A SURESH RAI AND ORS.

v.

STATE OF BIHAR

MARCH 30, 2000

B [S. SAGHIR AHMAD, A.P. MISRA AND Y.K. SABHARWAL, JJ.]

Penal Code, 1860—Sections 302 and 34—Appreciation of evidence—Murder—Three eye-witnesses—Trial Court sentencing accused to life imprisonment—Confirmed by High Court—On appeal Held, entire investigation was
C *wholly tainted and there was possibility of false imputation due to long enmity between families—Time of occurrence and information to Investigating Officer contradicted by prosecution witnesses—Presence of eye-witnesses at scene of occurrence not proved—Conviction, not justified.*

Cr.P.C., 1973—Sections 174 and 178—Inquest Report—Scope of investi-
D *gation limited to prima facie nature of injuries, possible weapons used and possible cause of death.*

There was a long standing enmity between families of the appellants and the deceased. Appellants allegedly murdered the deceased in presence
E **of P.W. 10, the informant, P.W. 16 and P.W. 17 at about 5.30 A.M. The incident, was stated to have been reported to the police at 7 A.M. after which investigation began. Appellants were sentenced to life imprisonment under Sections 302, 34 and 109 IPC and Section 27 of the Arms Act by Trial Court, which was confirmed by High Court. Hence this appeal.**

F **The appellants contended before this Court that the alleged eye witnesses were never present at the scene of occurrence; that the occurrence took place in the proceedings night; that due to bitter enmity between the families there was a possibility of false imputation; and that witnesses of inquest did not name the assailants.**

G **Allowing the appeal, this Court**

HELD : 1. Under Section 174 read with Section 178 Cr.P.C. Inquest Report is prepared by the Investigating Officer to find out prima facie the nature of injuries and the possible weapon used in causing those injuries
H **as also possible cause of death. [803-G-H]**

Podda Narayan v. *State of A.P.*, [1975] Supp. SCR 84; *George* v. *State of Kerala*, [1998] 4 SCC 605; *Rameshwar Dayal* v. *State of U.P.*, [1987] 3 SCR 59; *Khujji @ Surendra Tiwari* v. *State of M.P.*, [1991] SCR 1 and *Kuldip Singh* v. *State of Punjab*, [1992] Supp. 3 SCC 1, relied on.

2. It is apparent that the names of the appellants were introduced in the statement of P.W. 10 recorded after the Inquest Report was prepared, on account of the bitter enmity between their families. It was but natural that they would have been implicated at the instance of P.W. 10 in the incident which was not witnessed by him nor P.W. 16 and P.W. 17. The entire investigation was wholly tainted and appellants were implicated on the collective mischief of P.W. 10, the informant and P.W. 15, the Investigating Officer. [805-A; 806-A-B]

3. The Investigating Officer (P.W.15) directly and effectively contradicted the statement of P.W. 10 that he had gone to the Police Station at 7 A.M. and reported the matter. He had stated that P.W. 10 had not come to the Police Station nor had met him there. He admitted that he got the information at 8.15 A.M. from some other person after who did not disclose the name of the assailant. On scrutiny of the statement of P.W. 15 and P.W. 10 it comes out that P.W. 10 did not know the name of the assailant; therefore he was not in a position to disclose the name to the Investigating Officer at the Police Station. [801-B-E]

4. All three eye witnesses stated that they had gone to scrape grass along with the deceased. Their presence at the spot could be justified on the basis of the grass they had scraped, but the Investigating Officer was neither shown the grass nor did he come across any portion of land from where grass had been scraped. The explanation that large quantity of blood was spread over the field would not obliterate the evidence of the grass having been cut from the field. Circumstances indicate that no grass had been scraped and none of the eye-witnesses were present at the scene of occurrence. It is unbelievable that the three persons who were scraping the grass with the deceased would meekly move away so as to facilitate the killing of deceased. Their conduct is unnatural. [801-G; 802-B; 804-F]

5. P.W. 2 stated the time of occurrence at about 4.30 A.M. and that he heard the noise at his house which was about half a kilometer away the scene of occurrence. He had no knowledge as to how the *deceased died* and was not an eye-witnesses and appears to have been produced to fix

A **the place of occurrence, but in that process changed the time of occurrence. [803-C-D]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 740 of 1998.

B From the Judgment and Order dated 5.5.98 of the Patna High Court in Crl. A. No. 241 of 1988.

U.R. Lalit, Chander Bhushan Pd. and Ranjit Kumar for the Appellants.

B.B. Singh and Kumar Rajesh Singh for the Respondent.

C

The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. Enmity, undoubtedly, is a double-edged weapon; it may be a motive for commission of crime; it may also be a motive for false implication. If, as in the instant case, one edge of the weapon of D enmity is blunt, it cannot be sharpened by the judicial process. The weapon of enmity in the instant case, as we shall presently see, does not cut any ground for the commission of crime.

The appellants were charged and tried for offences under Section 302/ 34 IPC for having committed the murder of Shambhu Rai on June 2, 1984 at E Dhamaun Chour, Village Garh Chak Seema, P.S. Patory, Distt. Samastipur. One of the appellants, Pradeep Rai was further charged under Section 109/302 IPC for having abetted the offence by giving directions to his co-appellants, Suresh Rai and Jitendra Prasad Rai to commit the murder of Shambhu Rai. The appellant Suresh Rai was further charged under Section 27 of the Arms F Act for being in possession of a country-made pistol which he had fired twice at Shambhu Rai. The appellants were convicted for the aforesaid offences by judgment and order dated 15.4.1988, passed by the 2nd Addl. Sessions Judge, Samastipur, and were sentenced to life imprisonment for the offences under Section 302/34 IPC, but no separate sentence was passed under Section 109/ G 302 IPC against Pradeep Rai or under Section 27 of the Arms Act against Suresh Rai. The appeal filed by the appellants in the High Court was dismissed on 5th of May, 1998. Hence, this appeal.

The prosecution story, as set out in the FIR, is that on 2nd of June, 1984 at about 5.30 A.M., Sheo Deo Rai (informant - P.W.10) along with Shatrughan H Rai (P.W.16) and Ram Narain Rai (P.W.17), accompanied by Shambhu Rai

(deceased), had gone to Dhamaun Chour to scrape grass and while they had scraped the grass for about half an hour, there came the appellants, Suresh Rai (armed with a pistol), his father Pradeep Rai (armed with a dagger) and his cousin Jitendra Prasad Rai @ Jaintri Rai (armed with a dagger). Out of them, Pradeep Rai, who was the father of Suresh Rai, asked others, namely, Sheo Deo Rai (P.W.10), Shatrughan Rai (P.W.16) and Ram Narain Rai (P.W.17) to move away as they had come to commit the murder of Shambhu Rai. These persons then moved a few paces away and then Suresh Rai, at the instigation of his father, Pradeep Rai, fired two shots at Shambhu Rai, who fell down and, thereafter, Pradeep Rai and Jitendra Prasad Rai gave *Chhura (dagger)* blows to the deceased who died on the spot. This story has been held to have been proved both by the trial court and the High Court.

Mr. U.R. Lalit, learned Senior Counsel appearing on behalf of the appellants, has contended that the three witnesses, namely, Sheo Deo Rai (P.W.10), Shatrughan Rai (P.W. 16) and Ram Narain Rai (P.W.17), who were produced as eye-witnesses of the incident in question, were really not present at the spot and had not seen the occurrence, which had taken place some time in the preceding night and not in the morning at 5.30 A.M. as alleged by the prosecution. It is contended that there was bitter enmity between the appellants and their family members, on the one hand, and the deceased and his family members, on the other. Sheo Deo Rai (P.W.10), Shatrughan Rai (P.W.16) and Ram Narain Rai (P.W.17) were close relations of the deceased besides being related inter se. Admittedly, they were on inimical terms with the appellants. Learned counsel for the appellants has also attacked the investigation which, according to him, was wholly tainted and taking advantage of the enmity with the family of the deceased, the police, at the instance of the complainant, had roped them in this case.

What is correct and what is not correct has to be decided on a consideration of overall circumstances of the case as emanating from the material brought on record, including the statement of witnesses recorded by the trial court. The prosecution story, if analysed, indicates :

1. The time of the incident was 6.30 AM.

2. The field at Dhamaun Chour was the place where the incident took place.

3. Shambhu Rai was shot at twice by Suresh Rai (by pistol), and thereafter given dagger blows by the other two appellants, namely, Pradeep

A Rai and Jitendra Prasad Rai.

4. Sheo Deo Rai (PW-10), Shatrughan Rai (PW-16) and Ram Narain Rai (PW-17) were at the spot and had witnessed the occurrence.

5. The presence of the deceased and the witnesses at the spot is B evidenced by the heaps of grass which they had scraped and had kept in a gunnybag. The 'Khurpis' with which they had scraped the grass was also with them at the time of occurrence.

The incident was reported to the police by Sheo Deo Rai (PW-10) at Police Station Patori where he reached at 7.00 A.M., the distance from the C place of the incident being 5 kms. He specifically stated that he had met the Inspector of Police (PW-15) and told him the whole incident. He stated in the examination-in- chief as follows :

> "After the incident I went to the Police Inspector at 7.00 AM and gave the information."

D

In the cross-examination, he reiterated these facts and stated as under :-

> "On the day of incident, I had gone to the Patori Police Station at about 7.00 AM. I had gone to the Police Station on foot. Nobody was E accompanying me. I had gone alone. I had met the Police Inspector. I had directly approached him that there had taken place murder, please go.....Then I came alone."

But the Police Inspector, Haleshwar Prasad Singh (PW-15), who was F the Station Incharge of the Police Station, Patori on 2.6.1984 and had done the main part of the investigation of the case, stated as under :

> "On 2.6.84, I was posted as Incharge of Police Station, Patori. I came to know that a person has been shot dead in Dhamaun Chour. I registered the above information and proceeded towards Dhamaun G Chour along with ASI Mahesh Prasad Singh and Constable Ram Lokit Singh."

He further stated as under :

> "On the day of incident, Shiv Deo Rai did not give any information H at the Police Station. Even he did not meet me. On that day I had not

met him before 9.30 A.M..... At 8.15 I got a formal information about the incident. This fact is not mentioned in the Case Diary as to who gave the information. Even I do not know his name. The person who had given the information did not tell the name of the assailant."

Haleshwar Prasad Singh (PW-15), therefore, directly and effectively contradicted Sheo Deo Rai (PW- 10), inasmuch as PW-10 stated that he had gone to the Police Station at 7.00 AM and reported the matter to the Police Inspector, the latter, namely, the Police Inspector, who also took up the investigation of the case, stated that PW-10 had not come to the Police Station nor had he met him there. But what is certain, therefore, is that the Investigating Officer had received the information at the Police Station that somebody was shot dead at Dhamaun Chour. This information was positively recorded by the Investigating Officer in the General Diary, a copy of which has, unfortunately, not been produced at the trial. The Investigating Officer further stated in his statement that the fact as to who gave the information is not mentioned in the Case Diary. The Investigating Officer even pleaded ignorance of his name. He further admits that the person who gave the information did not tell the name of the assailant. What is also certain is that though the information of commission of crime was given to the Investigating Officer at 8.15 AM, the name of the assailant was not disclosed. If this statement of the Investigating Officer is scrutinised in the light of the statement of Sheo Deo Rai (PW-10) that he had gone to the Police Station at 7.00 AM and met the Investigating Officer and informed him of the murder of the deceased, Shambhu Rai, it would come out that the name of the assailant was not disclosed at that time. So also, PW-10 did not know the name of the assailant and, therefore, he would not be in a position to disclose the name to the Investigating Officer at the Police Station, would become clear from a further scrutiny of the evidence on record which positively indicates that Sheo Deo Rai (PW-10), or for that matter, Shatrughan Rai (PW-16) and Ram Narain Rai (PW-17) were not present at the spot.

All the three eye-witnesses, Sheo Deo Rai (PW-10), Shatrughan Rai (PW-16) and Ram Narain Rai (PW-17) have stated that they had gone to Dhamaun Chour along with the deceased for scraping grass. They further stated that they had 'khurpis' with them and had scraped the grass for about half an hour. Sheo Deo Rai (PW-10) further stated:

"On that day for about half an hour we collected the grass. We collected the grass in 5 Dhurs. The rest of the three collected how

A much grass, I don't know. They were collecting the grass again and again. That field is of Keshu Rai. .....Whatever grass we had cut that was kept by us in our respective Boras (gunny bags). It was a summer season. So we kept our grass in the bags and again started to cut the grass."

B He further stated :

"I had shown the field, from which I had cut the grass to the police inspector. The other three persons who had cut the grass had showed it to the police inspector. After informing the police inspector when I came back at the place of occurrence, many people had collected C there..... At that time, Khurpy and bags were there or not is not known to me.

Similarly, Shatrughan Rai (PW-16) and Ram Narain Rai (PW-17) had also stated that they had gone to the field to scrape grass. Ram Narain Rai D (PW-17) positively stated that he had shown the 'Khurpi', 'Chhitta' and the grass, which was cut. Then he stated that he does not remember. He further stated that the portion of the ground on which the grass was cut was shown to the Police Inspector.

Thus, the presence of these three eye-witnesses at the spot is justified E on the basis of the grass, which had been scraped by them before the incident had occurred and which had been kept in the gunny-bags. If it was true that they were present at the spot and had scraped the grass, the portion of the plot from which the grass was scraped would be visible to the naked eye. The 'khurpis' and the gunny-bags in which the grass was collected would also F have been available there. But the Investigating Officer, who visited the spot, stated that Sheo Deo Rai (PW-10) neither showed him the 'Bora' (gunny-bag) containing the grass nor the place at which the grass was cut. He further stated that he had not seen the grass to have been cut in the area of 5 Dhur. He further stated that he had not found any 'khurpi' at the spot. He, however, tried to explain this by saying that the blood in large quantity had spread all G over the field and, therefore, it was not clear whether the grass was cut or not. This explanation is not convincing as the blood would not obliterate the evidence of the grass having been cut from the field. If the grass had really been scraped as stated by *Shiv Deo Rai* (PW-10), Shatrughan Rai (PW-16) and Ram Narain Rai (PW-17) and collected by them in their separate gunny-bags H and 'khurpis' were utilised for scraping the grass, then the Investigating

Officer, who visited the spot on receiving the information about the commission of the crime, would have noticed that portion of the land from which the grass was scraped and would have also found the gunny-bags and the 'khurpis'. A

These circumstances clearly indicate that the grass was not scraped nor was it collected in the gunny- bags and, therefore, none of the eye-witnesses, namely, Sheo Deo Rai (PW-10), Shatrughan Rai (PW-16) or Ram Narain Rai (PW-17) was present at the spot when Shambhu Rai was done to death. In this background, the statement of Shiv Chander Rai (PW-2) becomes extremely relevant. He stated that the incident had taken place at about 4.30 AM and at that time he was present in his house and had heard the noise that *Shambhu* Rai had been murdered. On hearing the noise he went out and found at a distance of about half a kilometer from his house that Shambhu Rai was lying dead. He saw his neck having been cut. He stated in the cross-examination that the blood was not flowing from the body and it had stopped flowing. He further stated that it was not within his knowledge as to how Shambhu Rai had died. This witness, though not an eye-witness, is nevertheless a prosecution witness. It appears that he was produced to fix the place of occurrence, but in that process he changed the time at which the occurrence had taken place from 6.30 AM to 4.30 AM. B C D

Though we have already held that none of the eye- witnesses was present at the spot or had witnessed the occurrence, we may deal with another submission of Mr. U.R. Lalit dealing with the presence of the eye-witnesses at the spot. E

Learned counsel for the appellants, Mr. U.R. Lalit, contended that the presence of three eye-witnesses, namely, Sheo Deo Rai (P.W.10), Shatrughan Rai (P.W. 16) and Ram Narain Rai (P.W.17), at the spot, is doubtful for the reason also that though two of them, namely, Shatrughan Rai (P.W.16) and Ram Narain Rai (P.W.17), are the witnesses of inquest, they did not state the names of the assailants while describing the cause of death in the Inquest Report. This argument cannot be accepted. Under Section 174 read with Section 178 of the Code of Criminal Procedure, Inquest Report is prepared by the Investigating Officer to find out *prima facie* the nature of injuries and the possible weapon used in causing those injuries as also the possible cause of death. In *Podda Narayana* v. *State of A.P.*, AIR (1975) SC 1252 = 1975 (Supp.) SCR 84 = [1975] 4 SCC 153, it was held by this Court that the identity of the accused is outside the scope of Inquest Report prepared under F G H

Section 174 Cr.P.C. In *George* v. *State of Kerala*, [1998] 4 SCC 605 = AIR (1998) SC 1376, it has been held that the Investigating Officer is not obliged to investigate, at the stage of inquest, or to ascertain as to who were the assailants. This Court has consistently held that Inquest Report cannot be treated as substantive evidence but may be utilised for contradicting the witness of inquest. (See: *Rameshwar Dayal* v. *State of U.P.*, AIR 1978 SC 1558 = 1978 (3) SCR 59 = (1978) 2 SCC 518; *Khujji @ Surendra Tiwari* v. *State of M.P.*, AIR 1991 SC 1853 = 1991 (3) SCR 1 = (1991) 3 SCC 627 and *Kuldip Singh* v. *State of Punjab*, (1992) Crl.L.J. 3592 SC = AIR (1992) SC 1944 = [1992] Supp. 3 SCC 1.

The appellants, who are three in number, had gone to the spot to commit the murder of Shambhu Rai who, according to the prosecution story, was scraping grass with three close relations, namely, Sheo Deo Rai (PW- 10), Shatrughan Rai (PW-16) and Ram Narain Rai (PW-17). The appellants, on reaching at the spot, gave out loudly that they would commit the murder of Shambhu Rai. At that stage, all the four would have immediately reacted and tried to save Shambhu Rai, if not actually involving themselves into a practical combat with the assailants. The absence of injury on these three persons, who claim themselves to be eye-witnesses is explained by all the three by saying that the assailants gave out that they had come to commit the murder of Shambhu Rai so as to wipe out the family of Awadh Ram. The remaining persons, namely Sheo Deo Rai (PW-10), Shatrughan Rai (PW-16) and Ram Narain Rai (PW-17) moved away leaving Shambu Rai all alone who was shot at by Suresh Rai and then given dagger blows by his co-appellants. This is unbelievable that three of the persons who were scraping grass with the deceased would meekly move away so as to facilitate the killing of Shambhu Rai by the appellants. Their conduct is unnatural.

On an overall assessment of the circumstances of the case, it, therefore, becomes apparent that the murder of Shambhu Rai was reported to the Police at 7.00 AM on 2.6.1984, which was also noted in the General Diary, and it was on this Report that the Investigating Officer left for the place of occurrence where he did not notice any evidence of the presence of Sheo Deo Rai (PW-10), Shatrughan Rai (PW-16) and Ram Narain Rai (PW- 17) at the time of the occurrence as the 'khurpis' or the scraping of grass or the collection of grass in gunny-bags was not evidenced by their presence at the spot. After having done the Inquest and after having prepared the Inquest Report, the Investigating Officer recorded the statement of Sheo Deo Rai

(PW-10) and in that statement the names of the appellants were introduced. Why this was done, is apparent on account of the bitter enmity between the family of the appellants and the family of the deceased, which is admitted by all the three eye-witnesses. Relevant portion of the statement of Sheo Deo Rai (PW-10) which indicates the existence of enmity between the parties is reproduced below :

> "7. Hari Har Rai is my Baba. He had four sons. Theyare Avadh Rai, Ram Nandan Rai, Lilu Rai and Ram Narain Rai. Shambhu is the son of Avadh Rai. Ram Nandan Rai had three sons out of them I am elder and rest are my brothers. They are Ram Naresh Rai and Ram Sureseh Rai. Lilu Rai has three sons out of them the elder is *Shatrughan Rai*, second is Beij Rai and the third is Methuri Rai. In this case I myself, Shatrughan and Ram Narain. Shatrughan is my step brother and Ram Narain is my uncle. I will get the statement of Shatrughan recorded in this case as a Witness. He is not present in the house. I do not know where he is at this time. I cannot say as to whether there is a rape case against him and he is absconder.
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> 8. My Uncle Ram Narain Rai is confined in Samastipur Jail.
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> 9. I know Jagdeep Rai son of Ram Soorat Rai who are my villager. Jagdeep has filed a false case against we persons. This case of the time prior to this case. I do not know as to how many defendants we are in the case of Jagdeep. But the witnesses of this case are the defendants in that case. The charge sheet has been submitted in that case and it is pending in the Court. Jagdeep Rai is present here. He is lame. He cannot walk properly. His son Jayantri Rai is the defendant in this case.
>
> The accused Pradeep Rai had filed a case against me and the witness Ram Narain prior to this case. In the present case, Pradeep Rai and his son Suresh Rai are the defendants.
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> 10. The witness of this case is the real brother of Shatrughan Rai. Baijnath Rai who filed the case against the defendants Pradeep Rai, Suresh Rai and Jayantri prior to the instant case. My uncle Ram Narain Rai had filed the case against these defendants. Ram Narain Rai is the witness in this case."

From the above, it will be seen that there were cases and cross-cases

A pending against each other. In this backdrop, it was but natural that the appellants would have been implicated at the instance of Sheo Deo Rai (PW-10) in the incident which he had not himself witnessed nor had it been witnessed by Shatrughan Rai (PW-16) and Ram Narain Rai (PW-17). The entire investigation was wholly tainted and the appellants have been implicated in the case on the collective mischief of the informant, Sheo Deo Rai (PW-10) and the Investigating Officer, Haleshwar Prasad Singh (PW-15).

B

It was for these reasons that the appeal was allowed by us by our short order dated 15.3.2000.

A.Q. Appeal allowed.