

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1036 of 2016**

Arising Out of PS. Case No.-168 Year-2010 Thana- MUNGER MUFFASIL District- Munger

1. Mallik Yadav S/o Late Laxmi Yadav
2. Tulsi Yadav, S/o Malik Yadav Both R/o Village- Jafarnagar, P.S.- Muffasil, District- Munger.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Bindhyachal Singh, Sr. Advocate Mr. Sanjay Sinha, Advocate Mr. Md. Fazle Karim, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP
For the Informant	:	Mr. Tarkishor Verma, Advocate

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)**

Date : 01-12-2021

The appellants have been held guilty vide judgment dated 6.09.2016 passed by the learned 5th Additional Sessions Judge, Munger (hereinafter referred to as the “Trial Court”) in Sessions Trial No. 44 of 2011 arising out of Muffasil P.S. Case No. 168 of 2010 for the offences punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. Vide a consequent order dated 09.09.2016, the Trial Court sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs. 25,000/- each under Section 302 of the Indian



Penal Code and rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- each under Section 27 of the Arms Act. Both the sentences have been ordered to run concurrently.

2. The appellants have challenged the aforesaid conviction and sentence imposed against them by the Trial Court by filing the present appeal before this Court.

3. The prosecution in instant case was launched by registering Mufassil P.S. Case No. 168 of 2010 dated 13.09.2010 under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act against five persons, namely, Tulsi Yadav, Dhuran Yadav, Karelal Yadav, Mallik Yadav and Samtolla Devi on the basis of a written complaint made by one Bindeshwari Yadav regarding incident which took place at 05:00 AM on 13.09.2010, to the SHO, Muffasil Police Station at 06:30 AM on 13.09.2010.

4. The prosecution story, in brief, as per the informant is that on 13.09.2010 at around 05:00 AM, all the five accused persons being variously armed with pistol came to his house and one Madho Yadav, a nephew of the informant, was dragged out of the house and shot dead. The informant further alleged that Mallik Yadav and Samtolla Devi had given order upon which Tulsi Yadav pumped bullet in the chest of Madho



Yadav, who died on the spot. The occurrence is alleged to have been seen by Pawan Yadav, Rajesh Yadav, Vikash Yadav, Sanju Devi and others. The cause of occurrence is that on 12.09.2010 all the accused persons had demanded an extortion amount of Rs. 1 lac from the deceased and, the refusal of same led to his killing.

5. The inquest report (Exhibit-3) was prepared by one Vinay Shankar (not examined), a Sub-Inspector of Police of Mufassil Police Station at 09:00 AM on 13.09.2010 in Village-Jaffarnagar. The informant Bindeshwari Yadav (P.W.5) and one Vikash Yadav (son of the deceased) are the witnesses to the inquest.

6. A perusal of the postmortem report (Exhibit-4) would reveal that the body of the deceased was received at 09:00 AM on 13.09.2010 at Sadar Hospital, Munger. Dr. Inamul Rahman (P.W.8), a Medical Officer of Sadar Hospital, Munger conducted autopsy on the body of the deceased Madhav Yadav at 12:55 PM on 13.09.2010. The body was identified by the two chowkidars, namely, Bipin Sah and Samarjit Paswan and the informant Bindeshwari Yadav.

7. It is manifest from the first information report (for short the "FIR") that the same was instituted on the



basis of the written complaint of Bindeshwari Yadav at 03:00 on 13.09.2010 PM and the investigation of the case was taken up by the SHO himself, namely, Pravendra Bharti (P.W.9).

8. During investigation, the Investigating Officer inspected the place of occurrence, recorded the statement of witnesses and, on completion of the investigation, submitted charge-sheet against the two appellants and another accused, namely, Karelal Yadav. However, the investigation was kept pending as against the other two FIR named accused persons Dhuran Yadav and Santolla Devi.

9. On receipt of the report submitted under Section 173(2) of the Code of Criminal Procedure (for short the "Cr.P.C."), the learned Chief Judicial Magistrate, Munger took cognizance of the offences and after complying with the statutory requirements as prescribed under Section 207 Cr.P.C., committed the case of the appellants to the Court of Sessions for trial on 11.01.2011.

10. Since the accused Karelal Yadav was a minor in conflict with law on the date of the commission of the offence, his case was separated and sent to the Juvenile Justice Board, Munger for enquiry.

11. On 07.02.2012, the charges under two heads



i.e., Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act were explained to the appellants to which they pleaded not guilty and claimed to be tried. Accordingly, the trial commenced.

12. The prosecution examined altogether nine witnesses and proved Exhibits-1 to 4/2 in support of the charges during trial.

13. On completion of the prosecution evidence, the Trial Court examined the appellants under Section 313 of the Cr.P.C. In their reply to the questions framed under Section 313 Cr.P.C., they denied their complicity in the case.

14. The defence neither examined any witness nor produced any document in support of its case.

15. Thus, the Trial Court closed the defence case and, after hearing the parties, passed the impugned judgment of conviction and the consequent order of sentence.

16. We have heard Mr. Bindhyachal Singh, learned senior counsel for the appellants and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State. They have taken us through the materials on record as well as the relevant evidences, which were produced by the prosecution before the Trial Court.



17. Mr. Bindhyachal Singh, learned senior counsel submitted that there is an inordinate and unexplained delay in lodging the FIR, which creates serious doubt about the veracity of the prosecution case. He submitted that though P.Ws.1 to 5 claim themselves to be the eyewitness to the incident, a composite reading of their evidence would make it evident that none of them had witnessed the alleged occurrence. They have concocted a story based on suspicion to take revenge on account of the previous enmity. He contended that the eyewitnesses are all close relatives of the deceased. They were on inimical terms. Since, they come in the category of interested witnesses, their testimonies do not inspire confidence.

18. Mr. Singh, learned senior counsel further contended that there are vital inconsistencies in the testimonies of the witnesses examined during trial, which dent the root of the prosecution case. He argued that the Investigating Officer did not say anything about blood stains found on the soil or clothes of the deceased. Further, the recovery of the dead body on a cot lying in front of the house of the deceased creates a serious doubt on the prosecution case, especially, the place of occurrence. He further contended that neither the manner of occurrence has been proved nor the place of occurrence could



be established during trial.

19. Based on the aforesaid submissions, he urged that the Trial Court failed to appreciate the evidence on record in correct perspective and arrived at an erroneous conclusion.

20. On the other hand, Mr. Abhimanyu Sharma, learned counsel for the State submitted that the witnesses examined on behalf of the prosecution have fully corroborated the prosecution case. He contended that the family members are the best persons to vouch on the point of occurrence. According to him, there are five witnesses to the occurrence and there is no infirmity in their testimonies. The oral testimony of the witnesses finds corroboration from the medical evidence. He further contended that there are materials to show that the appellants came together with other accused persons with a common intention to commit the murder of Madho Yadav. They dragged him out from his house situated at village-Jaffarnagar on 13.09.2010 at 05:00 AM and, in furtherance of their common intention, committed his murder. He contended that the Trial Court has given cogent reasons for arriving at a conclusion of guilt against the appellants and the same requires no interference by this Court.

21. We have carefully considered the rival



submissions advanced at the Bar and perused the entire materials on record.

22. **Bindeshwari Yadav (P.W.5)**, the informant of the case corroborated the prosecution case as stated in the FIR. He is an uncle of the deceased Madho Yadav. He stated that Fantush Yadav (P.W.6) had written the complaint over which he had put his signature. He proved his signature, which has been marked as Exhibit-1. He also proved the signature of Dhuran Yadav on the written complaint, which has been marked as Exhibit-1/A

23. In cross-examination, he admitted that his vision is impaired. He cannot see anything without spectacles. He further admitted that he has difficulty in walking since last 4-5 years. He stated that it takes 2 to 4 minutes to cover the distance from his house to the house of the deceased Madho Yadav. However, it takes 5 to 7 minutes to him to cover the same distance. He admitted that he and others deliberated for about one and a half hour as to whether or not a police case should be instituted. As it was decided to inform the police, an intimation was sent to police on telephone after one and a half hour. Fantush Yadav transcribed the *fardebayan*, which was handed over to the police. He stated that Madho Yadav was



lying in a pool of blood after sustaining the bullet injury.

24. Pawan Yadav (P.W.1), the son of the informant and a cousin brother of the deceased; Nawal Yadav (P.W.2), a cousin brother of the deceased; Rajesh Yadav (P.W. 3) the son of the deceased and Sanju Devi (P.W.4) the wife of the deceased claim themselves to be the eyewitness to the incident of murder.

25. **Pawan Yadav (P.W.1)** stated in his examination-in-chief that the incident took place at about 05:30 AM on 13.09.2010. At that time, he was returning after attending the call of nature. He heard hulla near the house of the appellant Mallik Yadav. He saw that Mallik Yadav and Madho Yadav were quarreling together. Dhuran and Mallik caught hold of Madho Yadav and the son of Mallik Yadav, namely, Tulsi Yadav took out pistol and fired a shot causing injury in the chest of Madho Yadav, as a result of which, he died on the spot. He stated that a day before the incident, Tulsi Yadav had demanded *rangdari* tax from Madho Yadav. Since Madho Yadav did not obey his dictates, his murder was committed.

26. In cross-examination, he admitted that his statement was never recorded by the police during investigation. He admitted that for the first time, he had come to the court to



depose. When a question was asked from him as to whether Tulsi Yadav had instituted a police case against him and Radhe Yadav, he expressed his complete ignorance about the matter. On the point of demand of *rangdari*, when a question was asked from him, he admitted that he had no personal knowledge about it. He admitted that he heard about it from others. He stated that when he reached at the place of occurrence, he saw that Madho Yadav and Mallik Yadav were quarreling together. At that time, apart from the accused persons, he could not see any other person. He stated that when Madho Yadav was shot at, he bled profusely. At the relevant time, Madho Yadav was wearing *lungi* and *ganji*. He stated that he did not go to the police station rather his father Bindeshwari Yadav had gone to the police station to inform the police. The statement of his father was recorded at the police station. The police officer did not come to his village in his presence. He stated that he does not know as to whether Samtolla Devi had instituted Mufassil P.S. Case No. 191 of 2007 against the deceased Madho Yadav, his wife Sanju Devi, Vikash Yadav, Rajesh Yadav and Gulshan Yadav. He expressed his ignorance as to whether the aforesaid case is pending in the court of Shri Raja Ram Santosh Kumar, Judicial Magistrate-1st Class, Munger. He denied the defence



suggestion that no incident as alleged by him had ever taken place.

27. **Nawal Yadav (P.W.2)** stated in his examination-in-chief that the incident took place at about 06:00 AM on 13.09.2010. According to him, when the incident took place, he was present at the place of occurrence. Mallik Yadav, Dhuran Yadav, Karelal Yadav and Samtolla Devi were quarreling with Madho Yadav. In the meantime, Tulsi Yadav came out of his house and opened fire causing injury to Madho Yadav, as a result of which, he fell down and died. He also stated that the cause of occurrence was a demand of Rs. 1 lac as *rangdari* tax from Madho Yadav.

28. In cross-examination, he stated that he was at a distance of 10-15 feet from the place of occurrence at the time of incident. According to him, the accused persons dragged the body of the deceased towards their own house. The police prepared the inquest report near the house of the accused persons. He stated that blood had fallen on the ground when the body was being dragged from the place of occurrence to the house of the accused persons. He stated that Mallik Yadav had not sustained any injury. However, he admitted that the accused Samtolla Devi had instituted a case against the deceased Madho



Yadav, which was numbered as Mufassil P.S. Case No. 191 of 2007. He admitted that when he reached at the place of occurrence, no one else was present there. The crowd assembled there after the incident of murder took place. He stated that the police arrived at the place of occurrence after four hours of the incident and seized blood stained soil. He stated that there was mark of dragging of the dead body at the place of occurrence, which was also seen by the police. He stated that the occurrence had taken place on the road between the house of the accused persons and the deceased.

29. **Rajesh Yadav (P.W.3)** stated in his examination-in-chief that the incident took place at about 05:00 AM on 13.09.2010. The accused persons were demanding *rangdari* tax from his father. When he refused to oblige them, they dragged out his father from his house and killed him.

30. In cross-examination, he stated that he is the son of the deceased. He stated that his father was shot dead. He raised hulla, pursuant to which, Pawan Yadav (P.W.1), Sanjiv Kumar (not examined), Fantush Yadav (P.W.6), Vinay Yadav (not examined), Subodh (not examined) Nawal (P.W.2) and Bindeshwari Yadav (P.W.5) came at the place of occurrence. He also admitted that he himself, his mother Sanju Devi, Vikash



Yadav and Gulshan Yadav are accused in Mufassil P.S. Case No. 191 of 2007, which was instituted by Samtolla Devi. He denied the defence suggestion that his father was a criminal. He also denied the defence suggestion that no *rangdari* was ever asked from his father.

31. **Sanju Devi (P.W.4)** stated in her examination-in-chief that the incident took place at about 05:00 AM. At the relevant time, she was inside her house. Dhuran Yadav, Mallik Yadav, Kare Yadav, Samtolla Devi and Tulsi Yadav forcibly dragged her husband outside the house and took him on road. Tulsi Yadav fired from a close range causing injury in the chest of her husband, as a result of which, he died on the spot. She corroborated the story of demand of *rangdari* from her husband.

32. In cross-examination, she admitted that she was alone when the firing took place. She admitted that huge quantity of blood had fallen on the ground. She stated that the police had seized the *ganji* and *lungi*, worn by the deceased at the time of occurrence. She denied the defence suggestion that her husband was a man of criminal antecedent. She also denied that the accused persons have been falsely implicated in the present case as there was previous enmity.



33. **Fantush Yadav (P.W.6)** stated in his examination-chief that the incident took place at about 05:30 AM on 13.09.2010. At that time, he was in his house. He came to the place of occurrence on hulla. He saw that Madho was lying in a pool of blood. By the time, he reached at the place of occurrence, Madho Yadav had already died. He stated that he saw Tulsi Yadav being armed with pistol running away from the place of occurrence. He also saw Mallik Yadav, Karelal Yadav and Dhuran Yadav being armed with *bhala* and *farsa* running away from the place of occurrence. He stated that on enquiry, he came to know that Tulsi Yadav had pumped bullet in the chest of the deceased. He stated that the cause of occurrence was that all the accused persons had demanded *rangdari* tax from the deceased and, the refusal to obey the dictate led to his killing. He stated that the written complaint was transcribed by him as dictated by the informant Bindeshwari Yadav. He proved his signature on the written complaint, which was marked as Exhibit-3/2.

34. In cross-examination, he admitted that the deceased Madho Yadav was his uncle. He admitted that he is not a witness to the demand of *rangdari* tax from the deceased. He came to know about the same from the deceased subsequently.



He admitted that he came out of his house after the deceased was shot at. He admitted that Pawan Yadav (P.W.1), Nawal Yadav (P.W.2), Rajesh Yadav (P.W.3), Sanju Devi (P.W.4) and Bindeshwari Yadav (P.W.5) came at the place of occurrence after him. He saw the accused persons while they were running away. According to him, the police came at the place of occurrence after two hours of the incident. He stated that the body of Madho Yadav was left at the place of occurrence itself and was not dragged to any other place. He stated that the police came after an information regarding the incident was sent to them on mobile phone by the informant Bindeshwari Yadav. He stated that Mallik Yadav was arrested from his house on the date of incident. However, he was not having any injury on his person. He stated that he does not know as to whether Mallik Yadav was sent for medical examination after his arrest. He denied the defence suggestion that he had not taken name of Kare Yadav, Mallik Yadav and Dhuran Yadav in his statement recorded by the police during investigation.

35. **Dr. Ram Preet Singh (P.W.7)** was posted at Sadar Hospital, Munger as Medical Officer on 13.09.2010. He stated that on that day, the postmortem examination of Madho Yadav was conducted by Dr. Inamul Rahman (P.W. 8) and at



that time, he was present there as an observer. He proved the writing and signature of Dr. Inamul Rahman on the postmortem report, which was marked as Exhibit-4. He also proved his own signature on the postmortem report, which was marked as Exhibit-4/1.

36. In cross-examination, he admitted that he has no personal knowledge about the postmortem examination, as it was conducted by Dr. Inamul Rahman (P.W.8).

37. **Dr. Inamul Rahman (P.W.8)** was posted as Sadar Hospital, Munger as Medical Officer on 13.09.2010. He stated that on that day at 12:55 PM, he conducted the postmortem examination on the body of the deceased and found the following ante-mortem injuries:

- (i) Wound of entry measuring $\frac{1}{2}$ " x $\frac{1}{2}$ " on the right of upper chest by the side of sternum. Charring of hair present.
- (ii) Lacerated wound over forehead of measuring 2"x1".

He stated that on dissection, blood and blood clots were found in the right chest cavity and media sternum. Right lung and great vessel were lacerated. A bullet was found in the right chest cavity, which was sealed, signed and handed over to the police. He stated that in his opinion, death was caused by the



abovementioned injuries caused by firearm. According to him, time elapsed since death was within 24 hours. He stated that at the time of postmortem examination Dr. Ram Preet Singh was present as an observer.

38. In his cross-examination, he admitted that he did not take assistance of the forensic expert at the time of postmortem examination. He stated that he cannot say the distance from which the firing was made.

39. **Pravendra Bharti (P.W.9)**, was the Investigating Officer of the case. He stated that on 13.09.2010, he was posted as the SHO of Mufassil Police Station. After instituting the case, he took over the investigation of the case himself. He recorded the subsequent statement of the informant Bindeshwari Yadav, obtained the postmortem examination report of the deceased Madho Yadav from Sadar Hospital, Munger, inspected the place of occurrence, raided the house of the accused persons, arrested Tulsi Yadav, Kare Yadav and Mallik Yadav and produced them before the court. He stated that since Mallik Yadav was also having injury on his person, he was sent for medical examination. The defence statements of the arrested accused persons were recorded. He stated that he recorded the statement of Nawal Yadav, Subodh Kumar (not



examined) and Vinay Yadav (not examined) and on completion of investigation, submitted charge-sheet before the court. He proved his writing on the formal FIR, which was marked as Exhibit-2. He also proved his endorsement and signature on the FIR, which was marked as Exhibit-2/1. He also proved the inquest report prepared in the writing of Vinay Shankar, a Sub-Inspector of Police, which was marked as Exhibit-3.

40. In cross-examination, he admitted that he took up investigation of the case at 08:30 AM on 13.09.2010 and instituted the FIR at 03:00 PM on 13.09.2010. He could not say, who informed him about the occurrence on telephone. He admitted that a Sanha entry was made. He further admitted that he left the police station half an hour after receiving the information and reached at the place of occurrence at 08:30 AM. After reaching at the place of occurrence, Bindeshwari Yadav handed over a written complaint to him. He enquired from him about the occurrence and recorded his statement. Thereafter, in his presence, the inquest report was prepared. He could not say the distance between the place of occurrence and the house of the accused persons. However, he said that the house of the deceased is near the place of occurrence. He admitted that no case for demand of *rangdari* has been instituted against the



persons. He further admitted that no weapon was recovered from the house of the accused persons. He admitted that the accused persons were apprehended from their house at about 10:00 AM on the date of occurrence. He admitted that he did not seize any article at the place of occurrence. He admitted that when he reached at the place of occurrence, Madho Yadav was lying dead on a chowki. He stated that he did not prepare seizure list of the bullet recovered at the time of postmortem examination of the deceased. He further admitted that the said bullet was never produced before the Court. He admitted that he had recorded the statements of Raghav Kumar, Subodh Kumar and Vinay Yadav during investigation. They did not support the allegations made in the *fardebayan* in toto. He further admitted that they narrated the incident differently and also gave a different cause of the occurrence. He admitted that the residence of the aforesaid three witnesses is nearby the place of occurrence. They all were independent witnesses. In further cross-examination, he stated that he did not investigate as to whether the deceased was a man of criminal antecedent. He denied the defence suggestion that he did not make any scientific investigation into the case.

41. On appreciation of evidences of the



witnesses examined during trial, especially, the evidence of Dr. Inamul Rahman (P.W.8), it would be manifest that the deceased Madho Yadav died a homicidal death due to the injury caused in his chest by firearm.

42. Now, the question for determination is as to whether the appellants were responsible for causing the death of Madho Yadav.

43. It has been argued on behalf of the appellants that an inordinate and unexplained delay was caused in lodging the FIR, which creates serious doubt about the veracity of the prosecution case.

44. In this regard when we closely look at the testimony of the witness, we see that according to the informant, the incident of murder of Madho Yadav took place at around 05:00 AM on 13.09.2010. An information in this regard was sent to the police on phone at 06:30 AM on 13.09.2010. The Investigating Officer (P.W.9) stated in his evidence that after receiving the information on telephone, he made a station diary entry and left the police station after half an hour and reached at the place of occurrence at 08:30 AM. He stated that he took up the investigation of the case at 08:30 AM on 13.09.2010. On a perusal of the inquest report (Exhibit-3), it would appear that the



same was prepared by one Vinay Shankar, a Sub-Inspector of police at 09:00 AM on 13.09.2010 in the village where the incident had taken place. The postmortem report (Exhibit-4) would reveal that the body of the deceased was received at 09:00 AM on 13.09.2010 at Sadar Hospital, Munger and the autopsy on the body of the deceased Madho Yadav commenced at 12:55 PM on 13.09.2010. It would be manifest from the FIR and the deposition of the Investigating Officer that the formal FIR was registered at the police station at 03:00 PM on 13.09.2010.

45. Apparently, the preparation of the inquest report, inspection of the place of occurrence, sending the body from the place of occurrence to the hospital for postmortem examination and the autopsy on the body of the deceased were held much prior to the institution of the FIR.

46. There is no doubt about the fact that a major part of the investigation had been conducted by the police even prior to the institution of the FIR.

47. It is well settled that FIR is an important document even though it is not a substantive piece of evidence. A prompt FIR prevents possibility of coloured version being put by the informant.



48. In *Thulia Kali Vs. State of T.N.*, since reported in *AIR 1973 SC 501*, the Supreme Court had observed that the FIR in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The Court further observed that the delay in lodging the FIR often results in embellishment which is a creature of afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the FIR should be satisfactorily explained.

49. In *State of Punjab Vs. Ramdev Singh*, since reported in *(2004) 1 SCC 421*, the Supreme Court held: “Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such



delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the same cannot by itself be a ground for disbelieving and discarding the entire prosecution version....”

50. It is true that there is no hard and fast rule that the delay in lodging the FIR would automatically render the prosecution case doubtful. However, the delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not.

51. Apart from the delay caused in institution of the FIR, we find that the station diary entry made by the Investigating Officer of the case at the police station after receiving the telephonic call from the informant has not been brought on record. The withholdment of the station diary entry has deprived the Court from knowing the contents of the initial information given to the police by the informant on telephone.

52. The informant has admitted in his testimony that the information was sent to the police after due deliberations and consultations for one and a half hour after the commission of the murder of Madho Yadav. Hence, it is presumed that the information sent to the police must not be



cryptic in nature. The information to the police was definitely relating to a cognizable offence and, based on that, the FIR ought to have been instituted first. The SHO of the police station, who is also the Investigating Officer of the case seems to be ill-trained and ignorant of law and procedure. He did not realise the importance of getting a police case registered even before inspecting the place of occurrence, preparing the inquest report and sending the body of the deceased for postmortem examination with the two chowkidars and the informant. We find force in the submission made on behalf of the appellants that the FIR has belatedly been instituted after due deliberations and consultations.

53. The fact that the FIR has been belatedly instituted has to be considered in the light of the other facts and circumstances of the case.

54. An argument has been advanced on behalf of the appellants that apart from the official witnesses, the witnesses examined on behalf of the prosecution are related and interested witnesses. They were on inimical terms. Hence, they are not credible witnesses. In this regard, we must note that a witness cannot be said to be an interested witness merely by virtue of being a relative of the victim. A related witness possess



some kind of relation with the victim and interested witness postulates someone having direct interest and derives some benefits out of the result of the litigation. Hence, it is desirable to examine the credibility of such witnesses to rule out the possibility of tainted evidence. A witness is normally considered to be independent unless he or she comes out from sources which are likely to be tainted.

55. It has been held in number of cases that ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. Moreover, the Supreme Court has repeatedly held that the testimony of witnesses cannot be rejected merely on the point of inimical background. The requirement of law is that the testimony of inimical witnesses has to be considered with caution. A duty is cast upon the Court to examine the testimony of inimical witnesses with due caution and diligence.

56. However, it is the duty of the Court to determine every case with respect to every witnesses whether the witnesses is credible in his testimony or not, as credibility is critical to both the prosecution and defence in a criminal case. If witnesses are deemed not credible in their testimony that would derail the prosecution efforts to secure a verdict of guilt or allow



the defence to raise the reasonable doubt necessary to prevent a conviction.

57. It is true that in the present case, apart from the official witnesses, all the witnesses are examined on behalf of the prosecution are closely related to the deceased. It has also come in evidence that the members of the prosecution party including the deceased were being prosecuted by the accused persons in different cases.

58. Insofar as the place of occurrence is concerned, the witnesses examined on behalf of the prosecution are not consistent. Pawan Yadav (P.W.1) stated in his deposition that the incident took place in front of the house of Mallik Yadav whereas Nawal Yadav (P.W.2) stated in his deposition that the accused persons dragged the body of the deceased towards their own house and the Investigating Officer also stated in his deposition that the place of occurrence was away from the house of the appellants. Nawal Yadav (P.W.2) stated in his deposition that all the accused persons after killing the deceased dragged his body towards their house, but the other witnesses stated that the dead body was left at the place of occurrence. The Investigating Officer did not find any evidence of dragging. Even the doctor who conducted the postmortem



examination did not find any scratch on the body of the deceased. Surprisingly, a perusal of the inquest report (Exhibit-3) would reveal that the body was lying on a cot in front of the house of the deceased. There appears to be no certainty in the testimony of witnesses regarding the actual place where the incident of murder took place. The Investigating Officer stated that the place of occurrence was away from the house of the appellants.

59. Insofar as the inquest report (Exhibit-3) is concerned, it would appear that the same was prepared by one Vinay Shankar, a Sub-Inspector of Police of Mufassil Police Station, Munger. He has not been examined during trial. The column-4 of the inquest report demonstrates that at the time of preparation of inquest report, the body was found on a cot at the house of the deceased. However, Nawal Yadav (P.W.2) admitted in cross-examination that the inquest report was prepared near the house of the accused persons. The informant stated in his *fardbeyan* that the victim was dragged out from his house by the accused persons. In cross-examination, he admitted that his house is situated at some distance from the house of the deceased Madho Yadav. He stated that for a normal person, it takes 2 to 4 minutes to cover the distance from his house to the



house of the deceased Madho Yadav, but since his vision is impaired, it takes 5 to 7 minutes for him to cover the same distance. The wife and son of the deceased who have been examined during trial have categorically stated in their testimonies that the deceased was dragged out from his own house and not the house of his uncle Bindeshwari Yadav. Thus, the witnesses are not consistent even on the point of the house from which the victim was dragged out and shot dead.

60. Now coming back to the place of occurrence, we see that Nawal Yadav (P.W.2) and Sanju Devi (P.W.4) have stated in their testimony that the injury caused to the deceased Madho Yadav resulted in profuse bleeding but the Investigating Officer has not whispered a word regarding blood stains at the place of occurrence.

61. Keeping the aforesaid principles in mind, when we closely scrutinised the evidence adduced on behalf of the prosecution, insofar as the time of occurrence is concerned, we find that the witnesses examined during trial have deposed differently. As per the informant, the incident took place at around 05:00 AM at 13.09.2010, but according to Pawan Yadav (P.W.1) and Fantush Yadav (P.W.6), the incident took place at about 05:30 AM and according to Nawal Yadav (P.W.2), the



incident took place at about 06:00 AM.

62. Insofar as the manner of occurrence is concerned, the witnesses examined on behalf of the prosecution have deposed differently. The informant has stated in his *fardbeyan*, which is the basis for institution of the FIR that all the five accused persons entered into his house and dragged his nephew Madho Yadav and, on the exhortation of Mallik Yadav and Samtolla Devi, Tulsi Yadav shot at him causing injury in his chest, as a result of which, he died on the spot. The informant has corroborated the statement made in the FIR in his deposition before the court. However, Pawan Yadav (P.W.1) stated in his deposition that on hulla when he came out, he saw that Mallik Yadav and Madho Yadav were quarreling together and Dhuran Yadav and Mallik Yadav caught hold of Madho Yadav and Tulsi Yadav took out pistol and fired causing injury in the chest of Madho Yadav, as a result of which, he died on the spot. Nawal Yadav (P.W.2) stated in his deposition that Mallik Yadav, Dhuran Yadav, Karelal Yadav and Samtolla Devi were quarreling with Madho Yadav, in the meantime, Tulsi Yadav came out of his house and opened fire causing injury to him, as a result of which, he fell down and died. Thus, according to the informant, all the five accused entered into his house, they



dragged out Madho Yadav and, Tulsi Yadav shot him dead. But as per Pawan Yadav (P.W.1), Mallik Yadav and Madho Yadav were quarreling together and Dhuran Yadav and Mallik Yadav caught hold of Madho Yadav and Tulsi Yadav shot at him, as a result of which, he died on the spot and as per the Nawal Yadav (P.W.2), Mallik Yadav, Dhuran Yadav, Karelal Yadav and Samtolla Devi were quarreling together with Madho Yadav, in the meantime, Tulsi Yadav came out from his house and fired upon Madho Yadav causing injury, as a result of which he fell down and died. The description given by the aforesaid witnesses are not consistent. The discrepancies made in their deposition about the manner of occurrence creates doubt about the veracity of the prosecution case.

63. The inquest report (Exhibit-3) shows that the same was prepared at 09:00 AM on 13.09.2010 at village Jaffarnagr where the incident had taken place and the postmortem report (Exhibit-4) also shows that the body was received at the Sadar Hospital, Munger at 09:00 AM. The Sadar Hospital, Munger is definitely at some distance from the place of occurrence. It is surprising, as to how the body of the deceased could have been omnipresent both at the place of occurrence and at the Sadar Hospital, Munger at the same time.



This gives rise to an impression that there is some ante-dating in preparation of the inquest report. Since the author (Vinay Shankar) of the inquest report has not been examined, the defence could not elicit any explanation from him in this regard. The non-examination of the author of the inquest report has certainly prejudiced the case of the defence.

64. The witnesses examined during trial are not consistent even on the point of weapon in the hands of the accused persons. In the *fardbeyan*, the informant has categorically stated that all the accused persons were armed with pistol. In his deposition also he has not stated that the accused persons were armed with any other weapon. However, Fantush Yadav (P.W.6) stated in his deposition that he saw Mallik Yadav, Karelal Yadav and Dhuran Yadav being armed with *bhala* and *farsa* running away from the place of occurrence immediately after the incident. According to Fantush Yadav (P.W.6), it was only Tulsi Yadav, who was seen running away from the place of occurrence with pistol.

65. We noticed from the evidence adduced during trial that there is serious inconsistency in the testimony of witnesses during trial on the point of presence of witnesses at the time of occurrence near the place of occurrence. Nawal



Yadav (P.W.2) admitted in his cross-examination that when he reached at the place of occurrence, no one else was present there. He admitted that other persons came at the place of occurrence after the incident of murder took place. Similarly, Fantush Yadav (P.W.6) admitted in cross-examination that he came out of his house after the deceased was shot at. He admitted that Pawan Yadav (P.W.1), Nawal Yadav (P.W.2) Rajesh Yadav (P.W.3), Sanju Devi (P.W.4) and Bindeshwari Yadav (P.W.5) came at the place of occurrence after him. If the testimony of P.W.2 is to be believed, it rules out the possibility of witnessing the incident of murder by other witnesses examined during trial. Similarly, if the testimony of P.W.6 is to be believed, it rules out the possibility of witnessing the actual incident of murder by all the prosecution witnesses including Nawal Yadav (P.W.2).

66. In view of the inordinate and unexplained delay in lodging the FIR, the glaring loopholes in investigation, the material inconsistencies in the evidence of witnesses examined during trial on the behalf of the prosecution, the failure to prove the manner of occurrence and the place of occurrence and the failure to produce the material exhibits, we are of the opinion that the prosecution has not been able to



prove the charges against the appellants beyond the shadow of reasonable doubt.

67. Thus, on consideration of the entire evidence, we hold that the prosecution has miserably failed to prove its case beyond reasonable doubt against the appellants.

68. For the aforesaid reasons, the appeal is allowed. The impugned judgment of conviction dated 6.09.2016 and the consequent order of sentence dated 09.09.2016, passed by the Trial Court in Sessions Trial No. 44 of 2011 arising out of Muffasil P.S. Case No. 168 of 2010 are, hereby, set aside.

69. The appellants, namely, Mallik Yadav and Tulsi Yadav are acquitted of the charges levelled against them. They are directed to be released from the jail forthwith unless they are required in any other case.

(Ashwani Kumar Singh, J)

(Madhuresh Prasad, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02-12-2021
Transmission Date	02-12-2021

