

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.318 of 2015**

Arising Out of PS. Case No.-638 Year-2014 Thana- SASARAM NAGAR District- Rohtas

Sanjay Ojha son of Dina Nath Ojha resident of village Bahera, Police station
Kargahar, District Rohtas at Sasaram.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 311 of 2015

Arising Out of PS. Case No.-638 Year-2014 Thana- SASARAM NAGAR District- Rohtas

MAMTA DEVI @ MAMTA W/o Late Anil Ojha, Resident of Village -
Bahera, P.S. - Kargahar, District - Rohtas.

... .. Appellant/s

Versus

1. The State of Bihar
2. Ashwini Ojha @ Ashwini Kumar Ojha, Son of Dina Nath Ojha,
3. Gopal Ojha, S/o Late Bhuwaneshwar Ojha, Both are Resident of Village -
Bahera, P.S. - Kargahar, District - Rohtas.

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 318 of 2015)

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
Ms. Kiran Kumari, Advocate

For the State : Mr. Sujit Kumar Singh, APP

For the Informant : Mr. Sheojee Mishra, Advocate

(In CRIMINAL APPEAL (DB) No. 311 of 2015)

For the Appellant : Mr. Sheojee Mishra, Advocate

For the State : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

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

Date : 01-04-2024



Criminal Appeal (DB) No.318 of 2015 is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment of conviction dated 04.03.2015 and order of sentence dated 10.03.2015, passed by learned 3rd Additional Sessions Judge, Rohtas at Sasaram in S.T. Case No.852 of 2014, arising out of Sasaram Town P.S. Case No.638/14 whereby the learned Trial Court has convicted appellant Sanjay Ojha for the offence punishable under Section 302 of the Indian Penal Code and has sentenced him to undergo imprisonment for life and a fine of Rs.10,000/- and in default of payment of fine, appellant Sanjay Ojha has been sentenced to R.I. for one year. Appellant Sanjay Ojha has further been convicted for the offence punishable under Section 27 of the Arms Act and has been sentenced to suffer R.I. for three years and a fine of Rs.1,000/- and in default of payment of fine, appellant Sanjay Ojha has to undergo R.I. for three months.

2. Criminal Appeal (DB) No.311 of 2015 is filed under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment of acquittal dated 04.03.2015, passed by learned 3rd Additional Sessions Judge, Rohtas at Sasaram in S.T. Case No.852 of 2014, arising out of



Sasaram Town P.S. Case No.638/14 whereby the learned Trial Court has acquitted respondents, namely, Ashwini Ojha @ Ashwini Kumar Ojha and Gopal Ojha from the charges under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

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

3.1 Fardbeyan of Mamta Devi came to be recorded on 19.07.2014 at 07:45 PM in the emergency ward of Sadar Hospital, Sasaram wherein the informant has stated that on 19.07.2014 at about 04:30 PM, quarrel took place between her husband, namely, Anil Ojha, Ashwini Ojha and Gopal Ojha at village Bahera. It is alleged that accused Ashwini Ojha called his brother Sanjay Ojha from Sasaram who came there alongwith four unknown persons armed with weapons. It is also alleged that her husband could not go to Kargahar police station at that time and he proceeded for Sasaram with his nephew Arun Dubey by motorcycle. The informant came to know that her husband was being chased by accused Sanjay Ojha, Ashwini Ojha, Gopal Ojha, Ashok Ojha and four unknown persons. The brother of the informant, namely, Santosh Kumar Pandey also proceeded behind them and at about 06:30 P.M. the informant was informed on phone that her husband was surrounded by all the accused persons and appellant Sanjay



Ojha shot fire on the head of Anil Ojha, who sustained bullet injury and died. The informant after getting information came to Sadar Hospital, Sasaram alongwith her family members and found her husband dead.

3.2 After registration of the formal FIR on the basis of the aforesaid fardbeyan, the Investigating Agency started investigation. During course of investigation, the Investigating Officer recorded the statement of the witnesses, collected the documentary evidence and thereafter filed charge-sheet against all accused persons.

3.3 As the case was exclusive triable by court of sessions, the learned Magistrate committed the same to the concerned sessions court on 20.11.2014 where the same was registered as S.T. Case No.852 of 2014.

3.4 During course of trial, the prosecution had examined seven witnesses, namely, P.W.-1, Arun Kumar Dubey, P.W.-2, Santosh Kumar Pandey, P.W.-3, Mamta Devi, P.W.-4, Birendra Ojha, P.W.-5, Sunil Kumar Ojha @ Dharmendra Ojha, P.W.-6, Dr. Sidheshwar Prasad Singh and P.W.-7, Om Prakash Singh. Documentary evidence was also produced before the Trial Court. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the



Trial Court acquitted the accused, Ashwini Ojha and Gopal Ojha whereas appellant Sanjay Ojha has been convicted for the aforesaid offences as stated hereinabove.

3.5 Against the judgment of conviction and order of sentence passed by the learned Trial Court, appellant, namely, Sanjay Ojha has filed Criminal Appeal (DB) No.318 of 2015 whereas against the judgment of acquittal of two accused, namely, Ashwini Ojha and Gopal Ojha, the informant has filed Criminal Appeal (DB) No.311 of 2015.

4. Heard Mr. Ajay Kumar Thakur, learned counsel for the appellant, Mr. Sujit Kumar Singh, learned APP for the State in both the appeals as well as Mr. Sheojee Mishra, learned counsel appearing on behalf of the informant.

5. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of appellant-convict submits that there is delay of two days in sending the copy of FIR to the court. It is pointed out from the record that fardbeyan of P.W.-3, Mamta Devi came to be recorded on 19.07.2014 however, the concerned Magistrate Court received the copy of the FIR on 21.07.2014. It is further submitted that P.W.-3, the informant has specifically admitted during cross-examination that on paper the police took her signature. The said paper was written and the same was not read over to her.



Thereafter she met the police after two days. At this stage, it is also pointed out that P.W.-4, who is fardbeyan attesting witness, has also stated that he went to Sadar Hospital, Sasaram and he cannot say that when he reached in the hospital, the case was lodged or not and on written paper he put his signature at about 08:30-09:00 P.M. at Sadar Hospital, Sasaram however, what was written was not known to him. On the said paper, there was signature of Mamta Devi (P.W.-3) from before. At the instance of police personnel he put the signature. At this stage, it is also contended that fardbeyan of P.W.-3 was recorded by Police Sub-Inspector, Dinesh Paswan. However, the said witness has not been examined by the prosecution. Thus, it is contended that the contents of the FIR are not proved by the prosecution.

5.1. Learned Avocate Mr. Thakur would further submit that it is surprising that though P.W.-1 and P.W.-2, who are claiming to be eye witnesses to the occurrence in question, were present in the hospital when the injured was taken to the hospital, the statement was not recorded on the same day. It is submitted that statement of aforesaid two witnesses under Section 161 of the Code came to be recorded on 21.07.2014, i.e., after two days. Learned counsel has referred the deposition of the aforesaid two witnesses and thereafter contended that there are major



contradictions and discrepancies in the deposition. In fact, they are not the eye witnesses but they can be called chance witnesses.

5.2. Mr. Thakur, learned counsel for the appellant-convict further submits that as per the case of the prosecution, the police arrived at the place of occurrence and took the deceased to the hospital. However, the person, who had taken the injured (deceased) to the hospital, has not been examined by the prosecution and even the station diary entry was not produced before the Court. It is further submitted that who has shown the place of occurrence to the Investigating Officer is also not known. The learned Advocate referred the deposition of P.W.-7, the Investigating Officer and thereafter submitted that there are two places of occurrence. The place where firing took place and the deceased sustained gun shot injury is the first place of occurrence whereas the place where the deceased fell down after running away in order to save his life is the second place of occurrence. The Investigating Officer has specifically stated that at the first place of occurrence, blood was not found however, at the second place of occurrence small traces of blood was found.

5.3. Learned counsel for the appellant-convict thereafter contended that though it is the case of P.W.-1 that he was driving the motorcycle and Anil Ojha was sitting as pillion rider and after



the firing took place, the motorcycle fell down but surprisingly P.W.-1 did not sustain any injury in the said occurrence. Even the conduct of P.W.-1 and P.W.2, who are claiming to be eye witnesses, is also required to be scrutinized closely. It is also submitted that though they are near relatives of the deceased, the injured Anil Ojha was not taken to the hospital by the said two persons and in fact police came at the place of occurrence on getting information on phone made by third person. It is also submitted that the independent witnesses, though present at the place of occurrence, have not been examined by the prosecution. Learned counsel, therefore, urged that the prosecution has failed to prove the case against the appellant-convict beyond reasonable doubt. The Trial Court has passed the judgment of conviction and order of sentence against the appellant-convict and, therefore, the said judgment of conviction and order of sentence are required to be quashed and set aside.

5.4. It is lastly submitted that the learned Trial Court has not committed any error while acquitting the two other co-accused, namely, Ashwini Ojha @ Ashwini Kumar Ojha and Gopal Ojha by not believing the story put forward by the prosecution. He, therefore, urged that the appeal filed by the informant against the judgment of acquittal may be dismissed.



6. On the other hand, the learned APP for the State as well as learned counsel appearing for the informant have opposed the conviction appeal filed by the convict. It is contended that there is ample material in the form of evidence produced by the prosecution before the Trial Court against the appellant-convict. It is submitted that there are two eye witnesses to the occurrence in question and they have supported the case of the prosecution. Further, the medical evidence also supports the version given by the two eye witnesses, therefore, the Trial Court has not committed any error while convicting appellant Sanjay Ojha. However, it is submitted that the Trial Court has wrongly discarded the version given by the prosecution witnesses, who are the other two co-accused, and thereby committed an error while passing the judgment of acquittal in favour of other two co-accused, namely, Ashwini Ojha @ Ashwini Kumar Ojha and Gopal Ojha.

7. We have considered the submissions canvassed by learned counsel appearing for the parties, we have also perused the materials placed on record, the evidence led by the prosecution and the defence before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined seven witnesses.



8. P.W.-1, Arun Kumar Dubey has stated in his deposition that on 19.07.2014 at about 06:00 P.M., he was coming with his maternal uncle by motorcycle and reached near breaker situated towards north of over bridge where Gopal Ojha, Ashwini Ojha, Sanjay Ojha and other 6-7 persons surrounded them. Ashwini Ojha was armed with Katta and Gopal Ojha was armed with gun. Sanjay Ojha shot fire on the temple of Anil Ojha. Ashwini Ojha also shot fire which did not hit Anil Ojha. This witness further deposed that his maternal uncle fell down. Thereafter police and ambulance came there and brought Anil Ojha to Sadar Hospital, Sasaram where the doctor declared him dead. This witness further deposed that quarrel took place between Ashwini Ojha, Gopal Ojha and others in the village.

8.1. P.W.-1 has stated in his cross-examination that his village is about 60-65 K.M. away from the place of occurrence. There was land dispute between his maternal uncle and accused persons. There was quarrel between the parties on the day of occurrence. This witness further stated in his cross-examination that he did not see whether quarrel took place in the village or not. He was on the door. Quarrel took place at about 03:00 P.M. at a distance of 200-250 yards from the house of his maternal uncle and none has sustained any injury. This witness further stated in



his cross-examination that he cannot say whether any case was lodged or not with regard to the quarrel. He was driving the motorcycle and he does not have the licence. The deceased sustained bullet injury at the distance of 2-4 steps where the over bridge starts. Gorakshini market is situated before the over bridge. This witness further stated in his cross-examination that he did not shout. He did not pay attention whether people gathered there or not. The police reached there after half an hour. No family member of his maternal uncle was present there. The police did not inquire from me rather the police inquired from Santosh. Santosh told about the incident. He did not pay attention whether the police prepared paper or not. The police picked up his maternal uncle in their presence. No paper was prepared in the hospital before him. This witness was present in the hospital till 12 O' clock in the night. The police did not inquire him on the day of occurrence. The police inquired from him on 21 at the house of his maternal uncle situated in Mahdiganj.

9. P.W.-2, Santosh Kumar Pandey has deposed in his examination-in-chief that the occurrence took place on 19.07.2014. At about 03:30 P.M. he was at his brother-in-law's place situated in village Bahera. At 03:30 P.M., this witness and Arun Dubey were present at the door of Anil Ojha. Then scuffle took place between



Anil Ojha and Ashwini Ojha. Thereafter Anil Ojha came to home and Ashwini Ojha alongwith Gopal Ojha also came behind him. This witness further deposed in his examination-in-chief that Ashwini Ojha called Sanjay Ojha from mobile. Sanjay Ojha came to village Bahera alongwith 2-4 other persons and threatened. Thereafter this witness sent Arun Dubey and Anil Ojha from Bahera to Sasaram. Sanjay Ojha said that he would kill his sister's husband. This witness further deposed that he informed Anil Ojha immediately by phone and he also went behind Anil Ojha. Arun Dubey and Anil Ojha were sitting on a motorcycle and he was also on a bike behind them. P.W.-2 further deposed that they reached near Gorakshini breaker. Thereafter 6-7 persons surrounded Arun Dubey and Anil Ojha. This witness recognized three of them, namely, Sanjay Ojha armed with Katta, Gopal Ojha armed with licensee gun and Ashwini armed with Katta. Sanjay Ojha shot fire on the temple of Anil Ojha. Ashwini Ojha also shot fire. Arun Dubey also ran away behind Anil. Thereafter police came. P.W.-2 also deposed in his examination-in-chief that he called his sister and two brothers of Anil telephonically. Police came after 10-15 minutes. There was blood on the ground where Anil fell down. The police inquired him and called ambulance and they brought Anil Ojha to Sadar Hospital, Sasaram where the doctor declared him



dead. Thereafter the wife of the deceased came to the hospital where police took her statement. It is further deposed that a dispute is going on between them.

9.1. P.W.-2 has stated in his examination-in-chief that both the parties are agnates. On the day of occurrence, scuffle took place at about 03:00-03:30 P.M. with his brother-in-law. Nobody sustained any injury. The family member of his brother-in-law, namely, Sunil Ojha was ill and he was being treated in Banaras. Sunil, Birendra and his wife were in Banaras. His sister was in the village. When the threat was being given, no witness was present there. This witness further stated in his examination-in-chief that he called his brother-in-law at 5 o'clock that he is under threat. He proceeded from Bahera at 05:00-05:15 P.M. He stopped in Agrer. Police station is situated 100-150 yards away from the place where he stopped in Agrer. This witness also travelled by a motorcycle and he could not remember the number of the motorcycle. The motorcycle belonged to his brother-in-law. It is further stated by P.W.-2 in his examination-in-chief that he reached Agrer at about 05:45 P.M. He heard two rounds of firing. He did not left his motorcycle after hearing the sound of firing. The shopkeepers did not come out from the shop rather they closed their shop. Anil Ojha sustained bullet injury in the sitting position. His nephew



Arun was driving the motorcycle. He told the administration that he had seen the incident. No one other than him told the administration about the incident. The administration did not make any inquiry from the neighbours on that day. The police only asked whether there was anyone with the deceased or not, then he replied that he was there. This witness put his signature in the hospital. He put his signature at about 09:00-10:00 P.M. He did not read the content. This witness further stated in his examination-in-chief that he gave his statement to the police on 21.07.2014 in his house situated at Mahdiganj. He had not discussed about the incident with anyone in Mahdiganj. He met with his relatives and family members during his stay at Mahdiganj. This witness further stated in his examination-in-chief that he had stated before the police that there were 4-5 unknown persons at the time of incident armed with rifle and country made pistol. He had not told about the appearance and age of those unknown persons.

10. P.W.-3, Mamta Devi is the informant of the case. This witness deposed in her examination-in-chief that the incident took place on 19.07.2014. She was at home in village Bahera. Her husband came running inside the house at 03:00-03:30 P.M. Ashwini Ojha and Gopal Ojha also came behind her husband and went inside their house. Their house is situated 10-15 steps away



from her house. She went at the door of her house and saw Gopal Ojha carrying double barrel gun and Ashwini Ojha carrying Katta. She closed the door of her house. When she was at the roof of her house, her brother Santosh Pandey and nephew Arun Dubey were also present in the house. Ashwini Ojha called Sanjay Ojha. Thereafter Sanjay Ojha alongwith 4-5 unknown persons came and threatened to kill her husband. Sanjay Ojha told her brother that your brother-in-law would be killed.

10.1. P.W.-3, Mamta Devi stated in her cross-examination that it took time to reach Sasaram from Bahera. She reached Sasaram at about 08:00 P.M. It is further stated that she became unconscious five minutes after reaching hospital and remained unconscious till 9 O'clock. She met with the police ten minutes after regaining consciousness. The police got her signature on a paper. Police did not read that paper. This witness further stated in her examination-in-chief that she has not read that paper till date. Thereafter she met with the police after two days. It is further stated that she did not see the place where her husband fell down. It is not the case that she had not informed the police that her husband had come running at 03:30 P.M.

11. P.W.-4, Birendra Ojha has deposed in his examination-in-chief that the occurrence took place on 19.07.2014.



He was getting Sunil Ojha and Dharmendra Ojha treated at B.H.U. in Banaras. At about 03:45 P.M., Santosh Pandey called him by phone that scuffle took place between Anil Ojha, Ashwini Ojha and Gopal Ojha. This witness reached Sasaram hospital at about 07:45-08:00 P.M. He met with Mamta, Santosh Pandey and Arun Dubey there. The police took statement of this witness on 21st at the residence situated in Mohaddiganj.

11.1. P.W.-4 has stated in his examination-in-chief that he met 4-5 people of the neighbourhood in Mohaddiganj. He could not tell their name. This witness has put his signature on a written document at about 08:30-09:00 P.M. He did not read what was written in the document. Mamta's signature was already there on the paper. The policemen got him to sign the application. This witness talked to Santosh Pandey at about 08:15 P.M. in the hospital. It is further stated by this witness in his cross-examination that he could not tell whether the inquest had been prepared till the time of talk or not. He did not pay heed whether the document was made or not. At the time of giving statement to the police, they were disturbed and could not remember what statement has been given.

12. P.W.-5, Sunil Kumar Ojha @ Dharmendra Ojha has stated in his examination-in-chief that the occurrence took place



on 19.07.2014 and he was getting himself treated in B.H.U., Banaras. His brother and his sister-in-law were with him. Santosh Pandey gave him information through mobile at about 03:45-04:00 P.M. that quarrel took place between Anil Ojha (deceased), Ashwini Ojha and Gopal Ojha. Thereafter Gopal Ojha and Ashwini Ojha came at his door and threatened to kill Anil Ojha. This witness further deposed that thereafter they called Sanjay Ojha. Sanjay Ojha came after one hour with 4-5 unknown persons. After getting information, this witness sent his brother Birendra Ojha. Thereafter at about 06:00-06.30 in the evening, he got information that Sanjay Ojha shot fire on the temple of Anil Ojha and Anil Ojha died. This witness further deposed that he became unconscious after getting the information.

12.1. P.W.-5, Sunil Kumar Ojha @ Dharmendra Ojha has stated in his cross-examination that he was admitted in B.H.U. He was discharged on 19.07.2014 at 12 O'clock in the night. He did not give any information regarding his illness to his department. He did not hand over the mobile to the police on which he received information. He did not tell the police that by which mobile he got information. At the time of quarrel in Bahera village, only Anil Ojha and his wife were present. This witness further stated in his cross-examination that he went to the hospital



on 20.07.2014 at about 08:30-09:00 A.M. None of the family members was present there. Birendra Ojha, Santosh Pandey, Arun Dubey, Manoj Mishra and Ravi Mishra went to the hospital. The dead body was received by Birendra Ojha. He did not go to the place of occurrence with the police. The place of occurrence is about 1-1.5 K.M. from his house situated at Mohadiganj. The police did not go to village Bahera in his presence. This witness further stated in his cross-examination that he did not tell the police that he arrived Sasaram Sadar Hospital at 03:00 A.M. after getting information. He told the police that 4-5 persons surrounded the deceased and Sanjay Ojha shot fire.

13. P.W.-6, Dr. Sidheshwar Prasad Singh had conducted the post-mortem on the dead body of the deceased and found following injuries:

(i) Rigor mortis absent in upper limb & lower limb.

Lacerated wound 1/2” diameter inverted margin cavity deep blackening around wound right parietal region, wound of entry.

(ii) Lacerated wound 1-1/2” diameter inverted margin cavity deep left temporal region (wrongly written as right region due to slip of pen) behind ear, wound of exit.



(iii) Also found fracture of right parietal bone, fracture of left temporal region.

Cause of death- Haemorrhage & shock due to above mentioned injuries caused by firearm.

14. P.W.-7, Om Prakash Singh, who is the Investigating Officer of this case, has deposed in his examination-in-chief that the fardbeyan is in the handwriting and signature of S.I. Dinesh Paswan. He left for investigation at 05:00 A.M. on 20.07.2014. The inquest report is in the handwriting and signature of Dinesh Paswan. It is further deposed that there are two places of occurrence of the present incident, first, where the deceased was killed and second, where the deceased was found dead. The first place of occurrence is situated on Gorakshini-Ara-Sasaram main road near a breaker whereas the second place of occurrence is a road which goes towards Sasaram Station. A faint mark of blood was found on the spot. It is further deposed by this witness in his examination-in-chief that during investigation, he recorded the statements of Arun Kumar Dubey, Santosh Kumar Bhanu, Birendra Ojha, Sunil Ojha @ Dharmendra Ojha, informant Mamta Devi, Rameshwar Ojha, Gangotri Devi and Ravi Kumar. The CDR of mobile number of Gopal Ojha 9766990316 from 15.07.2014 to 22.07.2014 is mentioned in para 79 of the case diary. It is further



deposed that he perused the CDR by which it was found that conversation has taken place on the day of incident with mobile numbers 8521735892, 9504428360 and 8651877989. Mobile number of Sanjay Ojha is mentioned in para-91. The location of mobile number 8494097293, whose CDR from 16.07.2014 to 25.07.2014 has been received, is Jammu & Kashmir.

14.1. In the cross-examination, it is mentioned in para 4 of the case diary that, on 19.07.2014 at 07:00 o'clock, he received telephonic information that someone has been killed in Gorakshini. This witness further deposed that he did not record the statement of residents those who lived near the first place of occurrence, as they were not ready to give their statement. It is mentioned in para 15 of the case diary that none of the witnesses turned up for recording their respective statement. This witness further deposed that he did not find any trace of blood at the first place of occurrence. He did not seize anything from the second place of occurrence and he found small traces of blood there. This witness further stated in his cross-examination that accused Ashwini Ojha and Gopal Ojha on the day of occurrence at 05:30 P.M. appeared at Kargahar police station and registered Case No.180/14. After that, they were sent to Kargahar hospital from where the doctor referred them to Sasaram. Ashok Ojha is in



C.R.P.F. in Jammu & Kashmir, hence, he has been falsely implicated in the case. This witness further stated that he did not register the fardbeyan. He did not prepare the inquest report. The statement of Arun Kumar is in para 31. Arun Kumar Dubey in his statement had not stated that Sanjay Ojha came and shot at the right temple. He had not also said that the shot fired by Ashwini Ojha did not hit. Witness Santosh Pandey in his statement in para 32 had not stated that Ashwini Ojha and Gopal Ojha went abusing at the door and thereafter they went to their house and came with gun and Katta, threatened to kill and after that Ashwini Ojha called Sanjay Ojha by mobile and after one hour, Sanjay Ojha came and threatened to kill.

15. We have re-appreciated the entire evidence led by the prosecution as well as the defence before the Trial Court. It would emerge from the record that there is delay of two days in sending the copy of FIR to the court. It is pointed out from the record that fardbeyan of P.W.-3, Mamta Devi came to be recorded on 19.07.2014 however, the concerned Magistrate Court received the copy of the FIR on 21.07.2014. It would also emerge that fardbeyan of P.W.-3 was recorded by Police Sub-Inspector, Dinesh Paswan. However, the said witness has not been examined by the prosecution. It is surprising that though P.W.-1 and P.W.-2, who are



claiming to be eye witnesses to the occurrence in question, were present in the hospital when the injured was taken to the hospital, their statement was not recorded on the same day rather the statement of aforesaid two witnesses under Section 161 of the Code came to be recorded on 21.07.2014, i.e., after two days. What further appears from the record is that as per the case of the prosecution, the police arrived at the place of occurrence and took the deceased to the hospital however, the person, who had taken the injured (deceased) to the hospital, has not been examined by the prosecution and even the station diary entry was not produced before the Court. It would further reveal from the deposition of P.W.-7, the Investigating Officer that there are two places of occurrence. The place where firing took place and the deceased sustained gun shot injury is the first place of occurrence whereas the place where the deceased fell down after running away in order to save his life is the second place of occurrence. The Investigating Officer has specifically stated that at the first place of occurrence, blood was not found however, at the second place of occurrence small traces of blood was found. It is the case of P.W.-1 that he was driving the motorcycle and Anil Ojha was sitting as pillion rider and after the firing took place, the motorcycle fell down but surprisingly P.W.-1 did not sustain any injury in the said



occurrence. It would further emerge from perusal of the record that P.W.-1 and P.W.-2 are near relatives of the deceased but the injured Anil Ojha was not taken to the hospital by the said two persons and in fact police came at the place of occurrence on getting information on phone made by third person. The independent witnesses, though present at the place of occurrence, have not been examined by the prosecution.

16. We also found major contradictions and discrepancies in the deposition of the prosecution witnesses and we are of the view that the so called eye witnesses are in fact chance witnesses and their presence at the place of occurrence was doubtful.

17. In the facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt, despite which the Trial Court has recorded the order of conviction. Hence, the impugned judgment is required to be set aside. We are also of the view that the learned Trial Court has not committed any error while acquitting the two other co-accused, namely, Ashwini Ojha @ Ashwini Kumar Ojha and Gopal Ojha by not believing the story put forward by the prosecution.



18. Accordingly, the impugned judgment of conviction dated 04.03.2015 and order of sentence dated 10.03.2015 passed by learned 3rd Additional Sessions Judge, Rohtas at Sasaram in connection with S.T. Case No.852 of 2014, arising out of Sasaram Town P.S. Case No. 638/14 are quashed and set aside. The appellant, namely, Sanjay Ojha is acquitted of the charges levelled against him by the learned trial court. Since the appellant, named above, is in jail, he is directed to be released forthwith, if his presence is not required in any other case.

19. In the result, Criminal Appeal (DB) No.318 of 2015 is allowed and Criminal Appeal (DB) No.311 of 2015 is dismissed.

(Vipul M. Pancholi, J.)

(Sunil Dutta Mishra, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.04.2024
Transmission Date	04.04.2024

