

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.978 of 2016

Arising Out of PS. Case No.-114 Year-2014 Thana- LAHERIMUHALLA District- Nalanda

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Dharmvir Kumar, son of Ram Pravesh Sharma, resident of village-Lona,
P.S.- Nalanda, District Nalanda.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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Code of Criminal Procedure: S.374 (2)

Indian Penal Code: S.302 with S.34

Arms Act: S.27 (1)

Appeal – challenging the impugned judgment of conviction dated 11/8/2016 and order of sentence dated 23/8/2016 – passed by the learned Session Judge, Nalanda at Bihar Sharif in Session Trial No. 84/2015 arising out of Laheri P.S. case No.114/2014 where the concerned trial court has convicted the Appellant for offence punishable under S.302 of Indian Penal Code and S.27 of Arms Act – he has been sentenced to undergo rigorous imprisonment for four years and pay a fine of 5000/- and in default undergo rigorous imprisonment for one year under S.27(1) of Arms Act both to run concurrently – according to the Informant while he was attending the baraat procession of the brother – in – law of his brother and when it reached near Mahila Lodge at around 9 p.m . – Two unknown persons entered the procession – when the members of the baraat they went back after threatening them to see them ahead – when the baraat procession

Reached near Radhika Hotel at around 10 : 50 p.m. around 6-7 unknown persons bearing rod, pistol, sword in their hands including the persons who had tried to enter the baraat procession – they first assaulted a barati with rod and sword which hit below the left ear , another opened fire in another was hit in the right ear – subsequently his elder brother

became injured and died of the injury – thereafter the police came to the place of occurrence where apprehended persons disclosed their names – the appellant who opened fire was one Dharmvir Kumar who he identified – other persons were also assaulted – when the deceased went to pacify the people involved in scuffle he was shot on his head – on receiving information the police reached the place at around 11:00 p.m. – the police came armed and chased the accused persons along with some baraatīs and arrested them – All persons apprehended accepted to be involved in the occurrence – during investigation blood spots were found which were not in a condition to be collected – inquest report of deceased was prepared – injury report of the injured were prepared – formal F.I.R was lodged around 1:00 a.m. being P.S. case no.114/2014 on 3/5/2014 – clothes of the appellant and deceased were seized and were found stained with blood and were sent to Forensic Science Laboratory, Patna for investigation – place of occurrence is a busy road but not at night – no persons of nearby locality present during incident – statement of injured taken – It appears from the impugned judgment under appeal that the forensic report are the catalyst for conviction which was exhibited before the trial court – none of the eyewitnesses during trial stated that the appellant came in physical contact with the deceased – it appears the judgment of the trial court was passed on imaginary grounds by defying all the defying all the basic principles of criminal jurisprudence – there are several doubts regarding the accused which remain unanswered by prosecution during trial creating a doubt regarding recording of conviction by learned trial court the benefit of which must be given to the Accused/Appellant- Impugned order of conviction and sentence is thus set aside – the Appellant is acquitted and to be released forthwith if his presence is not required in any other case – Appeal Allowed

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Dharmvir Kumar, son of Ram Pravesh Sharma, resident of village-Lona, P.S.-
Nalanda, District Nalanda.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Bindhyachal Singh, Senior Advocate
		Mr. Vipin Kumar Singh, Advocate
		Ms. Smriti Singh, Advocate
		Ms. Nikita Mittal, Advocate
For the Respondent-State:		Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)
Date : 20-04-2024

The present appeal has been filed by the appellant-convict under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated 11.08.2016 and order of sentence dated 23.08.2016 passed by learned Sessions Judge, Nalanda at Biharsharif in Sessions Trial No. 84 of 2015, arising out of Laheri P.S. Case No.114 of 2014, whereby the concerned Trial Court has convicted the present appellant for the offences punishable under Section 302 of the Indian Penal Code



(hereinafter referred to as 'IPC') and Section 27 of the Arms Act. He has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- under Section 302 of the IPC and rigorous imprisonment for four years and to pay a fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year under Section 27(1) of the Arms Act. However, both the sentences have been ordered to run concurrently.

2. The case of the prosecution, as per the *fardebayan* of the informant (PW-6), namely, Shailendra Kumar recorded by Police Inspector, namely, Om Prakash Singh (PW-7), S.H.O. of Laheri Police Station at 23:15 hours on 02.05.2014 near Radhika Hotel at Ramchander Pur is as follows:-

"That on the occasion of the marriage of Sheo Dayal Kumar (brother-in-law of Anil Kumar Singh, the brother of the informant) on 02.05.2014 with Babita Kumari (daughter of Surendra Nath), the *Barat* started at 9 O'clock at night from the house of Sheo Dayal Kumar situated at Mohalla-Khandak Par Police Station, Bihar. The Barat was to stay at Radhika Hotel and the marriage ceremony was to be performed at



Raj Utsav Hall near Pani Tanki, Nala Road. When the Barat reached near Post Office from Khandak Par, D.J. was being played. But two young persons entered into the *Barat* and started dancing and disturbing the *Barat* and when the people of *Barat* protested to it, both the young men entered into scuffle, but they were made flee away by persons of the *Barat*. But, both the young men went away giving threatening to teach lesson ahead. When the *Barat* reached near Radhika Hotel at about 10.50 O'clock in the night, 6-7 persons having *Talwar* (sword) and pistol in their hands reached there and started assaulting to the persons of *Barat*. When *Barati* persons protested, one of those young men attacked on Nitish Kumar (PW-2) by his *Talwar* injuring him on the cheek near left eye. One of the attackers was also beaten by the persons of *Barat*. In the meantime, one of the attackers shot his younger brother, namely Anil Kumar near his ear. Consequently, he fell down and became unconscious. In the meantime, patrolling police party of Laheri Police Station reached there and chased the young attackers as per the guidance of the Barat party and caught three of them and rest persons fled away with the arms in another direction. The elder brother of the informant was sent to hospital but, he was declared brought dead. The injured out the attackers was arrested



and he stated his name as Inderajit Kumar, S/o Sadhu Thakur of village-Lona, P.S.-Nalanda, presently living at Bhaisasur in the house of Bihari Mahto as a tenant situated in Police Station-Laheri, District-Nalanda, the second person stated his name as Dharamvir Kumar, S/o Ram Perwesh Sharma, Resident of Lona, Police Station-Nalanda and presently living at Bhaisasur in the house of Bihari Mahto as a tenant situated in Police Station-Laheri, District-Nalanda and the third person stated his name as Bipin Kumar, S/o Awadhesh Sharma, Resident of Lona, Police Station-Nalanda. It has been also claimed by the informant that he can recognize the rest persons, who have fled away. The informant has claimed that the aforesaid three arrested accused persons in association with three-four other persons have shot his brother dead on account of little scuffle”.

3. On the basis of the aforesaid *fardbeyan*/written information given by the informant (PW-6), Laheri P.S. Case No.114 of 2014 was registered on 03.05.2014 at about 1.00 a.m. for the offences punishable under Section 302 of the I.P.C. and Section 27 of the Arms Act against all the accused persons including the appellant/convict.

4. The Investigating Officer, thereafter, carried out



the investigation and during the course of investigation, recorded the statement of the witnesses and collected the evidences and after completion of investigation, filed charge-sheet bearing No.128 of 2014 dated 30.07.2014 against the appellant/accused and other accused persons, namely, Indrajeet Kumar, keeping investigation open against rest accused persons, before the court of concerned learned Jurisdictional Magistrate.

5. On the basis of materials available on record, the learned Jurisdictional Magistrate took cognizance for the offence punishable under Section 302 read with 34 of the IPC and Section 27 of the Arms Act on 21.07.2014 against the charge-sheeted accused persons and on the same day, the case of accused, namely, Indrajeet Kumar was transferred to Juvenile Justice Board. However, as the case of appellant was exclusively triable by the Court of Sessions, the learned Jurisdictional Magistrate committed the case to Sessions Court under Section 209 of the Code, which transferred to the court of learned Additional Sessions Judge-IV, Nalanda at Biharsharif for trial and disposal, where



it was registered as S.Tr. No. 84 of 2015.

6. During the course of trial, the prosecution has examined altogether seven witnesses. They are:- PW-1 Shivaniketan Kumar, PW-2 Nitish Kumar (injured), PW-3 Anuj Kumar, PW-4 Pappu Kumar, PW-5, Dr. Raj Kishore Raju, PW-6 Shailendra Kumar (informant) and PW-7 Om Prakash Singh, Station House Officer of Laheri Police Station and Investigating Officer (I.O.) of this case.

7. The defence has examined two witnesses, namely, Kamlesh Kumar as DW-1 and Injrajeet Kumar (injured co-accused) as DW-2.

8. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit-1	Signaure of Shivaniketan Kumar (PW-1) on the seizure list.
Exhibit-1/1	Signature of Nitish Kumar(PW-2) on the seizure list.
Exhibit-2	Signature of Anuj Kumar (PW-3) on the seizure list
Exhibit-2/1	Signature of Pappu Kumar (PW-4) on seizure list.
Exhibit-3	Postmortem report of of the deceased Anil Kumar Singh.



Exhibit-3/1	Injury report of injured Indrajeet Kumar
Exhibit-3/2	Injury report of injured Nitish Kumar.
Exhibit-4	Signature of the informant Shailendra Kumar on the <i>fardbeyan</i> .
Exhibit-4/1	Signature of Nitish Kumar on the <i>fardbeyan</i> .
Exhibit-5	Photostat copy of Inquest report of deceased Anil Kumar Singh.
Exhibit-5/1	Signature of Shailendra Kumar (PW-6) on the Inquest report.
Exhibit-6	Seizure list of shirt of the accused Dharmvir Kumar.
Exhibit-7	<i>Fardbeyan</i> of the informant Shailendra Kmar (PW-6).
Exhibit-7/1	Endorsement of Police Inspector, Om Prakash Singh (PW-7).
Exhibit-8	Photostat copy of Inquest Report of deceased Anil Kumar Singh.
Exhibit-9	Seizure list of blood stained shirt of the deceased Anil Kumar Singh.
Exhibit-10	Formal F.I.R of Laheri P.S. Case No.114 of 2014 dated 03.05.2014.
Exhibit-11	F.S.L. Report bearing No.2930 of 2014 dated 21.04.2016.
Exhibit-11/1	Serological Report dated 17.05.2016.

9. The defence has also relied upon following documents/exhibits on their behalf in order to prove their innocence:-



Exhibit No(s).	List of documents
Exhibit-A	Blood Test Report of Indrajeet Kumar (DW-2)
Exhibit-B	Blood Test Report regarding blood group of Indrajeet Kumar.

10. The statement of the appellant/accused was recorded under Section 313 of the Code after stating him incriminating evidences/circumstances, as surfaced during the trial, which he denied and shown his complete innocence.

11. After conclusion of trial, the Trial Court has convicted and sentenced the appellant/accused in the manner as stated aforesaid.

12. Being aggrieved with the aforesaid judgment and order, the appellant/convict has preferred the present appeal.

13. Hence, the present appeal.

ARGUMENT ADVANCED FOR APPELLANT/ACCUSED:

14. Mr. Bindhyachal Singh, learned senior counsel while arguing on behalf of the appellant/accused submitted that the nature of evidences as surfaced during the trial is not sufficient to suggest that appellant/accused has committed the



alleged offence beyond reasonable doubt and, therefore, the impugned order passed by learned Sessions Judge is required to be set aside, as same is not fulfilling the foundational and basic aspects of established norms of the criminal law. In support of his submission, Mr. Singh submitted that the informant of this case cannot be said to be an eye-witness of the occurrence for the reason that despite of claiming through first information report (Exhibit-10) that he was present at the place of occurrence when it took place, he failed to name the appellant that he was the person, who fired upon the deceased though, he along with other two accused persons arrested immediately after the occurrence by chasing the police patrolling party for a short distance. It is further submitted that no weapons of any kind was recovered from appellant/accused and other two apprehended co-accused persons rather it is specifically averred through narration of FIR that rest of the co-accused persons ran away along with weapons in another direction. It is submitted that in view of this fact alone, the specific allegation as raised through different prosecution witnesses *qua* this appellant to fire bullet on temporal region of the brother of the informant causing his instant death is not



appearing convincing. It is submitted that through FIR, it was narrated that the apprehended three accused persons along with their 3 or 4 friends, who ran away after the occurrence, committed the murder of the brother of the informant. It is pointed out that the specific allegation as to cause fatal injury *qua* appellant is only an improved version during the trial just to secure the conviction being interested witness. It is further submitted that the manner in which alleged firing was made as deposed by PW-1, namely, Sriniketan Kumar also creates a doubt in view of specific allegation to fire on temporal region of the deceased by this appellant.

15. Mr. Singh further submitted that the injured witness, PW-2, namely, Nitish Kumar also not appearing eye-witness of the real occurrence of the fact that fatal firearm injury was caused by this appellant/accused. It is also pointed out that PW-3 also arrived at the place of occurrence after firing. Learned senior counsel further submitted that PW-6, who is informant of the case clearly deposed in his examination-in-chief itself that he came to know that firing was made by appellant/accused. It is also submitted by learned senior counsel that Test Identification Parade in this case was



not conducted in the manner as approved under the law. It is submitted that the Investigating Officer of this case, who examined as PW-7, chased the appellant/accused after a short distance and found that his shirt on right shoulder was stained with blood and his right pocket was also found torn which was seized and sent for Forensic Examination but, it could not connect the appellant/accused with the present occurrence and learned Trial Court purely on imaginary grounds, convicted the appellant/accused, as the blood-stained which was found upon the shirt of appellant/accused was of Group- 'O' which was of deceased, by ignoring the version of defence witness. It is submitted that admittedly one of the co-accused was injured during the occurrence namely, Indrajeet Kumar, who also received injury during the occurrence and was apprehended along with appellant/accused whose blood group was also 'O'. It is pointed out by Mr. Singh that the learned Trial Court while convicting the appellant/accused taken a note of medical injury of injured Indrajeet Kumar in a manner which is not supported from the record i.e. Exhibit No. 3/1. It is pointed out that the Trial Court erred to record that only abrasion on the face of Indrajeet Kumar was found in terms of Exhibit-3/1, whereas



Exhibit No.-3/1 shows multiple injuries upon different body parts of Indrajeet Kumar, which is in nature of 'bruise'. It is submitted that the learned Trial Court took an imaginary view, as there was no wound on the chin of Indrajeet Kumar and, therefore, it is not possible that the blood stain on shirt of appellant was of Indrajeet, as only chin may touch only while carrying a person on shoulder and purely on this imaginary ground, the version of defence was discarded. It is also pointed out that Investigating Officer/PW-7 of this case namely, Om Prakash Singh specifically stated in his examination-in-chief that the blood-stain was only limited with right shoulder. Therefore, the finding of blood by learned Trial Court on entire shirt of accused/appellant is appearing out of imagination.

16. Mr. Bindhyachal Singh, learned senior counsel while travelling over the argument submitted that this is a classical case where the conviction was secured out of failure of defence, who said to failed proved innocence, whereas it is the basic principle of criminal prosecution that the burden to establish its case beyond reasonable doubt is of prosecution not of the accused/appellant.

17. It is also submitted that the blood of co-accused



Indrajeet Kumar was also blood of human being and it was blood Group- 'O' which was also of the deceased. He was carried by appellant/accused on the shoulder from the place of occurrence. It is submitted that none of the eye-witnesses of the occurrence stated that the accused/appellant came in contact with deceased physically as to get stain blood from injury of the deceased on his right shoulder. The Trial Court failed to appreciate this fact and disbelieved the version of defence purely on imaginary ground, as submitted above. It is submitted that in case of tallying blood group, the only option, which was available to prosecution to establish its case beyond reasonable doubt was of D.N.A. (De-oxy Ribulose Nucleic Acid) examination, which was not conducted upon.

18. While concluding argument, Mr. Singh submitted that the recovery of firearms or any arm from three apprehended accused persons including accused/appellant also creates a serious doubt to entire prosecution version. It is also pointed out that the accused/appellant was apprehended at nearby bus-stand, which is at some distance from the place of occurrence but, the learned Trial Court again took shelter of imagination that in said time gap, the weapon of murder may



be thrown by appellant/accused. This version also creates a serious doubt in view of deposition of several prosecution witnesses that the other set of 3-4 accused persons ran away with all weapons in another direction.

19. In support of aforesaid submissions, learned senior counsel has relied upon the legal reports of Hon'ble Supreme Court as rendered in the matters of **Khema @ Khem Chandra and Ors. vs. State of U.P. [(2023) 10 SCC 451]**; **Sukhjit Singh vs. State of Punjab [(2014) 10 SCC 270]**; **Giresaan Nair and Ors. vs. State of Kerala [(2023) 1 SCC 180]** and in the matter of **Ram Singh vs. State of U.P. [(2024) SCC OnLine SC 170]**.

ARGUMENT ON BEHALF OF THE STATE:

20. Mr. Sujit Kumar Singh, learned APP for the State while advancing his argument submitted that several eye-witnesses supported through their oral testimony that it was the appellant/accused, who fired upon deceased causing his death and, thus, the prosecution established its case beyond all reasonable doubt. It is submitted that even the injured witness, who is a stamped witness of this case i.e. PW-2 stated during



trial that it was the appellant/accused, who fired upon the deceased and there is no apparent reason to disbelieve his version. It is submitted that the minor discrepancies are bound to be surfaced during trial and on account of same, the prosecution case cannot be disbelieved. In support of his submission, learned APP relied upon the judgment of Hon'ble Supreme Court as passed in the matter of **State of U.P. vs. Naresh and Ors. [2011 4 SCC 324]**. It is further submitted by learned APP that it was proved through postmortem report that death was caused due to firearm injury, which was supported by different eye-witnesses also and, as such, non-recovery of weapons also not fatal in present case. In support of his submission, learned APP relied upon the legal report of Hon'ble Supreme Court as passed in the matter of **Prakash Vs. State of Karnataka [2014 CrL.J. 2503]**.

21. It is also submitted by learned APP that in want of independent witness, the deposition of the Investigating Officer of this case, who immediately after the occurrence apprehended the accused persons cannot be discarded, if its found trustworthy and inspired confidence as it is in present case. In support of his submission, learned APP relied upon the



legal report of Hon'ble Supreme Court as reported in the matter of **Tahir vs. State of Delhi [(1996) 3 SCC 338]**.

CONSIDERATION AND ANALYSIS:

22. We have perused the materials available on record and also taken note of argument as advanced by learned counsel appearing on behalf of the parties., It appears to us that it would be apposite to re-appreciate the evidence for the just and proper disposal of this case, but before that we would like to quote the concluding finding of learned trial court as to convict appellant/accused in this case, which is as under:-

“... The defenece has miserably failed to prove its plea and demolished the prosecution case proved beyond the reasonable doubt.”

(Para 90 of the Impugned Judgment)

This is the ultimate line, which convinced the learned Trial Court to convict the appellant/accused. It seems disturbing that how the basic foundational aspect of criminal jurisprudence, where it is the bounden duty of prosecution to established its case beyond all reasonable doubt was overlooked in this case by shifting the burden on accused to established his innocence.



23. In view of aforesaid concluding note, it would be apposite to reappreciate the oral evidence at its first instance, which is as under:-

24. PW-6, Shailendra Kumar is the informant of this case, who stated that the occurrence is of 02.05.2014. He stated in his examination-in-chief that while he was attending the *Barat* procession of brother-in-law of his elder brother namely, Shiv Dayal and as it reached near to Mahila college near to Biharsharif post-office after starting at 9:00 pm from Khandakpar mohalla to Radhika Hotel, two unknown persons entered into said procession. When members of *barat* procession objected them, they went back by advancing the threat to see them ahead. He further stated that when said *barat procession* reached near to Radhika Hotel at about 10.50 pm, 6-7 numbers of unknown persons having rod, pistol and sword in their hand including those persons who entered unauthorisedly into procession near post-office came and first of all assaulted Nitish Kumar (PW-2) with rod and sword which hit below his left eye. One person opened fire, which hit his brother, Anil Kumar Singh



in right ear. Subsequent to that, his elder brother became injured and died out of said bullet injury. It appears from his examination-in-chief that three persons were apprehended and thereafter, police came to place of occurrence, where apprehended persons disclosed their name as Dharmvir Kumar, (appellant), Bipin Kumar and Indrajeet Prasad. The apprehend co-accused Indrajeet also said to receive injuries during occurrence. He came to know that the persons who opened fire was appellant Dharmvir Kumar to whom, he identified. It was stated that Nitish Kumar was also assaulted by Bipin Kumar. This very statement of examination-in-chief is sufficient to suggest that he was not the eye-witness of the occurrence rather he came to know from some undisclosed source that it was appellant, who opened fire upon his elder brother. He identified his signature over *fardbeyan* and signature of Nitish Kumar over there, which upon his identification exhibited as Exhibit No.4 and 4/1 respectively. He also identified his signature over inquest report, which upon his identification exhibited as Exhibit No.- 5 and his signature was exhibited as Exhibit No.5/1. It was



stated by him that no incriminating materials were recovered from apprehended accused persons including appellant at the time of arrest. It was stated by him that the murder took place near to Radhika Hotel. It is also stated by him that his deceased brother was not assaulted by rod neither by sword. This witness further stated that the persons who were equipped with pistol, one of them was the appellant. He specifically stated that the firing was made from the right side while his brother was facing towards west. It was a close range firing almost touching the head, where bullet remains inside head and did not exit. It is stated by him that at the time of firing itself, accused was apprehended. It is stated that the injury of Nitish Kumar was a cut injury, which was at one place of the body only, whereas he received invisible injuries all over the body. His clothes were torn during the occurrence. It is also stated by him that TIP was conducted in night itself to identify the accused persons, which was conducted in Deep Nagar Police Station. During TIP, he was accompanied with four other persons also but, he failed to disclose their name. He was the first person



questioned by police regarding the occurrence. It was deposed that he could not say whether police recorded his statement at the time of inquiry when accused persons were also there. He denied all the accusation as advanced to him by way of submission *qua* involvement of appellant/accused in the occurrence. He stated that accused persons including appellant were not known to him prior to the occurrence. After the inquiry and identification, as aforesaid, he was taken to place of occurrence, where his statement was recorded and signature was obtained. No pistol or sword were recovered at the place of occurrence. He denied the suggestion that the accused/appellant Dharmvir Kumar implicated falsely while was taken to his injured brother to hospital on the basis of suspicion.

25. PW-1 is Sriniketan Kumar, who also supported the date and time of occurrence. It was deposed by him that while deceased Anil Kmar Singh went to pacify the people involved in scuffle, the accused/appellant Dharmvir shot bullet on his head. He also stated that Bipin assaulted with sword to Nitish (PW-2), which caused injury under his left



eye. It was stated by him that on raising alarm by them, the police came over there and after chasing for a short distance apprehended three persons, namely, Dharmvir (appellant), Indrajeet and Bipin Kumar. Police taken Anil Kumar to hospital. It was stated by him that police seized blood-stained shirt and paint of deceased and prepared seizure list signed by him, which on his identification before learned trial court, was exhibited as Exhibit No.1. It was further stated that said seizure list was also signed by Nitish Kumar. His statement was recorded on next day of the occurrence in hospital at about 2.00 am. He stated before the police that out of six persons, he identified three persons and also stated that two of them were equipped with sword. He also stated before police that accused disclosed their name after arrest. He stated that the injury of Nitish Kumar was about a length equivalent to half of the finger but, he could not saw the said injury at the time of occurrence. He stated that he made an attempt to catch the person, who assaulted with sword, but he could not succeed. The injury of Nitish was bleeding. It was also stated by him that when bullet was



fired upon deceased Anil, by that time, he was facing towards east and firing was made from his front. It was single firing and as it was a night time, he could not see whether public gathered over there or not. He stated that information was not given to Laheri Thana, which was just near to place of the occurrence. It was also stated that police came to place of occurrence after two to half minutes when Anil (deceased) was taken to hospital. It was also stated by him that police did not record the statement of any person. He also failed to disclose that who told to the police that accused persons fled away. He specifically stated that when accused persons were apprehended by police, no weapon was recovered from them. The police neither recovered any pistol nor any sword. It is stated by him that police brought the accused persons at place of occurrence and thereafter, taken to police station, where police was accompanied with Shailendra Kumar (informant/PW-6). He met with PW-6/informant in morning only in hospital, somewhere between 3-4 am police came to Sadar Hospital, Biharsharif at about 2.00 am.



26. PW-2, is Nitish Kumar, who is the most important witness of this case, as he himself received injury during the occurrence. As per his deposition, he was assaulted by sword causing injury near to his eye and by that time, Anil Kumar Singh (deceased) came there to pacify the accused persons, where during the altercation, one accused persons fired bullet upon Anil Kumar in temporal region and, thereafter, they fled away. Thereafter, he brought him to the hospital with help of the persons, who were attending the *barat*. It is stated by him that they only disclosed to police that accused persons fled towards western direction, on which the police followed them and apprehended three accused persons, who were identified by him. His name was asked by police before him, where he disclosed their name as Dharmvir (appellant/accused), Indrajeet and Bipin. He disclosed that he was assaulted by Bipin and bullet was fired upon Anil by Dharmvir (appellant). He also stated that the blood-stained clothes were seized before him which he identified as witness, which on his identification before the trial court exhibited as Exhibit



No.1/1. It is also stated by him that the video recording of *barat* procession was done by bride side. It was deposed by him that he stopped sword attempt by his left hand but, he did not received any cut injury on his hand. It was said to be attempted from his front, where he caused injury near to his eye about the size of 1/2". It was categorically deposed by him that as he developed pain out of said sword injury, he went back side of *barat* procession out of fear and in the meantime, firing was made as a result of which, a stampede like situation developed and all the members of *barati* were also started to run away from the place of occurrence out of fear, who assembled after sometime. It was also stated by him that members of *barati* were also made an attempt to catch the accused persons. He deposed that he made statement before the police that firing was made by putting pistol on temporal region of Anil (deceased). He also went to hospital, where he received treatment and came back to home at about 5.00 am from hospital. Apprehended accused persons were not known to him prior to the occurrence. His statement was not recorded at place of occurrence.



27. PW-3 is Anuj Kumar, who also supported the date, time, place and manner of the occurrence as stated by the informant/PW-6, who is also claiming to be an eye-witness of the occurrence. It was stated by him that 5-6 unknown persons entered into *barat* procession and started to waive their sword and in meantime, a firing was made, which hit to Anil Kumar and he fell down to the ground. It was deposed that the bullet hit near to his right ear. It was stated by him that after the firing, the accused persons fled towards bus-stand in the meantime, the vehicle of police came over there and when he and others informed police regarding occurrence, the police went in said direction and apprehended the three persons, later on, he came to know that they were Dharmvir (appellant), Injdrajeet and Bipin. He also signed over seizure list. He failed to disclose that who were assaulted near Nalanda College. It was deposed tha the occurrence near Nalanda College was continued for 5-10 minutes and some peoples also received injuries out of said occurrence. His statement was recorded in hospital between 1-2 am. He also stated that he made a statement



to police that at the time of occurrence, he was near to Radhika Hotel, which is near to Ramchandrapur bus-stand and also made statement that 2-3 unknown persons assaulted the members of *barat* near Nalanda Mahila College. It was stated by him that bullet crossed the head of Anil, causing exit wound and as a result, much amount of blood was clotted near to the ear. It was stated that when Anil (deceased) fell down, after about 2 minutes he was taken to hospital. It was also stated by him that some blood were also spread on the ground, where deceased was fell down. He stated to be the relative of deceased Anil being the husband of his sister-in-law. He was not called to join TIP.

28. PW-4 is Pappu Kumar, who is the only seizure list witness. The said seizure list was signed by Anuj Kumar (PW-3) also, which was prepared at Bihar Sharif hospital. He identified his signature over his seizure list, which on his identification before the learned trial court exhibited as Exhibit No.2/1. It was prepared after midnight i.e. after 12 hours.

28.1. Upon cross-examination, he stated that he



only signed the seizure list and police never asked him about the occurrence. He is also the relative of deceased being husband of his sister-in-law. He denied the suggestion to depose falsely being relative of the deceased.

29. PW-5 is Dr. Raj Kishore Raju, who stated in his examination-in-chief that on 03.05.2014, he was posted at Sadar Hospital Bihar Sharif as Medical Officer and on that very day at 6:30 am, he has conducted the postmortem examination on the dead body of Anil Kumar Singh and found the following injuries:-

External Injury-

- (1) 1/2" entry wound behind right ear,
laceration adjoining soft tissue.
- (2) Tattooing 3" diameter from the wound
- (3) No exit wound seen".

On Dissection-

Skull-1/2" punctured wound posterior of temporal bone right cavity filled with blood, congested (Meninges), metallic bullet headings substances recovered.

Chest- Chest cavity intact, lungs pale.

Heart- All chambers empty.

Abdomen- Stomach 2 g. undigested food, All other viscera intact.



Bladder half filled.

External genitalia- Normal".

He opined that the death occurred due to hemorrhagic and neurogenic shock, caused by above said injury, caused by fire-arm. He further stated that the time elapsed since death was within 12 hrs. He further stated that the whole postmortem report is in his own handwriting over which he had put his signature, which is marked as **Exhibit No.-3.**

Exhibit-Metallic bullet head like handed over to police.

On the same day, PW-5 Dr. Raj Kishore Raju also examined accused Indrajeet Kumar and found the following injuries on his person:-

- "(1) Boggy swelling left upper and lower eyelid.
- (2) Multiple bruise on left side of face upto mandible.
- (3) Multiple bruise on right side of face".
- (4) Swelling 1" x 1" left elbow"

He opined that the age of injury within six hours and cause of injury-soft blunt substance. The nature of injury is simple. He deposed that the injury report has been



prepared by him and he had put his initial signature and on his identification, exhibited as **Exhibit No.-3/1**.

On the same day, PW-5 Dr. Raj Kishore Raju also examined injured Nitish Kumar (PW-2) and found the following injuries on his person:-

"M.I. Old scar mark at joint of index and thumb-left hand.

D.I. (2) Abrasion-lateral to left eye".

He opined that the age of injury within six hours and caused by hard blunt substance and nature of injury is simple. He stated that the injury report has been prepared by him and put his initial signature, which on his identification, exhibited as **Exhibit No.-3/2**.

29.1. Upon cross-examination, he deposed that he had received a receipt from the police at the time of handing over the metallic bullet and same was preserved in his office. He further deposed that injury no.1 can be inflicted by anyone, by the person being from right side. He opined that abrasion cannot be inflicted by sword. Bruises and swelling are superficial injuries.

30. PW-7, is Om Prakash Singh, who is the



Investigating Officer of this case and was posted as S.H.O. of Laheri Police Station on the date of the occurrence. It was stated by him that he received information at about 11.00 pm that someone was shot dead near Ramchandrapur Fish Market/Radhika Hotel and upon said information, he went near to Radhika Hotel along with A.S.I. Ram Naresh Sah and other armed police personnels. On arrival, he came to know that someone fired bullet on one Anil Kumar Singh, a member of *barati* and fled away towards Ajanta Cinema Hall. He chased accused persons along with some members of *barati* in the direction in which they were fled and found in the light of vehicle that three persons are running ahead, who were identified by members of *barati* and informant (PW-6) as persons who fired upon deceased and thereafter police personnels arrested them after chasing for a short distance. All three apprehended persons accepted to be involved in the occurrence and also in firing. The apprehended co-accused upon query disclosed their name as Dharmvir Kumar (appellant), son of Ram Pravesh Sharma, resident of Loan, P.S.-Nalanda, District-Nalanda, who said to



reside at present as a tenant of one Bihari Mahto at Bhaisasur locality, P.S.-Laheri, District-Nalanda. Upon which, it was said by member of *barati* and informant (PW-6) that he fired bullet upon Anil Kumar Singh. The other apprehended persons were Indrajeet Kumar, son of Sadhu Thakur, resident of Village-Lona, P.S.-Nalanda, District-Nalanda who also said to be a tenant of one Bihari Mahto at Bhaisasur, where third apprehended persons disclosed his name as Bipin Kumar, son of Awadhesh Sharma, resident of village-Lona P.S.-Nalanda, District-Nalanda. It was stated by him that during the occurrence, the apprehended co-accused Indrajeet Kumar who also assaulted and received injury. It was deposed by him that he examined the body of accused/appellant Dharmvir Kumar and found that he was wearing full shirt, which was stained with blood at its right shoulder, pocket of his shirt was also found torn, which was seized there, before PW-1 Sriniketan Kumar and PW-2 Nitish Kumar, which was prepared by A.S.I. Ram Naresh Sah of Laheri Police Station on his direction, which he identified during trial and upon his identification, it was exhibited as



Exhibit No.6. He also identified the signature of Sriniketan Kumar (PW-1) and Nitish Kumar (PW-2), which were already exhibited as **Exhibit No.1 and 1/1 respectively.** He recorded the statement of informant (PW-6), namely, Shailendra Kumar on 02.05.2014 at about 11:15 pm before Radhika Hotel in presence of Nitish Kumar (PW-2), which were read over and explained to them, which upon finding correct, signed by him and also by Nitish Kumar (PW-2). He identified the said *fardbeyan* before the Court, which was in his handwriting and upon his identification, same was exhibited as **Exhibit No.-7.** The signature of Shailendra Kumar (PW-6) and Nitish Kumar (PW-2) already exhibited as Exhibit Nos. **4 and 4/1.** He started investigation from the place of occurrence itself. He found some scattered spot of blood at place of the occurrence, which was not in condition to collect. He recorded statement of informant (PW-6) and Nitish Kumar (PW-2) after inspection of the place of occurrence and, thereafter, proceeded to Sadar Hospital, Biharsharif, where he prepared the inquest report of deceased Anil Kumar Singh, which was prepared in Bihar



Police Station by A.S.I. Santosh Kumar Rajak, who could not examined by prosecution during trial. He identified the handwriting of Santosh Kumar Rajak and signature, which upon his identification, exhibited as **Exhibit No.-8**. He also seized the blood-stained white shirt of deceased Anil Kumar Singh and in presence of Anju Kumar (PW-3) and Pappu Kumar (PW-4), it's seizure was prepared by A.S.I. Ram Naresh Sah, who also could not examined during the course of trial. He identified the said seizure list, which was prepared on 03.05.2014 at 12:35 am and upon his examination exhibited as **Exhibit No.9**. The signature of witnesses already exhibited before the court as **Exhibit Nos. 2 and 2/1**. He also prepared injury report of witness Nitish Kumar (PW-2) and accused Indrajeet Kumar and thereafter along with three apprehended co-accused persons and seizure list, he came to police station on 03.05.2014 at about 1:00 am and lodged the formal FIR. He stated that investigation was initiated before lodging the formal FIR, which was lodged as Laheri P.S. Case No.114 of 2014 on 03.05.2014 for the offences punishable under Section



302/34 of the IPC and Section 27 of the Arms Act. He identified his handwriting and signature upon formal FIR, which upon his identification, exhibited as **Exhibit No.-10**. He also obtained the injury report of Nitish Kumar (PW-2) and also the postmortem report of the deceased Anil Kumar Singh.

30.1. Upon cross-examination, he stated that before lodging the formal FIR, clothes of accused/appellant Dharmvir Kumar and deceased Anil Kumar Singh were seized. Both shirts were found stained with blood, which was sent to Forensic Science Laboratory, Patna (for short 'FSL'), where during the course of investigation, he did not received the reports. He stated that it is not mentioned in case diary that both blood stained shirts were sent to forensic lab for their examination. He also stated that he did not disclosed while explaining place of occurrence that the blood-stains were spread over ground, were not in position to collect. He visited the place of occurrence in night. He did not mention whether light was available there or not. He also stated that he did not mention in case diary that from whom he received



information regarding firing. He also recorded the statement of injured Nitish Kumar (PW-2) and informant (PW-6) before lodging the FIR. He categorically stated that no weapons were recovered from apprehended co-accused persons and he did not find even any weapons near to the place of occurrence. It was stated by him that place of occurrence is a very busy road but, not in night. It was stated by him that Ramchandrapur private bus-stand is at the distance of 1 km. from the place of occurrence. It was stated that as no person of nearby localities were present over there being night, the members of *barati* were made witness to the inquest, injury and seizure list. He stated that the location of Ajanta Cinema Hall is between the place of occurrence and Ramchandrapur bus-stand. He stated that PW-1, namely, Sriniketan Kumar never made statement before him that out of six, he identified three accused persons only after arresting by the police. He also stated that PW-1 never made statement before him during investigation that two persons were equipped with sword and also not made statement that it was co-accused Bipin, who assaulted PW-2



Nitish Kumar with sword, which hit to him near to his left eye. It was also stated by him that this witness never disclosed during investigation that accused-appellant Dharmvir Kumar fired upon deceased Anil Kumar Singh by putting pistol upon his head but, subsequently he deposed that this fact was stated by him. He recorded the statement of Anuj Kumar (PW-3) in hospital at about 1:30 am on 03.05.2014, who did not stated before him that at the time of occurrence he was near to Radhika Hotel, which is near to Ramchandrapur bus-stand. He also denied that PW-3 never stated during investigation that 2-3 unknown persons assaulted members of *barati* near Nalanda Mahila College rather stated that it was disturbed. It was stated by him that he did not remember that whether he mention the entry in police station before going to the place of occurrence, after receiving the information.

31. The appellant/accused in his defence examined two witnesses, namely, Kamlesh Kumar as DW-1 and Indrajeet Kumar as DW-2. The discussion of these two witnesses are important in view of the facts and



circumstances of the case, as one of the defence witness, namely, Indrajeet Kumar was also one amongst apprehended accused in this case and who admittedly received injury during the course of occurrence.

32. DW-1, Kamlesh Kumar claiming to be also an eye-witness of the occurrence, stated that when *barat* was proceeding behind of Ajanta Cinema Hall, in the meantime, 2-4 people entered into *barat* and started it disturbing, which upon protest, a free fight took place, where Indrajeet (one of the apprehended accused/DW-2) was also the member of one of *barat* passing thereby, received injuries. He was carried by appellant/accused Dharmvir Kumar, who was also the part of said *barat* party left *barat* carrying injured Indrajeet Kumar on his shoulder. The police arrived at the very moment and arrested both of them and took them away.

32.1. Upon cross-examination, he stated that he is the brother of one of the co-accused. The appellant is also his cousin brother and also the Indrajeet/DW-2. He stated that police arrested accused persons Dharmvir, Indrajeet and



Bipin from Ramchandrapur bus-stand.

33. DW-2 is Indrajeet Kumar, who is also one amongst the co-accused apprehended by police immediately after the occurrence. He stated that during the occurrence, he received bleeding injury on his head and chin. He was lifted by appellant/accused on his shoulder due to which, his shirt stained with his bloods on his left shoulder. He examined his blood group, which was found as 'O'-positive and same was exhibited as Exhibit-A with objection. He was treated while he was unconscious in Sadar Hospital. His clothes were also stained with blood and when he regain his consciousness, somewhere between 4-5 am he was brought to Laheri Police Station, where he found Dharmvir and Bipin were in police lock up. He deposed that police took his blood-stained clothes in morning but, he subsequently, deposed that he did not remember whether police took the cloth or not. He was hit by shoes and sleepers. He is not aware about the name and address of the assailants who assaulted him during the occurrence. His blood test was conducted in Parvati Lab by Dr. N. Kumar (not examined).



34. In view of aforesaid available evidences on record, it transpires that the FIR in issue (Exhibit No.-10) in view of the deposition of PW-6/informant and in view of deposition of PW-7/Investigating Officer was recorded when the appellant/accused along with co-accused Indrajeet and Bipin were apprehended and confessed before them as to involve in present occurrence. As per the statement of PW-6, the inquiry and identification was made at police station, thereafter, he was brought to place of occurrence, where his statement was recorded. It appears from the examination-in-chief of PW-6 that when accused/appellant was brought to the place of occurrence, he disclosed his name as Dharmvir Kumar, where he came to know that he was the person who fired upon his brother Anil Kumar Singh (deceased). Certainly, as per his deposition, his formal statement was recorded after couple of hours of arresting appellant/accused but, he did not raise any specific allegation in formal FIR (Exhibit-4) that it was the appellant/accused, who fired upon head of deceased brother by putting pistol on his head. It also creates a doubt as to when identification of



appellant/accused along with co-accused persons was already made on spot itself then how and in which circumstance, TIP was conducted in Deep Nagar Police Station. These basic contradictions caused a serious doubt with regard to arrest and identification of apprehended accused persons particularly, in view of statement of PW-6/informant itself that the accused persons including appellant were apprehended by members of *barat*, as he deposed in his cross-examination, where he stated that the accused persons were arrested at the time of firing itself, by contradicting the version as deposed in examination-in-chief that arrest of appellant/accused was made by chasing police personnel.

CONCLUDING REMARKS:

35. It is well settled law that the statement of injured witness in any occurrence is of much greater evidentiary value and should not be dealt in casual and mechanical manner until and unless there is no compelling circumstances to disbelieve.



36. It would be apposite to refer para-23 and 24 of the legal report of Hon'ble Supreme Court as passed in the matter of **Khema @ Khem Chandra and Ors.** (supra), which runs as under:-

"23. This Court, in the celebrated case of *Vadivelu Thevar v. State of Madras* [1957 SCC OnLine SC 13], has observed thus:

"11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way—it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no



difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

24. We find that the testimony of Inder (PW 2) would fall under the 3rd category i.e. his evidence can be said to be "neither wholly reliable nor wholly unreliable". As such, it will be necessary that there is some corroboration to his ocular testimony."

37. From the deposition of PW-2, who is only injured prosecution witness of the occurrence stated in his cross-examination that he developed a pain after receiving sword injury and out of fear he went to last line of the *barat* procession and in the meantime, the firing was made. The different members of the *barat* were also scattered due to stampede like situation. Subsequently, they gathered at place of occurrence. In view of same, the version of this witness being an eye-witness of the occurrence regarding specific allegation as the appellant/accused shot dead Anil Kumar Singh (deceased) is making a mark of doubt, as it is neither wholly reliable or wholly unreliable as per legal ratio



of **Khema case** (supra) and, as such, some further corroboration is required, even if he appears injured witness. It is admitted position in view of deposition of PW-2 and other prosecution witnesses including informant (PW-6) and Investigating Officer (PW-7) that no firearms were recovered from possession of appellant/accused. PW-7, the Investigating Officer did not find any weapons near to the place of occurrence. Therefore, in aforesaid factual scenario, where appellant/accused apprehended immediately after the occurrence, non-finding of murder weapon i.e. pistol in this case is casting a serious doubt over the case of prosecution. Further, it is important to mention that in FIR, PW-6/informant specifically stated that co-accused persons who fled away in separate group in another direction were only carrying weapons in their hand.

38. It would be apposite to refer para-27 and 32 of the legal report of Hon'ble Supreme Court as passed in the case of **Ram Singh vs. State of U.P.** (supra), which runs as under:-

"27. In *Munna Lal v. State of U.P.* [(2023) 18 SCC 661], this Court opined that since no



weapon of offence was seized in that case, no ballistic report was called for and obtained. This Court took the view that failure to seize the weapon of offence on the facts and in the circumstances of the case, had the effect of denting the prosecution story so much so that the same together with non-examination of material witnesses constituted a vital circumstance amongst others for granting the appellants the benefit of doubt.

xxx xxx xxx

32. This Court considered the issue as to failure of the prosecution to recover the crime weapon and also non-examination of ballistic expert in *Gulab v. State of U.P.* [(2022) 12 SCC 677] In that case, the deceased had sustained a gunshot injury with a point of entry and exit. In that case, prosecution had relied on the eyewitnesses' accounts of three eyewitnesses which were found to be credible. Therefore, non-recovery of the weapon of the offence would not dis-credit the case of the prosecution. After referring to the previous decisions, this Court opined that in the facts and evidence of the case, the failure to produce the report by a ballistic expert who could testify to the fatal injuries being caused by a particular weapon would not be sufficient to impeach the credible evidence of the direct witnesses."



39. PW-1 namely, Sriniketan Kumar, who is also claiming to be an eye-witness of the occurrence contradicting the version of other prosecution witnesses i.e. PW-2, 3 and 7, who are also claiming to be the eye-witness of the occurrence, stated that the firing was made from the front of the deceased, which also creates a doubt that how such firing made an injury on temporal region of the deceased. Though, he stated specifically in his examination-in-chief that a firing was made by appellant/accused on the right temporal region of the deceased. It also transpires from his deposition that the police came to the place of occurrence on alarm raised by member of *barat* including him, whereas PW-7 i.e. Investigating Officer of this case stated during trial that he received information regarding occurrence while he was sitting in Police Station.

40. It appears from the deposition of PW-6/informant that when bullet was fired upon his brother, his face was towards west, which is contrary to the statement of PW-1 Sriniketan Kumar, another eye witness, who said that his face was in east direction. It was stated by him that



bullet remained inside head, which also appears corroborated with deposition of PW-5 Dr. Raj Kishore Raju, who conducted postmortem upon deceased, recovered bullet head substance from the temporal bone of right cavity, but, in view of deposition of PW-3 Anuj Kumar, another eye witness, it appears that the bullet crossed the head of deceased by making exit wound, making a further separate contradictory version, regarding manner of gun shot injury.

41. From the perusal of deposition of PW-6, who is informant of this case, it appears that a TIP was conducted in Deep Nagar Thana. It appears that aforesaid identification of accused/appellant disclosed his name before police immediately after his arrest while running from the place of occurrence. It also appears that TIP was not conducted as per established acceptable principle of law and, as such, any identification out of said TIP is not sustainable in eye of law.

42. It would be apposite to refer para-55 of the legal report of Hon'ble Supreme Court as passed in the case of **Gireesan Nair and Ors. vs. State of Bihar** (supra),



which runs as under:-

"55. A three-Judge Bench of this Court in *Chunthuram v. State of Chhattisgarh* [(2020) 10 SCC 733], by relying on *Ramkishan Mithanlal Sharma v. State of Bombay* [AIR 1955 SC 104], has held that any identification made by witnesses in a TIP in the presence of a police officer tantamounts to statements made to the police officer under Section 162 CrPC. The Court held:

"11. The infirmities in the conduct of the test identification parade would next bear scrutiny. The major flaw in the exercise here was the presence of the police during the exercise. When the identifications are held in police presence, the resultant communications tantamount to statements made by the identifiers to a police officer in course of investigation and they fall within the ban of Section 162 of the Code."

43. It appears from the impugned judgment under appeal that FSL reports of blood stained clothes of appellant and deceased are the calyx of conviction, which was exhibited before learned Trial Court as Exhibit No.-11. No prosecution witness appears to be examined during trial to prove the contents of FSL report and it appears that same



was read by learned trial court under provision of Section 294 of the Code. From the perusal of FSL report/Serological report, it further appears that blood was detected all over the shirt of deceased Anil Kumar Singh, whereas blood was found at places on the shirt of accused/appellant, Dharmvir Kumar, which was found of human beings and of blood group-'O'. On perusal of seizure list (Exhibit No.-9), it appears that the shirt of deceased Anil Kumar Singh was stained with blood and it was stripped white in colour. It is nowhere mentioned that it was burnt but, from serological FSL report (Exhibit-11/1), it appears that the packet mark-B contained '**one old dirty burnt white blue stripped shirt**' said to be "**Ujala stripped shirt**", which bore reddish brown stains practically all over the shirt was said to be collected from the deceased Anil Kumar Singh. The seizure list nowhere suggest that the shirt of deceased Anil Kumar Singh was found burnt, while it was seized, making seizure of shirt of deceased doubtful, with all consequential findings of FSL.

44. It further appears that merely on the basis of



fact that the blood on the clothes of appellant/accused was also of blood group 'O', therefore, it was presumed by the learned trial court that the firing was made by this appellant/accused only, causing death of Anil Kumar Singh as blood on his clothes may come due to oozing of blood, due to close range firing, which appears not supported by any of prosecution witnesses during trial.

45. In this context, it is important to suggest that none of the eye-witnesses stated during the trial that the accused/appellant came into physical contact of the deceased Anil Kumar Singh rather it was stated that immediately upon receiving bullet injury he fell to the ground. None of the eye witnesses said during trial that forcible oozing of blood from injury caused by the bullet fired by the appellant, came to the shirts of appellant/accused. Therefore, the prosecution appears to fail primarily to convinced that how blood-stains came to the shirt of appellant/accused, and as such finding of learned trial court in this context appears purely on imaginary ground by importing theory of **"may be"** instead of **"must be"**.



46. For better understanding of finding of conviction by learned trial court and also as to why the defence version was not accepted, it would be apposite to reproduce para-89 and 90 of the impugned judgment itself passed by learned Trial Court, which appears purely based upon imaginary grounds by defying all the basic principle of criminal jurisprudence that it is for the prosecution to established its case beyond all reasonable doubt, which runs as under:-

" 89. *Here the defence has tried its best to make out a good defence case but truth is very deep rooted and it cannot be easily thrown out or eclipsed by concocted story of defence. It is well said that falsehood has no leg and this falsehood in the defence plea gets apparent on the following ground: **Firstly,** in view of the fact that the defence has not produced cogent evidence of proof of parallel Barat and the defence has also not brought on record the fact that where the accused Dharmvir Kumar was at the time of altercation in the parallel Barat of the defence and how can the accused Dharamvir Kumar came all of a sudden in a dramatic manner like a filmy scene to the place of occurrence*



to take his brother Indrajeet Kumar on his shoulder. **Secondly**, the claim of the defence that the accused Dharamvir Kumar was arrested by the police while carrying his injured brother, is totally false in view of the consistent testimony of the I.O. who has deposed that the accused along with other two persons were caught while they were fleeing away after the alleged occurrence of the prosecution case. The claim of the defence that the blood of Indrajeet Kumar came on the shirt of Dharamvir Kumar because he was carrying him on shoulder also false on the ground that as per the injury report which is Ext. 3/1. Indrajeet Kumar had got simple abrasion which cannot afford blood stains at places of the shirt of the accused Dharamvir Kumar who was allegedly carrying him on his shoulder. **Thirdly**, even taking the version of the defence for the moment as true that the accused was carrying injured Indrajeet Kumar and that way the blood of Indrajeet Kumar came on the shirt of Dharamvir Kumar does not stand to the reasoning because as per the injury report there was only abrasion on the face of Indrajeet Kumar and this abrasion was not found at and around chin and when a person is carried on a shoulder, at most his chin will



*touch the body of the persons carrying him. As such there was no possibility of having stains of the blood of Indrajeet Kumar on the shirt of accused Dharamvir Kumar. Even otherwise it is presumed for a moment that the blood of Indrajeet Kumar came on the shirt of Dharamvir Kumar who was carrying him, it is again against human understanding how the blood of Indrajeet Kumar would come at different places of the shirt of Dharamvir Kumar. At most it would have come on one place. **Fourthly,** the defence plea is not believable also in view of the fact that no F.I.R. was lodged in regard to assault allegedly suffered in the parallel Barot at the hands of outsider miscreants.*

90. I also find that undisputedly no witness has any enmity with the accused facing the trial to falsely implicate him. From the evidence on record, I find that the defence has not even given suggestion in regard to enmity between the accused and the PWs, let alone adducing any evidence in this context, I further find that non-official witnesses/eye witnesses are consistent and trustworthy, though some discrepancies in their may be found here and there which are nothing but natural even in case of truthful witnesses. Hence, taking into totality of evidence on



record and appreciation thereof there is no reasonable doubt regarding the charge that the accused Dharamvir Kumar facing the trial has murdered the victim Ajay Kumar Singh by his pistol and has thrown the pistol away getting opportunity in the time gap between the occurrence and his arrest by the police. The defence has miserably failed to prove its plea and demolish the prosecution case proved beyond reasonable doubts. Hence, I hold that the accused Dharamvir Kumar is guilty of the offence punishable under Sec. 302 of the I.P.C. and Sec. 27(1) of the Arms Act."

(underline to supply emphasis)

47. From aforesaid observations of the learned Trial Court, it appears that the injury of co-accused Indrajeet Kumar, who as per defence version was carried by appellant/accused away from the place of occurrence was read by learned trial court in contrary with finding of PW-5 Dr. Raj Kishore Raju, who examined him at Sadar Hospital, Bihar Sharif immediately after his arrest. As per the said injury report, which is Exhibit No.-3/1 injuries noticed upon him was:-



- (1) Boggy swelling left upper and lower eyelid;
- (2) Multiple bruise on left side of face upto mandible;
- (3) Multiple bruise on right side of face; and
- (4) Swelling 1" x 1" left elbow.

48. We fail to understand that how the learned Trial Court recorded that Indrajeet Kumar had got simple abrasion, which cannot afford blood-stains at places of the shirt of accused/appellant, Dharmvir Kumar. The version of defence also appears to disbelieve on the ground of presumption that as there was no abrasion at and around chin, therefore, when a person carrying another on his shoulder at least his chin will touch the body of the person carrying him. It appears read in wrong perspective, as the face of co-accused Indrajeet Kumar as per his medical report shows multiple bruise on left side of face upto mandible (lower jaw) and multiple bruise on right side of face, along with other swelling injuries.

49. We are also convinced with the argument of learned senior counsel that the most incriminating evidence *qua* matching of blood group on the shirt of appellant/accused with blood group of deceased was not explained to the appellant accused, while examine him under Section 313 of the Code and on this score alone, the impugned judgment of conviction is liable



to be set aside. It also appears from question no. 5 that the learned Trial Court read evidence of firing as a case of general firing, which hit to the right ear of the deceased Anil Kumar Singh contrary to the evidence that it was fired by putting pistol on temporal region of the deceased intentionally by appellant. Similarly, question no.6 formulated in contrary to the evidence surfaced during trial as none of the witnesses stated that the members of *Barat* and police both chased the appellant and jointly apprehended them.

50. It would be apposite to quote the statement of accused/appellant recorded under Section 313 of the Code, for better understanding of the aspects, which runs as under:-

“1. प्र०:- आपने गवाहों की गवाही सुना है ?

उ०:- जी हाँ

2. प्र०:- आपके विरुद्ध आरोप है एवं अभियोजन साक्षियों का कहना है कि दि० 02-5-14 की रात्रि करीब 10-11 बजे राधिका होटल के पास, महल्ला- रामचन्द्रपुर, थाना- लहेरी, जिला- नालंदा में, वादी शैलेन्द्र कुमार के बड़े भाई अनिल कुमार सिंह को गोली मार कर हत्या कर दिया था, क्या कहना है ?

उ०:- आरोप एवं साक्ष्य गलत है।

3- प्रश्न:- आपके विरुद्ध शिवनिकेतन कुमार, नीतिश कुमार, अनुज कुमार, पप्पु कुमार तथा वादी शैलेन्द्र कुमार का कथन है कि दिनांक 02-05-14 को महल्ला- खन्दक पर से बारात राधिका होटल के लिए, 9 बजे रात्रि में प्रस्थान किया था तथा बारात पार्टी में डीजे बाजा के साथ नाचते-गाते गवाहान एवं मृतक अनिल कुमार सिंह साथ अन्य लोग साथ चल रहे थे ?

उ०:- मुझे नहीं मालुम।

4. प्रश्न:- आपके विरुद्ध साक्षियों का यह भी कथन है कि नाचते-गाते



डीजे बाजा के साथ बारात बिहारशरीफ पोस्टऑफिस महिला कॉलेज के पास पहुंची तो आपने अन्य साथी के साथ मिलकर बारात को बाधित करने लगे तथा बारात पार्टी द्वारा विरोध करने पर धमकी देते हुए कहकर चले गए कि आगे जाकर बताते हैं ?

उत्तर:- आरोप एवं साक्ष्य झुठा है। मैंने बारात देखा तक नहीं है।

5. प्रश्न:- आपके विरुद्ध साक्षियों का कहना है कि ज्योंहि बारात पार्टी आगे बढ़ते हुए राधिका होटल रामचन्द्रपुर के पास सड़क पर पहुंची तो आप सहीत 6-7 की संख्या में अपराधी लोग डंडा, पिस्तौल एवं तलवार लेकर बारात पार्टी को बाधित करने लगे तथा अनिल कुमार सिंह जो फौजी सिपाही थे, अपने शाला की शादी में शामिल होकर बारात के साथ चल रहे थे। उन्होंने विरोध किया तो आप एवं आपके अन्य साथी मिलकर तलवार, डंडा एवं पिस्तौल लेकर हत्या के नीयत से बारात पार्टी पर हमला बोल दिया, जिसमें आपके द्वारा चलाया गया गोली से अनिल कुमार सिंह को दाएं कान के पास गोली लगी जिससे वे जख्मी होकर गिर गए एवं उनकी मृत्यु हो गई जिसका समर्थन डाक्टर साक्षी राज-किशोर राजु ने किया है कि मृतक अनिल कुमार सिंह की मृत्यु दाहिने कान के पास गोली लगने से हुई है ?

उ0:- आरोप एवं साक्ष्य गलत है।

6. प्रश्न:- आपके विरुद्ध साक्षियों का यह भी कथन है कि आप दि0 2-5-14 को रात्रि में घटना को अंजाम देने के बाद आप एवं आप के साथी इन्द्रजीत कुमार एवं विपीन कुमार को पुलिस एवं बारात पार्टी द्वारा खदेड़ कर पकड़ लिया गया था तथा पुलिस ने हिरासत में लेकर अनुसंधान शुरू किया था ?

उत्तर:- आरोप एवं साक्ष्य गलत है।

7. प्रश्न:- सफाई में कुछ कहना है?

उत्तर:- निर्दोष हूँ। सफाई साक्ष्य दूंगा। ”

51. It would be apposite to reproduce the legal report of Hon'ble Supreme Court as reported in the matter of **Sukhjot Singh case** (supra), which runs as under:-

“10. On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the



notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in *Ranvir Yadav v. State of Bihar* [(2009) 6 SCC 595]. Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.

11. In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh v. State* [1951 SCC 903] wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus:

"30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true,



or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not



suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat* [1951 SCC 1060], Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus:

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak



on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box."

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra* [(2007) 12 SCC 341] in following terms:

"14. The word 'generally' in subsection (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to



explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."

52. It would further be apposite to reproduce para-26 of legal report of Hon'ble Supreme Court as passed in the matter of **Wazir Khan vs. State of Uttarakhand**



[(2023) 8 SCC 597], which runs as under:-

"26. In the aforesaid context, we may profitably quote the following observations made by this Court in para 14 in *Dharm Das Wadhwani v. State of U.P.* [(1974) 4 SCC 267]:

"14. The question then is whether the cumulative effect of the guilt-pointing circumstances in the present case is such that the court can conclude, not that the accused *may* be guilty but that he *must* be guilty. We must here utter a word of caution about this mental sense of "must" lest it should be confused with exclusion of every contrary possibility. We have in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793], explained that proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal when any delicate or remote doubt flits past a feeble mind. These observations are warranted by frequent acquittals on flimsy possibilities which are not infrequently set aside by the High Courts weakening the credibility of the judicature. *The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of*



hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct. At the same time, it may be affirmed, as pointed out by this Court in Kali Ram v. State of H.P. [(1973) 2 SCC 808], that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from him."

53. In view of the aforesaid discussions and by taking guiding note of legal ratio laid down by Hon'ble Supreme Court as discussed above, we are convinced that there are several doubts as discussed above, which remains unanswered by prosecution during trial creating a doubt regarding recording of conviction by the learned Trial Court, the benefit of which must be given to the accused/appellant.

54. Hence, the appeal stands allowed.

55. The impugned judgment of conviction dated 11.8.2016 and order of sentence dated 23.08.2016 passed by learned Sessions Judge, Nalanda at Biharsharif in connection with S.Tr. No. 84 of 2015 arising out of Laheri P.S. Case No. 114 of 2014 is set aside. The appellant,



namely, Dharmvir Kumar is acquitted of the charges levelled against him by the learned trial court. He is directed to be released forthwith, if his presence is not required in any other case.

56. Let a copy of the judgment along with Trial Court Records be sent to the learned Trial Court forthwith.

(Vipul M. Pancholi, J.)

Sanjeet/-

(Chandra Shekhar Jha, J.)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.05.2024
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