

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.762 of 2018**

Arising Out of PS. Case No.-88 Year-2014 Thana- SHANKARPUR District- Madhepura

Meghnath Choupal @ Medhnath Choupal Sharma, Son of Baldeo Choupal @ Baldeo Sharma, Resident of Village Raibheer, P.S. Shankarpur, District Madhepura.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Amarnath Jha, Advocate
For the Respondent/s : Mr.Abhimanyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)**

Date : 24-06-2026

The instant criminal appeal is directed against an order of conviction and sentence passed by the learned Addl. Sessions Judge, 2nd Court at Madhepura in Sessions Trial No. 163 of 2014 arising out of Shankarpur P.S. Case No. 88 of 2014 whereby and whereunder the learned Trial Judge by his judgement dated 30th of May, 2018 convicted the appellant for the offence under Sections 302 / 34 of the IPC read with Section 27 Arms Act and sentenced him to suffer rigorous imprisonment of life and also to pay fine of Rs. 50,000/-, in default to suffer further imprisonment for 2 years. For the offence under Section 27 of the Arms Act, the appellant was



sentenced to suffer imprisonment for 1 year. The aforesaid judgment and order of conviction and sentence are under challenge in the present appeal at the instance of the convict/appellant.

2. Before we advert to the prosecution case, we are constrained to record that the instant appeal is a classic example of improper, lackadaisical, and indifferent investigation on the part of the Investigating Officer keeping material lacuna in the prosecution case.

3. Prosecution case in brief is that on 22nd of July, 2014 at about 4:00 P.M., the informant, namely, Arvind Kumar @ Munnaji was returning to his house by a motorcycle after attending the last rites of his aunt. The son of the informant was the pillion rider. While he was proceeding towards his house, he noticed near Chapariya Toll that some persons were following them on about four motorcycles. They crossed the motorcycle of the informant and registered them to proceed. The informant further stated that immediately thereafter, one Laltu Yadav and Birendra Choupal caught hold of him and placed a pistol beneath his ear. They instructed the informant not to raise any shout, failing which they would open fire at him. One Meghnand Choupal (appellant herein),



Bilash Mahto and Umesh Yadav caught hold of the son of the informant, namely, Anupam Ananad and Chandrahaas Choupal instructed them to bring Anupam to him. Chandrahaas was standing about 10 yards away on the western side from the place of occurrence. The above-named accused persons forcibly took away Anupam to Chandrahaas. When the informant requested Chandrahaas to release his son, the accused persons who caught hold of him assaulted him by fists and blows. At that time Chandrahaas told others that another vehicle is coming towards the place of occurrence. Hearing this, the motorcycle rider started their motorbike to proceed and on the instruction of Chandrahaas Choupal, Meghnad Choupal (the appellant) opened fire at the son of the complainant, touching pistol on his chest. All the accused persons then left the place of occurrence. The informant raised hue and cry and rushed towards his son, who was lying on the ground in pool of blood oozing out from his wound. The cousin brother of the informant, namely, Mantu Kumar and Rupesh Kumar were also present there. Subsequently, other relatives who went to attend the last ritual of the aunt of the informant appeared there and the injured was taken to Madhepura Hospital by a Scorpio Car. The Medical Officer



examined him and declared him dead.

4. On the basis of the said complaint, S.H.O. Shankarpur Police Station, namely, Mahesh Kumar Rajak took up the investigation by registering Shankarpur P.S. Case No. 88 of 2014, dated 23rd of July, 2014. It appears from the Lower Court Record that the investigation of this case culminated in filing charge-sheet under Section 302 / 34 of the IPC and Section 27 of the Arms Act against the present appellant Meghnad Choupal and one Bilash Mahto. After filing of the charge-sheet, the case was committed to the Court of Sessions and subsequently it was transferred for trial and disposal to the Court of the learned Addl. Sessions Judge, 2nd at Madhepura.

5. The Lower Court Record further shows that prosecution examined all 8 witnesses, including the informant (P.W. 8), The Medical Officer, who conducted post-mortem (P.W. 6) and the Investigating Officer (P.W. 7). Amongst other witnesses, P.W. 2, Tarni Sharma, was declared hostile by the prosecution. Only P.W. 1 Subhash Yadav claimed to be the eye-witness of the occurrence and on the basis of his evidence, the Trial Court held the present appellant guilty for committing offence under Sections 302 IPC and 27 of the



Arms Act and convicted and sentenced him accordingly.

6. Other witnesses being P.W. 3 Rajendra Sah, who is a signatory to the seizure list. P.W. 4 Rupesh Kumar who is the cousin brother of the informant and he did not see the occurrence. P.W. 5 Rajesh Kumar is also a seizure list witness but so far as the incident is concerned, his evidence is in the nature of hearsay. P.W. 7 is the I.O. and P.W. 8 Arvind Kumar @ Munnaji is the informant of the case. It is already recorded that P.W. 6 is the Autopsy Surgeon.

7. On perusal of the LCR, we find that the learned Trial Judge relied on the evidence of P.W. 1 alone and convicted the appellant on the ground that the Court can even hold an accused guilty on the basis of solitary evidence of one eye-witness only. In support of his contention, he refers to series of decisions, viz, Jarnail Singh & Ors vs State Of Punjab -2009 (9) SCC 719, Ramesh Krishna Madhusudan Nayar vs State Of Maharashtra - AIR 2008 SC 927, Ramji vs State of Bihar - 2007 (57) ACC 385 (SC), Syed Ibrahim vs State Of Andhra Pradesh - AIR 2006 SC 2908, Chaudhari Ramjibhai Narasangbhai vs State Of Gujarat And Ors - 2005 1 SCC 184 and Chhitar Lal vs State Of Rajasthan - 2003 6 SCC 397.



8. In the instant case, we have independently examined the evidence on record. At the foremost, we inclined to record that the informant who's the author of the case did not support his case and did not utter even a single word against the appellant involving him in committing the offence. Surprisingly enough, the informant was not declared hostile by the prosecution. Therefore, his examination in-chief stands firm on the ground and when an incident took place in presence of the informant, the FIR was lodged by the informant as an eye-witness. His contrary evidence on dock suffers most. The Trial Court held that P.W. 1 Subhash Yadav is the eye-witness of the incident. However, Trial Court failed to consider the cross-examination of P.W. 1 when he stated that he saw the deceased in injured condition. He received his injury on his chest. Thus, if the examination-in-chief and the cross-examination of P.W. 1 are taken together for appreciation, a doubt arises as to whether P.W. 1 was present at the place of occurrence before the deceased received injury or he appeared after the victim suffered gun-shot injury and was lying with blood oozing out from the wound. If we accept the version of P.W. 1 to be true during the cross-examination, then we find that P.W. 1 also reached the place of occurrence



after the deceased received the gun-shot injury.

9. In view of such contradiction, we are not in a position to hold that the evidence of P.W. 1 is of sterling character. The Hon'ble Supreme Court in ***Rai Sandeep @ Deepu vs State Of Nct Of Delhi*** reported in ***2012 (8) SCC 21*** was pleased to describe a sterling witness as hereunder:-

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room



for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender



guilty of the charge alleged.”

10. The above-mentioned decision was subsequently followed in a very recent judgement passed by the Hon'ble Supreme Court in *Nirmal Premkumar and Anr. v. State Rep. By Inspector of Police* reported in **2024 SCC Online SC 260**.

11. In view of the discrepancies pointed out, we are not in a position to hold that the P.W. 1 is a witness of sterling character and only on the basis of sole evidence of P.W. 1, the appellant could be convicted. There are series of lacunae in the prosecution case. During trial, the seizure list witness was not confronted with their signatures on the seizure list. Though they deposed but their signature on the seizure list was not marked exhibit. In his cross-examination, P.W. 5 stated that he put his signature on a blank paper under the instruction of the Investigating Officer.

12. There is no doubt that the victim of this case received gun-shot injury and succumbed to the said injury on the way to Madhepura Hospital. From the evidence of Investigating Officer, we find that he seized one motorcycle, one Samsung Mobile phone and an empty cartridge from the place of occurrence. Surprisingly enough, the ownership of the motorcycle was not asserted by the I.O. Had it been



asserted at least this Court could have come to a conclusion as to whether any of the FIR named accused persons were present at the spot and left his motorcycle after the occurrence. Ownership of Samsung Mobile Phone was also not asserted. The empty cartridge was not sent to Forensic Laboratory to ascertain as to whether the said empty cartridge was used to commit murder of the son of the informant. These were primary duties of the I.O. for investigation of a case like this. It appears to us that either the I.O. did not know the basic principles of investigation or purposefully withheld the evidences which could have been brought during investigation to save the accused persons.

13. In our view, the process of the investigation by the I.O. of this case is a clear instance of dereliction of his duty. Therefore, we direct Director General of Police, Bihar, Patna to initiate departmental proceeding against the Investigating Officer, namely, Mahesh Kumar Rajak, who was posted as S.H.O. Medhapur Police Station on 22nd of July, 2014. Due to lackadaisical investigation, both the Trial Court and this Court are deprived of having best evidence against the real culprits of the incident.

14. For the reasons stated above, we are not in a



position to concur with the finding of the Trial Court.

15. The appeal is, therefore, allowed.

16. The judgment and order of conviction dated 30th of May, 2018, and the order of sentence dated 31st of May, 2018, passed by the learned 2nd Additional Sessions Judge, Madhepura, are hereby set aside.

(Bibek Chaudhuri, J)

(Rana Vikram Singh, J)

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