

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.358 of 1995**

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Manglesh Singh @ Jata Singh, son of Late Ram Sewak Singh, resident of
Village- Bilap, P.S.- Bihta, District- Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant : Mr. Sudhanshu Kumar Lall, Advocate
Mr. Dhananjay Kumar, Advocate

For the State : Mr. Dilip Kumar Sinha, APP

For the Informant : Mr. Manoj Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 09-02-2022

This appeal is directed against the judgment dated 27.09.1995 and the consequent order dated 28.09.1995 passed by the learned Additional Sessions Judge Seventh, Patna in Sessions Trial No. 742 of 1993 whereby and whereunder the appellant has been convicted for the offences punishable under Section 302 of the Indian Penal Code (for short 'IPC') and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life under Section 302 of the IPC and rigorous imprisonment for five years under Section 27 of the Arms Act.



2. On 07.05.1993 at 11:10 AM, one Dharendra Kumar (P.W.7) son of Ramadhar Sharma, resident of village Bilap, P.S.- Bihta, District- Patna gave his oral statement (fardbeyan) at Bihta Police Station before one Ram Pravesh Singh (P.W.9), an Assistant Sub-Inspector of Police, Bihta Police Station alleging therein that on the same day at 10:00 AM, he along with his father was returning home after spading soil in the sugarcane field and as soon as they reached near the house of the appellant, he saw Awadhesh Singh and the appellant sitting there armed with gun and pistol respectively. Seeing him and his father, Awadhesh Singh hurled abuses. He ordered the appellant to kill his father Ramadhar Sharma for the alleged cutting of ridge of the field. On the order of Awadhesh Singh, the appellant fired from his pistol, which hit his father in his back as a result of which he fell down and started struggling for life. Immediately thereafter, Awadhesh Singh also fired from his gun, which hit him on the left palm in between left thumb and left index finger and bleeding started. He raised hulla upon which the neighbours and other co-villagers rushed there and saw the occurrence. He stated that his injured father was taken to Dariyapur on a cot for treatment at Dariyapur Hospital and from Dariyapur he was referred to the Referral Hospital, Bihta, where the doctor declared his father dead after examining him. The dead



body of his father was taken to Bihta Police Station. He claimed that Awadhesh Singh and the appellant resorted to firing with an intention to kill his father as also to kill him.

3. On the basis of the aforesaid oral statement of the informant Dhirendra Kumar, Bihta Police Station Case No. 81 of 1993 dated 07.05.1993 was registered under Sections 302 and 307/34 of the IPC and Section 27 of the Arms Act and investigation was taken over by the ASI Ram Pravesh Singh himself.

4. On completion of investigation, the police submitted charge-sheet against the appellant and Awadhesh Singh under Sections 302, 307/34 of the IPC and Section 27 of the Arms Act in the court of A.C.J.M., Danapur.

5. The learned A.C.J.M., Danapur took cognizance of the offences and after supplying the documents in compliance with Section 207 of the Code of Criminal Procedure (for short 'Cr.P.C.'), committed the case to the court of Sessions vide order dated 07.10.1993.

6. Later on, the learned Sessions Judge, Patna transferred the case to the court of 7th Additional Sessions Judge, Patna. The learned 7th Additional Sessions Judge explained the charges under Section 302 of the IPC and Section 27 of the Arms



Act to the appellant Manglesh Singh and Sections 302/34 and 307 of the IPC as also Section 27 of the Arms Act to Awadhesh Singh. Both of them denied the charges and claimed to be tried. Accordingly, charges under the aforesaid provisions were framed and the trial commenced.

7. During trial, the prosecution examined as many as nine witnesses in order to prove the charges. Out of them, Raj Deo Ram (P.W.1), Kundan Kumar (P.W.2) and Dharendra Kumar (P.W.7) claimed themselves to be the eye-witnesses to the incident whereas Jitendra Kumar (P.W.3) and Yogendra Singh (P.W.4) are hearsay witnesses. Dr. Basuki Nath Gupta (P.W.5) is the doctor, who had held the post-mortem examination on the body of the deceased, Ram Pravesh Singh (P.W.9) is the first Investigating Officer (for short 'I.O.')

 and Asrar Ahmad (P.W.8) is the second I.O. of the case.

8. **Dhirendra Kumar (P.W.7)** is the informant of the case. He is the son of the deceased. In his examination-in-chief, he has corroborated the allegations made in his oral statement on the basis of which the first information report (for short 'FIR') was instituted. He stated that at the place of occurrence, Kundan Kumar (P.W.2), Raj Deo Ram (P.W.1), Anil Sharma (not examined) and several other co-villagers were present and had



witnessed the incident. He further stated that Raj Deo Ram had wrapped the wound of his father by means of *gamchha* and his father was taken on a cot with the help of other witnesses to Dariyapur from where he was taken to the Referral Hospital, Bihta by jeep where the doctor declared his father dead after examining him and then the dead body was taken to Bihta Police Station. His statement was recorded by an A.S.I. of Police (P.W.9) and he and his brother Jitendra Kumar (P.W.3) put their signature on it. He further stated that the A.S.I. (P.W.9) had prepared the inquest report of the deceased in presence of Raj Deo Ram (P.W.1) and one Anil Sharma (not examined). He further disclosed that he had filed a protest petition against the I.O. of the case in the court of A.C.J.M., Danapur as he was not arresting the miscreant Awadhesh Singh. It was one Akhilesh Singh, an advocate, who had drafted the application, which was typed by one Dinesh Singh in his presence and on that the said advocate had put his signature. He had also executed vakalatnama in his favour on which the learned advocate had put his signature. He produced the protest petition before the court, which was marked as Exhibit-5. He also proved the vakalatnama executed by him in favour of Akhilesh Singh, which was marked as Exhibit-6. He identified Awadhesh Singh and the appellant in the court.



9. In cross-examination, P.W.7 stated that first of all he went to the hospital and, thereafter, he visited the police station. In the hospital, he had stayed for 15-20 minutes. The doctor had examined his injury also, but at that time no treatment was provided. Subsequently, when he returned from the police station, the doctor provided him treatment and his wound was stitched. He stated that when the body of the deceased was taken to the police station, the I.O. had seen the blood stained *ganchha*. He stated that Anil Sharma and Raj Deo Ram had told the I.O. that the injury on the person of the deceased was caused by the appellant Manglesh Singh. However, he immediately retracted and said that he does not remember as to whether they had stated the name of the assailant before the police or not. He admitted that when he returned back, the I.O. had visited the place of occurrence, but no used pellet or empty cartridge or wad was found. The I.O. had seen that the grass was uprooted and earth and ashes were thrown at the place of occurrence. Again, he retracted by saying that he does not remember as to whether the I.O. had found mark of blood or not at the place of occurrence. He admitted that he had not seen any person removing the earth or throwing ashes at the place of occurrence. He was not even told by anyone in this regard. He admitted that the place of occurrence is not a lane used by general



people rather it was his private lane and the accused persons had no concern with that place as their house is situated at some distance from there. He denied the defence suggestion that he himself had not witnessed the occurrence. He also denied the defence suggestion that the dead body of the deceased was recovered in the field and the same was brought one day after the incident. He further stated that it is not true that he had not sustained gunshot injury. He also denied the defence suggestion that the place of occurrence, cause of occurrence and the manner of occurrence were different. He stated that he had not taken the I.O. to show that they had not cut the ridge of the field. He denied the defence suggestion that the I.O. had inspected the place of occurrence and found that neither the field was spaded nor the ridge was damaged nor the field of the accused persons was situated adjacent to the place of occurrence. He stated that he had lodged a complaint against the I.O. before the Assistant Superintendent of Police. He further stated that no blood was found on his clothes. He denied the defence suggestion that on the instigation of his agnate Chotan Singh he has falsely implicated the accused Awadhesh Singh.

10. **Raj Deo Ram (P.W.1)** stated in his evidence that on 07.05.1993 at 10:00 AM he was removing pile of garbage in the



lane situated in the north of the house of Hari Nandan Singh. He saw the deceased Ramadhar Sharma and his son Dhirendra Kumar @ Chote coming after working in the field. At that time, the appellant Manglesh Singh @ Jata Singh was armed with pistol and the accused Awadhesh Singh was armed with gun. Awadhesh Singh started abusing Ramadhar Sharma and ordered Manglesh Singh to kill him. Thereupon, the appellant fired from his pistol at Ramadhar Sharma. Though Ramadhar Sharma tried to run away, he fell down on receiving the shot. When Dhirendra Kumar tried to rescue his father, Awadhesh Singh fired at him causing injury on his left palm in between left thumb and left index finger. He stated that he along with Anil Sharma, Kundan Kumar and others reached near the place of occurrence and saw Ramadhar Sharma lying down and struggling for life. Thereafter, he tied the wounds on the left side of the back of Ramadhar Sharma with his gamchha and carried him on a cot to Dariyapur with the help of Anil Sharma, Kundan Kumar and Dhirendra Kumar. He stated that from Dariyapur, the injured Ramadhar Sharma was taken to the Referral Hospital, Bihta by jeep where he was declared dead by the doctor, whereafter, the dead body was taken to the police station where the FIR was lodged. He stated that the injured Dhirendra Kumar was



also treated at the hospital. He identified both the accused persons in the court.

11. In cross-examination, his attention was drawn towards his previous statement made before the police during investigation. He stated that he had told the I.O. that when Ramadhar Sharma and Dharendra Kumar were returning back after working in their field, he saw the appellant Manglesh Singh and the accused Awadhesh Singh armed with pistol and gun respectively and they were abusing Ramadhar Sharma. He further stated that he had stated before the police that Awadhesh Singh had ordered Manglesh Singh to kill Ramadhar Sharma upon which the appellant Manglesh Singh fired from his pistol which hit him while he was trying to run away as a result of which he fell down. He stated that he had also stated that when Dharendra Kumar tried to rescue his father, Awadhesh Singh fired from his gun causing injury to him on his left palm in between left thumb and left index finger. He admitted that he had not seen Ramadhar Sharma keeping his spade at the door of Kundan Kumar. He stated that he had not made such statement before the police. He further stated that he had informed the police that it was the informant Dharendra Kumar, who told his father that the appellant had fired at him. He further stated that he had made his statement before the police that



he along with Anil Sharma, Kundan Kumar and others had reached at the place of occurrence and seen Ramadhar Sharma fallen down on the ground struggling for life. At that time, Ramadhar Sharma was wearing *lungi* and *ganji*, which were drenched with blood. He stated that he had told the police that he had wrapped the wound on the back of Ramadhar Sharma by means of *gamchha* as a result of which *gamchha* was also drenched with blood. He denied to have stated before the police that the *gamchha* was wrapped around the abdomen of the deceased. He stated that immediately after the occurrence 15-20 co-villagers had assembled and they were told that it was the appellant Manglesh Singh and the accused Awadhesh Singh, who had opened fire. He admitted that his statement was recorded by the A.S.I. of Police. However, he denied that he had not taken the name of the persons, who had opened fire or that the victim tried to run away or that the informant tried to rescue him.

12. **Kundan Kumar (P.W.2)** is another eye-witness to the incident. In his examination-in-chief, his statement is consistent with the statement of P.W.1. He stated that on 07.05.1993 at 10:00 AM he had gone to the shop of Anil Sharma to buy tea leaf and sugar when he heard hulla. He further stated that the appellant Manglesh Singh and the accused Awadhesh Singh



were abusing Ramadhar Sharma and on the order of Awadhesh Singh to kill Ramadhar Sharma saying that he had cut the ridge of the field, the appellant Manglesh Singh opened fire causing injury in the back below the left shoulder of Ramadhar Sharma. He further stated in his evidence that accused Awadhesh Singh also fired from his gun which hit on the left palm in between left thumb and left index finger of Dhirendra Kumar.

13. In his cross-examination, he admitted that there was land dispute between the accused Awadhesh Singh and the deceased, but no case was filed in the court. According to him, the disputed land is situated in the east direction of the house of the accused Awadhesh Singh. He stated that the deceased had got his field near the transformer in the west direction of his house. He has given the boundary of the field, which was the place of occurrence as follows:

North: Field of Kalash Deo Singh

South: Field of Deo Prasad Pathak

East: Field of Nar Singh

West: Field of Deen Bandhu Pathak.

His attention was also drawn towards his previous statement. He stated that he had not made such statement before the police that the deceased Ramadhar Sharma had taken his spade for spading



the sugarcane field and after working in the field, he was returning together with his son Dhirendra Kumar. He stated that he had not stated before the police that Ramadhar Sharma stopped at his door for handing over the spade. He denied to have stated before the police that when the deceased was returning the spade, Dhirendra Kumar came running and said that the appellant had opened fire. He further denied the defence suggestion that he had stated before the police that when the informant Dhirendra Kumar and the deceased Ramadhar Sharma moved ahead towards the place of occurrence, he heard the sound of firing twice. He admitted that the *lungi* and *ganji* of the deceased as well as the *gamchha* wrapped around his wound were drenched with blood. However, neither the empty cartridges nor the pellet nor wad was found at the place of occurrence. He stated that blood had fallen on the ground at the place of occurrence. He denied to have stated before the police that he had tied the *gamchha* around the wound caused in the abdomen of the deceased.

14. **Jitendra Kumar (P.W.3)** is the full brother of the informant. He has stated in his evidence that the incident took place at about 10:00 AM on 07.05.1993. About 20 minutes prior to the incident, he had proceeded from his village to Bihta on a bicycle. On the way, he saw his brother Dhirendra Kumar and his



father returning to their home. He Stated that as soon as he reached near Bihta bridge, he saw a jeep in which his father was being carried in an injured condition by his brother Dharendra Kumar and others. His brother was also injured. He also boarded the jeep and proceeded to the hospital. He stated that he learnt from his brother Dharendra Kumar that when he along with his father was returning home and when they reached near the house of the appellant, he opened fire causing injury to his father, who sustained injury in his back as a result of which he fell down on the ground. Thereafter, Awadhesh Singh also opened fire causing injury to the informant on his left palm in between his left thumb and left index finger. He stated that the doctor declared his father dead in the hospital and then he along with the informant took the dead body to the police station where the statement of the informant was recorded in his presence. He proved his signature on the *fardebayan* of the informant recorded by the police, which was marked as Exhibit-1. He also proved the signature of his brother on the *fardebayan*, which was marked as Exhibit-1/1.

15. In cross-examination, he stated that he was examined by the police at the place of occurrence. He claimed that he gave the same statement before the police as stated before the court. He denied to have stated before the police that he learnt that his father



and brother were returning from the field and while his father was handing over the spade near the door of Kundan Kumar (P.W.2), his brother had proceeded ahead and the appellant had opened fire. He further denied to have stated before the police that his brother had informed his father about firing and thereafter his father and brother both proceeded ahead when a bullet hit his father and another bullet hit his brother. He denied to have stated before the police about the firing taking place thrice. He also denied to have stated before the police that the bullet hit the abdomen of his father or that his father was taken to hospital after tying the wound around his abdomen with *gamchha*.

16. **Yogendra Singh (P.W.4)** was tendered for cross-examination. In cross-examination, he stated that the deceased was his father-in-law. His village is situated at a distance of 3 km from village Bilap. He came on a bus to village Bilap on the date of occurrence at about 01:30 PM and stayed there in the night.

17. **Dr. Basuki Nath Gupta (P.W.5)** was posted at Sub-Divisional Hospital, Danapur. On 07.05.1993, he had conducted post-mortem examination on the dead body of the deceased Ramadhar Sharma. In his evidence he stated that the body of the deceased was identified by the constable Govindji Dubey (not examined) and Chowkidar Shree Paswan (not examined), which



was brought at 04:30 PM on 07.05.1993. The post-mortem examination on the body of the deceased commenced at 05:00 PM. He found the following ante-mortem injuries on external and internal examination of the body of the deceased:

“(i) On external examination rigor mortis present in all four limbs, eyes open, mouth closed and found lacerated wounds 16 in numbers size 1/8” x 1/8” x chest cavity deep on the left side back of chest below scapula. Margins inverted, blackening present over all wounds. It was wound of entry.

(ii) On internal examination chest after opening blood and blood clots present in left chest cavity. 16 pellets received (extracted) from the left lung which were sealed in a vial and handed over to the police. Left lung lacerated, right lung pale. Heart- right side empty – left side empty, stomach about four ounces digested material; small gut-fluid plus gas - large gut-fickle matter plus gas; liver, spleen and both kidneys- all pale; Bladder full; brain matter-pale.”

18. He opined that the cause of death was hemorrhage and shock due to firearm injuries. According to him, time elapsed since death was within 36 hours. He proved the writing and signature on the post-mortem report, which was marked as Exhibit-2. He stated that firearm was used from a close range.



19. In cross-examination, he admitted that rigor mortis commences 3 to 6 hours after the death. He further admitted that it takes 12 hours in developing rigor mortis over the entire body. Thereafter, rigor mortis persists up to 12 hours. He admitted that on the body of the deceased he found rigor mortis in the last stage. He further admitted that on the basis of presence of rigor mortis he had given the approximate time of death within 36 hours. He admitted that in no case the death would have been caused within 12 hours. He further admitted that because of the injuries on the person of the deceased profuse bleeding was possible.

20. **Dr. Pradeep Kumar (P.W.6)** is the doctor, who had examined the injured informant. He stated in his evidence that on 07.05.1993 he was posted as Medical Officer Incharge at the Referral Hospital, Bihta, Patna. On that day, Dharendra Kumar was sent to the Referral Hospital, Bihta for treatment. He examined him at 12:05 PM on the same day and found the following injuries:

“(1) 1” x 1/4” lacerated wound over in between thumb and left index finger.

(2) 2” x 1” swelling on the left elbow posteriorly.”

21. In cross examination he admitted that both the injuries were simple in nature and caused by hard and blunt



substance. According to him, the injuries were caused within six hours. He proved his signature on the injury report, which was marked as Exhibit-3. He stated that pellet is hard and blunt substance, but it would cause charring with the injuries.

22. In his cross-examination, he stated that he had examined firearm injuries on numerous occasions. According to him, pellet causes cut or lacerated injury besides charring whereas stone or brickbat causes swelling or laceration or both depending upon force. He further admitted that pellet will either pierce into the body or fall on the ground. He admitted that both the injuries might have been caused by different blows of the same hard and blunt substance or two such substances. He further admitted that injury no.2 might be possible due to fall and injury no.1 may have been caused by assault with lathi, rod or stone or brick-bat. He admitted that an injury caused by firearm will be lacerated with margins charred or blackened. In further cross-examination, he admitted that injury nos. 1 and 2 were not caused by firearm.

23. **Ram Pravesh Singh (P.W.9)** is the first I.O. of the case. He stated in his evidence that on 07.05.1993 he



was posted as an A.S.I. at Bihta Police Station. On that day, the informant came with the dead body of his father at the police station. He recorded the *fardbeyan* of the informant and lodged the FIR, which was marked as Exhibit-4 on which Jitendra Kumar (P.W.3) had put his signature as a witness. He stated that he prepared the inquest report and proved the same, which was marked as Exhibit-7. He sent the dead body of the deceased to the hospital with the constable Govindji Dubey, recorded the subsequent statement of the informant and handed over the charge of investigation to Asrar Ahmad (P.W.8).

24. In cross-examination, he disclosed that the informant had reached at the police station on 07.05.1993 at 11:10 AM. He had prepared the inquest report at 11:30 AM. He found injuries in between the little finger and ring finger of the informant. He stated that he had sent the dead body of the deceased for post-mortem examination at 12:40 PM. He left the police station for going to the place of occurrence at 01:00 PM and reached at the place of occurrence at 02:30 PM. He took the subsequent statement of the informant between 02:30 PM and 04:00 PM. The Officer-in-Charge of the Police Station Asrar Ahmad reached at the place of



occurrence at about 04:40 PM and he handed over the charge of investigation to him. He admitted that the informant had not stated before him that his father had gone for spading the sugarcane field on the date of occurrence rather he had said that he and his father were returning from the sugarcane field. He admitted that he had stated before the police that after the firing was made and he raised hulla, Anil Sharma, Raj Deo Ram, Kundan Kumar and other co-villagers reached at the place of occurrence. He further admitted that Anil Sharma and Raj Deo Ram had not stated before him at the time of preparation of the inquest report as to who had opened fire and where the firing had taken place. He admitted that till the time he was at the place of occurrence, nobody had shown him the place where the deceased was shot at and the place he had fallen on the ground after receiving gunshot injury. He denied the defence suggestion that the *fardebayan* of the informant was antedated and fabricated.

25. **Asrar Ahmad (P.W.8)** is the second I.O. of the case. He has stated in his evidence that on 07.05.1993 at 11:10 AM the informant had reached at the police station along with the dead body of his father. The oral statement of



the informant was recorded by the ASI (P.W.9), who took investigation after registration of the FIR under Sections 302 and 307/34 of the Indian Penal Code and Section 27 of the Arms Act. The said ASI (P.W.9) had also held the inquest on the dead body of the deceased in presence of Anil Sharma and Raj Deo Ram and prepared inquest report. He further stated that on the order of the probationer A.S.P.-cum-Officer-in-Charge, Bihta, he proceeded to the place of occurrence and took charge of investigation from ASI Ram Pravesh Singh (P.W.9) and inspected the place of occurrence. According to him, at the time of inspection of the place of occurrence, grass was found uprooted and fresh soil was found thrown over it. He stated that he obtained the injury report of the informant on 08.05.1993 and post-mortem report of the deceased on 28.05.1993 and after completing the investigation he submitted charge-sheet against both the accused persons on 11.08.1993 under Sections 302 and 307/34 of the IPC and Section 27 of the Arms Act.

26. In cross-examination, he admitted that the statement of the informant was not recorded in his presence. At that time, he was participating in a crime meeting and he



took the charge of the case at 04:40 PM. He admitted that no pellet, bullet or empty cartridge was found at the place of occurrence. He admitted that blood- or blood-stained earth was not found at the place of occurrence. He admitted that he was not shown the place from where pile of garbage was being removed and where the same was being thrown. He admitted that he did not find the uprooted grass lying at the place of occurrence and no mention in this regard has been made during investigation in the case diary. He admitted that there is no mention of the fresh soil thrown at the place of occurrence in the case diary. He admitted that no member of the family of the deceased produced blood stained *gamchha*, *gendra* or clothes of the deceased before him. He claimed that on 08.05.1993 he had gone near the sugarcane field of the deceased and inquired from the persons of the locality, and he came to know that no quarrel had taken place near the sugarcane field nor the accused Awadhesh Singh had any field adjacent to the said sugarcane field of the deceased. He admitted that no witness had stated before him the place from which firing was resorted to by the accused persons.



27. In further cross-examination, P.W.8 admitted that there is no eye witness in the case except the informant. He contradicted P.W.1 by stating in paragraphs 46 and 48 of his cross-examination that P.W.1 had not stated before him that the appellant had fired causing injury to Ramadhar Sharma. He further contradicted P.W.1 by stating that he had not even stated that when the informant along with his father was returning home after spading soil in the sugarcane field, he saw that accused Awadhesh Singh armed with gun and appellant Manglesh Singh armed with pistol hurled abuses and Awadhesh Singh ordered the appellant to kill Ramadhar Sharma on which the appellant fired from his pistol. He admitted that P.W.1 had not stated that when the informant tried to rescue his father, Awadhesh Singh fired from his gun which hit the informant in his left palm in between left thumb and left index finger. He stated that P.W.1 had stated before him that he had seen Ramadhar Sharma keeping spade at the door of Kundan Kumar and at that time he heard the sound of firing. He stated that Dharendra Kumar (P.W.7) had apprised his father that the appellant had opened fire. He stated that Ramadhar Sharma and Dharendra Kumar were asked not to move further, but



they did not pay any heed and the moment they moved ahead, he heard the sound of firing twice. He stated that P.W.1 had stated that soon after the firing, he reached at the place of occurrence and saw Ramadhar Sharma fallen on the ground and bleeding from the injury on the hand of the informant. He admitted that P.W.1 had not stated before him that he together with Anil Sharma, Kundan Kumar and other villagers reached at the place of occurrence and saw Ramadhar Sharma fallen on the ground and struggling for life as he had sustained gunshot injury in his back. He admitted that P.W.1 had stated before him that he had wrapped *gamchha* on the belly of Ramadhar Sharma. He stated in para 48 and 49 of his cross-examination that P.W.2 had not made such statement as made by him in his examination-in-chief before the court. He stated that P.W.2 had not disclosed before him that on the date of occurrence at 10:00 AM he had gone to the shop of Anil Sharma to buy tea leaf and sugar. He had disclosed that at that time he was at his house and the deceased had taken his spade for spading his sugarcane field and while he was returning from the sugarcane field after spading his field, his son Dharendra Kumar was also with him. He disclosed that Dharendra



Kumar proceeded ahead while the deceased had stopped at his door for handing over the spade. He had further stated that in the meantime, the informant Dharendra Kumar returned and told his father that the appellant had opened fire. He admitted that P.W.2 had disclosed that when the deceased and the informant proceeded towards the place of occurrence, he heard the sound of firing twice and when he reached at the place of occurrence, he saw the deceased lying on the ground and the informant in an injured condition. He stated that P.W.2 had not stated before him that he heard hulla when he was going to the shop of Anil Sharma for buying tea leaf and sugar. He admitted that P.W.2 had also not stated before him that the appellant and the accused Awadhesh Singh were abusing the deceased Ramadhar Sharma. He had also not stated that Awadhesh Singh ordered to kill Ramadhar Sharma because he had cut the ridge of the field. He further admitted that P.W.2 had not stated before him that Awadhesh Singh was having gun in his hand and the appellant was armed with pistol at the relevant time and on the order of Awadhesh Singh the appellant opened fire causing injury to Ramadhar Sharma on the back below his shoulder. He admitted that P.W.2 had



not even stated that Awadhesh Singh also opened fire from his pistol causing injury to Dharendra Kumar. He further admitted that P.W.2 had not stated before him that he and Raj Deo Ram wrapped *gamchha* around the wound sustained by the deceased and took him to Dariyapur from where he was taken to Bihta in a jeep. He stated that P.W.2 had stated before him that *gamchha* was wrapped around the belly of the deceased and Ramadhar Sharma was taken to hospital.

28. In his further cross-examination, he contradicted P.W.3 by admitting that he had not disclosed in his statement made before the police that his brother and father were taken in a jeep. He had not even disclosed that he came to know about the occurrence from his brother Dharendra Kumar (informant). He had not disclosed the time when his brother and father were going towards their house and when they reached near the house of the appellant Mangalesh he fired from his pistol causing injury in the back below the shoulder of his father as a result of which he fell on the ground whereafter Awadhesh Singh also fired causing injury to his brother. He stated that P.W.3 had stated before him that he came to know that when his father and



brother were returning from the field and when they reached at the door of Kundan Kumar his father stopped to hand over the spade and his brother proceeded ahead and heard a sound of firing. He stated that P.W.3 had stated that his brother had informed his father regarding the said firing and when both of them proceeded ahead, his father sustained one gunshot injury and another gunshot injury was caused upon his brother Dharendra Kumar. He stated that P.W.3 had stated before him that he came to know that three rounds of firing were made on that day. He had disclosed that his father had sustained injury in his abdomen and his wound was wrapped with *gamchha* and he was taken to the hospital.

29. After the closure of the prosecution evidence, the circumstances appearing in the evidence against the appellant and the accused Awadhesh Singh were brought to their notice and their statement were recorded under Section 313 of the Cr.P.C. In their respective statements, they pleaded their innocence and denied their involvement in any manner in the alleged offence. The defence did not lead any evidence to rebut the charges. Thus, arguments were heard on behalf of the parties and vide impugned judgement the



appellant and the accused Awadhesh Singh were held guilty and vide consequent order they were sentenced for the offences under which they were charged. It would be relevant to note here that the convict Awadhesh Singh challenged the impugned judgement and order before this Court by filing a separate appeal vide Criminal Appeal (DB) No. 329 of 1995, which got abated due to his death during the pendency of his appeal.

30. Mr. S.K. Lall, learned counsel for the appellant submitted that from the evidence of P.W.1 and P.W.2 read with the evidence of the I.O. it is apparent that they are not the eye witnesses to the occurrence and they have developed the story from stage to stage. He submitted that the I.O. has contradicted P.W.1, P.W.2 and P.W.3 in material particular. He further contended that the death would not have been caused as disclosed in the FIR and in the evidence adduced by the prosecution witnesses during trial as the doctor (P.W.5) admitted in his evidence that in no case death would have been caused within 12 hours of the post-mortem examination. He submitted that the medical evidence totally rules out the possibility of the death of the deceased at the time when the incident is said to have taken place rather the



death of the deceased was caused in a different manner much prior to the incident as alleged, but due to enmity a false and concocted case was instituted.

31. Mr. Lall, learned counsel for the appellant argued that though the case of the prosecution is that the injury caused on the person of the informant was by firearm, the doctor (P.W.6), who examined him, completely ruled out the possibility of the injury having been caused by the firearm. He admitted that the injuries caused to the informant were due to fall and assault with hard and blunt substance like lathi, rod, stone or brickbat. He urged that the trial court did not take into consideration the contradictions in the evidence of P.W.1, P.W.2, P.W.3 and P.W.7 taken from P.W.8 and P.W.9. He contended that the independent witnesses have been withheld by the prosecution and the prosecution has examined only family members and highly interested witnesses. The witness of inquest, namely, Anil Sharma was not examined. It has come in the evidence of the witnesses that there were other villagers, who were present and saw the occurrence, but none of them were examined. He contended that Govindji Dubey, the police constable and the Chowkidar Shree Paswan, who brought



the body of the deceased to the Sub-Divisional Hospital and identified the corpse were not examined. He contended that Dharendra Kumar (P.W.7), who is the first informant of the case and P.W.3, are sons of the deceased. They are highly interested witnesses. Similarly, Raj Deo Ram (P.W.1) is the ploughman of the deceased. He is also highly interested witness. He contended that P.W.1 is also interested witness as his uncle Chotan Singh had enmity with the accused Awadhesh Singh.

32. On the other hand, Mr. Dilip Kumar Sinha, learned counsel for the State being assisted by Mr. Manoj Kumar Singh, learned counsel for the informant submitted that in the present case the trial court has considered the evidence adduced during trial and arrived at a right conclusion. There are three eye witnesses, who supported the case of the prosecution. The informant (P.W.7) in his testimony corroborated the initial version on the basis of which the FIR was registered. The evidence of Raj Deo Ram (P.W.1) and Kundan Kumar (P.W.2) is also consistent. He submitted that right from the beginning the prosecution evidence is consistent about the name of the accused persons, the weapons used in the offence, the place of



occurrence and the manner of occurrence. He submitted that motive was also present in this case. In his deposition, P.W.2 stated that there was land dispute between the accused Awadhesh Singh and the deceased and on the date of occurrence at about 10:00 AM the accused Awadhesh Singh started abusing the deceased on the ground that he had cut down the ridge of his field. Because of this dispute he killed Ramadhar Sharma. He contended that the medical evidence also supports the prosecution case. As per Dr. Basuki Nath Gupta (P.W.6), lacerated wound was found on the body of the deceased which was cause due to firearm injury. He also stated that firearm was used from close range and blackening was present over the wound. He submitted that so far as the medical evidence regarding rigor mortis is concerned, the opinion of the doctor cannot be the decisive factor to determine the time of death. According to him, rigor mortis depends upon variety of factors. Time of on-set of rigor mortis varies in different cases. It also depends on the climatic condition. He submitted that one cannot estimate the time of death only on the basis of rigor mortis. He urged that the medical evidence of the doctor cannot determine the fate of a criminal case. According to him the



law is well settled that if there is any discrepancy, it is the ocular evidence which is to be preferred over the medical evidence of the doctor. He submitted that in the present case since the eye witnesses have given consistent account of the occurrence, the trial court has rightly not given much weight to the medical evidence. He contended that non-examination of the witness to the inquest, namely, Anil Sharma or any other witness has not caused any prejudice to the defence. He contended that the witnesses examined in this case are all natural witnesses, who had seen the occurrence and they cannot be termed to be interested witnesses even if two of them are related to the deceased and the other one happens to be ploughman.

33. I have considered the rival submissions advanced on behalf of the parties and carefully perused the evidence on record.

34. As already noticed, in the FIR, the date and time of occurrence of the offence was 10:00 AM on 07.05.1993. On the same day, after 7 hours, the post-mortem examination on the body of the deceased Ramadhar Sharma was conducted. The doctor (P.W.5), who conducted post-mortem examination, stated in his examination-in-chief that



on external examination rigor mortis was found present in all four limbs of the deceased. In cross-examination, he admitted that rigor mortis commences 3 to 6 hours after the death and take 12 hours in developing over the entire body. Thereafter, it persists up to 12 hours. He also admitted that in the present case he found rigor mortis in last stage. Hence, according to him, in no case, the death would have been caused within 12 hours. Learned counsel for the State, however, disputed the finding of the medical expert. He contended that rigor mortis cannot be the decisive factor to determine the time of death, which depends upon variety of factor.

35. In view of the rival submissions made at the bar, I have consulted Modi's Medical Jurisprudence and Toxicology, which would be useful to refer the opinion of the author in Modi's Medical Jurisprudence and Toxicology, 24th edition at page 343, which reads as under:

"...Owing to the setting in of rigor mortis, all the muscles of the body become stiff, hard, opaque and contracted, but they do not alter the position of body or limb. A joint rendered stiff and rigid after death, if flexed forcibly by mechanical violence, will remain supple and flaccid, but will not return to its original position



after the force is withdrawn; whereas a joint contracted during life in cases of hysteria or catalepsy will return to the same condition after the force is taken away.

Rigor mortis first appears in the involuntary muscles, and then in the voluntary muscles. In the heart it appears, as a rule, within an hour after death, and may be mistaken for hypertrophy, and its relaxation or dilatation, atrophy or degeneration. The left chambers are affected more than the right. Post-mortem delivery may occur owing to the contraction of the uterine muscular fibres.

In the voluntary muscles, rigor mortis follows a definite course. It first occurs in the muscles of the eyelids, next in the muscles of the back of the neck and lower jaw, then in those of the front of the neck, face, chest and upper extremities, and lastly extends downwards to the muscles of the abdomen and lower extremities. Last to be affected, are the small muscles of the fingers and toes. It passes off in the same sequence.

Time of onset- This varies greatly in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop. In India, it usually commences in one to two hours after death.

Duration- In temperate regions, rigor mortis usually lasts for two to three days. In northern



India, the usual duration of rigor mortis is 24 to 48 hours in winter and 18 to 36 hours in summer. According to the investigations of Mackenzie, in Calcutta, the average duration is nineteen hours and twelve minutes, the shortest period being three hours, and the longest forty hours. In Colombo, the average duration is 12 to 18 hours. When rigor mortis sets in early, it passes off quickly and vice versa. In general, rigor mortis sets in one to two hours after death, is well developed from head to foot in about twelve hours. Whether rigor is in the developing phase, established phase, or maintained phase is decided by associated findings like marbling, right lower abdominal discoloration, tense or taut state of the abdomen, disappearance of rigor on face and eye muscles....”

(emphasis added)

36. It has rightly been submitted by Mr. Dilip Kumar Sinha, learned counsel for the State that the presence of rigor mortis by itself cannot be decisive of the time of death. However, I find it difficult to believe that rigor mortis would be found in all four limbs, which would mean all over the body within 7 hours of the death. It is true that on the basis of presence of rigor mortis all over the body of the deceased, no opinion can be given with mathematical



precision regarding time of death. However, probability of the death being beyond 7 hours of the commencement of the autopsy on the body of the deceased cannot be ruled out. At this stage, it is relevant to mention that the court is conscious of the judicial pronouncements that in case of discrepancy between the medical evidence and ocular evidence subject to test of reliability, it is the latter, which is to prevail. However, I must record at this stage that the finding of the doctor, who conducted the post-mortem examination over the body of the deceased, has not been challenged by the prosecution in any manner at any stage.

37. Adverting to the ocular evidence on record, it is doubtful that the alleged eye witnesses had seen the occurrence. They all have been contradicted by the I.O. in material particular. From the evidence of Raj Deo Ram (P.W.1) and Kundan Kumar (P.W.2) read with the evidence of the I.O., it would be evident that they are not the eye witnesses to the occurrence. P.W.1 was contradicted by the second I.O. Asrar Ahmad (P.W.8) in para 46 and 47 of his deposition by saying that P.W.1 had not stated before him that the appellant fired causing injury to the deceased. He further stated that he had not even stated that when the



informant along with his father was returning home after spading the soil in the sugarcane field, he saw that the accused Awadhesh Singh armed with gun and the appellant Manglesh Singh armed with pistol hurled abuses. He further contradicted him by saying that he had not stated that the accused Awadhesh Singh ordered the appellant to kill Ramadhar Sharma upon which the appellant fired from his pistol. He also contradicted him by saying that he had not stated that when the informant tried to rescue his father, the accused Awadhesh Singh fired from his gun which hit him between his left thumb and left index finger. The I.O. (P.W.8) stated in his deposition that P.W.1 had stated before him that he had seen Ramadhar Sharma keeping his spade at the door of Kundan Kumar. At that time, he heard the sound of firing upon which the informant told his father that the appellant had opened fire. The I.O. (P.W.8) stated that P.W.1 had stated before him that as soon as Ramadhar Sharma and Dharendra Kumar moved ahead, he heard the sound of firing twice. On hearing the sound, when he reached towards the place of occurrence, he saw that Ramadhar Sharma had fallen on the ground and there was bleeding from the injury sustained by Dharendra Kumar. The I.O. (P.W.8) further



contradicted P.W.1 by admitting that he had not stated that he had wrapped *gamchha* around the wound sustained by Ramadhar Sharma in his back below his shoulder. He had stated before him that he had wrapped *gamchha* on the belly of Ramadhar Sharma. The aforesaid contradictions would suggest that P.W.1 did not witness the occurrence himself. Though, he did not claim to be the eye witness before the I.O., he developed the case during trial and supported the prosecution case as narrated by the informant. I also find that on all the points on which contradiction was taken from the I.O., the attention of P.W.1 was drawn while he was being cross-examined during trial.

38. Similarly, Kundan Kumar (P.W.3) has been contradicted in material particular by the I.O. (P.W.8) of the case in para 48 to 50 of his deposition by stating that P.W.2 had not made the statement as narrated by him in his examination-in-chief before the court. He had not stated that on the date of occurrence at 10:00 AM he had gone to the shop of Anil Sharma to buy tea leaf and sugar rather he had stated that at that time he was at his house. He stated that P.W.2 had stated before him that the deceased Ramadhar Sharma had taken his spade and had gone to his sugarcane



field for spading and when he was returning, his son Dharendra Kumar was together with him. He stopped at his door and handed over the spade. While he was handing over the spade, the informant Dharendra Kumar came running and told that the appellant had opened fire and when the informant and his father proceeded ahead towards the place of occurrence, he heard the sound of firing twice. On hearing the sound of firing, he rushed to the place of occurrence and found Ramadhar Sharma fallen on the ground struggling for his life. The informant had sustained bleeding injury on his hand. The I.O. further contradicted P.W.2 by stating in his deposition that he had not stated before him that when he was going to the shop of Anil Sharma, he heard hulla. He had not stated that the appellant and the accused Awadhesh Singh were abusing Ramadhar Sharma. He had also not stated before him that accused Awadhesh Singh order to kill Ramadhar Sharma as he had cut down the ridge of his field or that Awadhesh Singh was having gun in his hand and the appellant was having pistol in his hand or that on the order of Awadhesh Singh, the appellant fired causing injury to Ramadhar Sharma in his back behind his shoulder or that Awadhesh Singh fired from



his gun causing injury in between left thumb and left index finger of the informant or that the appellant and Awadhesh Singh were seen running away from the place of occurrence or that Raj Deo Ram (P.W.1) and Anil Sharma (not examined) had witnessed the occurrence. The I.O. further contradicted P.W.2 by stating that P.W.2 had stated before him that he wrapped *gamchha* on the belly of Ramadhar Sharma and took him to hospital. Thus, it would be evident from the evidence of the I.O. that neither P.W.1 nor P.W.2 had witnessed the occurrence. They had developed the prosecution case during trial.

39. The only other eye witness is P.W.7. He is the informant of the case and an injured witness. I am conscious of the fact that the evidence of an injured witness is entitled to a greater weight and the testimony of such a witness is considered to be reliable. In the present case, the informant has alleged that he sustained injury in between his left thumb and left index finger due to firing caused by the accused Awadhesh Singh. I have already noticed the deposition of Dr. Pradeep Kumar (P.W.6), who was posted as Medical Officer In charge at Referral Hospital on 07.05.1993 and had treated the informant. He had found



lacerated wound 1" x ¼" in between thumb and left index finger and swelling 2" x 1" over left elbow posteriorly on the person of the informant. According to him, the first injury might have been caused by some hard and blunt substance like lathi, rod, stone or brickbat or two such substances whereas injury no.2 might be possible due to fall. In cross-examination, he categorically admitted that the injuries found on the person of the informant were not caused by firearm. He admitted that the injury caused by firearm will be lacerated with margins charred or blackening. In this connection, I may also point out the distinction between the objective finding of the doctor and his opinion based on such objective finding. Where the doctor finds lacerated wound on the person of an injured and opines that the same has been caused by hard and blunt substance, it would be open to the court to take a different view on the basis of reliable ocular evidence and hold that the wound in question was caused by firearm and not by hard and blunt substance. In other words, so far as the opinion of the doctor is concerned, it may be possible in an appropriate case to take a different view, but it is not possible to say that the objective finding is not correct



unless it is challenged on the basis of some reliable evidence.

40. When a pointed question was asked from the State by the Court as to on what basis the Court would ignore the finding of the doctor that the injuries caused to the informant were caused by firearm, he had no plausible answer to offer. In this regard, I must say that the aforesaid finding of the doctor has not been challenged by the prosecution at any stage.

41. It would be pertinent to note here that though the prosecution has alleged that the deceased and the informant both sustained injuries at the same time, the doctor, who examined the injured informant, stated the time of injuries on his person within six hours whereas the doctor, who conducted the post-mortem examination on the body of the deceased, opined that in no case death would have been caused within 12 hours as on external examination rigor mortis was found present in all four limbs of the deceased. The difference of at least six hours in the injuries caused on the person of the informant and the deceased creates serious doubt on the veracity of the prosecution case.



42. In the background of the discussions made above, when I examine the motive for the occurrence alleged by the informant, I find that the allegation put forth by the prosecution is that the appellant and accused Awadhesh Singh had abused the deceased for cutting down the ridge of the field, but as per P.W.2, the deceased had got his field near transformer in the west direction of his house. He has given boundary of the field as North: Field of Kalash Deo Singh, South: Field of Deo Prasad Pathak, East: Field of Narsingh and West: Field of Deen Bandhu Pathak. Thus, the accused Awadhesh Singh had no adjacent field. So, there is a ring of doubt in the motive alleged by the prosecution for committing the offence.

43. So far as the place of occurrence is concerned, it is an admitted position that no empty cartridge, spent pellet or wad was found from the alleged place of occurrence. The I.O. (P.W.9) has stated in his deposition that he had reached at the place of occurrence at 02:30 PM on the date of occurrence itself. He handed over the investigation of the case to the I.O. (P.W.8) on the same day at 04:40 PM. He admitted that till the time he was at the place of occurrence, nobody had shown him the place where



the incident had taken place and the place where the victim Ramadhar Sharma had fallen on the ground. Similarly, the I.O. (P.W.8) admitted in his cross-examination that when he visited the alleged place of occurrence, no empty cartridge or spent pellet or wad was found. He admitted that he did not find blood or mark of blood at the place of occurrence. Though he stated that at the place of occurrence grass was uprooted and earth was thrown, he admitted that it has not been mentioned in the case diary during investigation that grass was uprooted or fresh soil was thrown at the place of occurrence. I, therefore, find that there is no positive evidence that the incident had taken place at the place of occurrence as alleged by the prosecution.

44. In so far as the evidence relating to *lungi* and *ganji* of the deceased and the *gamchha* by which P.W.1 and P.W.2 had allegedly wrapped the wound of the deceased are concerned, it has come in evidence that they were drenched with blood but neither the *lungi* nor the *ganji* nor the *gamchha* was seized or produced before the court. None of the I.Os. has stated a word in this regard in their evidence.

45. Thus, it would not be off the record to say that the deceased might have been killed by some unknown



people at a different place in a different manner much before 10:00 AM on 07.05.1993 as alleged by the prosecution and taking advantage of the situation, the prosecution implicated the appellant and the accused Awadhesh Singh in the crime due to the admitted dispute between the parties.

46. In the facts and circumstances of the case, in my opinion, the appellant is entitled to the benefit of doubt.

47. In the result, the appeal is allowed. The conviction and sentence awarded to the appellant vide impugned judgment dated 27.09.1995 and the consequent order dated 28.09.1995 are set aside. Since the appellant is on bail, he is discharged from the liability of his bail bonds.

(Ashwani Kumar Singh, J)

Rajeev Ranjan Prasad,J.: I agree.

(Rajeev Ranjan Prasad, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	02-12-2021
Uploading Date	09-02-2022
Transmission Date	09-02-2022

