SHIO SHANKAR DUBEY & ORS. A

v.

STATE OF BIHAR

(Criminal Appeal No. 1617 of 2014)

MAY 09, 2019 B

[ASHOK BHUSHAN AND K. M. JOSEPH, JJ.]

Penal Code 1860: s. 302 – Murder – Accused persons armed with weapons killed the victim – Informant fled from the scene of incident and recorded FIR – Conviction of appellant no. 1 to 3 for the offence u/ss. 302/149/148, u/ss. 302/149/147 and u/s. 302/147 and 379 respectively – Upheld by the High Court – On appeal held: Courts below justified in convicting and sentencing the appellants – Prosecution case fully proved against them – Prosecution witness, who accompanied the deceased-victim gave the eyewitness account of the entire incident – Mere fact that witness was related does not lead to inference that such witness was an interested witness – Names of all the five accused and role attributed to them promptly recorded by the police officials – Non-mentioning of the name of one of the accused by the prosecution witness cannot lead to the inference that he was not involved in the incident – Ocular evidence corroborated the medical evidence – Motive for the occurrence was proved – Witness – Interested witness. C D E

Dismissing the appeal, the Court

HELD: 1.1 PW11, brother of the deceased, fully corroborated the prosecution case in his evidence. In spite of thorough cross-examination, the witnesses could not be shaken. The submission of the appellant that witnesses PW11 and PW13 being related to the deceased are interested witnesses and should not be relied, cannot be accepted. The mere fact that deceased was brother of the informant and PW13 is the husband of the niece of the deceased, does not impeach their evidence in any manner. The mere fact that witness is related does not lead to inference that such witness is an interested witness. Thus, it cannot be said that PW11 and PW13 being related to deceased, their evidence cannot be relied. [Para 10, 12] [612-C-D; 614-E] F G H

A *Kartik Malhar v. State of Bihar,* **(1996) 1 SCC 614 : [1995] 5 Suppl. SCR 239 ;** *Namdeo v. State of Maharashtra* **(2007) 14 SCC 150:[2007] 3 SCR 939 – referred to.**

1.2 PW5 in his statement stated that at 9 O'clock in the
B **morning, he had gone to place S. where he saw the accused persons namely RND, DD, JD and SD fleeing on the road. It is true that in his statement, he mentioned names of only four persons, who were seen fleeing on the road. The mere fact that he did not mention name of RPD cannot lead to the inference**
C **that RPD was not involved in the incident. There may be several reasons due to which, he could not see RPD. When PW11 and PW13, whose evidence has been relied by the trial court as well as High Court, have categorically proved the presence of RPD and his participation in the occurrence. [Para 13] [614-F-H; 615-A]**

D **1.3 The nature of injuries especially injury in the back of head led the officers recording the inquest report to believe that bullet entered from back of the head and came out of the mouth. The above impression recorded in the inquest report was only opinion of person preparing inquest report and due to the above**
E **impression recorded in the inquest report and no bullet having been found in the post mortem report, it cannot be concluded that incident did not happen in a manner as claimed by the prosecution. The mention of bullet injury was only an opinion of the officer writing the inquest report and in no manner belies the**
F **prosecution case as proved by eyewitnesses PW11 and PW13. [Para 17] [616-D-G]**

1.4 PW11 in his statement clearly mentioned that as his nephew had contested election against the accused SSD for the post of Mukhiya, due to which SSD was angry with his deceased brother. The trial court held that motive for the occurrence has
G **been proved from the oral evidence of PW11 and the exhibits. [Para 18 and 19] [616-H; 617-A, D]**

1.5 Within half an hour of the occurrence, police officials from Police Station 'S' arrived on the spot, a fardbeyan of the informant, PW11 was recorded on the spot itself by the police
H **officials. At 9.30 AM, the fardbeyan has been proved. The inquest**

report and the seizure report were provided at 10.00 AM and 10.15 AM respectively on the spot. FIR was sent to the court the next day. Trial court noticed the entire sequence of the events and rightly came to the conclusion that there was no opportunity for the informant to implicate other leaving the real culprits. [Para 20] [617-D-F]

1.6 The prosecution case being fully proved against the accused, the eyewitness account of PW11, who was accompanying the deceased has given the eyewitness account of the entire incident. The names of all the five accused and role attributed to them have been promptly recorded by the police officials within half an hour of the incident on the spot. The medical evidence corroborates the ocular evidence. Both the courts below have not committed any error in convicting the appellants and sentencing them. [Para 21] [618-B-D]

Case Law Reference

[1995] 5 Suppl. SCR 239	**referred to**	**Para 10**
[2007] 3 SCR 939	**referred to**	**Para 11**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1617 of 2014.

From the Judgment and Order dated 16.07.2013 of the High Court of Judicature at Patna in Criminal Appeal (DB) No. 410 of 1990.

Akhilesh Kr. Pandey, Rajeev Singh, Prabuddha Sharma, Advs. for the Appellants.

Devashish Bharuka, Ravi Bharuka, Ms. Sarvshree, Justine George, Aditya Singala, Advs. for the Respondent.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. This appeal has been filed by the three appellants challenging the judgment of High Court of Patna dated 16.07.2013, by which Criminal Appeal (DB) No. 410 of 1990 filed by them questioning their conviction and sentence under Section 302 and some other sections of I.P.C. has been dismissed.

A 2. The prosecution case is that on 16.05.1980, one Raj Ballam Rai, informant alongwith his brother Raj Keshwar Singh came to Sasaram Court. After finishing his work in court informant proceeded with his brother to his residence near Dharamshala. Raj Keshwar Singh was on rickshaw and the informant was on the bicycle. Raj Keshwar Singh was armed with a double barell gun. The further case is that at about
B 9:00 am when they reached 50 to 60 yards east of Kargahar More, the informant saw that Doodnath Dusadh, Jamadar Dusadh and Ram Nandan Dusadh stopped the rickshaw. They were armed with Lohbanda. Shio Shankar Dubey was armed with Rifle and his brother Ram Pravesh Dubey was armed with lathi and they were also alongwith them. They
C pulled down Raj Keshwar Singh from rickshaw and started assaulting with Lohbanda. The Mukhiya that is Shio Shankar Dubey asked them to kill in a hurry. The informant fled away. Shio Shankar Dubey opened fire but none received any injury. The accused persons thereafter fled away towards south.

D 3. At 9:30 am, the police official namely, S.N. Singh of Sasaram Police Station arrived at the place of occurrence to whom Raj Ballam Rai gave a fardbeyan. On the basis of fardbeyan given at the place of occurrence by informant, First Information Report was registered against 05 accused.

E 4. The prosecution, to prove its case, produced 15 witnesses. PW11, informant, fully supported the prosecution case. PW13, Ragho Ram Singh, who was also an eyewitness, supported the prosecution case. PW5 was another eyewitness, who saw 04 of the accused running away from the spot. Formal witnesses were also produced by the
F prosecution. On the spot seizure was also made by one Siddhanath Singh, Inspector of Police, which seizure also contained copy of four applications, which were typed at District Court, Sasaram and were being carried by the deceased alongwith him in a diary, which applications were marked as Ext.3/2 to 3/5.

G 5. Inquest Report was also prepared on the spot. Body was sent for post mortem. Post mortem report was prepared as Ext.4. One defence witness, DW1, Dasrath Ram was also produced, who brought the register of the employees for the period 1961 to 1963 containing the signatures of deceased Raj Keshwar Singh.

6. The trial court vide its judgment and order dated 14.09.1990
H convicted 04 accused, (one of the accused namely, Doodnath Dusadh

having died during the pendency of trial. The appellant No.1 – Shio Shankar Dubey, accused No.3, was convicted for the offence under Sections 302/149/148 I.P.C. and Section 27 of the Arms Act. The appellant No.2 – Ram Pravesh Dubey, accused No.4, was convicted for the offence under Sections 302/149/147 I.P.C. The third appellant, i.e., Jamadar Dusadh, accused No.1 was convicted under Sections 302/147 and 379 I.P.C. Four accused, who were convicted filed criminal appeal in the High court, which has been dismissed. One Ramnandan Dusadh also having died during pendency of the appeal before the High Court, the three surviving accused are in the appeal before this Court.

7. Learned counsel for the appellant in support of the appeal submits that PW11 – informant being brother of the appellant and PW13 being husband of the niece of the deceased were all close relatives and interested witnesses, the Courts below committed an error in relying on the testimony of interested witnesses. There being no independent witnesses corroborating the charge against the appellants the appellants ought not to have been convicted and sentenced. It is further submitted that PW5, who claimed to be an eyewitness and deposed before the courts below that he saw four accused running away from the spot, he has not taken the name of Ram Pravesh Dubey, the appellant No.2. PW5 having not taken the name of Ram Pravesh Dubey, the presence of Ram Pravesh Dubey on the spot is not proved and the Courts below have ignored this evidence. Ram Pravesh Dubey having not been proved to be on the spot, could not have been convicted. It is further submitted that inquest report mentioned a bullet injury whereas in the post mortem report, no bullet injury was found. There being no bullet injury found in the post mortem report, the entire prosecution theory is inconsistent. Learned counsel for the appellant further submits that there was no motive for appellants to kill Raj Keshwar Singh.

8. Learned counsel appearing for the State refuting the submissions of the learned counsel for the appellant submits that informant PW11 was accompanying the deceased and his evidence was found trustworthy. The Courts below did not commit an error in relying on his evidence. It is submitted that the mere fact that PW11 and PW13 are related to the deceased does not in any manner impeach their truthfulness. It is submitted that the mention of the bullet injury in the inquest report was due to error of judgment by the person writing inquest report. The skull being crushed in a manner and bones being fractured, impression was

drawn that bullet entered from behind the skull and came out of the mouth, which in no manner can be said to be fatal to the prosecution case. It is submitted that PW5 is a trustworthy witness, who is not related to the deceased and saw the accused running away from the spot.

9. We have considered the submissions of the learned counsel for the parties and have perused the records.

10. PW11, who is a brother of the deceased, has fully corroborated the prosecution case in his evidence. In spite of thorough cross-examination, the witnesses could not be shaken. The submission of the appellant that witnesses PW11 and PW13 being related to the deceased are interested witnesses and should not be relied does not commend us. The mere fact that deceased was brother of the informant and PW13 is the husband of the niece of the deceased and does not impeach their evidence in any manner. The mere fact that witness is related does not lead to inference that such witness is an interested witness. This Court has occasion to consider such submission in number of cases. In **Kartik Malhar Vs. State of Bihar, (1996) 1 SCC 614**, this Court held that a close relative who is a very natural witness cannot be regarded as an interested witness. In paragraph Nos. 15 and 16, following was laid down:-

> **"15.** As to the contention raised on behalf of the appellant that the witness was the widow of the deceased and was, therefore, highly interested and her statement be discarded, we may observe that a close relative who is a natural witness cannot be regarded as an interested witness. The term 'interested' postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason. In *Dalbir Kaur (Mst)* v. *State of Punjab, (1976) 4 SCC 158,* it has been observed as under: (SCC pp. 167-68, para 11)
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> > "Moreover, a close relative who is a very natural witness cannot be regarded as an interested witness. The term 'interested' postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. Such is not the case here."

16. In *Dalip Singh* v. *State of Punjab, AIR 1953 SC 364* it has laid down as under:

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

11. Further in **Namdeo Vs. State of Maharashtra, (2007) 14 SCC 150**, same propositions were reiterated by this court elaborately referring to the earlier judgments, this Court rejected the same submission in paragraph Nos. 29, 30 and 38, which are to the following effect:-

> **"29.** It was then contended that the only eyewitness, PW 6 Sopan was none other than the son of the deceased. He was, therefore, "highly interested" witness and his deposition should, therefore, be discarded as it has not been corroborated in material particulars by other witnesses. We are unable to uphold the contention. In our judgment, a witness who is a relative of the deceased or victim of a crime cannot be characterised as "interested". The term "interested" postulates that the witness has some direct or indirect "interest" in having the accused somehow or the other convicted due to animus or for some other oblique motive.
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> **30.** Before more than half a century, in *Dalip Singh* v. *State of Punjab, AIR 1953 SC 364,* a similar question came up for consideration before this Court. In that case, the High Court observed that testimony of two eyewitnesses required corroboration

since they were closely related to the deceased. Commenting on the approach of the High Court, this Court held that it was "unable to concur" with the said view. Referring to an earlier decision in *Rameshwar Kalyan Singh* v. *State of Rajasthan, AIR 1952 SC 54,* Their Lordships observed that it was a fallacy common to many criminal cases and in spite of endeavours to dispel, "it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel" (*Dalip Singh case*, AIR p. 366, para 25).

38. From the above case law, it is clear that a close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."

12. We, thus, reject the submission of the appellant that PW11 and PW13 being related to deceased, their evidence cannot be relied.

13. Now, the next submission of the learned counsel for the appellant that PW5, who is held to be an eyewitness has in his statement only taken names of the four accused, who, according to him, were seen running away from the spot. It is submitted that PW5 did not take the name of Ram Pravesh Dubey, the appellant No.2. The statement of PW5 has been brought on the record. PW5 in his statement stated that at 9 O'clock in the morning, he had gone to Sasaram and when he went about fifty steps south to Rouza Road from G.T. Road, he saw the accused persons namely Ram Nandan Dusadh, Dudnath Dusadh, Jamadar Dusadh and Shankar Dubey fleeing on Rouza Road going from the west to the east. It is true that in his statement, he mentioned names of only four persons, who were seen fleeing on Rouza Road. The mere fact that he did not mention name of Ram Pravesh Dubey cannot lead to the inference that Ram Pravesh Dubey was not involved in the incident. There may be several reasons due to which, he could not see Ram Pravesh Dubey. When PW11 and PW13, whose evidence has been relied by the trial court as well as High Court, have categorically proved

the presence of Ram Pravesh Dubey and his participation in the occurrence. The mere fact that PW5 did not see Ram Pravesh Dubey fleeing is not conclusive nor on that basis, we can come to any inference that Ram Pravesh Dubey was not involved in the occurrence.

14. Now, we come to the another submission of the appellants that in the inquest report, it was mentioned that pellet from back in the head has come out of the mouth, but there was no bullet injury found in the post mortem report. In column No.5 of the inquest report brought as Annexure-P42, following was stated:-

> "It appears that the pellet from back in the head has come out of the mouth. (illegible) part has been cut. The brow on the eyes are (illegible). Left elbow has bruise injury. Left had has also bruise injury. Lacerated."

15. We may further notice other details given in the inquest report in column No.4, following was noticed:-

> "Head in north-east direction, leg in south direction, felt facing upward, the back portion of the head heavily damaged, both the eye closed. Eye has blackened. Injury in mouth also. Blood is oozing from the mouth also."

16. Now, we come to the post mortem report. Post mortem report has been extracted by the High Court in paragraph No.12 of the judgment. The injuries noticed in paragraph No.12 are as follows:-

> "**12.** XXXXXXXXXXXXXXXXXXXXX
>
> (i) Lacerated wound 2" X 1" with commuted fracture of occipital bone in two multiple pieces at back of head. Some fragments of bone had pierced into brain covering. There was collection of blood clot outside and inside durameter. Corresponding part of the brain was found softened and with lacerated injury. There was no blackening of margin of surrounding area or no tatooing.
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> (ii) Bruise 4" X 2" in front of face involving right eye brow, right malar bone and bridge of nose with multiple fracture of right mallar bone, nosal bone and right maxilla.
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> (iii) Bruise 2" x 1" left and below the nose with fracture of left maxilla and lacerated cut of cheek from inside 1" X 1/2".

A (iv) Abrasion 1" x ½" of upper lip right to mid-line.

(v) Lacerated cut ½" x ½" left margin of tongue with blood clot in the mouth.

(vi) Abrasion ½" x ½" at left knee.

B (vii) Abrasion 1" x ½" at left forearm.

Injury Nos. (i), (ii) and (iii) are grievous in nature caused by hard blunt substance, may be lathi and Lohbanda.

Injury Nos. (iv), (v), (vi), (vii) are simple in nature, caused by hard blunt substance, may be lathi and Lohbanda. Time elapsed C since death within 12 hours.

XXXXXXXXXXXXXXXXXX"

17. A perusal of the injuries, which have been noticed in the post mortem report indicates that there was fracture of occipital bone in two multiple pieces at back of the head. Some fragments of bone had pierced D into brain covering. Multiple fracture of right mallar bone, nosal bone and right maxilla has also been noticed. The nature of the injuries, which were found in the post mortem report indicates that on seeing the injuries, the officers recording the inquest report thought that since occipital bone in two multiple pieces at back of head have been fractured and some E fragments of bone had pierced into brain covering, the bullet entered from the back side of the head and came out of the mouth, which is noticed in the inquest report and the officer writing the inquest report made his opinion by seeing the injury by bare eyes. The nature of injuries especially injury in the back of head led him to believe that bullet entered from back of the head and came out of the mouth. The above impression F recorded in the inquest report was only opinion of person preparing inquest report and due to the above impression recorded in the inquest report and no bullet having been found in the post mortem report, it cannot be concluded that incident did not happen in a manner as claimed by the prosecution. The mention of bullet injury was only an opinion of the G officer writing the inquest report and in no manner belies the prosecution case as proved by eyewitnesses PW11 and PW13

18. Learned counsel for the appellant has further contended that there was no motive proved. PW11 in his statement clearly mentioned that as his nephew had contested election against the accused Shio H Shankar Dubey for the post of Mukhiya, due to which Shio Shankar

Dubey was angry with his deceased brother. In paragraph No.5 of the statement, following has been stated:-

> "5. Accused Shiv Shankar Dubey was the Mukhiya of my Gram Panchayat Gotpar Khatadihri at the time of occurrence. My nephew Ram Bachan Singh had contested election against the accused Shio Shankar Dubey for the post of Mukhiya. This is why Shio Shankar Dubey was angry with my deceased brother and all the accused jointly murdered him. Bikram Dusadh had been jailed three to four days earlier to this occurrence. He was full brother of the accused namely Dudnath Dusadh and Jamadaar Dusadh and son of the accused Ram Nandan Dusadh. The accused were suspicious of the fact that my deceased brother had got him jailed."

19. In paragraph No.58, the trial court has discussed about the motive and it held that motive for the occurrence has been proved from the oral evidence of PW11 and Ext. 5 and Ext.5/1.

20. There is one more fact, which needs to be noted in the present case. The occurrence is of 9.00 AM on 16.05.1980 and within half an hour of the occurrence, police officials from Police Station, Sasaram arrived on the spot, a fardbeyan of the informant, PW11 was recorded on the spot itself by the police officials. At 9.30 AM, the fardbeyan has been proved. The inquest report and the seizure report were provided at 10.00 AM and 10.15 AM respectively on the spot. FIR was sent to the court on 17.05.1980. Trial court has noticed the entire sequence of the events and has rightly come to the conclusion that there was no opportunity for the informant to implicate other leaving the real culprits. In paragraph Nos. 72, 73 and 74, the trial court records following:-

> "72. The salient feature of the present case is that the occurrence took place at 9 a.m. on 16-5-80. The Fardbeyan was recorded at 9-30 a.m. at the place of occurrence. The inquest report and the seizure list was prepared at 10 a.m. and 10.15 a.m. respectively at the spot. The postmortem was done on the same day at 12.10 p.m. These facts are proved from ext.6 (Fardbeyan) Ext. 7 (inquest report), Ext.8 (seizure list) and Ext. 4 (postmortem report).
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> 73. The F.I.R. was sent to the court on 17-5-80. Admittedly, it was morning court and the court closes at 12 noon. So the F.I.R. was sent on 17-5-80 in the earliest possible time. One accused

A was also arrested and sent to custody on 17-5-80. This fact is proved from the order sheet of the lower court dated 17-5-80 which is the first order sheet in this case before lower court.

74. From the facts mentioned in the above para there was no opportunity for the informant to implicate other leaving the real B culprit. Sot this cannot be a case of false implication."

21. The prosecution case in the present case being fully proved against the accused, the eyewitness account of PW11, who was accompanying the deceased has given the eyewitness account of the entire incident. The names of all the five accused and role attributed to C them have been promptly recorded by the police officials within half an hour of the incident on the spot. The medical evidence corroborates the ocular evidence. Both the Courts below have not committed any error in convicting the appellants and sentencing them. We do not find any error in the judgment of courts below. There is no merit in the appeal. The appeal is dismissed.

D

Nidhi Jain Appeal dismissed.