PW-8, Ramanand Rai and PW-7, Ram Sakal Rai have not fully supported the case of the prosecution and therefore they were declared hostile. It is submitted that the prosecution has therefore placed reliance upon the deposition given by three witnesses namely, PW-3, Nitish Kumar, PW-1, Kailash Rai and PW-2, Bhagya Narayan. Learned Advocates have referred to the deposition given by the aforesaid so-called eye-witnesses and thereafter contended that though PW-3 is the first informant and son of the deceased, he



had for the first time narrated the story while giving the deposition before the Court by projecting himself as an eye-witness to the incident in question. It is submitted that in the fardbeyan given by the informant or by giving his further statement, the said witness did not disclose the story which he had narrated before the Court for the first time while giving his deposition and therefore there is material improvement in the version given by the PW-3. It also submitted that similarly PW-1 and PW-2 are near relatives of the deceased and have not stated about the manner in which the incident took place while giving statement before the police at the time of investigation. However, for the first time, the said witnesses have narrated different story before the Court while giving their depositions. At this stage, learned counsel has referred the deposition given by PW-5, Harischandra Thakur, the Investigating Officer, who has carried out the investigation. It is submitted that from the cross-examination of the said witness, it is clear that all the aforesaid so-called eye-witnesses have first time narrated different story before the Court while giving their depositions and thereby there are major contradictions in the deposition of the so-called eye-witnesses.

7.1. Learned counsel thereafter referred to the



deposition given by PW-4, Dr. Bipin Kumar, who has conducted the postmortem of the deceased. Learned Advocate has also referred to the postmortem report of the deceased and thereafter submitted that as per the case of the prosecution and the so-called eye-witnesses, the assailants came from the southern side and opened fire from their firearms and thereby father of the first informant sustained injuries. However, PW-4, Dr. Bipin Kumar has specifically stated that from the injury it appears that the firearms were used from the front side of the deceased. It is further submitted that as per the case of the prosecution, firing took place at a distance of about 7 - 9 feet, whereas the doctor has specifically opined that the firearms were used from close range, that is within 1 - 3 feet and the injuries on the body of the deceased will cause profuse bleeding and this type of injury in normal course, without any medical aid, will cause death within a very short time. The said doctor has further stated that exit wounds are at upper level in comparison to entry wounds. Learned counsel therefore submitted that the version given by the doctor clearly indicates that the aforesaid 3 prosecution witnesses are though not eye-witnesses, they are projected as eye-witnesses to the occurrence. In spite of that, the Trial Court has passed the impugned order of conviction. It is also



contended that as per the case of the prosecution, the injured-father of the informant was taken to his house, first from the market and after 10 -15 minutes, he was taken in the tempo and thereafter in the ambulance to the concerned hospital and when they reached to the hospital, the injured succumbed to the injuries and died in the hospital. Learned Advocate referred to the relevant portion of the deposition of the witnesses and thereafter contended that the incident took place at 04:00 p.m. and the injured was brought to the hospital at about 07:00 p.m., i.e., after three hours and thereafter he died. Thus, it is impossible to believe that the injured remained alive for three hours after sustaining the injuries as narrated by the doctor. It is therefore urged that the present appeal be allowed and thereby impugned order of conviction be quashed and set aside.

8. On the other hand, learned APP appearing for the State has opposed this appeal. Learned APP would mainly submit that three eye-witnesses have fully supported the case of the prosecution and deposed before the Court the manner in which the incident had occurred. It is further submitted that the medical evidence also corroborates the version given by the eyewitnesses and therefore merely because there is some lacuna on the part of the investigation while conducting the



investigation, the benefit of the same cannot be given to the appellants/convicts/accused.

8.1. Learned APP thereafter submitted that the prosecution has also proved the motive on the part of the accused in committing the alleged crime and, therefore, when the prosecution has proved the case against the appellants/accused beyond reasonable doubt, this Court may not interfere with the order of conviction passed by the Trial Court.

9. We have considered the submissions canvassed by the learned counsel appearing for the parties. We have also examined the entire evidence produced by the prosecution before the Trial Court.

10. PW-3, Nitish Kumar is the first informant, who had given the first fardbeyan at about 09:15 p.m. on 02.07.2012 at SKMCH before the S.I., R.K. Singh of Ahiyapur Police Station, District-Muzaffarpur. PW-1, who is son of the deceased, Kamta Rai, stated in the examination-in-chief that one Raman Rai came to his house on 02.07.2012 at about 03:30 p.m. and thereafter his father went on motorcycle with the said person, meanwhile he along with his mother Sumitra Devi were sitting in the room. At that time, he heard that one Chandrika Rai who was talking on phone and said that “*Madhumakkhi udtao humhu*



aa gaele Raman ke saath motorcycle se Sirkhiria bazaar gaela hu”, immediately within 5 minutes thereafter Chandrika Rai, Krishnakant Kesari and Anil Singh left their house on motorcycle and went to Sirkhiria market. The said witness therefore was apprehending that something untoward incident will happen and therefore he along with his cousin Munna had also gone to the market. He saw that his father, Raman Rai and Kailash Rai were buying vegetables. He, therefore, informed his father about the telephone talk of Chandrika Rai. His father took the same seriously and asked that he should now go to his house by saying that whenever he is leaving his house, Chandrika Rai, Shyam Rai and Krishna Kant Kesari are giving the same information to Chiranjivi Bhagat. His father and Raman Rai sat on the motorcycle at about 04:00 p.m. He noticed that one tempo was parked in the market on the road going towards western side. Suddenly, Chiranjivi Bhagat, Bindeshwar Bhagat, Arun Bhagat, Mantu Rai and Rakesh Kumar sneaked past the said tempo carrying pistols and opened fire and in the said incident, his father sustained injuries and fell down. The said witness further stated that his father sustained three gunshot injuries. It is also stated that the bullet, which was fired from the pistol of Mantu Rai, hit on the left wrist of his injured father, the



bullet which was fired from the pistol of Chiranjivi Bhagat hit on the left side of abdomen, whereas the bullet which was fired from the pistol of Arun Bhagat hit on the thigh. The other two persons, namely, Bindeshwar Bhagat and Rakesh Kumar also fired on two dogs and one dog died. Thereafter, the injured father was taken by him with the help of one Kailash Rai on the motorcycle to his house and thereafter in tempo, his father was shifted to SKMCH, Muzaffarpur. During the transit, he also informed his relative on phone and, therefore, his relative brought ambulance and his father was taken to the aforesaid hospital in ambulance.

10.1. During cross-examination, the said witness has stated that his house is situated two kilometers away from the Sirkhiria market. The said witness has specifically admitted during cross-examination that the accused started firing from their pistol from the southern side and that too from the distance of five steps (around 7 - 9 feet). When the bullet hit his father who was in a sitting position on the motorcycle along with one Raman Rai, who was his pillion rider. He has also stated that the motorcycle was shown to the Investigating Officer. However, the said Investigating Officer did not seize the said motorcycle. Raman Rai was not injured in the said firing. Though, the



number of persons, who were gathered there at the time of occurrence, nobody got injured in the said incident. The said witness further admitted that his father was initially taken to his house at about 04:30 p.m. However, he did not call the doctor from the village nor any doctor was called at the market. They stayed in their house for about 10 minutes and thereafter his father was taken in the tempo. He further stated that for the first time his statement was recorded at about 09:15 p.m. on 02.07.2012. He has stated correct aspect in the said fardbeyan. Thereafter, his another statement was recorded on 03.07.2012 at about 05:00 p.m. The defence has also pointed out about the contradictions in the deposition of the said witness. These witnesses have also stated that they reached at SKMCH at about 07:00 p.m. and after reaching to the said hospital, he informed to S.P. and Runni Saidpur police station from his mobile. In the said information, he did not give name of any of the assailants and he had simply stated that his father sustained firearm injuries.

11. PW-1, Kailash Rai has stated in his examination-in-chief that on the date of the incident, at about 4:15 p.m. to purchase the vegetables in Sirkhiria market. At that time, he met Kamta Rai and Raman Rai. Both the aforesaid



persons were also purchasing the vegetables. At that time, the son of Kamta Rai i.e. Nitesh Rai and cousin brother of Nitesh both came to the said place and informed Kamta Rai that after he left the house, Chandrika Rai informed on telephone to Chiranjivi that '*bazar me madhumakhi urtau hamhu bazar awahi*'. The said witness, therefore, told Kamta Rai that he should leave market immediately. Thereafter, Kamta started his motorcycle and sat on the said motorcycle along with Raman Rai. When the motorcycle was started, it was noticed that one tempo was parked in the southern side of the motorcycle at about five feet. Chiranjivi Bhagat, Arun Bhagat, Mantu Rai, Bindeshwar Bhagat and Rakesh Rai sneaked past the said tempo and started firing and in the said incident, Kamta Rai sustained injuries. Raman Rai was pillion rider jumped from the said motorcycle and fled away. At that time, Shyam Rai, Chandrika Rai, Krishnakant Kesari and Anil Singh were informing Chiranjivi about Kamta Rai. The said witness further stated that one dog had also gone along with Kamta Rai in the market and one bullet also hit the said dog and the said dog died. Thereafter, the injured Kamta Rai was taken to his house on the motorcycle by the said witness along with Nitesh and thereafter, he was taken to Muzaffarpur Medical College in tempo. In transit,



ambulance came and the injured was shifted to the said hospital in the said ambulance. The reason for the said incident is described by the said witness that there was a land dispute between Chiranjivi and Kamta Rai and there was also dispute with regard to road between Chandrika and Kamta Rai.

11.1. During cross-examination, the said witness stated that at the time of occurrence, Nitesh was also standing at a distance of 5-7 steps and the assailants did not fire on Nitesh or his cousin brother nor on Raman. The said witness further stated that they did not inform the police about the incident. The said witness further stated that he stayed at the house of Kamta Rai for 5-10 minutes and, thereafter, the injured was shifted to Muzaffarpur Medical College. He further deposed that when the police came to Medical College, he did not give his statement to the police. His statement was recorded by the police on the next day at 5:00 p.m. His further statement was also recorded by the police.

12. PW-2, Bhagya Narayan had stated in his examination-in-chief that on the date of incident at about 4:00 p.m., he had gone to purchase '*gamchcha*' in Sirkhiria market. At that time, he heard the sound of firing. When he saw, Kamta Rai along with Raman Rai were sitting on the motorcycle and at



that time, Bindeshwar Bhagat, Chiranjivi Bhagat, Arun Bhagat, Bhanu Rai @ Mantu Rai and Rakesh Kumar came at the said place carrying pistols in their hands and started firing. In the said incident, Kamta Rai sustained injuries on his left wrist, thigh and abdomen.

12.1. During cross-examination, the said witness stated that the deceased Kamta Rai was his step-brother. After the firing was over, he reached at the place of occurrence. When he reached at the place of occurrence, he had seen that Kamta Rai was lying in injured condition. The said witness resides next to the house of Kamta Rai. His statement was recorded by the police on the next day at about 4-5 p.m.

13. PW-8, Ramanand Rai and PW-7, Ram Sakal Rai have not fully supported the case of the prosecution and, therefore, they were declared hostile.

14. PW-5, Harischandra Thakur, who had carried out the investigation, has stated in his examination-in-chief that on 02.07.2012, he was working as S.H.O. (Station House Officer) of Runni Saidpur Police Station. At that time, he received the information at about 17:00 hours (5:00 p.m.) that one person is shot dead in Sirkhiria Market. He, therefore, entered the said information in the station diary and, thereafter,



proceeded to the place of occurrence. When he reached in the village-Sirkhiria, the persons, who were present at the said place informed him that one Kamta Rai, son of late Tejnarayan Rai of village-Sirkhiria is shot dead by the assailants and for treatment, the said person is taken to SKMCH, Muzaffarpur. He, therefore, sent one person to the said hospital and the said witness remained at the place of occurrence. On the next day, i.e. 03.07.2012, one person came from SKMCH, Muzaffarpur with fardbeyan and, therefore, the same was registered as FIR with the concerned police station. Thereafter, he has taken over the investigation. He further deposed that he had inspected the place of occurrence. When he reached at the place of occurrence, he also found the bloodstains at the place of occurrence. However, he did not collect the same. Thereafter, he had recorded the statement of the witnesses, collected postmortem report and after investigation, he filed the charge-sheet against Mantu Rai. PW-6, Suman Kumar Mishra has thereafter carried out the investigation and he has arrested the appellants-accused and thereafter filed charge-sheet against the appellants herein.

14.1. During cross-examination, he had stated that in case diary he had not written station diary number. He reached at Sirkhiria village in jeep within one hour. At the place



of occurrence, the persons, who have gathered, informed him that Kamta Rai had sustained injuries in the firing made by the assailants and he has mentioned about the same in the case diary. He remained at the place of occurrence during entire night and he received fardbeyan at 9:00-9:30 a.m. on the next day. Thereafter, he has carried out inspection of place of occurrence at about 15:30 hours (3:30 p.m.) and subsequently recorded the statement of the witnesses. In the cross-examination, the said witness has specifically stated that witness Nitesh had not stated in his statement recorded by the police about the manner in which the incident took place, which he had stated before the court in his deposition. Similarly, the said Investigating Officer has further stated that witness, Kailash Rai has also not stated in his statement recorded by the police about the manner in which the incident took place, which now he has deposed before the court. Similarly, in the cross-examination, witness Bhagya Narayan Rai has also not stated in his statement recorded on 03.07.2012, which now, he has deposed before the court. The Investigating Officer further admitted that he had not collected the blood from the place of occurrence nor he had found the bullet or empty cartridges or the pellets. The said witness has also stated that the motorcycle on which Kamta Rai was sitting



was not seized by him nor anybody had produced the said motorcycle before him.

15. PW-4, Dr. Bipin Kumar is a witness, who had conducted the postmortem on the dead body of the deceased Kamta Rai. The said doctor has found following injuries:-

“(i) One oval wound 1” x ½” x cavity deep over left upper part of abdomen 2” lateral and 5” below to the left nipple margins were inverted and surrounded by blackening - entry wound of fire arms.

(ii) One oval wound 1½” x 1” over left middle of back of chest with everted margins - exit wound.

On Dissection:

Injury No. 1 and 2 were continuous to each other the projectile in its course pierced the liver, left lung fractured the posterior rib and finally made exit through wound no. 2. Both cavity filled with blood.

3. One oval wound 1” x 1½” x muscle deep over left fore-arm. With inverted margins and surrounding blackening 5” above right joint. - Entry wound.

4. One oval wound 1½” x 1” over posterior part of left fore- arms 6” above left wrist joint with everted margins. - Exit wound.

5. One oval wound ¾” x ½” x muscles deep over lateral interior part of left thigh, with inverted margin and surrounding blackening entry wound.

6. One oval wound 1” x ¼” x 1” over posterior part of left thigh with everted margins. - Exit wound”.

The said witness further stated that the deceased died due to haemorrhage and shock as a result of the aforesaid injuries and the injuries were caused by firearms like, rifle, gun



and pistol or any firearms.

15.1. During cross-examination, the said witness has specifically stated that only three firearm injuries were found and the other three were the exit wounds of those injuries. He had further stated that looking to the injuries, it can be said that firing took place from very close range i.e. within 1-3 feet. He also stated that from the injuries, it appears that firearm was used from front side of the deceased and the injuries on the body of the deceased will cause profuse bleeding. This type of injury, in normal course, without any medical aid, will cause death within very short time. Lastly, the said witness had stated that exit wounds are at upper level in comparison to entry wounds.

16. From the aforesaid evidence led by the prosecution before the Trial Court, it can be said that PW-1, PW-2 and PW-3 are projected as eye-witnesses by the prosecution. However, PW-8 Ramanand Rai and PW-7 Ram Sakal Rai have not supported the case of the prosecution and they were declared hostile. Thus, the deposition given by the so-called eye-witnesses are required to be examined minutely.

17. It is pertinent to note that PW-3 Nitish Kumar is son of the deceased, whereas PW-1 Kailash Rai is near relative of the deceased. Similarly, PW-2 Bhagya Narayan is



also near relative of the deceased. Thus, all the three witnesses, who have supported the case of the prosecution are interested and related witnesses and, therefore, as observed hereinabove, that their deposition are required to be examined minutely.

18. If the deposition of PW-3 is read along with the fardbeyan given by the said witness before the police, it is revealed that, for the first time, the said witness has narrated story before the court that when his father left the house and gone to the market, he was present in the house with his mother and after his father left the house, he heard the conversation made by Chandrika Rai on telephone and, thereafter, he left his house with his cousin brother Munna. They went to the market and informed Kamta Rai i.e. father of Nitesh about the telephone talk made between Chandrika Rai and another. The said aspect is also not disclosed by the said witness when his further statement was recorded by the police during investigation. The Investigating Officer (PW-7), Harish Chandra Thakur also confirmed the same during his cross-examination.

19. Similarly, PW-1 Kailash Rai, PW-2 Bhagya Narayan have also stated certain aspects for the first time before the court. The Investigating Officer also confirms the same in his cross-examination.



20. Thus, from the aforesaid, it is clear that the aforesaid witnesses have improved their version and stated new story for the first time before the court. The defence has also able to prove the major contradictions in the deposition of the said witnesses. Thus, it can be said that there is an improvement and contradiction in the deposition of the prosecution witnesses, who are claimed to be eye-witnesses

21. From the deposition of so-called eye-witnesses, it is further revealed that as per the version of the said eye-witnesses, firing took place from the left side of the motorcycle on which Kamta Rai was sitting with Raman Rai and the said firing took place from distance of 7-9 feet. However, if the deposition given by PW-4, Dr. Bipin Kumar and postmortem report are examined, it is revealed that as per the said witness, the injuries sustained by the deceased, it can be said that firearms were used from close range i.e. within 1-3 feet and the firearms were used from the front side of the deceased. It is further revealed that the injuries on the body of the deceased can cause profuse bleeding and if the medical aid is not given, looking to the injuries, in normal course, death will cause within very short time. It is also revealed that exit wounds are at upper level in comparison to entry wounds.



21.1. Thus, from the medical evidence produced by the prosecution, it can be said that the medical evidence does not corroborate the version given by the ocular witnesses.

22. At this stage, it is also pertinent to note that as per the case of the eye-witnesses, the injured Kamta Rai was taken on the motorcycle by two prosecution witnesses to his house where they stayed for 10-15 minutes. Thereafter, the injured was taken to the Medical College, Muzaffarpur initially in tempo and, thereafter, in ambulance. The injured succumbed to the injuries when he reached to the hospital at about 7:00 p.m. Thus, from the evidence produced by the prosecution, it can be said that injured Kamta Rai died after three hours from the time of occurrence. At this stage, it is to be recalled that as per the case of the first informant, incident took place at 4:00 p.m. and he succumbed to the injuries at 7:00 p.m. Once again, at this stage, if the deposition given by the doctor (P.W.4) is once again examined, it is clear that looking to the injury sustained by the deceased that there would be profused bleeding and the death, in normal course, would occur within very short time, if medical aid is not given. In the present case, it is revealed that the medical aid was not given to the injured during these three hours.



23. It would further emerged from the record that the Investigating Officer (PW-5) had stated that he got the information about the incident on telephone and, therefore, the said aspect was recorded in the station diary and, thereafter, he reached at the place of incident around 6:00 p.m. He remained there during entire night. When he reached to the place of occurrence, from the people gathered, he came to know about the name of the injured and the manner in which the incident took place. The said aspect he had mentioned in his case diary. However, it is pertinent to note that nobody had disclosed the name of present appellants or the other assailants. Thus, the Investigating Officer was aware about the commission of the cognizable offence committed by unknown persons in which one person sustained injury by firearms. The name of injured was also disclosed to him. In spite of that, the said information was not considered as first information report.

24. It further transpires that PW-5, Harischandra Thakur, the Investigating Officer of the case though noticed certain blood stains at the place of occurrence, he did not collect the blood-stained soil for the purpose of necessary analysis. The said witness also admitted during cross-examination that he did not find any empty cartridges, bullet or pellet at the place of



occurrence.

25. Thus, the prosecution has tried to contend that because of the land dispute, an enmity between Chiranjivi and Kamta Rai and because of the dispute with regard to the road between Chandrika Rai and Kamta Rai (deceased), the accused have killed Kamta Rai. However, the prosecution has failed to prove the same by leading cogent evidence. Even otherwise, when the version given by so-called eye-witnesses is not required to be believed in view of the medical evidence and other circumstances discussed hereinabove, the aforesaid aspect is not very relevant. Even otherwise also, when there is enmity between the parties, there are chances of false implication. At this stage, it is pertinent to note that the appellants-accused have also examined 13 defence witnesses, namely, DW-1, Raj Nandan Baitha, DW-2, Surendra Singh, DW-3, Chandeshwar Sahni, DW-4, Mahesh Singh, DW-5, Prem Shankar Sah, DW-6, Babu Lal Bhagat, DW-7, Om Prakash Singh, DW-8, Jai Mangal Singh, DW-9, Subodh Thakur, DW-10, Suresh Rai, DW-11, Bauaji Bhagat, DW-12, Ramnath Sah and DW-13, Shashi Ranjan Kumar. The said defence witnesses have mainly stated in the examination-in-chief that they know the deceased Kamta Rai and deceased was having good relation with appellant Anil



Singh. Appellant Anil Singh was elected in the election of Panchayat Samiti and there was no enmity between Anil Singh and deceased Kamta Rai. DW-4 was having betel shop in Sirkhiria market. The said witness further stated that he had seen the incident in question, however, he did not identify the assailants. DW-5 was having grocery shop in the market. He had also seen the incident, however, he did not identify the assailants. Similar was the statement given by DW-6 by stating that he is having tea shop in the market and he had seen the incident but did not identify the assailants. The other defence witnesses have stated that appellant Chandrika Rai has falsely been implicated in the incident in question.

26. Mr. Thakur, learned counsel for the concerned appellants has contended at this stage that the Investigating Officer, Harischandra Thakur got information that firing took place at Sirkhiria market and, therefore, the said officer recorded the said information in the station diary and proceeded to the market. He reached at the market at around 06:00 p.m. and the said officer got the information that one Kamta Rai has sustained gun shot injuries and he is taken to the hospital. The people who had gathered at the place of occurrence have also stated that the assailants were unknown. Thus, occurrence of



cognizable offence was disclosed to the police officer and, therefore, it was his duty to register the FIR on the basis of the said information and the said information was to be treated as FIR. In support of the said contention, Mr. Thakur has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of State of M.P. v. Ratan Singh, reported in (2020) 12 SCC 630. The Hon'ble Supreme Court observed in paragraphs 8 and 9 as under:

“8. As emphasised by this Court in Amitbhai Anil Chandra Shah v. CBI, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154, and consequently there cannot be a second FIR. Rather it is absurd or ridiculous to call such information as second FIR. In Subramaniam v. State of T.N., this Court observed that if an FIR is filed after recording the statement of the witnesses, such second information would be inadmissible in evidence. Moreover, in Nallabothu Ramulu v. State of A.P., the Court was of the view that the non-treatment of statements of injured witnesses as the first information cast doubt on the prosecution version.

9. Thus, not only was there a delay in filing of the FIR (which remained unexplained) which was taken as the basis of the investigation in this case, but also there was a wilful suppression of the actual first information received by the police. These factors together cast grave doubts on the credibility of the prosecution version, and lead us to the conclusion that there has been an attempt to build up a different case for the prosecution and bring in as many persons as accused as possible.”



27. Learned counsel also placed reliance upon the decision rendered in the case of Emperor v. Nazir Ahmad, reported in A.I.R. (32) 1945 Privy Council 18, wherein the Hon'ble Supreme Court observed as under:

“.....But, in any case, the receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. No doubt in the great majority of cases, criminal prosecutions are undertaken as a result of information received and recorded in this way but their Lordships see no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognisable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged. Section 157, Criminal P.C., when directing that a police officer, who has reason to suspect from information or otherwise that an offence which he is empowered to investigate under s. 156 has been committed shall proceed to investigate the facts and circumstances, supports this view. In truth the provisions as to an information report (commonly called a first information report) are enacted for other reasons. Its object is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished,....”

28. From the aforesaid observations, it can be said that it was the duty of the police officer, who got complete information with regard to commission of the cognizable offence, to register the same as FIR. However, in the present



case, the said officer has waited upto 09:15 p.m. when the son of the deceased has given the fardbeyan in the hospital.

29. Reliance has also been placed upon a decision rendered by the Hon'ble Supreme Court in the case of Krishnegowda v. State of Karnataka, reported in AIR 2017 SC 1657, wherein the Hon'ble Supreme Court observed in paragraph-29 as under:

“29. Once there is a clear contradiction between the medical and the ocular evidence coupled with severe contradictions in the oral evidence, clear latches in investigation, then the benefit of doubt has to go to the accused.”

30. Mr. Thakur, learned counsel has also placed reliance in the case of Sanjay Khanderao Wadane v. State of Maharashtra, reported in (2017) 11 SCC 842, wherein the Hon'ble Supreme Court has observed in paragraph-13 as under:

“13. A medical witness who performs a post-mortem examination is a witness of fact though he also gives an opinion on certain aspects of the case. The value of a medical witness is not merely a check upon the testimony of eyewitnesses; it is also independent testimony because it may establish certain facts quite apart from the other oral evidence. From the evidence on record, inferences are drawn as to the truth or otherwise of the prosecution case in criminal matters and truth or otherwise of a claim in civil matters. In this process, the medical evidence plays a very crucial role. If there is inconsistency or discrepancy between the medical evidence and the direct evidence or between medical evidence of two doctors, one of whom



examined the injured person and the other conducted post-mortem on the injured person after his death or as to the injuries, then in criminal cases, the accused is given the benefit of doubt, and let off. Where the direct testimony is found untrustworthy, conviction on the basis of medical evidence supported by other circumstantial evidence can be done, if that is trustworthy.”

31. From the aforesaid order passed by the Hon’ble Supreme Court, it can be said that the medical witness who performs the post-mortem is a witness of fact though he also gives an opinion on certain aspects of the case. The value of a medical witness is not merely a check upon the testimony of eyewitnesses; it is also independent testimony because it may establish certain facts quite apart from the other oral evidence. It has further been observed that the medical evidence plays a very crucial role. If there is inconsistency or discrepancy between the medical evidence and the direct evidence or between medical evidence of two doctors, one of whom examined the injured person and the other conducted post-mortem on the injured person after his death or as to the injuries, then in criminal cases, the accused is given the benefit of doubt, and let off. Where the direct testimony is found untrustworthy, conviction on the basis of medical evidence supported by other circumstantial evidence can be done, if that is trustworthy.

It is also revealed from the aforesaid observation



that once there is a clear contradiction between the medical and the ocular evidence coupled with severe contradictions in the oral evidence, clear lapses in investigation, then the benefit of doubt has to go to the accused.

32. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the evidence of the prosecution more particularly the so called eyewitnesses and the medical evidence is once again closely examined, it is revealed that as per the version of the so called eyewitnesses, firing took place from the left side of the motorcycle on which deceased Kamta Rai was sitting and the said firing took place from the distance of 7-9 feet. However, from the deposition of the doctor, it can be said that firearms were used from close range, i.e., within 1-3 feet and the firearms were used from the front side of the deceased. It is further clear that as per the deposition of the doctor, the injury on the body of the deceased can be caused profuse bleeding and the medical evidence is not given in normal course and death will cause within very short time. From the evidence on record, it transpires that injured Kamta Rai died after three hours and at the place of occurrence though blood stained soil was found, the same was not collected by the Investigating Officer. Further from the medical evidence, it is



revealed that the exit wounds are at upper level in comparison to entry wounds. Thus, there is a clear contradiction between the medical and the ocular evidence. At this stage, it is also pertinent to note that there is clear lapses in the investigation as the Investigating Officer though reached at the place of occurrence within two hours, he did not register the FIR on his own nor had he collected the blood stained soil from the place of occurrence. Further he had not seized the motorcycle on which the deceased Kamta Rai was sitting and thereafter he was taken to his residence from the market. Further the Investigating Officer had not found empty cartridges, bullet or pellet at the place of occurrence.

33. In view of the aforesaid discussions, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt and, therefore, the learned Trial Court has committed grave error while passing the impugned judgment and order.

34. These appeals are allowed. The impugned judgment of conviction and order of sentence dated 28.02.2019, passed by the learned 1st Additional Sessions Judge, Sitamarhi in Sessions Trial No. 151 of 2014 + 586 of 2014/64 of 2015, arising out of Runnisaipur P.S. Case No.195 of 2012 is set



aside.

35. The appellants, namely, Chandrika Rai, Shyam Rai, Krishna Kant Kesari, Chiranjivi Sagar @ Chiranjivi Bhagat and Anil Singh @ Anil Kumar Singh are acquitted of the charges levelled against them. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

36. If the appellants have deposited the fine, the same shall be returned to them.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.09.2023
Transmission Date	01.09.2023

