

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.79 of 2017**

Arising Out of PS. Case No.-427 Year-2014 Thana- BEGUSARAI MUFFASIL District-
Begusarai

Sudha Devi Wife of Doman Paswan, Resident of Village- Bharra, P.S.-
Muffasil, District- Begusarai.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 152 of 2017

Arising Out of PS. Case No.-427 Year-2014 Thana- BEGUSARAI MUFFASIL District-
Begusarai

Raja Paswan Son of Doman Paswan, Resident of Village-Bharra, P.S.-
Muffasil, District-Begusarai.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :
(In CRIMINAL APPEAL (DB) No. 79 of 2017)
For the Appellant/s : Mr. Aaruni Singh, Advocate
Mr. Sandip Kumar Gautam, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, Addl.PP
(In CRIMINAL APPEAL (DB) No. 152 of 2017)
For the Appellant/s : Mr. Aaruni Singh, Advocate
Mr. Sandip Kumar Gautam, Advocate
For the Respondent/s : Mr. Ajay Mishra, Addl.PP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 30-08-2024

Heard learned counsel for the appellants in both the
appeals, Ms. Shashi Bala Verma, learned Additional Public
Prosecutor for the State in Cr. Appeal (DB) No. 79 of 2017 and



Mr. Ajay Mishra, learned Additional Public Prosecutor for the State in Cr. Appeal (DB) No. 152 of 2017.

2. Both the appeals have been preferred for setting aside of the judgment of conviction dated 01.12.2016 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 06.12.2016 (hereinafter referred to as the 'impugned order') passed by learned Additional Sessions and District Judge-VIII, Begusarai (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 128 of 2015 arising out of Begusarai Muffasil P.S. Case No. 427 of 2014.

3. By the impugned judgment, both the appellants have been convicted for the offence punishable under Section 302/34 of the Indian Penal Code (in short 'IPC'). Raja Paswan (appellant in Cr. Appeal (DB) No. 152 of 2017) has further been convicted for the offence under Section 27 of the Arms Act. By the impugned order, they have been ordered to undergo life imprisonment under Section 302/34 IPC with a fine of Rs.5,000/- each and in default of payment of fine, they have to further undergo simple imprisonment for six months. Further, Raja Paswan (appellant in Cr. Appeal (DB) No. 152 of 2017) has been ordered to undergo rigorous imprisonment for two years with a fine of Rs.2,000/- and in default of payment of fine, he has to further undergo simple



imprisonment for two months. Both the sentences are to run concurrently.

Prosecution Case

4. The prosecution case is based on the *fardbeyan* (Exhibit '1/A') of Rinku Devi (PW-6) recorded by Shankar Choudhary, S.I. of Muffasil Police Station on 07.12.2014 at 15:30 hours at Sadar Hospital Begusarai. PW-6 has stated that her husband Rohit Tanti used to sell eggs on cart ('*Thela*') near Mahavir Asthan and just beside him, Raja Paswan, son of Doman Paswan used to sell eggs. At 13:30 Hours, Raja Paswan started an altercation ('*Bakjhak*') saying that only he will sell eggs at this place. In the meantime, Sudha Devi, mother of Raja Paswan instigated Raja Paswan saying that "he will not understand, kill him". Thereafter, Raja Paswan, who is handicapped by right hand, took pistol in his left hand, came close to the husband of the informant and shot at his left side of chest as a result of which blood started oozing out and he fell down. PW-6 stated that she lifted her husband, somehow put him on the scooter of Sanjay Shah (PW-2) and took him to Sadar Hospital for treatment but on way to hospital he died.

5. On the basis of the *fardbeyan* of PW-6, Begusarai Muffasil P.S. Case No. 427 of 2014 dated 07.12.2014 was



registered under Section 302/34 IPC and Section 27 of the Arms Act.

6. Upon investigation, the police submitted a chargesheet bearing No. 429 of 2014 dated 31.12.2014 under Section 302/34 IPC and Section 27 of the Arms Act against both the appellants. On the basis of this chargesheet, learned Chief Judicial Magistrate, Begusarai after taking cognizance on 06.01.2015 handed over the matter to Judicial Magistrate, First Class who committed the records to the court of sessions on 09.03.2015. After registration of session trial, the charges were explained to the accused persons, they denied the same and claimed to be tried, whereafter the trial began.

7. In course of trial, Prosecution examined altogether nine witnesses and exhibited documentary evidences which are being shown hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Parmanand Sharma
PW-2	Sanjay Sah
PW-3	Ghultu Sharma
PW-4	Indu Devi
PW-5	Manoj Tanti
PW-6	Rinku Devi
PW-7	Girivar Ram
PW-8	Dr. Gopal Mishra
PW-9	Dr. Chakravarti Chaudhary



List of Exhibits produced on behalf of Prosecution

Ext.- 1	फर्दब्यान के पृष्ठांकन पर हस्ताक्षर	7-5-15	बिना आपत्ति के	Sd/- A.D.J- VIII 7-5-15
Ext- 2	औपचारिक प्राथमिकी पर S.H.O. का लिखावट एवं हस्ताक्षर	8-9-15	बिना आपत्ति के	Sd/- A.D.J- VIII 8-9-15
Ext- 1/A	फर्दब्यान के पृष्ठांकन पर लिखावट एवं हस्ताक्षर	8-9-15	बिना आपत्ति के	Sd/- A.D.J- VIII 8-9-15
Ext- 3	जख्म प्रतिवेदन पर डा0 साक्षी का लिखावट एवं हस्ताक्षर	5-11-15	बिना आपत्ति के	Sd/- A.D.J- VIII 5-11-15
Ext- 4	P.M. Report पर साक्षी का लिखावट एवं हस्ताक्षर	5-1-16	बिना आपत्ति के	Sd/- A.D.J- VIII 5-1-16

Exhibit on behalf of Defence

Ext-A	27-1-16 के शपथ पत्र पर रिकू देवी एवं अधिवक्ता का हस्ताक्षर	बचाव पक्ष 19-4-16	बिना आपत्ति के	Sd/- A.D.J- VIII 19-4-16
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Findings of the Learned Trial Court

8. The learned trial court, after analysing the evidence of the witnesses and the documentary evidence found that the prosecution has been able to prove the genesis of occurrence, time of occurrence, place of occurrence and the manner of occurrence. The trial court has opined that the medical evidence corroborates



the ocular evidence. After analysing the evidence of PWs 1 to 6, the learned trial court found that PW-1, PW-2 and PW-6 (informant) were present at the time of occurrence and took the deceased to Sadar Hospital, Begusarai for treatment. PW-1 became witness to the *fardbeyan* and PW-2 carried the deceased with his wife to hospital on his motorcycle. PW-3 has been treated as eyewitness to the occurrence who has a beetle shop at the place of occurrence. Though the learned trial court accepted that there are some contradictions in the evidence of the witnesses but those were natural as they are rustic and illiterate persons which cannot make the prosecution case doubtful. The learned trial court accepted that the I.O. has not collected blood and blood stained clothes from the place of occurrence though the prosecution witnesses had shown the blood stained cloth to Darogaji. The learned trial court opined that though the investigation is faulty but that cannot make out a case for acquittal of the accused. The learned trial court further recorded that from the evidence of PW-1 (paragraph '2'), PW-3 (paragraph '8') and PW-7 (paragraph '5'), the place of occurrence is proved. PW-4 has also proved the place of occurrence which corroborates the evidence of I.O. (PW-7).

9. The learned trial court recorded a finding that though the inquest report has not been accepted by the prosecution but the



I.O. has accepted that the inquest report was prepared by him and the photocopy of the same is available on the record. The inquest report was prepared on 07.12.2014 at 03:20 PM and thereafter *post mortem* was conducted in which it was found that the death was caused due to firearm injury. The learned trial court found that from the *fardbeyan* (Exhibit '1/A'), it is apparent that before the firing, scuffle and abuses between the parties took place and at about 02:10 PM, accused Raja Ram Paswan fired upon Rohit Tanti on the order of his mother Sudha Devi. Sanjay Sah (PW-2) took Rohit Tanti and his wife Rinku Devi to Sadar Hospital, Begusarai on his motorcycle where police prepared the inquest report at 3:20 PM. The Doctor (PW-9) in paragraph '2' of his deposition has deposed that the firing was made from a close range and as such, the learned trial court found that Raja Paswan fired on Rohit Tanti from a close range.

10. Regarding the charge under Section 34 IPC, the learned trial court considered the First Information Report (Exhibit '2') in which it is alleged that on 07.12.2014 at 1:30 PM, accused Raja Paswan and deceased Rohit Tanti indulged in scuffle and abuses on the point of selling of eggs and during that period, Sudha Devi, mother of Raja Paswan arrived there and she ordered Raja Paswan to kill Rohit Tanti, thereafter the occurrence took



place. The learned trial court opined that on the order of Sudha Devi, accused Raja Paswan shot at the left side of chest of Rohit Tanti and in that view of the matter, the learned trial court observed that the accused Sudha Devi is also involved in killing of Rohit Tanti. The act of Sudha Devi is in furtherance of common object.

Submissions on behalf of the Appellants

11. Mr. Aruni Singh, learned counsel for the appellants submits that in this case, the prosecution has miserably failed to prove the place of occurrence. As per the *fardbeyan*, the place of occurrence is Hanuman Mandir Chauraha at Bharra but PW-1 claims that it is under the Ashoka tree. PW-2 has though stated that the place of occurrence is near Bajrangbali Chowk, but he has not mentioned about any tree at the place of occurrence. PW-3, whose *paan* shop is situated at Bharra Hanumanji Chowk, claims that he had seen the occurrence. In paragraph '8' of his deposition, he has given the description of the place of occurrence saying North of place of occurrence-house of Baleshwar Sharma, South-house of Shivji Sharma, East-road, West-his house and shop, therefore, according to PW-3, the place of occurrence is in front of his house and shop. Learned counsel submits that PW-4, who is the wife of PW-1, has stated that after receiving shot, Rohit Tanti fell down at



the *darwaja* of her house. She has stated in paragraph '7' of her deposition that she had seen the Hanuman Mandir near the place of occurrence, West to Hanuman Mandir is the road coming from Begusarai, besides the Hanuman Mandir is the Ashoka tree and besides the tree is the road. She has stated that West to the said road is her house. It is stated that the I.O. (PW-7) has stated that the place of occurrence is the Ashoka tree, which is in the Western premises of the Hanuman Mandir. According to PW-7, the firing took place at this very tree. The submission is that from the evidence of prosecution witnesses, the place of occurrence is itself in mystery and the prosecution has miserably failed to prove the actual place where the firing took place.

12. Learned counsel further submits that there is no eyewitness to the actual incident of firing. It is pointed out that no name of any eyewitness is mentioned in the *fardbeyan* of PW-6. The presence of PW-6 is itself doubtful as she is not stating as to how, when and at what time, she reached the place of occurrence and witnessed the entire occurrence. Pointing out to the evidence of PW-1, learned counsel submits that he claims himself present at Mandir situated at Bharra Chowk on the day of incident at 1:30 PM and from there, he had witnessed the entire occurrence. PW-2 admits that he is a hearsay witness and he heard from PW-1 and



others about the firing made by Raja Paswan on the deceased. PW-3 has though claimed that he had seen Raja Paswan firing at Rohit Tanti but in his cross-examination, he has stated that at the time of firing made on the deceased Rohit Tanti, he was in his shop which is East facing and on hearing the sound of firing coming from Southern side, he got down from his shop, went to that place and saw deceased Rohit Tanti restless who was surrounded by around 10-12 people standing there.

13. PW-4 is the wife of PW-1 who has stated that the occurrence took place at 1:30 PM when she was on the terrace of her house with her husband (PW-1). She had seen the quarrel between Raja Paswan and Rohit Tanti for selling of eggs. She claims that Sudha Devi came there and told her son that he won't listen so kill him, upon this Raja Paswan fired at Rohit Tanti and ran away from there. According to PW-4, after receiving shot, the deceased Rohit Tanti fell down at the *darwaja* of her house. In paragraph '13' of her deposition, she has stated that she along with her husband Parmanand Sharma (PW-1) got down from the terrace of their house and saw deceased Rohit Tanti lying unconscious at their *darwaja*.

14. PW-5 has stated that at the time of incident, he was sitting in the *mandir* close by to the place of occurrence when Raja



Paswan, on the order from Sudha Devi, fired at his brother Rohit Tanti which hit his chest on the left side. In his cross-examination, this witness has admitted that upon being called by the family, he had come from Delhi to depose in this case and upon their telling, he was deposing what he had been told.

15. Learned counsel submits that PW-6, who is the wife of the deceased and informant of this case, has stated in her examination-in-chief that at the time she was in the *angan* of her house and hearing uproar (*bak jhak*), she ran towards Mahavir Asthan and saw heated arguments going on in between Rohit Tanti and Raja Paswan. Sudha Devi, mother of Raja Paswan, came there and said her son that “he won’t listen, shoot him” and upon this taking out pistol from his waist, Raja Paswan fired at Rohit Tanti on the left side of the chest. PW-6 has stated that her house is situated west to Mahavir Asthan and as many as 25-30 houses fall in between and she has further stated that by the time she reached at Mahavir Asthan, already 10-15 people were present while heated arguments were going on in between her husband and Raja Paswan as both were abusing each other. The I.O. (PW-7) has stated that PW-6 had not stated before him in her statement as to where she was at the time of incident. PW-6 had also not stated that she had tied the wound of the deceased by her *saree*. Thus, it



is submitted that the claim of these prosecution witnesses of being eyewitness to the occurrence completely stands belied. No one is an actual witness to the alleged occurrence. The learned trial court could not appreciate the evidence of the prosecution witnesses by a close reading of their depositions.

16. Learned counsel has further submitted that the conduct of the prosecution witnesses would make their evidence untrustworthy and unreliable. The prosecution witnesses have not seen the occurrence and they have not come to depose with clean hands. The prosecution witnesses are closely related to the deceased. PW-6 happens to be the wife of the deceased whereas PW-1 is neighbour and friend of the deceased. PW-3 is the uncle of PW-1. The occurrence is said to have taken place in a broad daylight at noon hours in busy marketplace situated at Hanuman Mandir Chauraha and it is admitted by prosecution witnesses that no less than 10-20 persons or more were present at the place of occurrence when the deceased and the appellant were engaged in heated discussion or eventually when firing was made on him, but these witnesses did not take any attempt to save the deceased. PW-5, who is brother of the deceased, claims that he was watching the occurrence sitting at the *mandir* but he had not made any effort to intervene when the occurrence was taking place. The inaction on



the part of the prosecution witnesses would make it clear that none of them were present at the place of occurrence and they came only subsequently with an concocted story. Learned counsel relies upon a judgment of the Hon'ble Supreme Court in the case of **Muluwa vs. State of M.P.** reported in **AIR 1976 SC 989** (paragraph '18') to submit that the evidence of infirmed witnesses would not be reliable.

17. Learned counsel for the appellants has submitted that there are intrinsic materials on record to show that the FIR was belatedly manufactured and prepared and it was not sent forthwith to the court. It is submitted that from the evidence of Sanjay Sah (PW-2) in paragraph '10', it would appear that he along with Rinku Devi (PW-6) reached Sadar Hospital, Begusarai at around 2:00 PM. If the evidence of PW-2 and PW-6 are read together, it may be noticed that police had come to the hospital and recorded the *fardbeyan* of PW-6. The said *fardbeyan* was recorded by S.I. Shankar Choudhary of Mufassil Police Station, Camp Sadar Hospital, Begusarai and PW-1 and PW-2 have signed on the *fardbeyan*. The scribe of the *fardbeyan* S.I. Shankar Choudhary of Mufassil Police Station has not been examined by the prosecution. No explanation has been offered for his non-examination. There is also no explanation by the prosecution as to why the *fardbeyan*



was not recorded immediately after reaching of PW-2 and PW-6 at the hospital at around 2:00 PM. The FIR was delayed and eventually instituted at 17:10 hours on 07.12.2014. Learned counsel submits that in the facts and circumstances of the present case, there is a considerable delay of more than one and half hour in recording of the concerned *fardbeyan* at 3:30 PM and further a delay of two hours in registration of formal FIR at 5:10 PM on 07.12.2014. It is further evident from column no. 15 of concerned formal FIR wherein date and time of the dispatch to court is required to be filled up, has been left blank and as such, the said FIR was received and seen by the learned jurisdictional Magistrate only on the next day i.e. 08.12.2014. Learned counsel submits that this would prove fatal to the prosecution in absence of any explanation for the delay. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **Meharaj Singh vs. State of U.P.** reported in (1994) 5 SCC 188.

18. Learned counsel submits that the I.O. (PW-7) has claimed in his evidence that he had prepared the inquest report of the deceased but in course of his cross-examination when he was questioned and asked as to where is the inquest report, he stated that it was not before him but its photocopy was available in the case diary. Learned counsel submits that the inquest report as



contained in paragraph '2' of the case diary goes to show that the inquest report had not been prepared by him rather by S.I. Shankar Chaudhary (not examined). Neither the police personnel nor the witnesses of the inquest report have been examined by the prosecution. Their statements were not recorded by the Investigating Officer (PW-7) in the case diary. The submission is that after the inquest report was made and the dead body was sent for *post mortem*, the informant (PW-6) along with PW-1, PW-2 and PW-3 came into picture and a *fardebayan* was drawn to cover up the inquest report already prepared and at a belated stage a plot was designed to rope in the business rival/competitor of the deceased Rohit Tanti.

19. It is submitted that the I.O. (PW-7) had not found any blood at any of the place of occurrence. He lied about the inquest report and even the time and date of making of the said inquest report has been suppressed and not entered, therefore, it would not be out of place to mention that the deceased Rohit Tanti was shot at some other place for whatever reasons best known to PW-6 or the witnesses of the said inquest report, which the prosecution side has suppressed very cunningly and has not exhibited and proved the same in evidence. In these circumstances, it is submitted that by drawing an adverse inference, benefit of



doubt should be given to the accused appellants as they cannot be convicted merely on assumptions. The whole onus lies upon the prosecution to prove its case beyond all reasonable doubts but in this case, the prosecution has failed to prove it.

20. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Mahabir Singh vs. State of Haryana** reported in **AIR 2001 SC 2503** to submit that a discretion has been given to the court to use the case diary for aiding the court to decide on a point. He has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Subramani and Others vs. State of Tamil Nadu** reported in **(2002) 7 SCC 210** wherein it has been held that where the investigating agency was guilty of withholding material records which if placed before the Court may tilt the scale in favour of the accused, an adverse inference could be drawn against the State for withholding material records.

21. Learned counsel submits that on perusal of the evidence of PW-6, it would appear that she claims to have taken her husband to a private Doctor at Begusarai but she could not furnish the name of the said private Doctor. It is submitted that her husband was alive when he was taken to the private Doctor and died while bringing him to the Sadar Hospital, Begusarai by a



vehicle and she was alone when she brought her husband to the private Doctor. It is pointed out that from the *fardbeyan* of PW-6, it would appear that at 14:10 hours, she realised that her husband is dead and she started crying but this time is proven to be false by medical evidence as the *post mortem* report was conducted at 4:30 PM and the Doctor has categorically opined time since death is 3-6 hours meaning thereby that he was dead at 1:30 PM or before that as the column states time since death as 3-6 hours. This goes on to prove that no such incident as claimed by the prosecution took place as stated in the FIR at 1:30 PM.

22. Learned counsel further submits that as far as motive is concerned, there is nothing to show that there was any prior long standing enmity, therefore, it is hard to believe that the appellant (Raja Paswan) had intentionally brought a loaded country-made pistol to kill the deceased for no reason just in assumption that the deceased would not agree to his proposal not to sell eggs where he sells and thus, he would kill him. It is submitted that if Raja Paswan had already made up his mind to kill the deceased, there was no need for any further instigation by his mother in order to kill Rohit Tanti. PW-2 and PW-3 do not admit the presence of Sudha Devi (appellant in Cr. Appeal (DB) No. 79 of 2017) at the time of occurrence nor have they stated anything against her.



Submissions on behalf of State

23. Learned Additional Public Prosecutor(s) for the State have opposed both the appeals. It is submitted that in this case, the place of occurrence has been duly proved. All the witnesses are consistent that the place of occurrence is the Hanuman Mandir Chauraha at Bharra. The Ashoka tree is also there in the vicinity and it would appear from the evidence of PW-1 that he was present at the Bharra Chowk. He has given the description of the surroundings of temple and he has stated that he was standing near the tree. PW-2 has also stated that the occurrence took place at Bajrangbali Chowk where he had seen Raja Paswan and Rohit Tanti quarreling with each other. PW-3 is the shop owner whose shop is situated at Bharra Hanumanji Chowk and he claims to have seen Raja Paswan firing at Rohit Tanti. The I.O. (PW-7) has stated that he had inspected the place of occurrence and according to him, the place of occurrence is the tree situated West in the premises of the Hanuman temple. He has stated that near the said tree, Rohit Tanti was shot at. He has given the description of the place of occurrence as North-Hanuman Mandir Premises thereafter road and thereafter the house of Baleshwar Sharma, South-Premises of the temple in which there is a banana tree and thereafter, the cauliflower plot of Jitender Sharma, East



Bajrangbali Temple and thereafter road and West-pacci road. It is submitted that on a close reading of the prosecution evidence, it would appear that there is no dispute about the place of occurrence and it has been duly proved by the prosecution. Learned Additional Public Prosecutor further submits that the prosecution witnesses such as PW-1, PW-2, PW-3, PW-4, PW-5 and PW-6 are the eye witnesses to the occurrence and the learned trial court has rightly believed that.

24. It is further submitted that there is no inordinate delay in recording of the *fardbeyan* of Rinku Devi (PW-6). It would appear that the S.I. Shankar Choudhary from Muffasil Police Station had reached the Sadar Hospital, Begusarai and recorded the *fardbeyan* of PW-6 at 15:30 hours. Only after recording of the *fardbeyan* in the Sadar Hospital, the inquest report was prepared and the dead body was sent for *post mortem*. Referring to the *post mortem* report (Exhibit '4'), learned Additional Public Prosecutor submits that perusal thereof would show that the dead body was received in the Hospital on 07.12.2014 at 04:30 pm. It is submitted that in this case, the enmity between the deceased and Raja Paswan (appellant in Cr. Appeal (DB) No. 152 of 2017) on account of selling of eggs at the same and one place has been duly proved and the appellant Raja



Paswan had gone to the place of occurrence fully prepared with a loaded pistol and shot at the deceased. It is further submitted that the prosecution has not suppressed the inquest report and the I.O. (PW-7) has rightly pointed out that the inquest report is available in the case diary. He has stated in paragraph '15' of his deposition that the inquest report was not before him but the xerox copy of the same is available in the diary. Referring to the inquest report in the case diary, he has stated that it is mentioned in the inquest report that on the body of the deceased, there was a white and blue coloured shirt and jeans pant, black coloured jhanghiya and Muflar which had not been seized. It is submitted that learned trial court has not committed any error in appreciation of the evidences on the record and has rightly convicted both the appellants and sentenced them.

Consideration

25. Having heard learned counsel for the appellants and learned Additional Public Prosecutor for the State as also on perusal of the trial court records, we are of the considered opinion that in this case, the prosecution has proved the place of occurrence. It is evident from the *fardbeyan* (Exhibit '1/A') of PW-6 that her husband Rohit Tanti (deceased) used to sell eggs near Mahavir Asthan. Evidence has also come that the Hanuman



Temple is situated at a Chauraha which is known as Hanuman Mandir Chauraha. PW-6 has stated that it is this Hanuman Mandir Chauraha where both were quarreling and on the instigation of Sudha Devi, Raja Paswan fired upon Rohit Tanti from a close range which hit on the left part of the chest of her husband and he fell down in blood spatted condition. PW-1 has stated that he was present at the temple (Bharra Chowk) and had seen that Rohit Tanti came there and stood under the Ashoka tree. According to him, the quarrel took place for about 10 minutes between Rohit Tanti and Raja Paswan. This witness cannot be said to be giving any different place of occurrence. From the evidence of PW-2, PW-3, PW-5, PW-6 and PW-7 also it is evident that the place of occurrence is the Chauraha known as Hanuman Mandir Chauraha and these witnesses claim their presence at the said place. So far as PW-4 is concerned, she is the wife of PW-1 and on perusal of her evidence, it would appear that she has stated that she had seen Raja Paswan and Rohit Tanti quarreling at 01:30 pm, she was on the roof of her house and from there she had seen the occurrence. In paragraph '7' of her cross-examination, she has stated that she had seen Hanuman Temple which is near the place of occurrence. She has stated that besides the Hanuman temple is Ashoka tree and thereafter there is a road and West to the said road is her house.



Thus, from the evidence of PW-4 also it is evident that the place of occurrence is the Hanuman Temple Chauraha. This Court, therefore, finds no reason to take a different view on this point from that of the views of the learned trial court.

26. It has been submitted that there is a delay of one and half hour in recording of *fardbeyan* of PW-6 and again a delay has occurred in registration of FIR. We do not agree with this contention. It is evident from the evidence of PW-6 that the occurrence took place at 2:10 PM, whereafter she brought the victim to a private doctor, although she has stated that her husband died on way to private doctor but then she brought him to Sadar Hospital where S.I. from Muffasil Police Station came and recorded her statement. The statement was recorded at 3:30 PM which cannot be said to be a case of inordinate delay. The judgment of Hon'ble Supreme Court in the case of **Meharaj** (*supra*) has been recently referred in the case of **Hariprasad @ Kishan Sahu vs. State of Chhattisgarh** reported in (2024) 2 SC 557. It has been opined in paragraphs '9' and '10' of **Hariprasad** (*supra*) as under:-

“9. It cannot be gainsaid that the First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced during the course of the trial. The object of insisting upon prompt



lodging of the report to the police in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as names of the eye witnesses present at the scene of occurrence³. It is also an equally settled legal position that the receipt and recording of information report by the police is not a condition precedent to set into motion a criminal investigation⁴. The First Information Report under Section 154 Cr.PC, as such could not be treated as a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in the Court. As held by a three-Judge Bench of this Court⁵, FIR is very useful if recorded before there is time and opportunity to embellish, or before the informant's memory fades. Undue or unreasonable delay in lodging the FIR, therefore, may give rise to suspicion which put the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version.

10. Of course, the delay in lodging an FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of prosecution. The Court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of prosecution.”

3. Thulia Kali v. State of T.N., (1972) 3 SCC 393 : 1972 SCC (Cri) 543

4. King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29 : (1943-44) 71 IA 203 : AIR 1945 PC 18

5. Apren Joseph v. State of Kerala, (1973) 3 SCC 114 : 1973 SC (Cri) 195



27. In our considered opinion, it cannot be taken as a case of inordinate delay in recording of *fardbeyan* and lodging of FIR.

28. Learned counsel for the appellants has made a submission that there is no eyewitness to the actual incident of firing. While considering this submission, we have carefully perused the deposition of the prosecution witnesses. Parmanand Sharma (PW-1) has stated that the occurrence took place on 07.12.2014 at 01:30 PM when he was present at the temple (Bharra Chowk). According to him, Rohit Tanti came there and stood under the Ashoka tree, at the same time, Raja Paswan came and Sudha Devi also reached there. According to this witness, a hot exchange of words took place between Raja Paswan and Rohit Tanti and while it was going on, Sudha Devi told that “he will not agree in this way, kill him” and thereafter Raja Paswan took out his pistol and fired upon the left side of the chest of Rohit Tanti. In his cross-examination, he has stated that he is neighbour of Rohit and he had got friendship with him. He has stated in paragraph ‘13’ of his cross-examination that at the time of occurrence, in temple there were five persons present, he has named Gholtu Sharma (PW-3), Makhan Paswan (not examined), Ram Fulesh Sharma (not examined), Sanjay Shah (PW-2) and he names



himself as present. In paragraph '18' of his deposition, PW-1 has categorically stated that he was aware of the fact that Raja Paswan was keeping pistol while selling eggs and he was aware of this for about one year but he had not made any complaint in this regard to any authority and he had not told it to Rohit. Nobody had tried to catch hold of Raja Paswan. PW-1 has stated in paragraph '17' of his deposition that hot exchange of words between Rohit and Raja Paswan took place for 10 minutes. In paragraph '18', this witness says that he (Raja Paswan) took out his pistol and said that he would kill. In his cross-examination, this witness has made a material deviation from his examination-in-chief. Here, he does not say that Sudha Devi asked her son to kill Rohit Tanti. PW-1 says that Raja Paswan took out his pistol and said that he would shot at.

29. Sanjay Shah (PW-2) has given a different version in his examination-in-chief. He has stated that occurrence is of 01:30 pm when he reached Bajrangbali Chowk, he had seen Raja Paswan and Rohit Tanti quarreling but he moved ahead, after he moved ten steps he heard the sound of firing whereafter, he parked his vehicle at the roadside and went to the place of occurrence where he found that Rohit had suffered a bullet on to his chest. According to PW-2, Ghultu Sharma (PW-3), Parmanand Sharma (PW-1) and Rinku



Devi (PW-6) were present at the place of occurrence. It is this witness who had taken Rohit for treatment to Hospital at Begusarai by his vehicle but Rohit died on his way. In his examination-in-chief, PW-2 does not talk of presence of Sudha Devi and he has not stated that Sudha Devi had exhorted Raja Paswan to kill Rohit Tanti. This witness has stated in paragraph '11' of his deposition that he met Darogaji for the first time in the Hospital but his statement was not recorded there, he had neither shown the motorcycle nor the Darogaji had seen the motorcycle, he was present in the hospital till evening where he had met Bhuvneshwar Sao, Ranjeet Sao, Rajesh Paswan, Bhagnu Choudhary and Siya Ram Sao who had reached there after two hours. From the deposition of PW-2, it appears that when the *fardbeyan* of Rinku Devi was recorded by S.I. of Muffasil Police Station, Begusarai at 03:30 PM, it was PW-2 who was present but he has not signed on the *fardbeyan* as a witness. PW-2 does not say that PW-1 and PW-3 had arrived at the Hospital, therefore, signing of PW-1 and PW-3 as a witness on the *fardbeyan* at Sadar Hospital, Begusarai becomes doubtful. Fact remains that the Sub-Inspector who recorded the *fardbeyan* of PW-6 has not been examined in this case.



30. Ghultu Sharma (PW-3) has stated that he was present in his betel (*paan*) shop at 01:30 pm. He had seen that Raja Paswan had shot at Rohit Tanti. Again this witness has not stated that Sudha Devi, who is mother of Raja Paswan, was present at the place of occurrence rather in paragraph '2' of his examination-in-chief, PW-3 has stated that there was no other person with Raja Paswan at that time. In paragraph '9' of his cross-examination, PW-3 has stated that when he saw Raja Ram, there was no other person. After firing, 10-20 persons had come, at that time, PW-3 was sitting in his shop. His shop is facing East side and the firing had taken place from the South to his shop whereafter he had come down from his shop and saw that Rohit Tanti was withering and 10-20 persons had surrounded him. He had not seen any person lifting Rohit. From the testimony of PW-3, it would be evident that when quarrel was taking place and Rohit Tanti was shot at, Rinku Devi (PW-6) was not present. This witness has not named those 10-20 persons who had come after firing and has not stated about the presence of PW-1 at the place of occurrence from before the time of occurrence.

31. Indu Devi (PW-4) is the wife of Parmanand Sharma (PW-1) who claims that she was at the roof of her house when Rohit Tanti and Raja Paswan were quarreling. She has stated that



Sudha Devi, mother of Raja Paswan, came there and told to shot at Rohit Tanti whereas Raja Paswan fired upon Rohit and fled away. According to this witness, Rohit had fallen down at her door. She has stated in her cross-examination in paragraph '6' that she was with her husband at the roof of her house whereas her husband has stated in his evidence that he had been in the temple (*Bharra Chowk*). In paragraph '10' of her deposition, she has stated that her husband is also a witness in this case and whatever he had told her, she was deposing the same. From the testimonies of PW-1 and PW-4, it is evident that PW-1 being friend of the deceased Rohit Tanti has deposed in this case claiming himself as an eyewitness and at his instance his wife (PW-4) has also deposed but from their testimonies, this Court finds that they are not eyewitnesses to the occurrence and cannot be relied upon.

32. Manoj Tanti (PW-5) is the brother of the deceased. He claims that at the time of occurrence, he was sitting at the temple. He has supported the prosecution case but in course of his cross-examination, he has stated in paragraph '6' that he had come at the instance of his family members to depose and he has been told as to what are to be stated in his evidence. He has admitted that he was telling what he was told. It is evident from the evidence of PW-5 that he is a related and tutored witness whose



testimony cannot be safely relied upon. His presence at the place of occurrence becomes highly doubtful because he has stated in paragraph '9' of his deposition that he remained sitting in the temple and did not intervene when his brother was quarreling with Raja Paswan. It has been noticed in the evidence of PW-2 and PW-3 that while PW-2 has stated about the persons who had arrived at the hospital after two hours, he has not named PW-5. Thus, PW-5 neither accompanied his injured brother to hospital nor he went there even after two hours. Similarly, PW-3 has also not named PW-5 present at the place of occurrence.

33. Rinku Devi (PW-6) is the wife of the deceased. She has stated in her examination-in-chief that the occurrence took place at 1:30 PM, at that time, she was in her courtyard (*angan*) but she claims that she had heard the uproar (*bak jhak*) and then went towards Mahavir Asthan where she found that hot exchange of words were taking place between Rohit and Raja Paswan. Raja Paswan had asked Rohit not to sell eggs. She has stated in paragraph '2' of her examination-in-chief that thereafter Sudha, mother of Raja Paswan, came and on her exhortation, Raja Paswan had fired upon Rohit as a result he suffered the wound and fell down. She had taken Rohit to Sadar hospital on the motorcycle of Sanjay Sah (PW-2) but Rohit had died on way to Sadar Hospital.



As regards her presence at the place of occurrence when Raja Paswan shot at Rohit Tanti, this Court has found upon examining her testimonies that her house is situated after 25-30 houses from the temple. She has another house which is at a distance of ten houses and there are ten-twenty houses in the neighbourhood. According to her testimony, nobody had informed her about the occurrence. This Court finds it difficult to believe that PW-6 would hear the uproar/quarrel which was going on near Mahavir Asthan which is a busy area and several vehicles would be passing on with a lot of noise through the road which is near the place of occurrence. Hearing of quarrel from such a long distance being inside her courtyard is highly doubtful. She has stated that she had reached the place of occurrence while the hot exchange of words were going on and she had started from her house after two minutes. According to PW-6, when she reached there, ten-fifteen persons were present there, her husband and Raja Paswan were abusing each other. If this statement of PW-6 is considered keeping in view the evidence of PW-3, who is the betel shop owner and whose shop is situated at the place of occurrence, it would appear that according to PW-3, ten-twenty persons had assembled at the place of occurrence only after Rohit had suffered bullet. Neither PW-1 nor PW-3 has stated about the presence of



PW-6 at the time of quarrel. While PW-6 claims that she had intervened in course of quarrel and tried to stop the quarrel whereafter the quarrel stopped but PW-1 and PW-5 both have stated that nobody tried to pacify/stop the quarrel. PW-2 and PW-3 are also not saying about presence of PW-6 at the time of hot exchange of words between Raja Paswan and Rohit Tanti. When PW-3 had seen Rohit, he had not seen anybody lifting him. Thus, presence of PW-6 at the time of occurrence is not corroborated from the testimonies of other prosecution witnesses.

34. PW-6 has stated that after her husband had fallen down, she had tied his wound with a portion of her saree, her saree had soaked blood but she had not given that saree to Daroga. The I.O. (PW-7) has contradicted PW-6 saying that she had not told him that she had tied the wound of her husband by her saree. She cannot say the name of the private Doctor to whom she had gone and she cannot say the distance of the private Doctor from her house. She has stated that even before bringing her husband to the private Doctor, her husband had died. In paragraph '15', she has stated that she had reached the private Doctor by a vehicle but no one had reached there. She was suggested that she had seen the dead body of her husband only in the Sadar Hospital, she was in



her house at the time of occurrence and she had lodged a false case at the instance of Parmanand Sharma (PW-1).

35. Giriwar Ram (PW-7) is the Investigating Officer of this case. He has stated that the *fardbeyan* of PW-6 was recorded by A.S.I. of Muffasil Police Station at 3:30 PM and he was given charge of investigation at 5:30 PM whereafter he had gone to the place of occurrence. He had reached there at 5:45 PM but did not find any blood mark at the place of occurrence. This Court finds that 07.12.2014, which is the date of occurrence, was a winter season and the I.O. (PW-7) reached the place of occurrence only after the darkness had prevailed. From 1:30 PM to 5:45 PM, when I.O. reached at the place of occurrence, no step was taken to protect the blood mark at the place of occurrence, therefore, absence of the blood mark at the place of occurrence cannot be seen to doubt the prosecution case. I.O. has stated that he had prepared the inquest report but in paragraph '15' of his deposition, he has stated that the inquest report was not before him and its xerox copy is in the case diary. Learned counsel for the appellants has taken a plea that the I.O. had made false statements and he has tried to suppress the truth but this Court would not accept this plea of the learned counsel for the appellants for the reason that the I.O. has stated in his cross-examination that inquest report is in the case



diary and after looking into the same, he has stated about the clothes which the deceased was wearing at the time of occurrence. In paragraph '16' of his deposition, PW-7 has contradicted PW-6 saying that she had not made statement before him that she had tied the wounds of the deceased by her saree. PW-7 has further stated that in her statement PW-6 had not informed that at the time of occurrence where she was. From the *fardbeyan* of PW-6, this Court finds that the informant (PW-6) has not claimed in her *fardbeyan* that she was personally present at the place of occurrence and the occurrence of firing had taken place in her presence. She has stated that she had lifted her husband and taken him on the scooter of her neighbour Sanjay Sah (PW-2) to Sadar Hospital but on way he died, contrary to this, in her evidence she has stated she had taken her husband firstly to a private Doctor by a vehicle but no one had reached to the private Doctor. This Court arrives at a conclusion that the informant (PW-6) reached the place of occurrence only after her husband had already been shot at, therefore, she is not an eyewitness to the occurrence. Her non-mentioning about her presence at the place of occurrence in the *fardbeyan* and then not telling it to the I.O. in course of investigation that where she was at the time of occurrence would



lead this Court to disbelieve the claim of the informant (PW-6) that she is an eyewitness to the occurrence.

36. Dr. Chakravarti Chaudhary (PW-9) had conducted the autopsy on the dead body of Rohit Tanti at 04:30 pm in Sadar Hospital, Begusarai who found the following anti-mortem injuries as per post-mortem report (Exhibit '4'):-

“Postmortem of deceased Rohit Tanti, 25 Yr H.M. S/o Sagar Tanti, village Bharra P.S.- Muffasil- Dist- Begusarai was done at 4:30 P.M. of 7.12.14 & found-

(1) Wound of entrance at superomedial aspect of left axilla-Inverted margin, diameter $1\frac{3}{4}$ cm of round hole with tattooing & charring mark around wound.

(2) Chest full of blood clot, Bullet taken out from Rt. costo-chondral junction.

(3) Lungs were lacerated.

(4) Stomach filled with semidigested food & water.

(5) Bladder – filled with urine.

(6) All solid viscera like- lungs, Heart, Liver, Kidney Spleen are pale.

(7) Bullet packed in a glass jar and sealed & given to police personnel.

Body along with it's belongings were handed over to police personnel.

Time since- 3 to 6 hours.

Cause of death :- Hemorrhagic, psychogenic shock due to sever bleeding as result of fire arm.”

37. From Exhibit '4', it is evident that the deceased was shot at from a close range. There was tattooing and charring mark around the wound. Death of Rohit Tanti by the firearm and the manner of firing by Raja Paswan has been duly proved by the prosecution.

38. In the light of the aforementioned discussions, this Court is of the view that PW-2 and PW-3 are the two reliable



witnesses in this case. They have not stated about presence of Sudha Devi (the appellant in Cr. Appeal (DB) No. 79 of 2017) at the time of place of occurrence. They had seen Rohit and Raja Paswan quarreling with each other at the place of occurrence and thereafter Raja Paswan had taken out pistol and fired at Rohit Tanti. PW-2 had seen quarreling and when he moved ahead about ten steps he had heard the sound of firing whereafter he had returned and found Rohit had fallen down, Raja Paswan had fired on him and he was fleeing away. PW-3 has also withstood the test of cross-examination. He is a natural witness being a shop owner present in his shop at the time of occurrence. The motive behind the occurrence is the enmity on account of selling of eggs at the same place. PW-6 has herself stated that there was enmity on this count. We, therefore, conclude that while the prosecution has failed to prove the guilt of Sudha Devi beyond all reasonable doubts, the prosecution has fully established the guilt of the appellant Raja Paswan beyond doubt.

39. In result, this Court sets aside the conviction and sentence of the appellant Sudha Devi and acquit her of the charges under Section 302/34 IPC. She is on bail. By virtue of her acquittal giving her benefit of doubt, she is discharged from the liability of her bail bond.



40. The conviction and sentence of Raja Paswan (the appellant in Cr. Appeal (DB) No. 152 of 2017) is affirmed. Since Raja Paswan is already in incarceration, he would serve the sentence awarded by the learned trial court.

41. Cr. Appeal (DB) No. 79 of 2017 is allowed and Cr. Appeal (DB) No. 152 of 2017 stands dismissed.

42. Let the trial court records along with copy of the judgment be sent to the learned court below.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

SUSHMA2/Rishi-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	03.09.2024
Transmission Date	03.09.2024

