

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.261 of 2017

Arising Out of PS. Case No.-68 Year-2012 Thana- BHAGWANPUR District- Begusarai

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Ram Bachan Singh Son of Sri Balram Singh, Resident of Village-Hadipur,
Police Station-Bachhwara in the District of Begusarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 288 of 2017

Arising Out of PS. Case No.-68 Year-2012 Thana- BHAGWANPUR District- Begusarai

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Munna Singh S/o Late Chandrika Singh, Residents of Village- Hadipur, P.S.-
Bachhabara, District- Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 365 of 2017

Arising Out of PS. Case No.-68 Year-2012 Thana- BHAGWANPUR District- Begusarai

1. Sonu Kumar Singh @ Sonu Singh and Anr
2. Manoj singh @ Manoj Kumar Singh, Both sons of Shashikant Singh @
Bhola Singh, Both Residents of Village Hadipur, P.S. Bachhbara, District-
Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 261 of 2017)

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Kiran Kumari, Advocate Md. Imteyaz Ahmad, Advocate Mr. Bimal Kumar, Advocate Mrs. Vaishnavi Singh, Advocate Mr. Sabal Kumar Jha, Advocate
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For the State : Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 288 of 2017)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Kiran Kumari, Advocate
Md. Imteyaz Ahmad, Advocate
Mr. Bimal Kumar, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Sabal Kumar Jha, Advocate
For the State : Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 365 of 2017)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Kiran Kumari, Advocate
Md. Imteyaz Ahmad, Advocate
Mr. Bimal Kumar, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Sabal Kumar Jha, 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 : 18-12-2023

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.') challenging the order of conviction dated 23.01.2017 and order of sentence dated 25.01.2017 passed by learned Sessions Judge, Begusarai, in Sessions Case No. 319 of 2013 arising out of Bhagwanpur (Tiyai) P.S. Case No. 68 of 2012, whereby the concerned Trial Court has convicted the present appellants for the offences punishable under Sections 302/34, 120B and 307/34 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') as well as Section 27 of the Arms Act and the appellants and other convicts were awarded sentence of life



imprisonment for conviction under Section 302/34 of I.P.C., Section 120B of I.P.C. and three years of rigorous imprisonment for conviction under Section 27 of the Arms Act. It is stated that no sentence has been awarded for conviction under Section 307/34 of the I.P.C.

2. The brief facts leading to filing of the present appeals are as under:-

2.1. The *fardbeyan* of Ram Vinay Singh was recorded on 29.06.2012 at about 15:30 hours at Alexia Hospital, Begusarai, wherein the informant has stated that on 29.06.2012, the *Baraat* was coming to Hadipur by city ride bus from Salimpur village of Patna District. His son-in-law Mukesh Singh @ Puttu Singh, son of Ram Pravesh Singh, resident of Hadipur P.S. Chhawada, District-Begusarai, and six other people were travelling in the said bus. As soon as the bus reached near the tree of Pakar at village Maheshpur Mor, the bus was stopped from the front by Sonu Kumar Singh and Manoj Singh. They got into the bus and started firing shots with the country-made pistols. Due to their firing, his son-in-law Mukesh Singh @ Puttu Singh got shot in the chest on both sides, elbow of left arm and below the lips and on the forehead on both sides, due to which, he died in the bus. After his death, he wanted to get down from the bus but Rambachan Singh,



Munna Singh, Balram Singh and Chhotu Singh, who all were standing outside the bus, started firing. The said incident happened around 12:30 p.m. The reason behind the shooting is that the son-in-law of the informant had a conflict with the accused persons and around 3 years back, he had filed a case. All the accused person murdered his son-in-law to resolve the case.

2.2. On the basis of the aforesaid *fardbeyan*, a formal F.I.R. came to be registered. The Investigating Officer thereafter started the investigation and during the course of the investigation, he had recorded the statement of the witnesses. The dead body of the deceased persons were sent for *post mortem*. The Investigating Officer has also collected the documentary evidence and thereafter filed the charge-sheet against the accused before the concerned Magistrate Court. However, as the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the concerned Sessions Court.

2.3. During the course of the trial, the prosecution had examined 11 witnesses, whereas the defense has examined 3 witnesses. The prosecution has also produced documentary evidence. Statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court



passed the impugned order against which three different convicts have filed three different appeals.

3. Heard learned advocate Mr. Ajay Kumar Thakur assisted by Mrs. Kiran Kumari, Md. Imteyaz Ahmad, Mr. Bimal Kumar, Mrs. Vaishnavi Singh and Mr. Sabal Kumar Jha for the appellants and Mr. Sujit Kr. Singh, learned A.P.P. for the Respondent-State.

4. Learned Advocate Mr. Ajay Kumar Thakur for the appellants, referred the deposition of the witnesses and thereafter submitted that PW-1, PW-2 and PW-11 have not supported the case of the prosecution and they were declared hostile. It is further submitted that, as per the case of the prosecution, there are two eye-witnesses i.e. PW-6 Ram Binay Singh, who is the informant and father-in-law of the deceased Mukesh Kumar Singh @ Puttu Singh and PW-10 Ram Pravesh Singh is also projected as an eye-witness, who is the father of the deceased Mukesh Kumar Singh. It is submitted that, though in the present case, as per the case of the prosecution, two persons died in the occurrence in question and one Fudan Thakur sustained injury, none of the relatives of the deceased Saket Chaudhary have been examined nor Fudan Thakur (injured) is examined by the prosecution. At this stage, it is also contended that there are major contradictions in the deposition of



the so-called eye-witnesses as well as PW-5 Kiran Devi, who is the wife of the deceased Mukesh Kumar Singh, who came at the place of occurrence after the occurrence took place, despite which, the Trial Court has placed reliance upon the deposition of the said witnesses. Thereby, the Trial Court has committed an error.

5. Learned counsel Mr. Ajay Kumar Thakur would further submit that, though as per the case of the informant, six other passengers were present in the bus, none of the passengers have been examined by the prosecution. It is also submitted that even with regard to the place of occurrence, two different stories have been put forward by the prosecution. It is submitted that the Investigating Officer has not collected any material from the bus. Learned advocate, at this stage, has referred the deposition given by the Investigating Officer and submitted that the Investigating Officer has collected empty cartridges from the road. However, there is no reference with regard to the blood-stains found on the road. It is, therefore, submitted that there is a dispute with regard to the place of occurrence.

6. Learned counsel Mr. Ajay Kumar Thakur further submits that, as per the *fardbeyan*, the occurrence took place at about 12:30 hours. However, from the medical evidence i.e. the deposition given by the Doctor who had conducted the *post*



mortem of the dead body of the deceased, it is revealed that the death of the deceased Mukesh Kumar Singh was caused within 24 hours. He has submitted that *post mortem* was conducted on 29.06.2012 at 04:30 p.m. Learned counsel, therefore, submitted that the medical evidence does not support the case of the prosecution. Learned counsel, therefore, urged that all these appeals be allowed, and thereby, the impugned order be quashed and set aside.

7. On the other hand, learned A.P.P. has also referred the deposition of the witnesses and thereafter submitted that the prosecution has proved the case against the accused beyond reasonable doubt. There is an evidence in the form of eye-witnesses and the case of the eye-witnesses has been supported by the medical evidence. It is submitted that the empty cartridges were found from the place of occurrence i.e. from the road and, therefore, the Trial Court has not committed any error while passing the impugned order. Learned A.P.P., therefore, urged that no inference is required in the present appeals.

8. We have considered the submissions canvassed by the learned counsels appearing for the parties. We have also perused the evidence led before the Trial Court. From the material placed on record, it emerges that PW-1, PW-2 and PW-11 have not



supported the case of the prosecution and they have turned hostile. The *fardbeyan* of the informant was recorded at 15:30 hours on 29.06.2012. As per the said *fardbeyan*, the occurrence took place at about 12:30 hours. It is revealed from the *fardbeyan* that the same was given at Alexia Hospital, Begusarai. However, it is not coming out from the said *fardbeyan* that the dead body of Mukesh Kumar Singh was taken to the said hospital. However, if the said *fardbeyan* is carefully seen, it is revealed that the accused Sonu Kumar Singh and Manoj Singh stopped the bus and entered into the bus and started firing with the country-made pistols. In the said firing, his son-in-law Mukesh Kumar Singh @ Puttu Singh sustained gun-shot injuries on the chest on both sides, elbow of left arm and below the lips as well as on the forehead, as a result of which, his son-in-law died in the bus. Thereafter, they wanted to get down from the bus but the accused Rambachan Singh, Munna Singh, Balram Singh and Chhotu Singh, who were standing outside near the bus, started firing. Thus, from the aforesaid F.I.R. it appears that the son-in-law of the informant namely, Mukesh Kumar Singh died on the spot in the said firing in the bus. The said informant has not stated about the death of any other person and the injury sustained by Fudan Thakur though the information was given after four hours after the occurrence.



8.1. The informant has given his deposition as PW-6 before the Court. In his examination-in-chief, he has stated that he was returning from Bhawanipur, Patna in a city ride bus. When the said bus reached near the turning of Maheshpur and Hadipur at that time, driver of the bus i.e. Manoj stopped the bus, got down and ran away. Thereafter, Manoj and Sonu, who were present on the said place, entered inside the bus, whereas Munna Singh, Chhotu Singh, Balram Singh and Ram Bachan Singh were standing outside the bus. All the accused were carrying weapons in their hands. Thereafter, Sonu and Manoj both started firing from their country-made pistol, and in the said firing, his son-in-law Mukesh Singh @ Puttu Singh sustained injury on various parts of his body. He, therefore, called his daughter. His daughter came at the place of occurrence. Till his daughter came at the place of occurrence, his son-in-law was alive. His son-in-law told something in her ears. In the said occurrence, Saket Chaudhary and Fudan Thakur also sustained gun-shot injuries and, therefore, all three were taken to Alexia Hospital, Begusarai. On the way, his son-in-law Mukesh Singh succumbed to the injuries. Saket Chaudhary died in the hospital during the course of treatment. His statement was recorded by *Darogaji*. He has signed the said statement. It is also stated that the incident occurred due to filing



of the case by his son-in-law when extortion money was demanded from his son-in-law by the accused Balram Singh, Ram Bachan Singh, Butan Singh and his son.

8.2. During cross-examination, he has admitted that his *fardbeyan* was read over by *Darogaji*. It was not read out to him that he called his daughter. It was also not read out to him that his daughter came and his son-in-law told something in her ears. He further stated that he had called his daughter from inside the bus. He has further stated that the distance from his house and the house of his daughter-in-law is 7-8 kms. It is also stated that he had given the names of other people sitting in the bus in his *fardbeyan* as the witnesses. This witness has also stated in the cross-examination that about 10-15 buses were arranged for the *baratis*. Except 2 buses, all the buses had returned at night. All were smaller buses that came back. The city ride bus went only in the morning and one car remained for bride and bride-groom. In the city ride bus, 7-8 children were there and 6-7 people were also in the said city ride bus. He was sitting in the backside of the bus with children. The driver stopped the bus and ran away. He recognized the accused persons. He was sitting in the bus when the accused persons entered into the bus. Saket Chaudhary was shot at when he opposed the accused. First, Mukesh Kumar Singh was



shot and after that Saket Chaudhary was shot at. Mukesh Kumar Singh and Saket Chaudhary were sitting at the back seat of the driver. Mukesh Kumar Singh and Saket Chaudhary became unconscious on their seats. The accused persons fled away. He lifted both of them. He has further stated that S.I. went to the place of occurrence. Who had shown the place of occurrence to the S.I., he did not know. The injured persons were brought from the place of occurrence by other bus. The bus was not brought by the S.I. in the police station. He has further stated that the father of Mukesh Kumar Singh was coming in a mini bus behind their bus.

9. PW-10 Ram Pravesh Singh is also projected as an eye-witness by the prosecution. The said person is the father of the deceased Mukesh Kumar Singh. This witness has stated that the incident took place on 29.06.2012 at about 12:15 hours when he was returning from wedding ceremony of his son Amit Kumar Singh. When the bus reached at Pirpaiti, Maheshpur round-about, they found themselves surrounded from all sides. The driver Manoj Singh stopped the bus. The accused Sonu Singh and Manoj Singh boarded on the bus and started firing. During the said firing, his son Mukesh Kumar Singh @ Puttu Singh, who was sitting in the bus, sustained gunshot injuries. He spoke a few words from his mobile and died there. Balram Singh, Rambachan Singh, Munna



Singh and Chhotu Singh were firing on the bus from outside. Fudan Thakur and Saket Chaudhary also sustained bullet injuries. All the three were taken to Alexia Hospital, Begusarai for treatment. Saket Chaudhary died at the time when the medical treatment was given to him and the Doctor had declared his son Mukesh Kumar Singh died. The Inquest Report of Mukesh Kumar Singh was prepared in the Alexia Hospital. He had signed the Inquest Report. The said witness has also narrated about the cause for the motive on the part of the accused to kill his son.

9.1. During cross-examination, PW-10 has stated that several vehicles were present in the wedding (marriage procession). All the vehicles returned in the night. Only three vehicles were remaining. One of the three vehicles stayed there whereas second vehicle was the city ride bus. The wedding procession was returning in the said vehicle. He has further admitted that he was in an Alto Car. He had no conversation with the driver. Maheshpur is around 100 kms. from the place from where the bus started. His vehicle was running at a distance of 15-20 yards from the bus. The accused were sitting in the jungle hiding themselves and, therefore, they did not notice them. The first firing took place outside the bus. He was not afraid and went running towards the bus. When he entered the bus, he found his



son alive and speaking. Saket Chaudhary and Fudan Thakur were injured. After the incident, the accused fled away. The police was informed who came at the place within 10 minutes and took them to the hospital. Police had recorded the statement after two days and he had signed the said statement.

10. PW-5 Kiran Devi is the wife of the deceased Mukesh Kumar Singh. She has stated that her husband Late Mukesh Kumar Singh had gone in the marriage of his brother at Shalimpur, Patna and was returning from wedding procession. He was returning from the city ride bus. Manoj Singh was the driver of the bus. Manoj Singh telephoned and called Sonu Singh, Manoj Singh, Chhotu Singh, Balram Singh, Rambachan Singh and Murari Singh. Near Maheshpur, the bus was stopped and the accused Sonu Singh and Manoj Singh boarded the bus. Sonu Singh started firing in which her husband sustained injuries. Accused have been firing from all the sides. The accused used to demand extortion money from her husband as he was in the business of vehicles. Her husband previously filed a case and due to non-payment of extortion money, the accused killed her husband. The accused have also killed her relative Saket Chaudhary in the said incident and one Fudan Thakur also got bullet injuries. Fudan Thakur had gone



as a barber in the wedding procession. The said witness had identified the witnesses who were present in the Court.

10.1. During cross-examination, she has admitted that the incident was reported by her father. The *fardbeyan* is filed by her father. She has further stated that when the statement of her father was recorded, she was also present. Her statement was taken by Sub Inspector. She has further stated that when she reached at the place of incident, Sub Inspector had not reached. Her statement was taken in the hospital by the Police. Thereafter, she has stated that her statement was recorded on the second day. She has also stated that her father called at about 12:30 hours. Her house is less than half kilometer to the place of incident. It took less than 5 minutes to reach the place of incidence. When she reached there, her husband narrated all the details of the incident and then died. Pursuant to the question put by the Court, the said witness has stated that when she reached the place of occurrence, at that time, her husband was alive and, therefore, he narrated the details and then he died during the narration of the incident. She had not signed the F.I.R. but her father had signed.

11. PW-3 Dr. Raju is the Medical Officer at Sadar Hospital, Begusarai, who had performed the *post mortem* at about



04:30 p.m. on the dead body of the deceased Mukesh Kumar Singh @ Puttu Singh. The said Doctor found following injuries:-

“1) Wound 1/2” x 1/2” lacerated inverted tattooing and charring present around wound on right side angle of mouth. It is entry wound.

2) Wound 1 1/2” x 2” margin lacerated and averted on left temporal region of fiscal. It is exit wound.

3) Lacerated wound 1/2” x 1/2” margin inverted on right side of chest. It is entry wound.

4) Lacerated wound 2” x 2 1/2” margin averted on left side of lower limb. It is an exit wound.

5) Lacerated wound 1/2” x 1/2” margin inverted on left elbow on medical part.

6) Lacerated wound 1” x 1” on left elbow lateral side.

7) Lacerated wound 1/2” x 1/2” margin inverted on right elbow lateral part.

8) Lacerated wound 1” x 1” on right elbow medial part. It is an exit wound.

9) Lacerated wound 1” x 1” on right knee medial part margin inverted.

10) Lacerated wound 1 1/2” x 2” on right knee on lateral part. Margins averted.

On dissection, I found blood was present in cranial cavity and abdominal cavity. Stomach contain semi-digested food and bladder was empty.

In my opinion, the cause of death was due to hemorrhage and shock due to above injury caused by fire arm. Time since death- within 24 hours.”

11.1. During cross-examination, the said witness has stated that, in his opinion, the death should be after 6 hours from the time of *post mortem*. He has further stated that except Injury No. 1 and 2 all the injuries are not caused by close range.



12. PW-4 Dr. Pramod Kr. Singh was posted as Medical Officer at Sadar Hospital, Begusarai. The said Doctor had performed the *post mortem* on 29.06.2012 at 09:30 p.m. on the dead body of the deceased Saket Chaudhary. He found the following injuries:-

“1) One contused lacerated wound with small intestine coming out in left iliac fossa was covered with cotton and bandage (it was wound of exit) about 3” x 2” incised.

2) One bandaged operation (surgical) wound stitched in lower median abdomen about 4.2” long.

3) One contused lacerated wound with inverted margin (right) parasacral area 1^{1/2}” x 1”. It was wound of entry.

4) On dissection, whole abdomen was full of blood. Inferior vena cava, sigmoid colon and mesentery all were lacerated with multiple injuries. Inferior vena cava ruptured.

5) Foley’s catheter in situ and two intro catheters in both wrists were sealed.

In my view the cause of death was due to projectile (bullet) injury, injuring inferior vena cava and multiple coils of intestine leading to hemorrhagic shock.

Time left since death 24 hours. The dead body was handed over to accompanying police persons.”

12.1. During cross-examination, the said witness has stated that he found that the deceased was treated by some other Doctor earlier. He has further stated that after opening the injury, he did not find any charring and blackening, so it may be from long range firing.

13. PW-8 Dr. Dheeraj Shandilya has stated in examination-in-chief that he is the Director of Alexia Hospital,



Begusarai. On 29.06.2012, he was present in his hospital. He is also a Doctor of the said hospital. On 29.06.2012, Fudan Thakur was admitted in his hospital in an injured condition. He admitted the said patient and examined him and thereafter found the following injuries:-

“(i) Injury wound on right shoulder. Exit wound was not present.”

In his opinion, the nature of injury was grievous.

14. PW-9 Vishwamitra Singh is the Investigating Officer who had taken over the charge of the investigation on 29.06.2012. The Inquest Report of the deceased Mukesh Kumar Singh, Saket Chaudhary were prepared by him and another officer. The Seizure List was also prepared. The *fardbeyan* was in his writing and signature. Thereafter, he visited the place of occurrence. The place of occurrence is his village Maheshpur, Pipapanti Chowk, Kharanja Road. From the said place, two 9 mm misfired bullet, one 9 mm misfired bulled and four 9 mm fired bullets have been seized. He has further recorded the statement of the witnesses. He retired on 31.07.2012 and the investigation was handed over to Pankaj Kumar Jha.

14.1. During cross-examination of the said witness, he has stated that the informant has not told about the unknown persons. During his further statement also, the informant has not given the name of the passengers. He has further stated that the



incident took place inside the bus. He had seen the bus. However, he had not written in the case diary that he has seen the bus. The bus was also not brought to the police station after seizure. He has also not written in the investigation about the number of seats in the bus. He has not written about the distance between the place of occurrence and the house of the informant. He has also not written the name of the place from where the marriage procession had started. He had also not visited the place of marriage procession. The said witness has further stated that in the statement given by Kiran Devi, she had not stated that Manoj Singh called up Sonu Singh, Manoj Singh, Chhotu Singh, Balram Singh, Ram Bacchan Singh and Murari Singh on telephone and accused were firing from all around. The said witness has also not stated that the accused used to demand extortion money from her husband because he was a driver. The said witness further stated that witness Ram Binay Singh (informant) had not stated in his statement that his daughter came after he called her and also not said that they were adjacent to each other in bus. He has further admitted during cross-examination that witness Ram Binay Singh (informant) had not stated in his statement that his son-in-law was alive when his daughter came and he said something in her ears. The said Ram Binay Singh has also not stated that his son-in-law



Mukesh Kumar Singh died on the way. It is also admitted that Ram Binay Singh has stated in the *fardbeyan* that his son-in-law had died in the bus. The Investigating Officer has further admitted in cross-examination that he had not sent the cartridges for scientific examination and the seized items were not with him.

15. PW-7 Pankaj Kr. Jha is the Investigating Officer who had taken over the charge on 31.08.2012. The said Officer has arrested some of the accused and thereafter filed the charge-sheet against them. The criminal history of the concerned accused were also obtained by him. As and when the accused were arrested, supplementary charge-sheets were filed against the concerned accused.

16. The defense has also examined 3 witnesses, including DW-1 Fudan Thakur, who has sustained injury in the alleged occurrence as per the case of the prosecution. However, the prosecution did not examine him as a prosecution witness. We have also considered the deposition given by two other defence witnesses.

17. From the aforesaid evidence, it would emerge that the prosecution has projected two witnesses as an eye-witness. The informant Ram Binay Singh is the father-in-law of the deceased Mukesh Kumar Singh. In the *fardbeyan*, the said witness has



specifically stated that two of the accused boarded the bus and started firing in which his son-in-law, namely, Mukesh Kumar Singh sustained gunshot injuries on various parts of the body and he died on the spot in the bus. However, while giving the deposition before the Court, the said witness (PW-6) has stated that one Saket Chaudhary was also there in the bus with his son-in-law and when the accused started firing, Saket Chaudhary also sustained the gunshot injury and both of them became unconscious in the bus. Thereafter, they were lifted by him. This story is, for the first time, placed by the said witness before the Court. This witness has also stated before the Court, for the first time, that he made telephone call to his daughter Kiran Devi and informed her about the occurrence and thereafter his daughter Kiran Devi came at the place of occurrence and his son-in-law Mukesh Kumar Singh told something in the ears of his daughter. Thus, this story was, for the first time, put forward by this witness before the Court. At this stage, if the deposition of Investigating Officer (PW-9) is carefully examined, it is revealed that the Investigating Officer has admitted that the informant Ram Binay Singh had not stated in his statement that he called his daughter, and when she reached, his son-in-law stated something in her ears. It is further revealed that, as per the *fardbeyan*, the other accused persons



started firing from outside the bus. However, there is no reference with regard to the injury sustained by Saket Chaudhary and Fudan Thakur in the *fardbeyan*. It is the specific case of the appellants/accused that in the *fardbeyan*, two lines have been added subsequently with different ink wherein it has been stated that two other persons, whose names he did not know, are injured by bullets. Thus, in the *fardbeyan*, the informant did not state about the name of Saket Chaudhary and Fudan Thakur. It is to be recalled at this stage that, as per the case of the prosecution, all the three persons were taken to the Alexia Hospital, Begusarai and the *fardbeyan* was given after four hours in the hospital itself. In the *fardbeyan*, the informant has also not referred about the presence of his daughter Kiran Devi. Thus, we are of the view that there are major contradictions in the deposition of the informant and totally a new story has been deposed by him before the Court.

18. The second projected eye-witness is Ram Pravesh Singh, who is the father of the deceased Mukesh Kumar Singh. In the examination-in-chief, the said witness has narrated the story as if he was present in the city ride bus and he had seen the incident. However, during cross-examination, the said witness has stated that he was travelling in the Alto Car which was behind the city ride bus at a distance of 10-15 yards. The said witness has also put



forward some different story and there are major contradictions in his deposition. Thus, we are of the view that the so called eye-witnesses are projected as chance witnesses and their deposition cannot be relied as there are major contradictions and inconsistencies.

19. Kiran Devi is, admittedly, not an eye-witness to the occurrence and, as per the case of the prosecution, she reached at the place of occurrence after some time. It is stated by her that when she reached the place of occurrence, her husband was alive and he narrated the entire occurrence in her ears. However, if the *fardbeyan*, which was given after four hours from the time of occurrence, it is revealed that the informant has stated that Mukesh Kumar Singh died in the bus itself as a result of gunshot injury sustained by him. Even there is a dispute with regard to the distance between the place of occurrence and the house of the said witness. It is to be recalled that, as per the case of the prosecution, within 10 minutes, the Police reached the place of occurrence and all the three persons were taken to Alexia Hospital, Begusarai.

20. It is pertinent to note that though the informant has specifically stated that there were six other passengers in the city ride bus, none of them have been examined by the prosecution. Even injured Fudan Thakur was also not examined by the



prosecution. Further, from the medical evidence also, it is revealed that the death of Mukesh Kumar Singh was caused before 6 hours from the time of conducting the *post mortem*. If the time is carefully examined, we are of the view that the theory put forward by the prosecution is not supported by the medical evidence. As per the Doctor, except Injury No. 1 and 2 all the injuries were not caused by close range. At this stage, it is to be recalled that as per the case of the so called eye-witness Ram Binay Singh (informant), both the accused boarded the bus and started firing from the close range in which Mukesh Kumar Singh sustained injuries on various parts of his body.

21. It is further revealed from the record that the Investigating Officer has not seized any cartridges from the bus and it appears that the Investigating Officer has only seized certain cartridges from the road. Even bus was not examined and no article was seized from the bus. As per the *fardbeyan*, at two places, occurrence took place i.e. in the bus and outside the bus. However, the Investigating Officer has not even cared to collect any material from the bus. Further, it is also revealed that though certain empty cartridges of bullets were found from the road and the same were seized while preparing the Seizure List, there is no reference with regard to the blood-stains present at the said place



of occurrence i.e. the road. Even the empty cartridges or the bullets were not sent for necessary analysis to F.S.L. Even the country-made pistols from which the alleged firing took place were not discovered or recovered by the Investigating Agency.

22. From the aforesaid discussion, we are of the view that the prosecution has failed to prove the case against the appellants/accused beyond reasonable doubt, despite which, the Trial Court has passed the impugned order of conviction against the appellants. Hence, the impugned order is required to be quashed and set aside.

23. Accordingly, we set aside the common impugned judgment and order of sentence dated 23.01.2017/25.01.2017 passed by the learned Sessions Judge, Begusarai in Sessions Case No. 319 of 2013 arising out of Bhagwanpur (Tiyai) P.S. Case No. 68 of 2012. The appellants, namely, Ram Bachan Singh [Cr. App. (DB) No. 261 of 2017], Munna Singh [Cr. App. (DB) No. 288 of 2017], Sonu Kumar Singh @ Sonu Singh and Manoj Singh @ Manoj Kumar Singh [Cr. App. (DB) No. 365 of 2017] are acquitted of the charges leveled against them by the learned Trial Court.



24. Since, all the appellants, named above, are in custody, they are directed to be released from jail forthwith, unless their detention is required in any other case.

25. All these appeals are, accordingly, allowed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	21.12.2023
Transmission Date	21.12.2023

