2024(10) eILR(PAT) SC 123

[2024] 10 S.C.R. 1313 : 2024 INSC 755

Rama Devi
v.
The State of Bihar and Others

(Criminal Appeal No(s). 2623-2631 of 2014)

03 October 2024

[Sanjiv Khanna,* Sanjay Kumar and R. Mahadevan, JJ.]

Issue for Consideration

Whether the High Court was justified in reversing the judgment of the trial court and acquitting the respondents of the charges punishable under Sections 302, 307, 333, 355 and 379, all read with Section 34 of the Penal Code, 1860, and Section 27 of the Arms Act, 1959.

Headnotes†

Penal Code, 1860 – ss.302, 307, read with s.34 – Murder of an MLA and his bodyguard – Respondents convicted by Trial Court – Conviction reversed by High Court – Challenge to:

Held: In view of the evidence and materials on record, charges against A-4 and A-8 under Section 302 read with Section 34 and Section 307 r/w Section 34 proved and established beyond reasonable doubt – Conviction and sentence awarded by the trial court affirmed and restored – However, benefit of doubt given to other accused persons as there is no direct ocular evidence implicating them and the charge of conspiracy is not substantiated, their acquittal upheld – Impugned judgment set aside. [Paras 42-45]

FIR – Delay in forwarding the copy to magistrate – When not fatal:

Held: The incident took place in the night of 13.06.1998 – 14.06.1998 being a Sunday, the FIR was forwarded to the jurisdictional magistrate on 15.06.1998 – Thus, the delay in forwarding the copy of the FIR to the jurisdictional magistrate was explained – Mere delay by itself is not sufficient to discard and disbelieve the case of the prosecution unless the accused demonstrate how this delay has prejudiced their case – If the investigation starts in right earnest and there is sufficient material on record to show that the accused were named and pinpointed,

*Author

the prosecution case can be accepted when evidence implicates the accused – The requirement to dispatch and serve a copy of the FIR to the jurisdictional magistrate is an external check against ante dating or ante timing of the FIR to ensure that there is no manipulation or interpolation in the FIR – Further, if the court finds the witnesses to be truthful and credible, the lack of a cogent explanation for the delay may not be regarded as detrimental. [Para 30]

Evidence – Non-recovery of vehicles and weapons used in the offence – Effect on credibility of eyewitnesses, if any:

Held: The ocular version of the witnesses should not be disregarded solely because the weapon used in the crime and the vehicles allegedly used by the accused were not located or seized by the police – On facts, the failure of the police to recover the vehicles and the weapons is not sufficient to undermine the credibility of the eyewitness accounts or the corroborative evidence regarding the cause of the homicidal deaths of both the deceased. [Para 27]

Evidence – Witness with criminal background – Courts to exercise caution but, evidence cannot be discarded merely on the ground of criminal background:

Held: Criminal background of a witness necessitates that the courts approach their evidence with caution – The testimony of a witness with a chequered past cannot be dismissed as untruthful or uncreditworthy without considering the surrounding facts and circumstances of the case, including their presence at the scene of the offence – In cases involving conflicts between rival gangs or groups, the testimony of members from either side is admissible and relevant – If the court is convinced of the veracity and truthfulness of such testimony, it may be considered – Courts assess the broader context to determine if there is sufficient corroboration, as long as there are no valid reasons to discredit the evidence – The crucial test is whether the witness is truly an eyewitness and whether their testimony is credible – If their presence at the scene is established beyond doubt, their account of the incident can be relied upon – Such evidence cannot be discarded merely on the grounds of criminal background. [Para 20]

Evidence – Presence of eyewitness (PW-1) at the place of occurrence (hospital) proven, however there was

non- compliance with hospital and prison protocols – Reliance on testimony of PW-1, if proper – MLA and his bodyguard were murdered in the hospital where the former was admitted for treatment while in judicial custody – PW-1 did not seek prior permission from the court or jail authorities nor did he make any entry in the hospital register while visiting the deceased MLA in the hospital:

Held: Fardbeyan (Exhibit-50) and the ocular evidence of PW-24 and PW25, establish the presence of PW-1 and other visitors in the hospital – Once the presence of a witness at the place of occurrence is proven, their testimony, if credible and truthful, should not be dismissed solely based on non-compliance with hospital and prison protocols – Further, the reasoning given by the High Court to disregard and doubt the eyewitness account of PW-1, on the premise that he ought to have been the informant because he is the brother-in-law of the deceased MLA and was present at the hospital at the time of occurrence, is conjectural and unfounded – Any person can be an informant of a case, and the police may also register a case on their own – The rationale of the High Court for dismissing the testimony of PW-1 is fundamentally flawed. [Para 15]

Evidence – Testimony of hostile witness – Maxims – falsus in uno, falsus in omnibus – Inapplicability:

Held: Maxim falsus in uno, falsus in omnibus is not a sound rule to apply in the conditions of this country – This maxim does not occupy the status of rule of law – It is merely a rule of caution which involves the question of the weight of evidence that a court may apply in the given set of circumstances – Evidence of a hostile witness is not to be completely rejected, so as to exclude versions that support the prosecution – Rather, the testimony of the hostile witness is to be subjected to close scrutiny, enabling the court to separate truth from falsehood, exaggerations and improvements – Only reliable evidence should be taken into consideration – The court is not denuded of its power to make an appropriate assessment – The entire testimony of a hostile witness is discarded only when the judge, as a matter of prudence, finds the witness wholly discredited, warranting the exclusion of the evidence in toto – The creditworthy portions of the testimony should be considered for the purpose of evidence in the case. [Paras 16, 22]

Case Law Cited

Deep Chand and Others v. State of Haryana **(1969) 3 SCC 890;** *State of Rajasthan v. Daud Khan* **(2016) 2 SCC 607;** *Ponnam Chandraiah v. State of Andhra Pradesh* [2008] 11 SCR 561 **: (2008) 11 SCC 640;** *State of U.P. v. Farid Khan and Others* **(2005) 9 SCC 103;** *C. Muniappan and Others v. State of Tamil Nadu* [2010] 10 SCR 262 **: (2010) 9 SCC 567;** *Yogesh Singh v. Mahabeer Singh and Others* [2016] 7 SCR 713 **: (2017) 11 SCC 195;** *State of Rajasthan v. Arjun Singh and Others* [2011] 10 SCR 823 **: (2011) 9 SCC 115 – relied on.**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Arms Act, 1959.

List of Keywords

Murder; Member of the Legislative Assembly; MLA; Bodyguard; Political leader; Benefit of doubt; Acquittal; Conspiracy not proved/ substantiated; Motive; Charges proved beyond reasonable doubt; Hospital; Prison protocols; Hospital register; Visitors; Delay in forwarding FIR to magistrate; Not fatal; Ante dating; ante timing; Manipulation or interpolation in FIR; Superficial issues; Memory test; Witness with criminal background; Non-recovery of vehicles, weapons used in the offence; Ocular evidence; Informant; Hostile witness; Maxims; falsus in uno, falsus in omnibus; Fardbeyan; Eyewitness; Efflux of time.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 2623-2631 of 2014

From the Judgment and Order dated 24.07.2014 of the High Court of Patna in CRLAP No. 778, 898, 825, 859, 865, 899, 871, 874 and 878 of 2009

With

Criminal Appeal Nos. 2632-2640 of 2014

Appearances for Parties

Tushar Mehta, Solicitor General, K M Nataraj, A.S.G., Siddharth Aggarwal, Ms. Sonia Mathur, Mrs. Ruchi Kohli, Mrs. Archana

Pathak Dave, Surendra Singh, Sr. Advs., Arvind Kumar Sharma, Aditya Singia, Vishwajeet Bhati, Harsh Yadav, Ritwik Saha, Sharad Kumar Puri, Ms. Parul Sharma, Mrs. Pinki Aggarwal, Mrs. Priya Puri, Mukesh Kumar Maroria, Ms. Sairica S Raju, Rajesh Kumar Singh, Rajan Kumar Chourasia, P V Yogeswaran, Ms. Ronika Tater, Ms. Surbhi Bhardwaj, Ms. Dipanshu Krishnan, Ms. Madhumita Kesavan, Nikhil Chandra Jaiswal, Tripurari Ray, D. S. Parmar, Ms. Sujeeta Srivastava, Abhishek Priyadarshi, Ms. Mrinal Elker Mazumdar, Saurabh Singh, Anirudh Ray, Ashutosh Ghade, Sunil Kumar, Nimit Bhimjiyani, Rahul Raman, Ms. Sneha Balapure, Raj Kamal, Aseem Atwal, Kartavya Batra, Anurag Chandra, Ms. Nupur Kaushik, Ms. Stuti, Ms. Aprajita Tyagi, Ms. Muskan Sidana, Harneet Singh, Ms. Prerna Singh, Shantanu Sagar, Raj Kumar, Prabhat Ranjan Raj, Anil Kumar, Gunjesh Ranjan, Mrs. Divya Mishra, Shashank Kumar Saurav, Sanjay Jain, Manu Shanker Mishra, Laxmi Narayan Sharma, Vivekanand Singh, Nishant Kumar, Nithyananda Murthy P, Ms. Bhanu Prabha, Vaibha Kumar, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Sanjiv Khanna, J.

This judgment decides two sets of appeals, one by the State of Bihar, through the Central Bureau of Investigation,[1] and the other by Rama Devi, wife of one of the deceased – Brij Bihari Prasad, a member of the Bihar Legislative Assembly. The second deceased – Lakshmeshwar Sahu – was the bodyguard of Brij Bihari Prasad and a member of the Bihar police.

2. The impugned judgment of the High Court of Judicature at Patna dated 24.07.2014 reverses the judgment of the trial court and acquits the nine accused[2] of the charges punishable under Sections 302, 307, 333, 355 and 379, all read with Section 34 of the Indian Penal Code, 1860,[3] and Section 27 of the Arms Act, 1959.[4]

1 For short, "CBI."

2 Suraj Bhan Singh @ Suraj Singh @ Suraj, Mukesh Singh, Lallan Singh, Mantu Tiwari, Captain Sunil Singh (since deceased), Ram Niranjan Chaudhary, Shashi Kumar Rai (since deceased), Vijay Kumar Shukla @ Munna Shukla, Rajan Tiwari.

3 For short, "IPC".

4 For short, "1959 Act".

3. The incident in question took place on 13.06.1998 at around 08:15 p.m. at the Indira Gandhi Institute of Medical Science, Patna.[5] On the basis of the *fardbeyan* (Exhibit 50) of Amarendra Kumar Sinha (PW-10) recorded by S.S.P. Yadav, Inspector-cum-Officer-in-Charge, Shastri Nagar Police Station,[6] on 13.06.1998 at 9:00 p.m., First Information Report[7] No. 336/1998, (Exhibit 51 and 51/1) was lodged under Sections 302, 307, 34, 120B, 379 of the IPC and Section 27 of the 1959 Act at 12:15 a.m. on 14.06.1998.

The Prosecution Case

4. The prosecution case is as follows:

   (i) On 13.06.1998 at around 6:30 p.m., Brij Bihari Prasad, who was in judicial custody and admitted for treatment at IGIMS hospital, was taking a walk outside the wardroom along with – Amarendra Kumar Sinha (PW-10), Arbind Singh (PW-13), Ram Nandan Singh (PW-12), Mahant Ashwani Das (PW-25), Paras Nath Chaudhury (PW-1), Onkar Singh and 2-4 others.

   (ii) Brij Bihari Prasad was also accompanied by his bodyguard – Lakshmeshwar Sahu, who was armed with a carbine, and other sepoys.

   (iii) Two vehicles, a Sumo car, with registration number, BR-1P-1818, followed by an Ambassador car, registration number of which could not be ascertained, entered the IGIMS hospital from the southern main gate, Bailey Road side and stopped near Brij Bihari Prasad.

   (iv) Occupants of the said cars, namely – Mantu Tiwari (A-4), Vijay Kumar Shukla @ Munna Shukla (A-8), Rajan Tiwari (A-9), and Shri Prakash Shukla @ Shiv Prakash Shukla (since deceased), Satish Pandey (since deceased) and Bhupendra Nath Dubey (since deceased) came out of the vehicles.

   (v) Mantu Tiwari(A-4) was armed with a sten gun and all others were armed with pistols. Bhupendra Nath Dubey (since deceased)

5 For short, "IGIMS Hospital".

6 S.S.P. Yadav subsequently expired and did not depose.

7 For short, "FIR".

abusively exhorted others to shoot at Brij Bihari Prasad while he himself also fired at Brij Bihari Prasad with his pistol.

(vi) Mantu Tiwari (A-4) and Shri Prakash Shukla @ Shiv Prakash Shukla (since deceased) fired at Brij Bihari Prasad from their sten gun and pistol respectively.

(vii) Satish Pandey, Vijay Kumar Shukla @ Munna Shukla (A-8) and Rajan Tiwari (A-9) fired at Lakshmeshwar Sahu.

(viii) Both Brij Bihari Prasad and Lakshmeshwar Sahu collapsed and died.

(ix) Rabindra Bhagat (PW-14) suffered a gunshot wound in the cross-fire.

5. The post-mortem reports dated 14.06.1998 (Exhibits 9 & 9/1), proved by Dr. Arvind Kumar Singh (PW-7), establish the homicidal death of Brij Bihari Prasad and Lakshmeshwar Sahu due to multiple gunshot injuries resulting in haemorrhage and shock. The multiple gunshot wound entries are consistent with successive firing from firearms/ pistol. To this extent the prosecution version is unchallenged.

6. As per the prosecution case, there were eleven eye-witnesses, namely, Paras Nath Chaudhury (PW-1), Amarendra Kumar Sinha (PW-10), Amod Kumar (PW-11), Ram Nandan Singh (PW-12), Arbind Singh (PW-13), Rabindra Bhagat (PW-14), Kamakhya Narain Singh (PW-15), Bhola Prasad Premi (PW-16), Mahanth Ashwani Das (PW-25), Shashi Bhushan Singh (PW-42) and Binod Kumar Singh (PW-19). However, Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), Shashi Bhushan Singh (PW-42), and to some extent, Amarendra Kumar Sinha (PW-10) had supported the prosecution case. Others were hostile or partly hostile as they did not support the prosecution case or did not name/identify the perpetrators.

7. Primarily relying on the testimonies of Paras Nath Chaudhury (PW-1), Mahant Ashwani Das (PW-25), Shashi Bhushan Singh (PW-42) and Amarendra Kumar Sinha (PW-10), the trial court convicted the respondents Suraj Bhan Singh (A-1), Mukesh Singh (A-2), Lallan Singh (A-3), Mantu Tiwari (A-4), Captain Sunil Singh (A-5) (since deceased),[8] Ram Niranjan Chaudhary (A-6), Vijay Kumar

8 It is an accepted and admitted position that Captain Sunil Singh (A-5) has passed away. The appeal *qua* him shall stand abated.

Shukla @ Munna Shukla (A-8), Rajan Tiwari (A-9) and Shashi Kumar Rai (A-7) (since deceased).[9]

Reasoning of the High Court

8. The judgment of the High Court refers to the evidence in detail, with the acquittal of the respondents grounded in the following findings:

(i) FIR No. 336/1998, marked Exhibit 51, is *ante*-timed.

(ii) Shashi Bhushan Singh (PW-42) is not an eye-witness, but rather a planted witness, as his name was not mentioned in the *fardbeyan* (Exhibit 50). His antecedents are questionable.

(iii) The testimony of Paras Nath Chaudhury (PW-1) implicating the respondents-accused is unreliable because:

(a) he is Brij Bihari Prasad's brother-in-law;

(b) he should have been the informant but was not, which raises doubts about his presence at the IGIMS hospital;

(c) he contradicted the prosecution's case by accepting that Rajan Tiwari (A-9), whom he knew beforehand, was not present during the incident. However, in his statement under Section 161 of the Code of Criminal Procedure, 1973,[10] he claimed that Rajan Tiwari (A-9) was one of the assailants of Lakshmeshwar Sahu; and

(d) he deposed under the pressure of his sister, Rama Devi (PW-24), who was present in the court during the recording of his evidence on all (three) days.

(iv) The deposition of Mahanth Ashwani Das (PW-25) is unreliable on the following grounds:

(a) he is a convict in a murder case registered in the year 1979;

(b) he did not surrender after the dismissal of his appeal by the High Court and was accordingly declared an absconder;

(c) he was arrested on 04.05.2006 while deposing before the trial court in the present case;

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9 The appeal *qua* Shashi Kumari Rai (A-7) stood abated on account of his demise *vide* order dated 28.02.2020.

10 For short, "CrPC".

(d) he was under the patronage and protection of Brij Bihari Prasad and his wife, Rama Devi (PW-24);

(e) there is a contradiction between the versions of Shashi Bhushan Singh (PW-42) and Mahanth Ashwani Das (PW-25) regarding their presence in the hospital room of Brij Bihari Prasad at IGIMS hospital. While Shashi Bhushan Singh (PW-42) claims that Mahanth Ashwani Das (PW-25) was in the hospital room when he arrived there, Mahanth Ashwani Das (PW-25) states that Shashi Bhushan Singh (PW-42) was already present in the hospital room of Brij Bihari Prasad when he (Mahanth Ashwani Das) reached the hospital.

(f) there is a discrepancy as to when the police recorded the statement of Mahanth Ashwani Das (PW-25) and his version of events on 13.06.1998 and 14.06.1998. Mahanth Ashwani Das (PW-25) claims that after the occurrence he and Rama Devi (PW-24) had proceeded to the official residence of Brij Bihari Prasad from IGIMS hospital at about 9:00-9:30 p.m. Mahanth Ashwani Das (PW-25) had left for Muzzaffarpur *Math* in the night at about 12:30 a.m. on 14.06.1998. Thus, the police could not have recorded the statement of Mahanth Ashwani Das (PW-25) in the IGIMS hospital at 12:30 a.m. on 14.06.1998. Further, if Mahanth Ashwani Das (PW-25) was present at the time of occurrence, as deposed by him, police should have recorded his statement before he left the IGIMS hospital campus around 9:30 p.m.

(v) Shashi Bhushan Singh (PW-42) was not an eye-witness, as his presence is not mentioned in the *fardbeyan* (Exhibit 50) or the FIR (Exhibits 51 and 51/1). His statement under Section 161 of the CrPC was recorded belatedly, five days after the incident.

(vi) Rama Devi (PW-24) is not an eye-witness, as she had left the place of occurrence prior to the incident. The police did not produce Rama Devi's statement under Section 161 of the CrPC recorded on 13.06.1998 by the second investigating officer[11] –

11 For short, "IO".

Shashi Bhushan Sharma (PW-54), who had taken charge of the investigation in compliance with the instructions of Senior Superintendent of Police, Patna. The version of Rama Devi (PW-24) that she learnt names and details of the assailants from the visitors she had met earlier in the day in the hospital room is not mentioned in the Section 161 CrPC statements dated 18.10.1999 and 28.03.2001 given by her to Rai Singh Khatri (PW-62), IO of CBI. This is corroborated by the statement of Rai Singh Khatri (PW-62), IO of CBI, who testified that Rama Devi (PW-24) did not name the assailants. Since the initial statement of Rama Devi (PW-24) under Section 161 CrPC recorded by Shashi Bhushan Sharma (PW-54) was not on record and she later failed to disclose the name of the assailants in her Section 161 CrPC statements to Rai Singh Khatri (PW-62), IO of CBI, her deposition in court, stating that Paras Nath Chaudhury (PW-1), Ram Niranjan Chaudhary (A-6), Kamakhya Narain Singh (PW-15), Arbind Singh (PW-13), Amarendra Kumar Sinha (Informant/PW-10), Onkar Singh, Mahanth Ashwani Das (PW-25), Shashi Bhushan Singh (PW-42) and others were present with the deceased, should not be relied on.

(vii) The eye-witnesses did not testify about the retaliatory firing by the security personnel of Brij Bihari Prasad who were present at the scene of the occurrence. The recovery of empty cartridges and the firearms examination report (Exhibit-17) indicate that shots were fired from two of the four rifles which had been issued to the security guards.

Court depositions and analysis of evidence

9. We will now examine in some detail the court depositions of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), Amarendra Kumar Singh (PW-10) and Rama Devi (PW-24), before scrutinising the reasons given by the High Court to discredit their versions. Our discussion will also address the arguments raised by both sides, with particular focus on the contention of the respondents that the court depositions of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), Amarendra Kumar Singh (PW-10) and Rama Devi (PW-24) should not be accepted.

10. At the outset, we express our agreement with the reasoning given by the High Court for disbelieving the presence of Shashi Bhushan

Singh (PW-42) at the spot, and consequently, his deposition as an eye-witness for the following reasons:

(i) Shashi Bhushan Singh (PW-42) is not mentioned as one of the persons present at the place of occurrence in the *fardbeyan* (Exhibit-50), as also in the FIR (Exhibits 51 and 51/1). These documents name the eyewitnesses. Therefore, the absence of the name of Shashi Bhushan Singh (PW-42) is significant.

(ii) His statement under Section 161 CrPC was recorded on 18.06.1998, i.e., 5 days after the date of occurrence;

(iii) Shashi Bhushan Singh (PW-42) has deposed about taking the dead body of Brij Bihari Prasad on 14.06.1998 from Patna to Behihari village, the native place of Brij Bihari Prasad. Therefore, the delay in his Section 161 CrPC statement impairs his assertion of being an eyewitness, making it unworthy of acceptance;

(iv) Although Paras Nath Chaudhury (PW-1), Mahant Ashwani Das (PW-25), and Rama Devi (PW-24) have testified to the presence of Shashi Bhushan Singh (PW-42) as an eyewitness, this assertion should not be accepted. The *fardbeyan* (Exhibit P-50), being the first written account made immediately after the incident, is unexceptionable. Furthermore, the unexplained delay of five days in recording the statement of Shashi Bhushan Singh (PW-42) as an eyewitness dents the credibility of his account.

(v) For the same reasons, the reliance of the prosecution on the court testimony of Amarendra Kumar Sinha (PW-10), averring the presence of Shashi Bhushan Singh (PW-42) at the place of occurrence, contrary to his *fardbeyan*, is erratic and untrustworthy. Amarendra Kumar Sinha (PW-10), did not entirely support the prosecution case, yet being conscious of the fact that he was the informant of the *fardbeyan*, he could not completely resile. His dock version about the presence of Shashi Bhushan Singh (PW-42) has been rightly disbelieved.

Testimony of Paras Nath Chaudhury (PW-1)

11. Paras Nath Chaudhury (PW-1) is categoric about his presence in the hospital at about 6:40–7:00 p.m. on 13.06.1998 to visit Brij Bihari Prasad. He named the persons who were present with him in the

hospital room, which includes Mahanth Ashwani Das (PW-25). The testimony captures the following:

(i) Brij Bihari Prasad went for a walk along with the people of his constituency and supporters who had come to see him. The police personnel assigned for his protection also accompanied him.

(ii) After some time, two vehicles – a white Sumo car (Registration No. BR-1P-1818) and a white Ambassador car – came into the hospital and stopped at a distance of about 20 steps in front of Brij Bihari Prasad.

(iii) Bhupendra Nath Dubey (since deceased) alighted from the Sumo car, which was also carrying 2-3 more persons. 2-3 other people also alighted from the Ambassador car.

(iv) Bhupendra Nath Dubey (since deceased) pointed towards Brij Bihari Prasad and ordered that he be killed, while he himself also started firing shots. Others joined him in the firing.

(v) Paras Nath Chaudhury (PW-1) specifically identified Satish Pandey (since deceased) as an occupant of the Ambassador car.

(vi) Vijay Kumar Shukla @ Munna Shukla (A-8), who was a legislator from Lal Ganj, got down from the Ambassador car, while Mantu Tiwari (A-4), along with 1-2 more people, alighted from the Sumo.

(vii) Paras Nath Chaudhury (PW-1) saw Mantu Tiwari (A-4) but did not know his name. He came to know about the name subsequently from Amarendra Kumar Sinha (PW-10) and Shashi Bhushan Singh (PW-42).

(viii) Mantu Tiwari (A-4) was carrying a big firearm while Bhupendra Nath Dubey (since deceased) was carrying a small firearm. The other assailants were carrying either a revolver or a small firearm.

(ix) Bodyguard Lakshmeshwar Sahu who was carrying a carbine, was also fired upon.

(x) As a result of the firing, both Lakshmeshwar Sahu and Brij Bihari Prasad collapsed.

(xi) While leaving, Bhupendra Nath Dubey (since deceased) took the carbine that belonged to Lakshmeshwar Sahu and raised the slogan *"Jai Bajrang Bali".*

(xii) After the assailants left, Paras Nath Chaudhury (PW-1) and other visitors went near the dead bodies of Brij Bihari Prasad and Lakshmeshwar Sahu.

(xiii) Paras Nath Chaudhury (PW-1) identified both Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) in the court.

(xiv) While Paras Nath Chaudhury (PW-1) identified Rajan Tiwari (A-9) in the court, he testified that Rajan Tiwari (A-9) was not present at the place of occurrence. Paras Nath Chaudhury (PW-1) had not seen Suraj Bhan Singh (A-1) and Shashi Kumar Rai (A-7) at the place of occurrence.

(xv) Paras Nath Chaudhary (PW-1) establishes the presence of Amarendra Kumar Sinha (PW-10), Arbind Singh (PW-13), Shashi Bhushan Singh (PW-42), Ram Nandan Singh (PW-12), Mahanth Ashwani Das (PW-25), Rabindra Bhagat (PW-14), one Kanti, resident of Jamui, Kamakhya Narain Singh (PW-15), Ram Niranjan Chaudhary (A-6), Vijay Jha (PW-51) and 2-3 other persons at the IGIMS hospital.

12. The cross-examination of Paras Nath Chaudhury (PW-1) brings the following aspects to light:

(i) He accepted that Rama Devi (PW-24) was his sister and that she was present in the court on the day of the hearing but left while his evidence was being recorded.

(ii) He affirmed that Brij Bihari Prasad was admitted to the hospital 10-12 days before the occurrence.

(iii) Before the date of occurrence, he met Brij Bihari Prasad in the hospital on 4-5 occasions.

(iv) Brij Bihari Prasad, being in judicial custody, was admitted to IGIMS hospital by the jail administration.

(v) He accepted that his sister, Rama Devi (PW-24), had contested Lok Sabha elections in the past. Rama Devi (PW-24) contested Vidhan Sabha elections after the death of Brij Bihari Prasad.

(vi) He states that he had also taken part in the election campaign of Rama Devi (PW-24).

(vii) He denied knowing the fact that Devendra Nath Dubey, one of the candidates of Motihari constituency, was the main rival of Rama Devi (PW-24).

(viii) He further denied that Brij Bihari Prasad along with his brother, Shyam Bihari Prasad, murdered Devendra Nath Dubey.

(ix) He affirmed his presence at the place of occurrence and denied the claim that he did not witness the incident.

(x) He refuted the suggestion that being the brother-in-law of Brij Bihari Prasad, he is giving false evidence.

(xi) He also denied the claim that he was deposing at the behest of his sister Rama Devi (PW-24).

(xii) He reiterates that Mahanth Ashwani Das (PW-25) and others were present at the hospital.

(xiii) Two guards, which included Lakshmeshwar Sahu, were walking beside Brij Bihari Prasad.

(xiv) After the firing, the hospital staff and other people present started running in different directions.

(xv) Rama Devi (PW-24) came to the hospital after the incident. He testifies to seeing her cry beside the dead body of Brij Bihari Prasad.

(xvi) Police officers examined the dead body of Brij Bihari Prasad and prepared an Inquest Report. He denies signing the Inquest Report or any other document.

(xvii) He had gone to the hospital the next morning on 14.06.1998.

(xviii) He mentioned that his police statement was recorded about 10-12 hours[12] after the incident but could not recall the exact date since it was taken seven years ago.

13. Though it was pointed out that Paras Nath Chaudhury (PW-1), in his testimony, could not remember the number of the hospital room

12 See Trial Court Record, Vol. II, p.58.

or whether it was south-facing or not, this aspect would not, in our opinion, dent his core testimony. It is apposite to note that Paras Nath Chaudhury (PW-1) was aware that the hospital room was on the ground floor and there was a verandah after crossing 4-5 rooms on the west side. He further stated that there was a cycle stand, a vacant place for sitting, and a road which joins Bailey Road on the west side.

14. Paras Nath Chaudhury[13] (PW-1) accepts that he did not seek prior permission from the court or the jail authorities to visit Brij Bihari Prasad in the hospital, nor did he make any entry into the hospital register. This is also true for other visitors, a position accepted by the prosecution. The absence of a register entry or prior permission, a factor to be taken into consideration, is not sufficient reason to discard bounteous and credible evidence and material establishing that Brij Bihari Prasad, a political leader with influence, had numerous visitors and supporters meeting him at the hospital. The *fardbeyan* (Exhibit-50) and the ocular evidence of Rama Devi[14] (PW-24) and Mahanth Ashwani Das[15] (PW-25), establish the presence of Paras Nath Chaudhury (PW-1) and other visitors. Further, the following witness accounts establish the presence of visitors and eyewitnesses:

- Amarendra Kumar Sinha (PW-10) has deposed and accepted the presence of Arbind Singh (PW-13), Shashi Bhushan Singh (PW-42), Ram Niranjan Chaudhary (A-6) and 7-8 other persons.
- Arbind Singh (PW-13), who was declared hostile, accepted that Amarendra Kumar Sinha (PW-10), Shashi Bhushan Singh (PW-42) and 5-7 other persons had come to the hospital.
- Rabindra Bhagat (PW-14), the injured witness who also turned hostile, deposed to the presence of two other persons accompanying Brij Bihari Prasad.

Once the presence of a witness at the place of occurrence is proven, their testimony, if credible and truthful, should not be dismissed solely based on non-compliance with hospital and prison protocols.

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13 See para 11(xv).

14 See para 23.

15 See para 17(ii).

15. The reasoning given by the High Court to disregard and doubt the eyewitness account of Paras Nath Chaudhury (PW-1), on the premise that he ought to have been the informant because he is the brother-in-law of Brij Bihari Prasad and was present at the hospital at the time of occurrence, is conjectural and unfounded. This fact cannot *ipso facto* lead to the disavowal of his testimony. Such a presumption imposes a rigid formula for determining who should be an informant, which the law does not envision. It is an accepted and admitted position that the name of Paras Nath Chaudhury (PW-1) has been mentioned in the *fardbeyan* and in the FIR as one of the persons present at the hospital. Any person can be an informant of a case, and the police may also register a case on their own. The rationale of the High Court for dismissing the testimony of Paras Nath Chaudhury (PW-1) is fundamentally flawed.

16. Yet another reason for rejecting his testimony stems from contradictions about the presence of Rajan Tiwari (A-9) as an assailant at the hospital. In his police statement, Paras Nath Chaudhury (PW-1) identified Rajan Tiwari (A-9) as being at the hospital, but in his court testimony, he stated that Rajan Tiwari (A-9) was not present. In our considered view, this contradiction does not weaken Paras Nath Chaudhury's (PW-1) account of witnessing Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) commit the offence. Indian law does not recognise the doctrine – *falsus in uno, falsus in omnibus*. In ***Deep Chand and Others*** v. ***State of Haryana***,[16] this Court had observed that the maxim *falsus in uno, falsus in omnibus* is not a sound rule to apply in the conditions of this country. This maxim does not occupy the status of rule of law. It is merely a rule of caution which involves the question of the weight of evidence that a court may apply in the given set of circumstances.[17] In cases where a witness is found to have given unreliable evidence, it is the duty of the court to carefully scrutinise the rest of the evidence, sifting the grain from the chaff. The reliable evidence can be relied upon especially when the substratum of the prosecution case remains intact. The court must be diligent in separating truth from falsehood. Only in exceptional circumstances, when truth and falsehood are so

16 (1969) 3 SCC 890

17 *Ponnam Chandraiah v. State of Andhra Pradesh* (2008) 11 SCC 640

inextricably connected as to make it indistinguishable, should the entire body of evidence be discarded.

Testimony of Mahanth Ashwani Das (PW-25)

17. The deposition of Mahanth Ashwani Das (PW-25) equally supports the prosecution case. His testimony captures the following:

(i) On 13.06.1998, he reached IGIMS hospital at about 7:00 p.m. to meet Brij Bihari Prasad.

(ii) He confirmed the presence of Paras Nath Chaudhury (PW-1). Amarendra Kumar Sinha (PW-10), Arbind Singh (PW-13), Shashi Bhushan Singh (PW-42), Ram Niranjan Chaudhary (A-6), Ram Nandan Singh (PW-12), Onkar Singh and some other people at the hospital.

(iii) After a passing remark by Ram Niranjan Chaudhary (A-6) that it was hot in the hospital room, Brij Bihari Prasad stepped outside for a stroll. Brij Bihari Prasad was accompanied by Ram Niranjan Chaudhary (A-6), Lakshmeshwar Sahu and other security personnel.

(iv) In the meanwhile, a Sumo car and an Ambassador car came inside the hospital campus. About 10-12 persons alighted from the said vehicles and moved toward Brij Bihari Prasad.

(v) Mantu Tiwari (A-4) was carrying a carbine and others were carrying pistols.

(vi) He specifically identified Bhupendra Nath Dubey (since deceased), Shri Prakash Shukla @ Shiv Prakash Shukla (since deceased), Rajan Tiwari (A-9), Vijay Kumar Shukla @ Munna Shukla (A-8) and Satish Pandey as the persons who alighted from the aforementioned vehicles.

(vii) Mantu Tiwari (A-4), Bhupendra Nath Dubey (since deceased) and Shri Prakash Shukla @ Shiv Prakash Shukla (since deceased) fired at Brij Bihari Prasad. Others were also firing indiscriminately in different directions.

(viii) Vijay Kumar Shukla @ Munna Shukla (A-8), Satish Pandey and Rajan Tiwari (A-9) shot at Lakshmeshwar Sahu.

(ix) On being shot, Brij Bihari Prasad and Lakshmeshwar Sahu collapsed.

(x) Bhupendra Nath Dubey (since deceased) took the carbine belonging to Lakshmeshwar Sahu and thereafter exclaimed that the work had been done. He raised the slogan *"Jai Bajrang Bali"*.

(xi) His signed statement (Exhibit-29) was also recorded by a judicial magistrate.

(xii) The occurrence took place at about 8:30 p.m.

(xiii) The police and CBI had interrogated him in this regard.

18. We have carefully scrutinized the cross-examination of Mahanth Ashwini Das (PW-25). His cross-examination states:

(i) Mahanth Ashwani Das (PW-25) was introduced to Brij Bihari Prasad in 1996. This was around the same time Mahanth Ashwani Das (PW-25) became a disciple under Sanatan Dharma.

(ii) He had also known Rama Devi (PW-24), wife of Brij Bihari Prasad, since 1996.

(iii) Rama Devi (PW-24) was present in the court while his testimony was being recorded. However, Mahanth Ashwani Das (PW-25) denies speaking to her.

(iv) Mahanth Ashwini Das (PW-25) states that while there was no particular reason to meet Brij Bihari Prasad on 13.06.1998, he would generally meet Brij Bihari Prasad whilst in Patna.

(v) Earlier also he had visited Brij Bihari Prasad in the hospital on another occasion, but he could not remember the date and time of this meeting.

(vi) He met Brij Bihari Prasad approximately 8-10 days prior to the date of incident.

(vii) He did not know the specific treatment for which Brij Bihari Prasad was admitted to the hospital. He states that the treatment had been going on for about one and a half months.

(viii) He denies having knowledge of any case(s) pending against Brij Bihari Prasad.

(ix) He states that he is unaware of any case pending against him. However, he accepts that way back in 1979, a murder

case was registered against him, for which he had remained in jail for 3-4 months.

(x) He states that he was sentenced to life imprisonment and filed an appeal in 1987; however, he was uncertain whether the appeal was still pending or had been dismissed, and he could not recall the grounds for the appeal.

(xi) He did not have any documentary proof of visiting the hospital on 13.06.1998.

(xii) He had not made any signatures on the death summary report and the seizure memo.

(xiii) He did not know if the wife of Onkar Singh (since deceased) had given a police statement that her husband was murdered by Brij Bihari Prasad due to a contract dispute.

(xiv) Mahanth Ashwani Das (PW-25) had deposed about remaining at the place of occurrence after the firing. He saw the police coming and lifting the dead bodies of Brij Bihari Prasad and Lakshmeshwar Sahu. He left the hospital for the residence of Brij Bihari Prasad at 9:30 p.m., where several people, including Kamakhya Narain Singh (PW-15), Shiv Ji Prasad, Ram Nandan Singh (PW-12), Onkar Singh, and Raj Bala Verma (Collector, Patna), had already gathered. Later that night, on 14.06.1998, around 12:30 a.m., he departed for Muzzaffarpur *Math.*

(xv) He was arrested on 04.05.2006 in Patna. Thereafter, he was given protection by the Bihar Government to give evidence in the present trial. Armed security guards, who were generally not present with him, used to accompany him whilst going to the court.

(xvi) He states that he used to reach Smriti Bhawan of Brij Bihari Prasad at about 5:00 a.m. Rama Devi (PW-24), her driver and security guards reside at the Smriti Bhawan.

(xvii) During the firing he had hidden about 30-40 steps away from the hospital room.

(xviii) He denies the suggestion of giving false evidence due to his close relationship with Brij Bihari Prasad.

19. As noted above, the High Court has rejected the testimony and complicity of the accused by Mahant Ashwani Das (PW-25) on the ground that he is himself an accused in a murder case and had absconded despite being convicted in appeal, while he was being examined as a witness in the present case. The High Court had also held that Mahant Ashwani Das (PW-25) had the patronage of Rama Devi (PW-24) and the deceased Brij Bihari Prasad.

20. The criminal background of a witness necessitates that the courts approach their evidence with caution. The testimony of a witness with a chequered past cannot be dismissed as untruthful or uncreditworthy without considering the surrounding facts and circumstances of the case, including their presence at the scene of the offence. In cases involving conflicts between rival gangs or groups, the testimony of members from either side is admissible and relevant. If the court is convinced of the veracity and truthfulness of such testimony, it may be considered. Courts typically assess the broader context to determine if there is sufficient corroboration, as long as there are no valid reasons to discredit the evidence. The crucial test is whether the witness is truly an eyewitness and whether their testimony is credible. If their presence at the scene is established beyond doubt, their account of the incident can be relied upon. Such evidence cannot be discarded merely on the grounds of criminal background.[18]

Testimony of Amarendra Kumar Sinha (PW-10)

21. No doubt, Amarendra Kumar Sinha (PW-10) turned hostile, but his core deposition captures the following:

    (i) He accepts having recorded the *fardbeyan* (Exhibit-50) on 13.06.1998 at about 9 p.m. It bears his signatures which are marked Exhibits 12 and 12/1.

    (ii) He had gone to the hospital at about 6:00 – 6:30 p.m. Some of the people, including Arbind Singh (PW-13), Shashi Bhushan Singh (PW-42) and 7-8 other persons, whom he did not remember, accompanied him.

    (iii) He met Brij Bihari Prasad at about 6:30 p.m. in the ward. He states that the incident took place at about 8:15 p.m., and he, along with the others, stayed there till after the incident.

18 See *State of U.P.* v. *Farid Khan and Others* (2005) 9 SCC 103

(iv) At the time of the incident, Amarendra Kumar Sinha (PW-10) along with Arbind Singh (PW-13), Shashi Bhushan Singh (PW-42), Ram Niranjan Chaudhary (A-6) and some others, had come out for a stroll with Brij Bihari Prasad.

(v) Two vehicles, a Sumo and an Ambassador car, had come in. 5-6 persons alighted from the two vehicles and moved towards Brij Bihari Prasad. Thereafter, one of the assailants pointed towards Brij Bihari Prasad, identifying him as the Minister. The assailants then started firing. Brij Bihari Prasad and Lakshmeshwar Sahu were shot at, and they collapsed. Amarendra Kumar Sinha (PW-10) and others ran towards the parking lot. One of the accused took the carbine of Lakshmeshwar Sahu. While exiting the hospital, slogans of "*Jai Bajrang Bali"* were raised by the assailants. They exited in the same vehicles from the east gate.

(vi) He does not remember the registration number of the vehicles. He, along with the other visitors present there, had informed the hospital staff, who in turn, informed the police.

(vii) He identified Bhupendra Nath Dubey (since deceased) and Mantu Tiwari (A-4). He could not identify the other accused. He claimed that Bhupendra Nath Dubey (since deceased) and Mantu Tiwari (A-4) were carrying pistols.

(viii) Mantu Tiwari (A-4) was not present in the court when Amarendra Kumar Sinha (PW-10) was being examined. However, he identified Ram Niranjan Chaudhary (A-6) who was present in the court.

(ix) As he did not recognize the other accused, he was declared hostile and was allowed to be cross-examined by the prosecution.

(x) In his cross-examination, he denied that Mantu Tiwari (A-4) fired from his sten gun.

(xi) He also denied the presence of Paras Nath Chaudhury (PW-1), claiming that he had not seen him in the hospital.

(xii) However, he accepts in the cross-examination that he had put his signatures on the *fardbeyan.*

(xiii) He was not cross-examined at length by the defence.

22. We have already referred to judgments of this Court while examining the doctrine of *falsus in uno, falsus in omnibus*. The same principles equally apply when the court examines the statement of a witness who has been declared hostile by the prosecution. In a catena of judgments, this Court has observed that the evidence of a hostile witness is not to be completely rejected, so as to exclude versions that support the prosecution. Rather, the testimony of the hostile witness is to be subjected to close scrutiny, thus enabling the court to separate truth from falsehood, exaggerations and improvements. Only reliable evidence should be taken into consideration. The court is not denuded of its power to make an appropriate assessment. The entire testimony of a hostile witness is discarded only when the judge, as a matter of prudence, finds the witness wholly discredited, warranting the exclusion of the evidence in toto.[19] The creditworthy portions of the testimony should be considered for the purpose of evidence in the case. It is in this context that we have to examine the testimony of Amarendra Kumar Sinha (PW-10), the complainant/ informant, who gave the *fardbeyan* (Exhibit P-50) on which basis the FIR (Exhibit P-50/51) was registered.

Testimony of Rama Devi (PW-24)

23. Rama Devi (PW-24) confirmed the presence of the witnesses – Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), and Amarendra Kumar Sinha (PW-10) at the IGIMS hospital. On 13.06.1998, Rama Devi (PW-24) had taken food to the hospital at about 2:50 p.m. and stayed there till about 7:00 p.m. From the hospital, she went to Maurya Lok to purchase some items for her sons and remained there for about one and a half hours. Whilst leaving Maurya Lok, she learnt about the attack on her husband, Brij Bihari Prasad. She immediately reached IGIMS hospital where she saw Brij Bihari Prasad and Lakshmeshwar Sahu lying dead in a pool of blood. Several people had gathered there. She established the presence of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), and Amarendra Kumar Sinha (PW-10) at the hospital.

19 See *C. Muniappan and Others* v. *State of Tamil Nadu* (2010) 9 SCC 567

24. We will exclude the testimony of Rama Devi (PW-24) regarding the individuals who arrived in the two vehicles and the detailed version about the occurrence which she heard from the people present there, including Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), and Amarendra Kumar Sinha (PW-10), which is hearsay. However, her testimony establishing the presence of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), and Amarendra Kumar Sinha (PW-10) is direct evidence and cannot be discarded. Rama Devi (PW-24) was at the hospital for a considerable time before and after the incident. Her version is factually accurate and fosters confidence. Thus, the testimony of Rama Devi (PW-24) can be used to partly corroborate and affirm the testimonies of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25), and Amarendra Kumar Sinha (PW-10).

25. The testimony of Rama Devi (PW-24) is also relevant from the point of view of motive, a question which is not contentious, as is clear from the questions posed to her in her cross-examination. She has affirmed having contested the Lok Sabha elections against Devendra Nath Dubey, who was murdered. Brij Bihari Prasad, her husband, was implicated in the said case as an accused. Her husband was also arrested in MEDHA scam by the CBI. He was subsequently lodged in Beur Jail. Due to his ill health, he was taken to Patna Medical College from where he was referred to IGIMS hospital.

26. Mantu Tiwari (A-4) is the nephew of the late Bhupendra Nath Dubey (since deceased), who was the brother of Devendra Nath Dubey, a political rival of Rama Devi (PW-24). Devendra Nath Dubey was killed a day before the re-poll for the Motihari Lok Sabha Constituency. Brij Bihari Prasad was named as an accused in the case. The longstanding animosity is further highlighted by the fact that Vijay Kumar Shukla @ Munna Shukla (A-8) is the brother of Chottan Shukla and Bhutkun Shukla, who were allegedly killed by the henchmen of Brij Bihari Prasad. Further, Rama Devi (PW-24) testified that in 1987, there was an assassination attempt on her husband, Brij Bihari Prasad, statedly orchestrated at the behest of Raghunath Pandey (chargesheeted in the present case but since deceased), with Vijay Kumar Shukla @ Munna Shukla (A-8), Chottan Shukla and Bhutkun Shukla involved in the attack.

Identification and non-recovery of vehicles and weapons

27. Paras Nath Chaudhury (PW-1) and Mahanth Ashwani Das (PW-25) have identified the vehicles used by the accused on 13.06.1998. They have specifically deposed about a Sumo bearing registration no. BR-1P-1818. The Sumo and the Ambassador cars, which they have referred to in their depositions, were not recovered. The weapons used in the offence, including the carbine belonging to the deceased Lakshmeshwar Sahu, also could not be recovered. However, given the facts and circumstances of the case, the failure of the police to recover the vehicles and the weapons is not sufficient to undermine the credibility of the eyewitness accounts or the corroborative evidence regarding the cause of the homicidal deaths of Brij Bihari Prasad and Lakshmeshwar Sahu. The ocular version of the witnesses should not be disregarded solely because the weapon used in the crime and the vehicles allegedly used by the accused were not located or seized by the police.[20]

28. It is significant to note that the vehicle No. BR-1P-1818 (Sumo), as per the deposition of the second IO, Shashi Bhushan Sharma (PW-54), had been taken under a hire-purchase agreement by the late Devendra Nath Dubey, brother of Bhupendra Nath Dubey (since deceased), from a finance company – SBR Private Limited, Calcutta. The said assertion had remained unchallenged in the cross-examination of Shashi Bhushan Sharma (PW-54). The vehicle No. BR-1P-1818 is also mentioned in the *fardbeyan* (Exhibit P-50) of Amarendra Kumar Sinha (PW-10).

Forwarding of the FIR

29. The impugned judgment has observed that the FIR (Exhibits 51 and 51/1) is *ante*-timed. The High Court, in its reasoning, highlights this as one of the grounds for acquitting the accused. In the present case, the first IO, SSP Yadav, passed away before he could depose. However, registration of the FIR itself is not in doubt and debate and has been deposed to by Amarendra Kumar Sinha (PW-10). We have evidence with regard to the statement of eye-witnesses which were recorded under Section 161 CrPC on the night of occurrence, as is clear from the depositions of Paras Nath Chaudhury

20 See *Yogesh Singh v. Mahabeer Singh and Others* (2017) 11 SCC 195 which refers to several other decisions. See also *State of Rajasthan v. Arjun Singh and Others* (2011) 9 SCC 115

(PW-1), Mahanth Ashwani Das (PW-25), and Amarendra Kumar Sinha (PW-10). The inquest reports of Brij Bihari Prasad and Lakshmeshwar Sahu (Exhibits 42/1 and 52) were prepared on the same night and, thereafter, the post-mortem was conducted by Dr. Arvind Kumar Singh (PW-7) at 12:30 a.m. and 1:30 a.m. respectively on 14.06.1998.

30. The occurrence having taken place at night on 13.06.1998, normally the FIR should have been sent to the jurisdictional magistrate on 14.06.1998. However, 14.06.1998 being a Sunday was a holiday. The FIR was forwarded to the jurisdictional magistrate on 15.06.1998. There is, therefore, an explanation for the delay in forwarding a copy of the FIR to the jurisdictional magistrate in terms of Section 157 of the CrPC. It is trite law that a delay in forwarding the FIR to the jurisdictional magistrate is not fatal to the prosecution case. This Court, in ***State of Rajasthan*** v. ***Daud Khan***,[21] has examined the case law on the subject and held that when there is a delay in forwarding the FIR to the jurisdictional magistrate and the accused raises a specific contention regarding the same, they must demonstrate how this delay has prejudiced their case. Mere delay by itself is not sufficient to discard and disbelieve the case of the prosecution. If the investigation starts in right earnest and there is sufficient material on record to show that the accused were named and pinpointed, the prosecution case can be accepted when evidence implicates the accused. The requirement to dispatch and serve a copy of the FIR to the jurisdictional magistrate is an external check against *ante* dating or *ante* timing of the FIR to ensure that there is no manipulation or interpolation in the FIR. If the court finds the witnesses to be truthful and credible, the lack of a cogent explanation for the delay may not be regarded as detrimental.

Police Statements of Eye-witnesses

31. The High Court, in its reasoning, takes an exception on the minor discrepancies regarding the place and time of recording the statement under Section 161 CrPC of Mahanth Ashwani Das (PW-25). Similarly, the impugned judgment has adversely commented on the versions given by Shashi Bhushan Singh (PW-42) and Mahanth Ashwani Das (PW-25) as to who had reached the hospital at an earlier point in time.

21 (2016) 2 SCC 607

Considering the efflux of time of more than 4-6 years between the date of occurrence and recording of court testimony, these issues are at best superficial and peripheral and would not warrant disregarding the prosecution case. The questions posed to the witnesses were more in the nature of a memory test rather than questions posed to test the truthfulness and credibility of their core testimony. Equally, the observation of the High Court on the statement under Section 161 CrPC of Rama Devi (PW-24) to Rai Singh Khatri (PW-62), IO of the CBI, is inconsequential. Section 161 CrPC statement of Rama Devi, in which she had given the names and details of the persons who were present in the hospital, cannot be brushed aside solely on this ground. Statements under Section 161 CrPC are *per se* not evidence in the court. Rama Devi's statement under Section 161 CrPC was recorded on 13.06.1998 and the same was filed along with the chargesheet. She was not cross-examined regarding the said statement.

32. The assertion that Rama Devi's (PW-24) Section 161 CrPC statement dated 13.06.1998 to Shashi Bhushan Sharma, IO (PW-54), has not been included in the record is solely predicated on her cross-examination conducted on 21.02.2006. Rama Devi's (PW-24) acknowledgement during her cross-examination reflects a clear lapse in memory, likely due to the nearly eight-year gap and the length of her questioning. It is a well-established fact that SSP Yadav was the IO on 13.06.1998, making it impossible for Shashi Bhushan Sharma (PW-54) to have recorded her Section 161 CrPC statement on that date. Moreover, Shashi Bhushan Sharma (PW-54) was never questioned about whether he had recorded Rama Devi's (PW-24) Section 161 CrPC statement on 13.06.1998. In fact, both the defence and prosecution agree that Shashi Bhushan Sharma (PW-54) took over the investigation on 14.07.1998.

Attesting Witnesses and Retaliatory Firing

33. The contention that Paras Nath Chaudhury (PW-1) and Mahanth Ashwani Das (PW-25) were not attesting witnesses to the inquest report, *fardbeyan*, FIR, etc. is inconsequential and does not in any way weaken their ocular evidence. Similarly, the contention that they were not injured during the cross-fire is nugatory as it is clear from the evidence on record that it was Brij Bihari Prasad who was the target of the attack. The armed bodyguards who were attacked

had retaliated. Although it is true that the depositions of Paras Nath Chaudhury (PW-1) and Mahanth Ashwani Das (PW-25) do not mention the retaliatory firing by the bodyguards, an independently proven fact, this alone is not a sufficient ground to dismiss their presence at the spot or their versions including the culpability of the persons who had committed the offence.

Offence under Section 307 read with Section 34 of the IPC

34. Rabindra Bhagat (PW-14) had averred to his presence at IGIMS hospital on 13.06.1998 in the evening at about 7-7:30 p.m. when he was shot at and received a bullet injury in his left arm during the attack on Brij Bihari Prasad. He called his brother, Sanjeev Kumar, who took him to Alok Nursing Home for treatment. Rabindra Bhagat (PW-14), however, did not identify the culprits. Dr. Tarkeshwar Prasad Singh (PW-8) examined injured Rabindra Bhagat (PW-14) on 13.06.1998 at 9:30 P.M. and issued the injury report dated 08.08.1998 (Exhibit-10). The deposition of Dr. Tarkeshwar Prasad Singh (PW-8) refers to the entry and exit wounds on the left arm of Rabindra Bhagat (PW-14) inflicted by a gunshot approximately two hours before the medical examination. In any case, it is proven that in spite of the number of people present, there was extensive firing and the use of firearms with intent to kill. The charge under Section 307 of the IPC is, therefore, established and proved.

The Charge of Criminal Conspiracy

35. The case was transferred to CBI by Notification dated 07.03.1999, pursuant to which it conducted an investigation. The CBI filed two supplementary chargesheets implicating Suraj Bhan Singh (A-1), Ram Niranjan Chaudhary (A-6), Shashi Kumar Rai (A-7) and Raghunath Pandey, who had since died, as conspirators who were responsible for the incident. A supplementary chargesheet was filed against Shashi Kumar Rai (A-7) on 08.11.2000, followed by a second supplementary chargesheet dated 20.04.2001 against Raghunath Pandey.

36. The prosecution case makes a charge of conspiracy based on an alleged meeting which took place in Beur Jail where Suraj Bhan Singh (A-1) was incarcerated. Suraj Bhan Singh (A-1) is said to have reportedly met with Vijay Kumar Shukla @ Munna Shukla (A-8), Lallan Singh (A-3) and Ram Niranjan Chaudhary (A-6). However, the witnesses to this meeting, Sone Lal (PW-32) and Lal

Babu Chaudhury (PW-39), turned hostile and did not support the prosecution version. This evidence is based on the testimony of Shashi Bhushan Sharma (PW-54) that Sone Lal (PW-32) and Lal Babu Chaudhury (PW-39) informed him about the said jail meeting on 19.08.1998, nearly two months after the date of occurrence. Shashi Bhushan Sharma (PW-52) failed to establish how he discovered the purported version of Sone Lal (PW-32) and Lal Babu Chaudhury (PW-39). He was also unable to establish that Sanjay Singh, the inmate whom Sone Lal (PW-32) and Lal Babu Chaudhury (PW-39) had allegedly visited, was present in Beur Jail 2-3 days before the incident. There is no record of Sone Lal (PW-32) and Lal Babu Chaudhury (PW-39) visiting Beur Jail.

37. Further, the claim of the prosecution regarding the dubious character of Ram Niranjan Chaudhary (A-6) and that he encouraged Brij Bihari Prasad to go outside his hospital room for a walk is not directly implicatory. Rather, it is an assumption requiring substantial evidence to be established. It only expresses doubt about Ram Niranjan Chaudhary (A-6), an insider who could have given information.

38. To prove the charge of conspiracy, the prosecution further relied upon the telephone records of Mokama landline number 32772, which was supposedly subscribed to by Suraj Bhan Singh (A-1). The telephone records indicate calls made from Mokama landline number 32772 to Shashi Kumar Rai (A-7), Sunil Singh (A-5) (since deceased) and Munna Shuka (A-8). The prosecution relied on the report dated 29.10.1999 (Exhibit-1) submitted by Shiya Sharan Ram (PW-2), Sub-Divisional Engineer (Vigilance), Bharat Sanchar Nigam Limited, which stated that the landline number was subscribed in the name of one Shrawan Kumar Agrawal but was operational in the house of Suraj Bhan Singh (A-1) at Mokama. However, the said report of Shiya Sharan Ram (PW-2) is based on the physical verification of S.M.M. Rahman, Sub-Divisional Engineer, Barh and Jitan Mehta, Junior Telecom Officer, Hatida, both of whom, have not been examined. Further, Shrawan Kumar Agrawal has also not been examined. The original report prepared by S.M.M. Rahman and Jitan Mehta is also not on record. The prosecution version establishing the landline number as belonging to Suraj Bhan Singh (A-1) hinges on the testimony of M.L. Meena (PW-60), Assistant IO, CBI. However, M.L. Meena (PW-60) accepts in his testimony that

he did not enter the house to verify the existence of a telephone set. Rather, his entire version is based on his interaction with the step-mother of Suraj Bhan Singh (A-1). The telephone records indicating the exchange of calls between 11.05.1998 and 11.06.1998, as deposed by Rai Singh Khatri (PW-62), do not substantively prove and establish the conspiracy charge in the absence of revelatory and weighty incriminating material.

39. The CBI also relied upon the post-incident celebration held in village Khanjah Ghat on 15.06.1998 at the behest of Vijay Kumar Shukla @ Munna Shukla (A-8). Amod Kumar (PW-11), Sushil Kumar Singh (PW-35) and Pooja (PW-37), who were statedly witnesses to the post-incident celebration turned hostile. The statement of Avadhesh Kumar Singh (PW-36), who did not turn hostile, was recorded one year and two months after the date of occurrence. The prosecution has not placed any material on record to showcase how M.L. Meena, IO, CBI (PW-60) had traced Avadhesh Kumar Singh (PW-36), though Rai Singh Khatri, IO, CBI (PW-62) had stated that M.L. Meena, IO, CBI (PW-60) had got in touch with Avadhesh Kumar Singh (PW-36). The evidence of Avadhesh Kumar Singh (PW-36) and Pooja (PW-37) establishing the presence of Shashi Kumar Rai (A-7), since deceased, in the post-incident celebration is not entirely credible. In any case, Shashi Kumar Rai (A-7) passed away during the pendency of the present appeals.

40. To fortify the charge of conspiracy, the prosecution has further relied on the fax message (Exhibit-6) regarding the threat to the life of Brij Bihari Prasad. This fax message would not help the prosecution implicate the accused persons – Suraj Bhan Singh (A-1), Mukesh Singh (A-2), Lallan Singh (A-3) and Captain Sunil Singh (A-5) (since deceased) – on the charge of criminal conspiracy.

Discrepancy regarding the presence of Rajan Tiwari (A-9)

41. As noticed above, Paras Nath Chaudhury (PW-1) in his deposition had categorically stated that Rajan Tiwari (A-9) was not present with the other accused who had murdered Brij Bihari Prasad and Lakshmeshwar Sahu. Even though Mahanth Ashwani Das (PW-25) had referred to the presence of Rajan Tiwari (A-9), given the discrepancy in the statement of the two eye-witnesses, we feel that the benefit of doubt must be given to Rajan Tiwari (A-9).

Conclusion

42. Even if we completely exclude the testimony of Shashi Bhushan Singh (PW-42), the depositions of Paras Nath Chaudhury (PW-1), Mahanth Ashwani Das (PW-25) and, to some extent of Rama Devi (PW-24) and Amarendra Kumar Sinha (PW-10) with other evidence and material are conclusive enough to prove the charge against Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8). Bhupendra Nath Dubey and Captain Sunil Singh (A-5) are no more, and, therefore, we need not consider the evidence against them. Similarly, we need not examine the depositions implicating Shashi Kumar Rai (A-7), who died during the pendency of the present appeals.

43. Regarding the question of conspiracy and the evidence against Suraj Bhan Singh (A-1), Mukesh Singh (A-2), Lallan Singh (A-3) and Ram Niranjan Chaudhary (A-6), there is no direct ocular evidence implicating them through the testimonies of Paras Nath Chaudhury (PW-1) and Mahanth Ashwani Das (PW-25). Since the charge of conspiracy is not substantiated, we will not interfere with the judgment of the High Court acquitting them, and they are entitled to the benefit of the doubt.

44. In light of the above discussion, we hold and direct as under:

    a) The charge under Section 302 read with Section 34 of the IPC against Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) for the murders of Brij Bihari Prasad and Lakshmeshwar Sahu is proven and established beyond reasonable doubt.

    b) The charge under Section 307 read with Section 34 of the IPC against Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) for attempting to murder, as held in paragraph 34 above, is proven and established beyond reasonable doubt.

    c) The conviction and sentence awarded to Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) by the trial court under Sections 302 and 307 read with Section 34 of the IPC are affirmed and restored.

    d) Consequently, Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) shall have to undergo imprisonment for

life with a fine of Rs. 20,000/- (Rupees Twenty Thousand Only) each under Section 302 read with Section 34 of the IPC, and in addition to undergo rigorous imprisonment for five years with a fine of Rs. 20,000/- (Rupees Twenty Thousand Only) each under Section 307 read with Section 34 of the IPC. Both the sentences shall run concurrently. Section 428 of the CrPC shall apply. As default punishment was not imposed by the trial court, we direct that in case of non-payment of fine on each account, Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) shall undergo rigorous imprisonment for six months.

e) Mantu Tiwari (A-4) and Vijay Kumar Shukla @ Munna Shukla (A-8) are directed to surrender within two weeks from today to the concerned jail authorities/court to serve the remainder of their respective sentences. In case of failure to surrender, the authorities shall take appropriate measures to arrest and detain them in accordance with law.

f) Insofar as Suraj Bhan Singh (A-1), Mukesh Singh (A-2), Lallan Singh (A-3), Ram Niranjan Chaudhary (A-6) and Rajan Tiwari (A-9) are concerned, we give them benefit of doubt and uphold their acquittal.

45. The appeals are partially allowed and the impugned judgment is set aside in terms and *vide* the directions issued in paragraph 44 above. Pending applications, if any, shall also stand disposed of.

Result of the case: Appeals partly allowed.

†*Headnotes prepared by:* Divya Pandey