

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL APPEAL (DB) No.885 of 2014**

Arising Out of PS. Case No.-78 Year-1986 Thana- VAISALI GRP CASE District- Vaishali

=====

Ram Babu Singh Son of Late Basawan Singh resident of village- Ratan, P.S.-  
Bhagwanpur, District- Vaishali.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

**CRIMINAL APPEAL (DB) No. 886 of 2014**

Arising Out of PS. Case No.-78 Year-1986 Thana- VAISALI GRP CASE District- Vaishali

- =====
1. RANJEET CHOUDHARY @ RANJIT CHAUDHARY Son of Sri Shivnath  
Choudhary @ Lala Choudhary
  2. Uday Kumar Singh @ Uday Singh Son of Late Bindeshwari Singh
  3. Sanjay Kumar Singh @ Sanjay Singh Son of Late Kapildeo Singh
  4. Sachchidanand Singh Son of Late Chandrika Singh @ Chandrika Prasad Singh  
All resident of village- Ratanpura, P.S.- Bhagwanpur, District-Vaishali.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

**CRIMINAL APPEAL (DB) No. 24 of 2015**

Arising Out of PS. Case No.-78 Year-1986 Thana- VAISALI GRP CASE District- Vaishali

=====

1. Kameshwar Singh Son of Yogeshwari Singh
2. Sunil Kumar Singh Son of Kameshwar Singh Both are residents of Vill-Ratanpura,P.S-Bhagwanpur,District-Vaishali

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

=====

Indian Penal code, 1860 – Section 302 and 149 – Division Bench remanded the matter back to the trial Court for a very limited purpose – Trial court has presumed certain aspects. We are of the view that such a presumption is not permissible. --- Even after the matter was remanded back, and deposite specific direction of the division bench, F.I.R. was not brought on record. --- chance was given by the division bench to the prosecution to lead evidence, prosecution has failed to prove the same beyond reasonable doubt. Inquest report was prepared in three copies, i.e, two carbon copies and one photo copy – P.W 16 has admitted about the discrepancies in the two carbon copies of the same inquest report – prosecution has failed to prove the contents of the post-mortem report and failed to produce the copy of FIR before the Court – impugned judgment of conviction and an order of sentence quashed and set aside – appellants are acquitted of the charges levelled against them.

(Para 20, 21, 23, 24 and 25)

IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.885 of 2014

Arising Out of PS. Case No.-78 Year-1986 Thana- VAISALI GRP CASE District- Vaishali

Ram Babu Singh Son of Late Basawan Singh resident of village- Ratan, P.S.-  
Bhagwanpur, District- Vaishali.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with  
CRIMINAL APPEAL (DB) No. 886 of 2014

Arising Out of PS. Case No.-78 Year-1986 Thana- VAISALI GRP CASE District- Vaishali

- 1. RANJEET CHOUDHARY @ RANJIT CHAUDHARY Son of Sri Shivnath Choudhary @ Lala Choudhary
- 2. Uday Kumar Singh @ Uday Singh Son of Late Bindeshwari Singh
- 3. Sanjay Kumar Singh @ Sanjay Singh Son of Late Kapildeo Singh
- 4. Sachchidanand Singh Son of Late Chandrika Singh @ Chandrika Prasad Singh All resident of village- Ratanpura, P.S.- Bhagwanpur, District- Vaishali.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with  
CRIMINAL APPEAL (DB) No. 24 of 2015

Arising Out of PS. Case No.-78 Year-1986 Thana- VAISALI GRP CASE District- Vaishali

- 1. Kameshwar Singh Son of Yogeshwari Singh
- 2. Sunil Kumar Singh Son of Kameshwar Singh Both are residents of Vill- Ratanpura,P.S-Bhagwanpur,District-Vaishali

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :  
(In CRIMINAL APPEAL (DB) No. 885 of 2014)  
For the Appellant/s : Mr. Amit Kumar, Advocate



For the State : Mr. Sujit Kumar Singh, APP  
(In CRIMINAL APPEAL (DB) No. 886 of 2014)  
For the Appellant/s : Mr. Ajay Thakur, Advocate  
For the State : Mr. Sujit Kumar Singh, APP  
(In CRIMINAL APPEAL (DB) No. 24 of 2015)  
For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate  
Mr. Rajesh Kumar, Advocate  
For the State : Mr. Sujit Kumar Singh, APP

---

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**  
**and**  
**HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

**Date : 08-01-2024**

All the present appeals have been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Cr.P.C.’) against the judgment of conviction dated 01.11.2014 and order of sentence dated 07.11.2014 rendered by learned Additional Sessions Judge-VII, Vaishali at Hajipur in Sessions Trial No. 242 of 1987, arising out of Muzaffarpur Rail P.S. Case No.78 of 1986, by which the appellants/convicts namely, Uday Singh, Ranjit Chaudhary, Sachchidanand Singh, Sunil Kumar Singh, Sanjay Singh and Ram Babu Singh have been convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- each for the offence punishable under Section-302 of I.P.C. read with Section-149 of I.P.C. The fine amount which has been imposed will be payable to the legal heirs of the deceased Nawal Kishore Chaudhary.



2. The factual matrix of the present case is as under:

2.1. On 09.10.1986, at about 07:00 PM, the informant, Shatrughan Choudhary (PW-8), accompanied by his younger brother, Parmanand Choudhary (PW-7), elder brother, Nawal Kishore Choudhary, Shiv Nath Singh, Brij Nandan Choudhary, Balram Choudhary (PW-2), Nanda Choudhary (PW-4) and Nagendra Choudhary (PW-6), returning to their respective houses after seeing fair at Bhagwanpur Belhatta and were one furlong short of south Gali No. 33 of Bhagwanpur Station, they saw their co-villagers, Kameshwar @ Bhola Singh, Sunil Singh, Ram Babu Singh, Ram Surat Choudhary, Ranjeet Choudhary, Sachchidanand Singh, Uday Singh, Sanjay Singh, all armed with country-made pistols, Basawan Singh with Chura (dagger), Umashankar Singh with small *danda*, Kapildeo Singh and Surendra Singh, armed with *lathis*, near the house of one Arun Mukherjee and, on seeing Shatrughan Choudhary and his companions, accused Umashankar Singh incited his associates to avenge blood with blood, which will put an end to all sort of litigation. Following the instigation so given, by accused Umashankar Singh, accused Kameshwar Singh @ Bhola Singh fired on Nawal Kishore Singh and the bullet hit on the right ear



of Nawal Kishore Singh, and accused Sunil Singh also fired and the bullet hit Nawal Kishore Singh, just above his left ear. On sustaining bullet injuries, Nawal Kishore Singh yelled in pain. Thereafter, accused Ram Babu Singh shot from his pistol on the left waist of Nawal Kishore Singh and accused Ram Surat Choudhary fired, while exhorting others to kill Nawal Kishore Choudhary, from his pistol, the bullet hit Nawal Kishore Choudhary, on his left buttock. The bullet fired by accused Ranjeet Choudhary, hit on the right thigh of Nawal Kishore Choudhary. Accused Uday Singh, Sachchidanand Singh and Sanjay Singh, too, fired on Nawal Kishore Choudhary; whereas accused Basawan Singh assaulted Nawal Kishore Singh, with his dagger, below the waist of Nawal Kishore Choudhary and, then, the accused person fled away.

2.2. The reason behind the occurrence, according to PW-8, is the old land enmity with accused-appellant Kameshwar Singh and others.

2.3. On receiving the information about the occurrence, police from Bhagwanpur Police Station arrived at the private clinic of Dr. Jaiswal, on 09.10.1986, at 10:30 PM, and recorded, in the form of *fardebayan*, the information given by Shatrughan Choudhary (PW-8) about the occurrence. The



information, so given by PW-8 was forwarded to the Rail Police Station, Muzaffarpur for institution of the case.

2.4. Treating the said *fardbeyan* as First Information Report, Muzaffarpur Rail Police Station Case No. 78 of 1986 was registered, under Sections 302, 307/34 of the Indian Penal Code, against 12 accused persons, namely, (i) Kameshwar Singh, (ii) Sunil Kumar Singh, (iii) Ram Babu Singh, (iv) Ram Surat Choudhary, (v) Ranjeet Choudhary, (vi) Umashankar Singh, (vii) Sachchidanand Singh, (viii) Kapildeo Singh, (ix) Sanjay Singh, (x) Uday Singh, (xi) Basawan Singh and (xi) Surendra Singh.

2.5. During investigation, inquest was held over the said dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, charge sheet was laid against accused persons, namely, (i) Basawan Singh, (ii) Kameshwar Singh, (iii) Sunil Kumar Singh, (iv) Ram Babu Singh, (v) Ram Surat Choudhary, (vi) Ranjeet Choudhary, (vii) Sachchidanand Singh, (viii) Sanjay Singh, (ix) Uday Singh, under Sections 147/148/149/302 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

2.6. At the trial, when a charge, under Section 302 read with Section 149 of the Indian Penal Code, was framed, the



accused-appellants, namely, (i) Kameshwar Singh, (ii) Sunil Kumar Singh, (iii) Ram Babu Singh, (iv) Ram Surat Choudhary, (v) Ranjeet Choudhary, (vi) Sachchidanand Singh, (vii) Sanjay Singh, (viii) Uday Singh, (ix) Basawan Singh and (x) Surendra Singh, the accused-appellant pleaded not guilty thereto. When charges, under Section 302 read with Section 149 and 302 read with Section 109 of the Indian Penal Code, were framed against accused-appellant, namely, (i) Uma Shankar Singh, (ii) Kapildeo Singh and (iii) Surendra Singh, they, too, pleaded not guilty to the charges so framed.

2.7. During trial, accused Ram Surat Choudhary and Basawan Choudhary died.

2.8. In support of their case, prosecution examined altogether 13 (thirteen) witnesses. The accused persons were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused persons denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. The defence has adduced ten witness.

2.9. Thereafter, the Trial Court vide order dated 13.01.2014 convicted all the accused under Sections 302 read





with 149 of the Indian Penal Code (hereinafter referred to as I.P.C.). However, the Trial Court has acquitted accused Uma Shankar Prasad Singh of the charges framed against him. Order of sentence was passed on 18.01.2014. Against the said order of conviction and sentence imposed by the Trial Court, the convict/appellants preferred Cr. Appeal (D.B.) Nos. 102 of 2014, 196 of 2014 and 135 of 2014.

2.10. A Division Bench of this Court vide C.A.V. judgment dated 16.05.2014 partly allowed the aforesaid appeals and order of conviction and sentence passed by the concerned Trial Court was set aside. At the same time, the Division Bench of this Court remanded the case to the Trial Court for the purpose of obtaining presence of the Doctor and the Investigating Officer as witnesses and direction was given to examine them in accordance with law and to decide the case in light of the evidence which may surface on record.

2.11. After the matter was remanded back to the Trial Court, the prosecution had examined additional prosecution witnesses i.e. P.W. 14 Dr. Vinita Kumari, P.W. 15 Ashok Kumar and P.W. 16 Bhupesh Kumar Singh.

2.12. After the evidence of the prosecution witnesses was over, the Trial Court once again passed the



impugned order of conviction and order of sentence dated 01.11.2014 and 07.11.2014, whereby the present appellants have been convicted, as observed hereinabove, against which now the present appellants have preferred the present appeals.

3. Heard Mr. Ramakant Sharma, learned Senior Advocate assisted by Mr. Ajay Thakur and Mr. Rajesh Kumar for the appellants and Mr. Sujit Kumar Singh for the respondent-State in all the appeals.

4. Learned Senior Advocate appearing for the appellants/convicts have mainly submitted that in the first round of litigation, when the appellants had challenged the order of conviction dated 13.01.2014 and order of sentence dated 18.01.2014 passed by the learned Trial Court, while setting aside the said conviction and sentence, the Division Bench of this Court has made certain observations. Learned counsels for the appellants have referred the said observation made by the Division Bench of this Court.

5. This Court, in para 50, has observed that the copy of the F.I.R. of Bhagwanpur P.S. Case No.101 of 1986 was not brought on record. This Court has further observed that the Investigating Officer had recorded the statement of P.W.8 (Shatrudhan Chaudhary), carried out the investigation and



prepared the inquest report. There is no description of the injury found on the dead body of the deceased, whereas in the other copy of the inquest report, injuries found have been mentioned. Thus, the Division Bench of this Court thought it fit to remand the matter back to the learned Trial Court to obtain the presence of the Doctor and the Investigating Officer concerned as witnesses. It is also submitted that direction was also given to the prosecution to examine these witnesses and thereafter the learned Trial Court has to decide the case in accordance with law.

6. Learned counsels for the appellants would further submit that after the matter was remanded back to the learned Trial Court for specific purpose, the prosecution has examined P.W. 14 Dr. Vinita Kumari, who is daughter of the deceased. However, she has not identified the signature of her father nor she was aware of anything about the *post mortem* report. It is further submitted that P.W. 15 Ashok Kumar was also examined by the prosecution with a view to prove the *post mortem* report. However, the said witness was working as an X-ray technician and he could only identify the signature of the Doctor and he was not aware of the contents of the *post mortem* report.



7. Learned counsels would thereafter submit that P.W. 16 Bhupesh Kumar Singh was the officer who was posted at Bhagwanpur Police Station and he has stated that the *fardbeyan* of Shatrudhan Chaudhary (informant) was written by Rampujan Singh. Learned counsels have referred the aforesaid deposition and submitted that, in fact, the aforesaid witness admitted that there are discrepancies in the two carbon copies and one photo copy of the inquest report. It is submitted that even the contents are different in carbon copies of the inquest report. It is further submitted that even the said officer has also failed to produce a copy of F.I.R. of Bhagwanpur P.S. Case No.101 of 1986.

8. Learned counsels would submit that even after the matter was remanded to the learned Trial Court, the prosecution has not brought on record copy of the aforesaid F.I.R. of Bhagwanpur P.S. Case No.101 of 1986 registered with Bhagwanpur Police Station.

8.1. At this stage, learned counsels have referred the reasoning recorded by the learned Trial Court and thereafter contended that Trial Court has made certain presumptions which is not permissible. Trial Court has also observed that F.I.R. bearing Bhagwanpur P.S. Case No.101 of 1986 is also not



brought on record, despite which the learned Trial Court has recorded the order of conviction. Learned counsels, therefore, urged that prosecution has failed to prove the case against the appellants beyond reasonable doubt, despite which the learned Trial Court has recorded the impugned order and, therefore, the same be quashed and set aside.

9. On the other hand, learned A.P.P. has opposed these appeals filed by the appellants/convicts. Learned A.P.P. has submitted that there are eye-witnesses to the occurrence in question and merely because copy of F.I.R. of Bhagwanpur P.S. Case No.101 of 1986 is not brought on record and merely because there are certain discrepancies in the inquest report, benefit of the same cannot be given to the appellants/accused. Learned A.P.P., therefore, urged that the present appeals be dismissed.

10. We have considered the submissions canvassed by the learned advocates appearing for the parties. We have also perused the material placed on record. It would emerge from the record that on 09.10.1986 at about 7:00 p.m. the occurrence in question took place for which a *fardbeyan* was given by informant Shatrudhan Chaudhary at 8:30 p.m. on 09.10.1986 at State Dispensary, Bhagwanpur. On the basis of the said



information, Bhagwanpur P.S. Case No.101 of 1986 came to be registered and inquest report of the deceased was also prepared wherein there is a reference of Bhagwanpur P.S. Case No.101 of 1986. Similarly, in *post mortem* report of the deceased, there was reference of Bhagwanpur P.S. Case No.101 of 1986. However, it is further revealed that formal F.I.R. came to be registered on 10.10.1986 at 11:00 a.m. i.e. Muzaffarpur Rail P.S. Case No.78 of 1986. From the record, it would also reveal that during the course of the trial, the prosecution had examined 13 witnesses and thereafter the learned Trial Court passed the order of conviction dated 13.01.2014 and order of sentence was passed on 18.01.2014 whereby all the accused, except one accused Uma Shankar Singh, were convicted for the offence punishable under Section-302 read with 149 of I.P.C. Against the said judgment of conviction and order of sentence, the appellants/convicts preferred Cr. Appeal (D.B.) No.102 of 2014 and allied appeals. The Division Bench of this Court vide its judgment dated 16.05.2014 partly allowed the said appeals and matter was remanded back to the Trial Court for specific purpose, i.e. with a direction to obtain the presence of the Doctor and the Investigating Officer concerned as witnesses and examine them in accordance with law and thereafter to pass



appropriate order in accordance with law.

11. The Division Bench of this Court has observed in para Nos.11 to 16 as under:

“11. While considering the present appeals, what attracts the attention, most prominently, is that in the case at hand, the doctor, who had conducted post mortem examination on the dead body of the said deceased and determined the cause of his death, was not examined nor was examined the Investigating Officer.

12. As per the post mortem examination report, the death has been caused by fire-arm injury, which is described below.

"Lacerated circular injury, ½" diameter, with inverted margin, penetrating into the skull bone making a hole of ½" diameter, associated with the fracture of the skull bone into small fragment crossing the whole of the brain walls and again damaging the left side of the occipital bone having a circular hole of ¼" associated with lacerated wound on the skin just about the back of the neck and behind the left ear with averted margin, skin in torn in star shaped fashion having four flaps. This is an injury of fire arm having the wound of entry on the right parietal bone and the wound of exit on the occipital bone behind the left ear. The bullet has passed through skull damaging the skull bones and the brain matter."

13. Since the defence has not disputed the factum of murder, we, now, proceed to examine whether the time of the occurrence, the place of the occurrence and the manner of the occurrence, as alleged by the prosecution, have been proved beyond all reasonable doubt.

14. While considering the above aspects of the present appeals, we may point out that the informant (PW 8) has deposed that Parmanand Choudhary (PW 7) was together with him, when he, accompanied by the said deceased, was returning after



seeing Fair at Bhagwanpur Belhatta in the evening of 09.10.1986. According to this witness, all the accused persons apprehended the prosecution party when they were returning from the fair at about 7 PM and on the instigation of accused Umashankar Singh, accused Kameshwar Singh @ Bhola Singh fired at the right side of head of the deceased Nawal Kishore Choudhary, whereafter accused Sunil Singh fired around left ear of deceased Nawal Kishore Choudhary. Accused Ram Babu Singh fired from the pistol above the left waist of the said deceased. In the meantime, accused Ram Surat Choudhary also fired from his pistol from back which caused injury on the hip of Nawal Kishore Choudhary. Accused Basawan Singh struck with dagger causing injury below the waist of the said deceased. The accused persons after ensuring that the said deceased is dead, they fled away from the place of occurrence.

15. Close to the heels of PW 8 are the evidence of PW 2, PW 5 and PW 7.

16. From the cross-examinations of PW 2, PW 5, PW 7 and PW 8, nothing could be elicited by the defence to show that what these witnesses had deposed was untrue or false. The evidence of PW 2, PW 5, PW 7 and PW 8 cannot, therefore, be taken to have been shaken by cross-examination. Their evidence, thus, remained wholly intact.”

12. It is pertinent to note that the Division Bench of this Court has discussed the evidence in detail with regard to the deposition given by P.W. Nos. 2 to 8, who are eye-witnesses to the occurrence. The Division Bench of this Court has observed in para 10 that P.W. 5 and P.W. 6 have been declared hostile and P.W. 3 died during pendency of the trial and, therefore, he could not be cross-examined.

13. At this stage, it is pertinent to note that the





aforesaid finding recorded by the Division Bench of this Court was not challenged by the appellants/convicts before the higher forum and, therefore, in the present appeals, we are not repeating the contents of the deposition of the aforesaid witnesses.

14. At this stage, it is also pertinent to note that the Division Bench of this Court has remanded the matter back to the Trial Court for a very limited purpose i.e. with a direction to the Trial Court to obtain the presence of the Doctor and the Investigating Officer concerned as witnesses and direction was also given to examine them in accordance with law and thereafter to decide the case on merits.

15. Thus, in the present appeals, we have to consider the developments which have taken place after the matter was remanded back to the learned Trial Court by this Court.

16. Thereafter, as observed hereinabove, the prosecution had examined P.W. Nos. 14, 15 and 16 before the Trial Court and once again now the Trial Court has passed the order impugned in the present appeals against which the present appeals are filed.

17. As observed hereinabove, as per the direction



given by this Court, the prosecution has now examined P.W. Nos. 14, 15 and 16. P.W. 14 Dr. Vinita Kumari has stated in examination-in-chief that on 10.10.1986 her father was posted in Sadar Hospital, Hajipur. He died in the year 1988. She was not aware about the fact whether her father has written the *post mortem* report, Exhibit-4, or not. She could not identify the signature of her father.

18. P.W. 15 Ashok Kumar has stated in examination-in-chief that he was posted in Sadar Hospital, Hajipur in 1986. He has further deposed that the *post mortem* of the deceased Nawal Kishore Chaudhary of Muzaffarpur Rail P.S. Case No. 78 of 1986 was conducted by Doctor S. Kumar. The said witness has identified the signature of the said doctor and the *post mortem* report (Exhibit-4). However, during cross-examination, the said witness has stated that he was working as an X-ray technician in referral hospital and he was not aware as to what is written in the *post mortem* report.

19. P.W. 16 Bhupesh Kumar Singh has stated in examination-in-chief that on 09.10.1986 he was posted at Bhagwanpur Police Station. At 8:30 p.m., *fardbeyan* of Shatrudhan Chaudhary was recorded in the dispensary of Government Doctor S.K. Jaiswal. The said *fardbeyan* was



recorded in the handwriting of Rampujan Singh. *Fardbeyan* was recorded by Satya Narayan Mandal. This witness has also stated about the fact that inquest report of the deceased was prepared and carbon copy was also procured. He has further stated that in the carbon copy of the inquest report, Column-6, 8 and 9 are written in his handwriting. He has further stated that in the said inquest report 'Bhagwanpur' was scored through and substituted by 'Muzaffarpur Rail P.S.' and the said handwriting are not of the said witness or that of Satya Narayan Mandal. He has further stated that case diary, para-9, is also a carbon copy of inquest report and the carbon copy was also signed by him. In the said copy also, in Column 1 'Bhagwanpur' has been scored through and substituted by 'Muzaffarpur Rail P.S.'. The said carbon copy, Column 6 was written by him. He has further stated that though both are carbon copies, the contents are different and who has written the same he is not aware.

19.1 During cross-examination, the said witness has stated that inquest report was prepared in three copies. There were two carbon copies and one photo copy. Once again he has admitted that in one carbon copy, Column-9, was written by him. However, the other columns were not written by him. Column-6 is also not written by him. He is not aware about the



fact that Column Nos. 6, 7, 9 and 8 are written by a third person. In the document, Exhibit-2, Bhagwanpur P.S. Case No.101 of 1986 is also scored through. He has admitted in cross-examination that both the inquest reports are in his handwriting. However, there are apparent discrepancies in the said reports. He has further admitted in para-34 that in both the inquest reports name of the witnesses are transposed *vice versa*. He has also stated that in the *post mortem* report there was a reference of P.S. Case No.101 of 1986.

20. On the basis of the aforesaid, further evidence led by the prosecution after the matter was remanded back to the learned Trial Court, the Trial Court has recorded the finding in Para-54 of the impugned judgment that on behalf of the prosecution, F.I.R. of Bhagwanpur P.S. Case No.101 of 1986 has not been brought on record. It has been further observed that certified copy of G.R. register of C.J.M., Vaishali of Bhagwanpur P.S. Case No.101 of 1986 has been brought on record, which shows that case has been registered under Sections-448, 341, 325, 323 read with 34 I.P.C. and the informant is Nakul Prasad Sahi and the accused are also different. The learned Trial Court has further observed that P.W. 16 could not properly clarify as to how in seizure list 101 of



1986 has been written by him as also who deleted Bhagwanpur and Case No.101 of 1986 from the inquest report. So, there is discrepancy in the evidence of P.W. 16. It was further observed that it was the responsibility of the prosecution to prove the F.I.R. of Bhagwanpur P.S. Case No.101 of 1986, but the same has not been produced by the prosecution. Further, in para-55 of the judgment, the Trial Court has observed that there is no doubt that there is a mystery as to why Bhagwanpur P.S. Case No.101 of 1986 has been written at various places. Further, it has been observed that there is no doubt that there is difference in the inquest report. After recording the aforesaid, Trial Court has presumed certain aspects. We are of the view that such a presumption is not permissible.

21. We have also re-appreciated the evidence of the prosecution-witnesses and more particularly the witnesses who have been examined by the prosecution after the matter was remanded back to the learned Trial Court. We are of the view that the prosecution has failed to prove the contents of the *post mortem* report and also failed to produce the copy of Bhagwanpur P.S. Case No.101 of 1986 before the Court. P.W. 16 has admitted certain aspects during the course of his deposition that contents of inquest report in two carbon copies



are different, though he has signed both the inquest reports. He has also admitted that in the inquest report in two carbon copies and photo copy as well as in the *post mortem* report, initially there was a reference with regard to Bhagwanpur P.S. Case No.101 of 1986. However, the same has been scored through and substituted by Muzaffarpur Rail P.S. Case No.78 of 1986. He is not aware as to who has written the same. There is no initial made at the time of scoring and overwriting. It is the specific defence of the appellants/convicts before the learned Trial Court that initially the *fardbeyan* was recorded at State Dispensary, Bhagwanpur on 09.10.1986 at 20:30 hours. On the basis of the same, Bhagwanpur P.S. Case No.101 of 1986 was registered. The Investigating Officer has, therefore, started the investigation and prepared the inquest report and dead body was sent for the purpose of conducting *post mortem* and, therefore, in the aforesaid documents, there was a reference of Bhagwanpur P.S. Case No.101 of 1986. However, thereafter formal F.I.R. was registered on the next day at 11:00 a.m. before Muzaffarpur Rail Police Station which was registered as Muzaffarpur Rail P.S. Case No.78 of 1986 and, therefore, the contents of the original F.I.R. bearing Bhagwanpur P.S. Case No.101 of 1986 was different. Therefore, the same was not



brought on record. It is also the case of the defence that along with the formal F.I.R. registered with Muzaffarpur Rail Police Station, *fardbeyan* of the informant was attached wherein there is a reference with regard to giving the *fardbeyan* by the informant at the clinic of the Doctor of the Government Hospital and not at the State Dispensary, Bhagwanpur.

22. At this stage, we may also note that while remanding the matter back to the learned Trial Court, the Division Bench of this Court has observed in Para-50 of the order of remand dated 16.05.2014 that copy of F.I.R. of Bhagwanpur P.S. Case No.101 of 1986 has not been brought on record.

23. Even after the matter was remanded back, as observed hereinabove, the copy of the F.I.R. of Bhagwanpur P.S. Case No.101 of 1986 has not been brought on record and, therefore, it can be said that the prosecution has suppressed the same. Even otherwise, P.W. 16 has specifically admitted about the discrepancies in the two carbon copies of the same inquest report. This cannot be said to be mere *lacuna* or faulty investigation by the investigating agency, as contended by learned A.P.P.

24. Suffice it to say that though chance was given



by the Division Bench of this Court to the prosecution to lead the evidence with a view to bring on record copy of the F.I.R. of Bhagwanpur P.S. Case No.101 of 1986 and with a view to prove the contents of the *post mortem* report, the prosecution has failed to prove the same. Thus, we are of the view that the prosecution has failed to prove the case against the appellants/convicts beyond reasonable doubt and, therefore, appellants/convicts are required to be acquitted of the charges levelled against them.

25. The impugned judgment of conviction dated 01.11.2014 and order of sentence dated 07.11.2014 passed by learned Additional Sessions Judge-VII, Vaishali at Hajipur, in connection with Sessions Trial No. 242 of 1987, (arising out of Muzaffarpur Rail P.S. Case No. 78 of 1986 dated 10.10.1986) is quashed and set aside. The appellants, namely, Ram Babu Singh, Ranjeet Choudhary @ Ranjit Chaudhary, Uday Kumar Singh @ Uday Singh, Sanjay Kumar Singh @ Sanjay Singh, Sachchidanand Singh, Kameshwar Singh and Sunil Kumar Singh are acquitted of the charges levelled against them by the learned Trial Court.

26. Since the appellants namely, Ram Babu Singh, Ranjeet Choudhary @ Ranjit Chaudhary, Uday Kumar Singh @





Uday Singh, Sanjay Kumar Singh @ Sanjay Singh, Sachchidanand Singh and Sunil Kumar Singh are on bail, they are discharged of the liabilities of their bail-bonds. Since appellant namely, Kameshwar Singh in Cr. Appeal (DB) No. 24 of 2015 is in jail, he is directed to be released forthwith, if his presence is not required in any other case.

27. Accordingly, all the appeals stand allowed.

**(Vipul M. Pancholi, J)**

**( Rudra Prakash Mishra, J)**

K.C.Jha/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	10.01.2024
Transmission Date	10.01.2024

