

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.582 of 2017**

Arising Out of PS. Case No.-41 Year-2016 Thana- NAWANAGAR District- Buxar

Joni Pasi @ Ravindra Pasi Son of Late Bhagalu Pasi @ late Bhagelu Pasi, R/o
Vill.- Katiknar, P.S. Nawanager, Dist.- Buxar.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 443 of 2017

Arising Out of PS. Case No.-41 Year-2016 Thana- NAWANAGAR District- Buxar

1. Birendra Pasi Son of Late Bhagelu Pasi
2. Chandan Pasi Son of Birendra Pasi
3. Pappu Pasi @ Hindustan Pasi Son of Joni Pasi @ Ravindra Pasi
4. Botal Pasi Son of Late Ram Bachan Pasi
5. Gidik Pasi Son of Late Bhagelu Pasi All are Resident of Village- Katiknar,
P.S. Nawanager, District Buxar.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 582 of 2017)

For the Appellant : Mr. Rajendra Narain, Senior Advocate
Dr. Kamal Deo Sharma, Advocate

For the Respondent : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 443 of 2017)

For the Appellants : Dr. Kamal Deo Sharma, Advocate
Mr. Vishwa Nand Upadhyay, Advocate
Mr. Tushar Vaibhav, Advocate

For the Respondent : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 04-09-2024

Both these appeals have been filed under Section 374(2)

of the Code of Criminal Procedure, 1973 (hereinafter referred to as



‘the Code’) challenging the judgment of conviction dated 27.03.2017 and the order of sentence dated 29.03.2017, passed by learned Sessions Judge, Buxar, in Sessions Trial No. 256 of 2016, arising out of Nawanagar P.S. Case No. 41 of 2016, whereby and whereunder all the appellants have been convicted for the offence punishable under Sections 302/34, 448/34 and 323/34 of the Indian Penal Code (‘IPC’ for short) and have been sentenced to undergo life imprisonment and a fine of Rs.10,000/- each for the offence under Section 302/34 of the IPC. The appellants have been further sentenced to undergo one year simple imprisonment for the offence under Section 448/34 of the IPC and also to undergo one year simple imprisonment for the offence under Section 323/34 of the IPC. The sentences have been directed to run concurrently.

2. The facts of the present case, in a nutshell, are as under:-

2.1. The prosecution case is based on the *fard-beyan* of the informant Kanchan Pasi, recorded by Sub Inspector of Police of Nawanagar Police Station, Buxar, on 31.03.2016, at about 08:30 AM, at Katiknar on village road, that, on 31.03.2016 at about 08.05 AM, the informant with his father Ghughali Pasi (deceased), his mother Kouta Devi and sister-in-law Dharmsheela Devi was returning from the field of Nanhaku Singh after cutting



the crop of lentil and reached at the door of Nirmal Singh. All the named accused persons, Joni Passi @ Ravindra Pasi, Gidik Pasi, Virendra Pasi, Chandan Pasi, Pappu Pasi @ Hindustan Pasi, Krishna Pasi (juvenile) and Botal Pasi surrounded them and assaulted the father of the informant. Ravindra Pasi inflicted repeated blows by means of *Katta* (a sharp cutting weapon) upon the deceased. When they tried to save the deceased, the accused persons assaulted them and as the villagers assembled, the accused persons fled away. Thereafter, they reached near his father, who died at the spot. Prior to this occurrence, the accused persons also went to their house looking for them and when they did not find them, they assaulted his nephew and nieces.

2.2. After recording of the *fard-beyan* of the informant, formal FIR came to be registered before Nawanagar Police Station, bearing Nawanagar P.S. Case No. 41 of 2016 for the offences punishable under Section 447, 341, 323, 302 120(B)/34 of the IPC at about 08:05 AM on 3103.2016.

2.3. After registration of the FIR, the Investigating Officer commenced the investigation and during the course of the investigation, he had recorded the statement of the witnesses and collected documentary evidence and thereafter filed the charge-sheet against the appellants-accused before the concerned



Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court under Section 209 of the Code, where the same was registered as Sessions Trial No. 256 of 2016.

2.4. The trial court proceeded with the trial of six accused persons out of total seven accused, as accused Krishna Pasi was declared juvenile on 05.01.2017 and his case was referred to Juvenile Justice Board, Buxar for trial and disposal.

3. Before the trial court, the prosecution examined 11 witnesses and also produced documentary evidence. Four defence witnesses were also examined and documentary evidence was also produced. Thereafter, the statement of the accused under Section 313 of the Code came to be recorded wherein they pleaded not guilty.

3.1. After conclusion of the trial, the trial court passed the impugned judgment of conviction and the order of sentence, against which the appellants/convicts have preferred the present appeals.

4. Heard Mr. Rajendra Narain, learned senior counsel appearing on behalf of the appellant and Mr. Sujit Kumar Singh, learned APP for the respondent-State in Cr. Appeal (DB) No. 582 of 2017. Also heard Dr. Kamal Deo Sharma, learned



counsel for the appellants and Mr. Sujit Kumar Singh, learned APP for the respondent-State in Cr. Appeal (DB) No. 443 of 2017.

5. Mr. Rajendra Narain, learned senior counsel for the appellant in Cr. Appeal (DB) No. 582 of 2017 submits that, as per the case of prosecution, the *fardbeyan* has been recorded at 08:30 AM on 31.03.2016 at village road in respect of the alleged occurrence which took place at 08:05 AM. It is submitted that from the formal FIR, it is further revealed that the police station got the information about the incident at about 08:10 AM. However, from the evidence led by the prosecution, it is not clear as to who informed the police about the said incident, what was the information given, when it was given and how it was given within five minutes to the police is not coming out from the records. It is further submitted that even station diary entry has not been produced by the police and, therefore, it raises doubt with regard to the recording of the *fard-beyan* at 08:30 AM in the morning.

5.1. At this stage, it is also contended that, as per the case of the prosecution, the inquest report (Ext.-2) has been prepared at 08:45 AM on the date of incident. However, in the said inquest report, case number has not been mentioned. It is further contended that though two witnesses who have signed the inquest



report have been examined by the prosecution, i.e., PW 10 and PW 11, both the said witnesses have admitted that their signatures were obtained on a blank paper and nothing was written in their presence. Thus, the inquest report loses its evidentiary value and sanctity.

5.2. Learned senior counsel further submits that, as per the case of the prosecution, PW 1, the doctor, who has conducted the *postmortem* examination of the dead body of the deceased, commenced the *postmortem* at 02:30 PM. However, in the *postmortem* report (ext.-1), there is no mention with regard to the P.S. case number. Learned senior counsel referred the deposition of PW 1 and thereafter contended that the said witness admits to have found and recorded foul smelling gas and he admits that it remained present after 12 hours of death. It has also been submitted that the said witness has not recorded the presence of *rigor mortis* whether in ascending or descending order. It is further submitted that, as per the said witness, time since death was 6-24 hours. Learned senior counsel, therefore, submits that despite the fact that the formal FIR was recorded at 13:45 hours and the *postmortem* was conducted at 02:30 PM, still police station case number was not mentioned in the *postmortem* report.



5.3. It is further submitted that, as per the *fard-beyan* given by the informant PW 7, while returning after stacking the lentil at the door of Nanhku singh with his deceased father, mother, sister-in-law and brother Sukar Pasi, all the seven named accused persons surrounded them and started assaulting his father with *Katta* (a sharp-cutting weapon) and killed him and when they tried to save the deceased, they were also attacked and assaulted, due to which they fled away. Thereafter, when the villagers arrived there, the accused persons fled away. It is also alleged, in the FIR, that earlier the accused had also gone to the house of the informant searching them and assaulted and abused the family members. It is submitted that how could the informant know earlier that the accused had gone to the informant's house in their search and assaulted the members there. Thus, the story put forward by the informant, in the *fard-beyan*, is doubtful and the FIR was, in fact, lodged after the *postmortem* was conducted.

5.4. Learned senior counsel, at this stage, contends that the prosecution has projected PW's 6, 7 and 9 as eyewitnesses. Similarly, PW's 2, 4, 5 and 8 have also tried to depose as eye-witnesses. However, so far as PW's 2, 4, 5 and 8 are concerned, they are neither named in the *fard-beyan* or the FIR nor they made statements under Section 161 of the Code before the police during



the course of investigation and they have improved their version before the court at the time of deposition. Learned senior counsel has referred the deposition of the Investigating Officer (PW 3), in support of the said contention.

5.5. Learned senior counsel further submits that, in fact, PWs 6, 7 and 9 are not the eye-witnesses to the incident in question and their deposition is not trustworthy. There are major contradictions, inconsistencies and discrepancies in their deposition. Even otherwise, the aforesaid three witnesses are near relatives of the deceased and are interested witnesses. It is contended that, as per the case of the said witnesses, 20-25 persons had assembled at the place of incident, despite which the prosecution has failed to examine such independent witnesses. It is further submitted that when the medical evidence does not support the version of the so-called eye-witnesses, the impugned judgment and order passed by the trial court be quashed and set aside and these appeals be allowed.

6. Dr. Kamal Deo Sharma, learned counsel appearing on behalf of the appellants in Cr. Appeal (DB) No. 443 of 2017, filed by five other co-convicts, has adopted the submissions canvassed by Mr. Rajendra Narain, learned senior counsel



appearing on behalf of the appellant in Cr. Appeal (DB) No. 582 of 2017.

7. On the other hand, Mr. Sujit Kumar Singh, learned Additional Public Prosecutor appearing on behalf of the respondent-State in both the appeals, has vehemently opposed the present appeals. Learned APP would mainly contend that from the evidence led by the prosecution, it can be said that the appellants-accused firstly had gone to the house of the deceased in search of male members. However, three female members were there, i.e., PW's. 4, 5, and 8. It is submitted that the said witnesses have supported the case of the prosecution which took place in the house. It is further submitted that thereafter PW's 6, 7 and 9 are the eye-witnesses who have fully supported the case of the prosecution. The presence of the said witnesses at the place of occurrence was natural and, in fact, the appellants are also neighbours. The Investigating Officer found blood at the place of occurrence. In fact, he had collected the blood stained soil from the said place. It is further submitted that PW 1 (Doctor), who had conducted the *postmortem* examination of the dead body of the deceased, had found five injuries on the dead body of the deceased and the cause of death was shock and hemorrhage due to *ante mortem* wound caused by sharp cutting weapon. It is submitted



that the medical evidence supports the evidence given by the three eye-witnesses and, therefore, merely because the eye-witnesses are the near relatives and no independent witnesses have been examined, it cannot be said that the prosecution has failed to prove the case against the appellants-accused beyond reasonable doubt. Learned APP further submits that the prosecution has also proved the motive on the part of the appellants-accused for commission of the alleged offence. Thus, the prosecution has proved the case against the appellants beyond reasonable doubt. Therefore, the trial court has not committed any error by passing the impugned judgment and order. Learned APP, therefore, urged that both these appeals be dismissed.

8. We have considered the submissions canvassed by learned counsel appearing for the parties and also perused the materials placed on record. At this stage, it is pertinent to deal with the evidence of the witnesses. The prosecution has examined 11 witnesses, whereas four witnesses have been examined by the defence.

9. PW 1, Dr. Anil Kumar Singh, is the doctor, who was then posted as Medical Officer, Sadar Hospital, Buxar, has conducted the postmortem examination of the dead body of the deceased Ghughuli Pasi and found as under: -



“Rigor mortis present in all four limbs. Average built.

External Examination:-

(i) Incised wound on upper part of neck 6” x 2” x neck cavity deep damaging internal structure of neck etc.

(ii) Incised wound of left side of cheek near left ear pinna 4” x 1” x muscle deep. Ear pinna also cut.

(iii) Incised wound of right side of forehead just above eyebrow 5” x 1” x bone deep with fracture of bone underneath it (skull bone).

(iv) Left palm separated from body at 4” above wrist joint by sharp cutting instrument.

(v) Incised wound on right index finger 1” x 1/2” x skin deep.

Internal Examination:-

Lungs-pale, heart-empty, stomach-mucous only present, large intestine- foul smell gas & faeces – present, liver-pale, spleen-pale, kidney-pale, urinary bladder-empty.

Cause of death: Shock and hemorrhage due to ante mortem wound as mentioned in Column 35 caused by sharp cut instrument.

Time elapsed since death: Within 6 to 24 hours.”

9.1. In his cross-examination, PW 1 has stated that he did not mention in the *postmortem* report whether the rigor mortis was on its peak point or in ascending or descending order or that any of the relatives of the deceased identified the dead body. He has further stated that foul smelling gas in large intestine may be present after 12 hours and time elapsed since death is determined by the stomach contents also. He has not mentioned



the colour of the wound, which is also a factor to determine the time elapsed since death.

10. PW 2, Jag Dayal Pasi, who is son of the deceased, has stated in his examination-in-chief that the occurrence took place on 31.03.2016 at 08:00 AM. He was there at his village. He saw that Gidik Pasi, Joni Pasi, Birendra Pasi, Pappu Pasi, Chandan Pasi, Krishna Pasi and Botal Pasi, all seven collectively killed his father. He saw the dead body. He recognized accused Birendra Pasi and Krishna Pasi who were present in the court room and also recognized Joni Pasi who was in custody and had arrived.

10.1. In his cross examination, PW 2 stated that he had given his statement before the police. He denied that on the date of occurrence, he was not there at his house. He also denied that he was informed by his family members on mobile that the named accused entered into his house in search of male members. He stated that his son Pramod Kumar took away the daughter of accused Birendra Kumar and a case of kidnapping was lodged against his family members. His father was a completely healthy person. He stays at the village. He denied that his family members eliminated his father to pressurize the accused persons in the kidnapping case. He stated that the accused persons also attacked



them, however, they did not sustain any injury as they fled away.

He denied that the accused have been implicated in a false case.

11. PW 3, Rakesh Kumar, was posted as S.H.O. in Nawanager Police Station and had taken over the investigation of Nawanagar Police Station Case No. 41 of 2016 on 31.03.2016. He has stated that, in course of investigation, he has recorded the *fardebayan* of the informant Kanchan Pasi at the place of occurrence. After recording the *fardebayan*, he prepared the inquest report and sent the dead body for *postmortem* and also went to search the accused persons. He again visited the place of occurrence and inspected it. He has given the detailed boundary of the place of occurrence. The dead body of the deceased was lying south to north on the western side of the road. Double storied *pucca* house of Nirmal Singh is adjacent east to the road with open space in the west, where hand pump, tractor and cowshed is placed. Adjacent to the said open space, *pucca* house of accused Bidik Pasi, Ravindra Pasi @ Joni Pasi and Birendra Pasi is situated and at about a distance of 4-5 feet from there, the dead body of the deceased was lying and large amount of blood was there. He also took the statement of witnesses Kaula Devi, Punam Kumari, Kajal Kumari, Lilawati Devi and Dharmsheela Devi and raided the house of the accused persons and also deputed spy. He also took



re-statement of the informant. He obtained the supervisory note of the Sub Divisional Police Office and the Superintendent of Police and entered the same in case diary and followed the instructions. He also detailed the *postmortem* report in the case diary. He submitted the charge-sheet No. 91/16 dated 28.06.2016 against the accused Ravindra Pasi @ Joni Pasi, Gidik Pasi, Binrendra Pasi, Dhandan Pasi, Pappu Pasi, Krishna Pasi and Botal Pasi under Section 448, 323, 354, 302 and 34 of the IPC.

11.1. In his cross-examination, PW 3 has stated that he has not taken the statement of the witnesses of boundary of the place of occurrence nor of the people ten houses each in the north or south. Though he collected the blood stained earth, but the same was not sent for chemical examination. He has further stated that though it does not transpire that the case-diary was not sent to the Senior officials after completion, but he used to send the same. He has not investigated the case of kidnapping of Srikanti Kumari. He immediately sent the dead body and raided the house of the accused, but no sharp-edged weapon was found. He has further stated that PW 2 Jag Dayal Pasi has made statement before him that he was not present at his house on 31.03.2016. He was told by his family members on mobile about the occurrence. He denied



that his investigation was not based on scientific method and is faulty.

11.2. At this stage, we take note of the fact that PW 3 has been recalled at the instance of the trial court. However, we would deal with his subsequent evidence later on, after considering the depositions of other PWs.

12. In her examination-in-chief, PW 4, Kajal Kumari, has stated that the occurrence is of 31.03.2016 at 08:00 AM when she was at her home. Joni Pasi @ Ravindra Pasi, Gidik Pasi, Birendra Pasi, Pappu Pasi @ Hindustan, Chandan Pasi, Kirshna Pasi, Botal Pasi came to her house and started abusing filthily, assaulted Punam Kumari, Leelawati Devi and her and dragged them to the door of the house. At that time, her grandfather, Ghughli Pasi, was coming from that side. Thereafter, her grandmother, Kawla Devi, Aunt Sheela Devi came and her Uncle Kanchan Pasi also came there. Near the door of the house of Nirmal Pasi, Joni Pasi, who was armed with *Katta*, Gidik Pasi armed with *Dab*, Birendra Pasi and Pappu Pasi, who were also armed with *Katta*, surrounded her grandfather and all started cutting her grandfather, Chandan Pasi, Krishna Pasi and Botal Pasi, who were armed with *lathi* and *bhala*, surrounded them. When they were inflicting blows upon her grandfather, she



screamed not to do so, but they did not listen. Thereafter, her grandfather fell down and he was given blows on his head, cheek, his palm was severed and his neck was also cut. Her grandfather died there itself and all the accused fled away. She recognized Joni Pasi, Kirshna Pasi and Birendra Pasi, who were there in the court room and said that she will identify others upon seeing them. She stated that she had heard that about 20 years back, these accused persons had shot her grandfather.

12.1. In her cross-examination, PW 4 has stated that her statement was recorded by the police. She had stated before the police that they dragged her from road to their house. Joni Pasi, who was armed with *Katta*, Gidik Pasi armed with *Dab*, Birendra Pasi and Pappu Pasi, who were also armed with *Katta*, surrounded her grandfather and all started cutting her grandfather, Chandan Pasi, Krishna Pasi and Botal Pasi, who were armed with *lathi* and *bhala*, surrounded them. When they were inflicting blows upon her grandfather, she said not to do so, but they did not listen to her. Thereafter, her grandfather fell down and he was given blows on his head, cheek, his palm was severed and his neck was also cut. As a result, her grandfather died there. She has further stated that her father, brother and others have falsely been implicated in the kidnapping case of Srikanti Kumari. She denied that her



grandfather was killed by her family members because he was suffering from contagious disease and also to pressurize the accused persons in kidnapping case. She said that she does not know which doctor treated her wounds.

13. In her examination-in-chief, PW 5, Leelawati Devi, has stated that the occurrence is of about nine months back at 08:00 AM. She had been to the house of Ghughli Pasi in Katiknar. She was there in the house with her granddaughters, Kajal and Punam Kumari. There were accused Joni Pasi, Birendra Pasi, Pappu Pasi, Chandan Pasi, Krishna Pasi, Botal Pasi and one unknown. Total seven persons came to the house in search of male members of the family. They dragged her two granddaughters on the road. Her *samdhi* was coming after harvesting the lentil. They started cutting her *samdhi*. She asked them not to cut him, but they cut him and he died.

13.1. In her cross-examination, PW 5 has stated that her statement was recorded before the police in which she said that she, Kajal and Punam were dragged out of their house and thereafter the accused left them and went towards their house. She denied that she heard after some time that Ghughli Pasi has been killed. She denied that she had told the police that killing was effected by *lathi* and *danda*. She denied that she stated before the



police that she does not know the names of all the accused. She said that Ghughli Pasi was killed just after the dawn at 08:00 AM. She said that she does not know time reading. She denied that Gughli Pasi was killed before dawn and whether he was killed or got killed to save the family from the social stigma as he was suffering from leucoderma as he was an old man and also to pressurize the persons who have implicated the family in kidnapping case.

14. PW 6, Kawla Devi @ Kauli Devi, who is the widow of the deceased, has deposed in her examination-in-chief that the incident is of nine months back. At 08:00 AM, when she was coming with her husband after stacking the lentil at the door of Nanhku Singh and her daughter-in-law Sheela Devi and son Kanchan Pasi were also with them. She has stated that Pappu, Joni, Gidik, Birendra, Chandan, Krishna and Botal went to her house and after cutting her husband's hand, cheek, head and neck at the door of Nirmal Singh by *Dab* and *Kata*, fled away, *her* husband fell down and died.

14.1. In her cross-examination, PW 6 has stated that they were harvesting the lentil crop since last two days from the date of incident and they used to go for harvesting early in the morning, but at what time she does not know. She has stated that,



at the place of occurrence, she was there with her husband, Sheela Devi (daughter-in-law) Kanchan and one more boy. They had finished the harvesting on that day. She had given her statement before the police that all named accused persons started cutting her husband. They cut her husband's hand, head and neck. She said that she can see upto a distance of one-two hands. However, again she said that she can see up to a distance of 10 feet. She saw that Ghughli Pasi was cut. She further stated that when she was at the place of occurrence there was no need to tell the other members of house about the incident. The accused were always inimical to her family. She denied that Ghughli Pasi was killed around 4-5 AM or that he was killed or got killed because he was a stigma for the family because of his disease and the accused have been named because of the enmity.

15. PW 7, Kanchan Pasi, is son of the deceased, who has deposed in his examination-in-chief that the incident is of nine months back at 08:00 AM. At that time, he, his father, mother, sister-in-law Sheela Devi had gone to harvest lentil crop from the field of Nanhku Singh. After putting the lentil at the door of Nanhuku Singh, when they were coming home and reached at the door of Nirmal Singh, Joni Pasi @ Ravindra Pasi, Gidik Pasi, Birendra Pasi, Pappu Pasi, Chandan Pasi, Botal Pasi and Krihna



Pasi came towards them and assaulted his father with sword and *katta*, upon which his father fell down and died. They screamed and told them not to kill him, spare him. Then they were also assaulted with *lathis*, upon which they fled away. The accused fled away after the people gathered. He deposed that he had given his *fard-beyan* to the police and put his LTI on it. He has deposed that 20 years ago, Joni Pasi, Gidik Pasi and Birendra Pasi had shot at his father.

15.1. In his cross-examination, PW 7 has stated that he has given statement before the police twice. Both the times, he has stated before the police that Joni Pasi, Gidik Pasi and Birendra Pasi had shot at his father. He has also stated before the police that all named accused assaulted his father by sword and *katta* upon which he fell down. He has also stated before the police that he was also assaulted by *lathi*. He was not aware about the documents relating to the case registered 20 years ago for the incident of firing. He has said that they were having old enmity. He has also given the boundary of the place of occurrence. PW 7 has further stated, in his cross-examination, that they went for harvesting lentil crop at 05:00 AM in the morning and they were harvesting the lentil for last three days. His injuries were not treated. His father was killed in front of him. They have not deliberated before



lodging the case and the place of occurrence is in the middle of the village. He has stated that his father was not suffering from leucoderma and that the marriage of the children of the family was not getting finalized because of that. He denied that killing of his father took place at about 4-5 AM and there was whisper in the village that the family members had killed the deceased as he was suffering from leucoderma, which was disrupting marriage in the family and that the named accused have been implicated in the present case because of enmity. He denied that he is giving false deposition.

16. PW 8 Punam Kumari, has deposed, in her examination-in-chief, that the incident was of nine months back at about 08:00 AM. She was there at her house with her sister Kajal and her grandmother. Joni Pasi, Gidik Pasi, Birendra Pasi, Pappu Pasi, Chandan Pasi, Krishna Pasi and Botal Pasi, all seven persons came to their house in search of male members, upon which she told them that no one was at home. Then they started abusing them and assaulted her and her sister Kajal and dragged them to the road. Her grandfather Ghughli Pasi, Kamla Devi, Dharsheela Devi (aunt) and Kanchan Pasi (uncle) were coming to their house from the house of Nanhku Singh after stacking the lentil at his door, when Joni Pasi, Gidik Pasi, Birendra Pasi, armed with *Katta* and



Dab surrounded her grandfather near the house of Nirmal Singh and cut his left hand, right cheek, forehead and neck, Chandan Pasi, armed with *bhala* and Botal Pasi, armed with *lathi*, were intimidating them that if they dared to come near them, then all of them will be cut. Her grandfather died instantly.

16.1. In her cross-examination, PW 8 has deposed that Lakshman Pasi is brother of her grandfather Ghughli Pasi and he is in jail for murder of Hareram Pasi. She had given her statement before the police wherein she had not said that that they dragged them out of her house, but left them and went to their house. She does not know whether she was treated by the Doctor or not. She had further deposed that her grandfather, uncle Kanchan Pasi, Kamla Devi grandmother and aunt Dharmsheela Devi used to go for harvesting the lentil. She does not know for how many days they were harvesting the lentil. They used to go for harvesting in the wee hours, but for how long, she does not know. She denied that her grandfather was suffering from leucoderma and his brother had kidnapped a girl. Therefore, to overcome the social stigma and kidnapping case, her grandfather was eliminated/got eliminated and the accused persons have been implicated in the case because of enmity and that his grandfather was killed around 04:00 AM.



17. PW 9, Sheela Devi @ Dharmsheela Devi, in her examination-in-chief, has deposed that the incident took place at 08:00 AM, nine months back, when she had stacked lentil at the house of Nanhku Singh from his field along with Ghughli Pasi, Kawla Devi and Kanchan Pasi. Joni Pasi, Birendra Pasi, Pappu Pasi, Gidik Pasi, Botal Pasi, Krishna Pasi, Chandan Pasi all seven went to her house, abused and dragged Punam and Kajal from house to road. They were coming from that side. Her father-in-law was ahead of them. When they reached near the house of Nirmal Singh, Joni Pasi, Gidik Pasi, Pappu Pasi and Birendra Pasi, armed with *Kata* and *Dab*, assaulted her father-in-law, whereupon the arm got severed, he sustained cut injury on his forehead, left cheek and neck also got cut and Ghughul Pasi fell down and died. Botal Pasi, Krishna Pasi, armed with *lathi*, and Chandan Pasi, armed with *bhala*, had surrounded them so they could not reach near her father-in-law and they ran towards the village and when villagers gathered, the accused fled away.

17.1. In her cross-examination, PW 9 has stated that when the accused persons went to her house, she was there. However, she again tells that she had gone to harvest lentil. Botal Pasi, Krishna Pasi and Chandan Pasi had surrounded them at a distance of 8-10 *gaj*. She deposed that Srikanti Devi is daughter of



accused Birendra Pasi and she was not kidnapped rather she had gone out on her own sweet will. They were not treated by Doctor. She had given her statement before the police that only her statement was recorded at that time and not of anyone else. She deposed that she had stated before the police that when she was spreading the lentil plants at the door of Nanhku Singh, her son Ranjan Kumar told her that some people are quarreling at her house. She had stated before the police that the accused had gone to her house and abused Kajal and Punam and thereafter dragged them and had beaten them. She had stated before the police that Joni Pasi, Gidik Pasi, Birendra Pasi and Pappu Pasi assaulted with *katta* and *Dab* and that his hand was severed, and his forehead, left cheek and neck got cut. She has deposed that she had stated before the police that Botal Pasi, Krishna Pasi, armed with *lathi*, and Chandan Pasi, armed with *bhala*, had surrounded them and, therefore, they could not go near the deceased.

18. PW's 10 and 11 are formal witnesses. They have signed the inquest report as witnesses and they identified their signatures thereupon, which have been marked ext-2 and 2/1 respectively.

19. At this stage, we deem it pertinent to consider the subsequent deposition of PW 3, who has been recalled at the



instance of the trial court. PW 3, upon being recalled has deposed that formal FIR is in the handwriting of Upendra Choudhary, Reader of the Police Station on which he had put his initial, which he identified and has been marked as ext.-3 and he also identified his signature on the *fard-beyan*, which has been marked as ext.-3/1. He deposed that inquest report is in the handwriting of Subh Narain Tiwari, A.S.I., and upon which his initial is there and he identified his initial, which has been marked as ext.2/2.

19.1. PW 3 has deposed that PW 2, Jag Dayal Pasi, has not stated before him that named accused had killed his father by means of *Dab* and *Katta*, rather PW 2 stated before him that he was not at his house on the date of occurrence and he was informed by his family members on mobile. He had stated before PW 3 that the accused persons entered into his house in search of male members.

19.2. PW 3 has further deposed that PW 4, Kajal Kumari, has not stated before him that accused persons dragged her to their door. She has also not stated before him that when her grandmother Kawla Devi, aunt Sheela Devi, Kanchan Pasi reached near the house of Nirma Singh, her grandfather Ghughli Pasi was caught hold of by them and Joni Pasi, Birendra Pasi and Pappu Pasi, who were armed with *katta*, and Gidik Pasi, armed with *Dab*,



started assaulting her grandfather and Dhandan Pasi, Krishna Pasi and Botal Pasi, armed with *lathi* and *bhala* surrounded them. She also did not state before him that her grandfather was being assaulted repeatedly and that when she screamed to stop, they did not yield to her screams. She also did not state before him that her grandfather fell down and thereafter he was assaulted on his forehead, cheek and his hand and neck got severed.

19.3. PW 3 has further deposed that PW 5, Leelawati Devi, has not stated before him that her two granddaughters were dragged on the road. She said that after some time she heard that Ghughli Pasi has been killed by the accused, but she did not know their names.

19.4. PW 6, Kawla Devi, has stated before PW 3 that Ravindra Pasi @ Joni Pasi had repeatedly assaulted by means of *katta*. However, she did not say that other accused have assaulted her husband by *Dab* and *Kata*. She also did not state before PW 3 that cut injuries were inflicted on hand, cheek, forehead and neck by *Dab* and *Kata*.

19.5. PW 7, Kanchan Pasi, who is the informant, has neither stated before PW 3 that Joni Pasi, Gidik Pasi and Birendra Pasi had shot his father nor that Gidik Pasi, Birendra Pasi, Pappu Pasi, Chandan Pasi, Botal Pasi and Krishna Pasi had inflicted cut



injuries on his father by means of sword and *Katta*. PW 7 has also not stated before him that his father fell down and died. PW 7 has also not stated that they were crying and saying not to assault him and that they were also beaten by *lathi*. PW 7 has also not stated before him that a case of gun shot fire was lodged 20 years ago.

19.6. PW 8, Punam Kumari, has not stated before PW 3 that the accused persons dragged her to road or that after dragging her to road, they left her and went towards their house. PW 8 has also not stated before PW 3 that Gidik Pasi, Birendra Pasi, Pappu Pasi assaulted her grandfather by *Kata* and *Dab* nor did she say that they cut the left hand, right cheek, forehead and neck. She also did not say that Chandan Pasi, armed with *bhala*, and Botal Pasi, armed with *lathi*, were intimidating them that if they all move forward, they too will be cut.

19.7. PW 9, Sheela Devi @ Dharmsheela Devi has not stated about date and time of the occurrence nor did she say before PW 3 that the accused persons went to her house and abused Kajal and Punam and dragged and had beaten them. She also did not say before him that Gidik Pasi, Birendra Pasi, Joni Pasi and Pappu Pasi assaulted by *Katta* and *Dab*. She also did not say that hand of the deceased was severed and his forehead, left cheek and neck were cut. She also did not say that Botal Pasi,



Krishna Pasi, armed with *lathi*, and Chandan Pasi, armed with *bhala*, had surrounded them and because of which they could not go near her father-in-law. She stated that the incident occurred near the door of accused persons.

19.8. PW 3 has deposed, on his recall, that witnesses Kajal Kumar and Leelawati Kumari did not state about the date and time of the occurrence. PW 2, Jag Dayal Pasi, said about the date of the incident, but did not say about the time. PW 8, Punam Kumari also did not say about the date and time of the incident.

19.9. PW 3 has deposed that he had not inspected the field wherefrom lentils were harvested nor the place where it was being stacked. He has stated that he recorded the statement of PW 2, Jag Dayal Pasi on 16.06.2016 and that he had taken the re-statement of the informant on 01.04.2016.

20. The defence has also produced four witnesses, who have not deposed anything about the occurrence and the manner thereof. They have mainly deposed that after the occurrence, commotion prevailed near the place of occurrence and they learnt from others that Ghughli Pasi has been killed and his dead body was lying there. They have also deposed that Ghughli Pasi was infirm, unable to move on his own and his daily chores were completed with the help of his family members and despite



his such physical conditions how could he reach at the place of occurrence on his own. They have also deposed that he was suffering from leucoderma since long and he had been killed by his family members to implicate the accused persons to take revenge of the kidnapping case and because of old enmity.

21. We have considered the submissions canvassed by learned counsel appearing on behalf of the parties. We also perused the materials on record and the evidence led by the prosecution as well as by the defence.

21.1. It would emerge from the record that, as per the case of the prosecution, incident took place at 08:05 AM on 31.03.2016. The *fard-beyan* of the informant (PW 7) was immediately recorded at 08:30 AM. Thus, in the present case, there was no time for the informant or police to falsely implicate the appellants-accused in the incident in question. Learned counsel for the appellants has tried to contend that the Investigating Officer has failed to produce the station diary entry. It is also contended by him that who has given information to the police with regard to the incident in question and what was the said information is not coming out on the record. However, it is pertinent to note that the distance of the police station from the place of incident is only 8 kms. Therefore, it is possible for the police to reach to the place of



incident immediately and to record the *fard-beyan*. Merely because the station diary entry was not produced before the court, the story put forth by the prosecution cannot be doubted only on that ground. It is pertinent to note that the Investigating Officer, in his deposition, has specifically deposed that he found blood at the place of incident and he collected the blood stained soil from the said place. From the deposition of the prosecution witnesses, it would further reveal that first incident took place at the house of the informant and PW's 4, 5 and 8 have supported the case of the prosecution and proved the manner in which the incident took place at the house. Thereafter, when PW's 6, 7 and 9 with the deceased were coming to their house after harvesting lentil. The appellants-accused came near the house and assaulted the deceased with weapons like *Katta* and *Dab*. It is pertinent to note that PW 1 (Doctor) has found five injuries on the dead body of the deceased. Even left palm was separated from the body at 4" above wrist joint by sharp-cutting instrument. The Doctor has specifically opined that cause of death is shock and hemorrhage due to ante mortem injuries sustained by the deceased, which were caused by sharp-cutting instruments. Further, it is specifically stated that the time elapsed since death was within 6-20 hours. At this stage, it is to be recalled that, as per the case of the prosecution, the incident took



place at 08:05 AM, whereas the *postmortem* was conducted at 02:45 PM. Thus, we are of the view that the medical evidence fully supports the version given by the three eyewitnesses. Learned senior advocate for the appellant has contended that the Doctor has stated, in the cross-examination, that he found foul smelling gas in large intestine, which may be present after 12 hours and, on the basis of the same, it has been contended that the death was caused prior to 12 hours. However, we are of the view that the aforesaid contention is misconceived in view of the specific opinion given by the Doctor that the time elapsed since death is between 6-24 hours.

21.2. All the three witnesses, i.e., PWs 6, 7 and 9 have specifically stated that they had gone to harvest lentil from the field of Nanhku Singh and after putting the lentil at the door of Nanhuku Singh, when they were coming home and reached at the door of Nirmal Singh, Joni Pasi @ Ravindra Pasi, Gidik Pasi, Birendra Pasi, Pappu Pasi, Chandan Pasi, Botal Pasi and Krishna Pasi came towards them and assaulted the deceased with sword and *katta*, upon which the deceased fell down and died. When they screamed and told not to kill him, spare him, then they were also assaulted by *lathis*, upon which they fled away. The accused fled away after the people gathered.



21.3. It is true that the prosecution has failed to examine independent witnesses. However, merely because such witnesses have not been examined, the version given by the prosecution witnesses cannot be discarded. It is well settled that the deposition given by the interested or the related witnesses cannot be discarded only on the ground that they are the interested witnesses. Their deposition is to be examined closely. If the deposition given by such witnesses is found trustworthy, reliable and plausible, conviction can be recorded on the basis of the deposition given by such witnesses, who are eyewitnesses to the incident in question. In the present case, PW's 6, 7 and 9 are the near relatives of the deceased. However, their presence at the place of occurrence was natural. Even, in the present case, as observed hereinabove, the medical evidence also supports the version given by the said eyewitnesses. The prosecution has even proved the motive on the part of the appellants-accused to commit the alleged crime, i.e., both the accused side and the prosecution side were on inimical terms for very long and a girl of accused side was kidnapped by the prosecution side. Thus, in the present case, merely because the independent witnesses have not been examined, the version of the prosecution is not required to be discarded.



21.4. Learned senior counsel for the appellant has also contended that the police station case number has not been mentioned in the inquest report as well as in the *postmortem* report. However, it is required to be observed that inquest report was prepared at the place of incident at 08:45 AM and, at that time, formal FIR was not registered. Further, from the deposition of PW 3 (Investigating Officer), it is also revealed that he had sent the dead body for *postmortem* examination from the place of incident itself and, therefore, there are all chances that police station case number has not been mentioned even in the *postmortem* report. Even otherwise, formal FIR was registered at 01:45 PM (13:45 hours) and, as per the *postmortem* report (ext.-1), the dead body was received at 2:00 PM. Thus, merely because the police station case number has not been written in the *postmortem* report, it cannot be said that the case of the prosecution itself is doubtful. Even the defence raised by the appellants-accused before the trial court is also not required to be believed in view of the evidence produced by the prosecution. We have also gone through the reasoning recorded by the trial court and we are of the view that the trial court has not committed any error while passing the impugned judgment and order.



22. Accordingly, both these appeals stand dismissed.

23. Since all the five appellants of Cr. Appeal (DB) No. 443 of 2017 are on bail, their bail bonds are hereby cancelled. The trial court is directed to take immediate steps for sending them to jail custody for serving the remaining sentence.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

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