

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Criminal Appeal (DB) No.102 of 2012

Arising Out of PS.Case No. -13 Year- 2008 Thana -null District- MUZAFFARPUR

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1. Surendra Singh, S/O Late Ganga Singh, R/O Vill.- Sahmohamad Dumri, P.S.-  
Paroo, District- Muzaffarpur

.... .... Appellant/s

Versus

1. The State Of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Ranjan Kumar-Advocate

For the Respondent/s : Mr. A. K. Sinha-A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP  
SINGH**

and

**HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI)**

**Date: 23-12-2016**

The sole appellant Surendra Singh has been found guilty for an offence punishable under Section 302/34 of the I.P.C. as well as Section 27 of the Arms Act vide judgment of conviction dated 29.11.2011 and sentenced to undergo imprisonment for life as well as to pay fine of Rs.25,000/- in default thereof, to undergo imprisonment of one year, additionally under Section 302/ 34 of the I.P.C., imprisonment of three years as well as fine of Rs.5,000/- in default thereof, to undergo imprisonment of six months additionally under Section 27 of the Arms Act with a further direction to run the sentences concurrently vide order of sentence dated 30.11.2011 passed by the Sessions Judge, Muzaffarpur in Sessions Trial No.571



of 2008.

2. Vijay Pratap Singh @ Sonu gave his fard-beyan at S.K.M.C.H., Muzaffarpur on 18.01.2008 at 10.45 a.m. alleging inter alia that he along with his brother Abhay Pratap Singh (deceased) were in a way to his house from Repura Bazar in the evening of 17.01.2008. His brother was driving the motorcycle. At about 5.00 p.m. when they reached near Banauli Bridge, he saw Surendra Singh, Annu Kumar Singh, Babloo Singh along with two unknown persons standing along with bicycle. As soon as they reached over the bridge, Surendra Singh threw bicycle in front of motorcycle on account of which they dashed and fell down. Then thereafter, Annu Kumar Singh took out pistol and shot at his brother Abhay Kumar Singh causing injury over his hand. He, in order to save himself ran there from and after covering some distance began to raise alarm. On the other hand, both the unknown persons caught hold his brother and Surendra Singh, Babloo Singh began to give repeated Bhujali blow. Annu Kumar Singh also aimed at him, but he had a miraculous escape. So many persons began to arrive on his alarm on account of which Surendra Singh, Annu Kumar Singh, Babloo Singh escaped towards Northern side after crossing the road. He has further claimed identification of aforesaid two unknown persons.

The motive of occurrence has been shown as in the Year 2001, Surendra Singh attempted upon life of his father for which case



was instituted. Surendra Singh had gone to Jail. After release, he was insisting upon his father to withdraw the case otherwise he will not spare any of his family members.

3. The aforesaid fard-beyan was sent to Saraya P.S. for registration as well as investigation and on the basis thereof, Saraya P.S. Case No.13 of 2008 was registered. During course of investigation, Babloo Singh was apprehended from his house along with firearms as well as on his confessional statement leading to recovery, *Dabiya* allegedly used during course of crime was seized. However, the aforesaid Babloo Singh was found Juvenile and his case, accordingly has been transferred to the Court of the Juvenile Justice Board. Appellant was apprehended. The co-accused Annu Kumar Singh along with two unknown persons remained out of grip and so, keeping investigation pending against them, after concluding investigation, chargesheet was submitted. Consequent thereupon, trial against appellant proceeded and ultimately, concluded in a manner, the subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence and further, having been falsely implicated in the background of animosity persisting amongst the party. It has also been pleaded that though Nagendra Singh managed to get a criminal case instituted by the



appellant for causing death of his wife, in his favour at the nascent stage itself, but that happens to be a cause of false implication. Furthermore, it has also been pleaded that appellant happens to be a Home Guard Constable and on the alleged date and time of occurrence, he was deputed at G.R.P. Sitamarhi and was discharging his duty. So, plea of alibi has also been taken out and to substantiate the same, two witnesses including the appellant himself along with exhibit of documents have been made on his behalf.

5. While assailing the judgment of conviction and sentence, it has been submitted at the end of the learned counsel for the appellant that the alleged P.O. is not at all found substantiated because of the fact that all the witnesses have consistently deposed that appellant along with his sons and two unknown persons were possessing bicycle, which was thrown in front of motorcycle driven by the deceased, but during course of inspection of P.O., the I.O. had not found bicycle though found motorcycle at that very moment. It has also been submitted that there happens to be disclosure at the end of the informant, PW-7 that both of them were returning from Repura Bazar after purchasing vegetable, refuse of which, which got spread over at the place of occurrence, which is not at all found substantiated from the objective finding of the place of occurrence.

6. Apart from this, the witnesses whoever been examined are only family members or relative. The alleged P.O. happens to be



public road. Villages also lies adjacent to the alleged P.O. Presence of independent witnesses have also been shown, but none of them have been examined nor were named in the fard-beyan of PW-7. The prosecution is susceptible as it failed to examine F.I.R. attesting witness Ravi Ranjan Singh @ Ravi. In the aforesaid background, it has been submitted that the witness, who happens to be hostile, inimical could not be stamped as an independent witness nor their evidences could be relied upon.

7. Apart from this, it has also been submitted that after going through the deposition of the witnesses, it is apparent that none of them happens to be an eye witness to occurrence and in likewise manner, PW-7, informant could not be allowed to remain as an informant coupled with the fact that his presence being pillion rider along with deceased is found doubtful being abhorrent one.

8. Moreover, it has also been submitted that the police became puppet at the end of the prosecution party and that happens to be reason behind that in spite of deposing that Babloo Singh was apprehended with the arms and ammunitions, he made inculpatory extra-judicial confessional statement as well as on his pointing out, *Dabiya* was recovered, but neither aforesaid *Dabiya* was sent to Forensic Science Laboratory for its examination nor the same has been produced before the Court during course of trial. So, submitted that the cumulative effect of aforesaid eventualities ultimately lent to



the conclusion that appellant has fallen victim of false implication at the end of the prosecution party, who getting a golden opportunity on account of murder of Abhay Kumar Singh, who was himself a dreaded criminal by the unknown criminals.

9. Apart from this, it has also been argued on behalf of learned counsel for the appellant that it has been admitted by all the PWs that appellant happens to be a Home Guard Constable. Furthermore, appellant had exhibited the relevant documents in order to show that he was deputed at G.R.P. Sitamarhi much before the alleged date of occurrence and even on the date of occurrence, he was on duty. So, the alibi having been shown by the appellant found duly substantiated by way of examination of the witnesses along with relevant documents having been exhibited on his behalf, which the learned lower Court should have accepted. In sum and substance, the submission is that in the background of aforesaid infirmities persisting in the prosecution case, instant appeal is fit to be allowed.

10. The learned Additional Public Prosecutor while refuting the submission having been made on behalf of appellant has submitted that enmity is a double edged sword. It may be a cause for false implication simultaneously it may be a cause to commit murder. Prosecution never tried to wrap. In the aforesaid background, the evidence of the witnesses have to be seen whose presence at the place of occurrence is found plausible one and further, manner whereunder



they deposed, inspires confidence regarding their status to be an eye witness to occurrence. Apart from this, they are consistent on the factum of manner of occurrence as well as part played by individual accused without any contradiction or embellishment. That being so, those evidences have rightly been accepted by the learned trial Court.

11. It has further been submitted that on account of consistent prosecution version regarding presence of appellant during course of commission of crime whereunder he actively participated by way of inflicting the *Dabiya* blow over the deceased repeatedly rules out his plea of alibi which, from the evidences is found suspicious one. That being so, appellant has rightly been convicted and sentenced.

12. To substantiate the case of the prosecution as many as ten witnesses have been examined viz. PW-1 Ajit Kumar Singh, PW-2 Dharmnath Singh, PW-3 Uday Pratap Singh, PW-4 Punya Dev Singh, PW-5 Brahma Deo Singh, PW-6 Mithilesh Kumar, PW-7 Vijay Pratap Singh, PW-8 Dr. Nagendra Singh, PW-9 Surendra Dubey and PW-10 Dr. Mumtaz Ahmad. To prove the case of the prosecution, some documents have also been exhibited viz. Exhibit-1, signature of PW-1 Ajit Kumar Singh on inquest report, Exhibit-1/1 Signature of Ravi Nandan Singh on inquest report, Exhibit-2 Fard-bayan, Exhibit-3 Formal F.I.R., Exhibit-4 seizure list, Exhibit-5 post mortem report. The defence has also examined two DWs viz. DW-1



Mithilesh Kumar Verma and DW-2 Surendra Singh @ Surendra Prasad Singh. Defence has also exhibited some documents viz. Exhibit-A Attendance statement of attendance for the month of January, 2008 of Homeguards deputed in the District of Muzaffarpur Rail, Exhibit-B Certified copy of F.I.R. of Paroo P. S. Case No.118 of 2000 dated 10.6.2000, Mark-X photocopy of command letter and Mark-X/1 photo copy of attendance sheet from 1.1.08 to 31.1.08.

13. As per evidence of PW-10, Dr. Mumtaz Ahmad, it is apparent that he conducted post mortem over dead body of Abhay Pratap Singh on 18.01.2008 and found following ante-mortem injuries :-

*(i) One incised wound with clean cut margin was found on left side of forehead, lateral to left eye including left eyebrows 3.5" x 1" brain deep with fracture of frontal bone.(transverse fracture).*

*(ii) One incised wound with clean cut margin was found on left face including nose and upper lip 9" x 1 ½" and cutting facial bone transversally.*

*(iii) One incised wound with clean cut margin was found on left parietal area of head 3" above left ear 3.5" x ½" x brain deep with fracture of left parietal bone.*

*(iv) One oval wound with inverted margin was found on dorsum of right hand at the base of thumb ½" diameter and one bullet was recovered from palmar surface of right hand which after proper sealing was handed over to*





*attending chaukidar.*

In the opinion of doctor the deceased died due to shock and haemorrhage as a result of injury nos.1, 2 and 3, which were caused by heavy and ordinary heavy sharp cutting weapon. Injury no.4 was caused by some firearm. Time elapse since death within 12-18 hours. From cross-examination, it is evident that nothing substantial has been found to discredit his version over presence of ante-mortem injuries caused by firearm as well as heavy sharp cutting weapon. That being so, the cause of death happens to be conclusive in nature.

14. Now, coming to ocular evidence, as stated above, the witnesses have claimed themselves to be an eye witness of occurrence, save and except PW-5, who had simply stated that nearabout Banauli bridge, the deceased was done to death by the miscreant. As he had not named the assailant on account thereof, he was declared hostile.

15. PW-1 had stated that Dr. Nagendra Singh (father of deceased) happens to be his maternal uncle. He took study remaining at his place. On 17.01.2008 at about 5.00 p.m., the occurrence took place near Banauli bridge. At that very time, he was going to place of his maternal uncle from Repura bazaar over motorcycle. His cousin brother (Mamera bhai) Abhay Pratap Singh was also going over motorcycle ahead of him, Sonu @ Vijay Pratap Singh was pillion



rider. They were proceeding 90-100 metres ahead of him. 5-6 persons were standing since before at Banauli bridge. All of a sudden, one of them threw bicycle in front of motorcycle being driven by Abhay Pratap Singh, till then, he also reached nearby. Then, he saw Annu Kumar Singh making firing over Abhay Pratap Singh. Abhay Pratap Singh sustained firearm injury and fell down. Abhay Pratap Singh and Sonu Singh began to run raising alarm, during midst thereof, two persons caught hold Abhay Pratap Singh, whom he had not identified and then, threw him. Thereafter, Surendra Singh and Babloo Singh began to assault with *Dab* over head as well as face. He, after parking his vehicle began to raise alarm attracting the villagers till then, the accused persons ran away towards northern direction after crossing the road. Deceased was taken to Medical College, Muzaffarpur where he died. He had further stated that prior to this occurrence, accused persons have led murderous attack upon his maternal uncle and during course thereof, he sustained injuries of firearm as well as explosive substance for which his maternal uncle had lodged case wherein Surendra Singh was arrested. After being released on bail, Surendra Singh was pressing upon to compromise the case otherwise threatened to eliminate his family members. He identified Surendra Singh in dock. During cross-examination, he had stated in Para-4 that he had gone to shop of his maternal uncle and then thereafter, had gone to purchase vegetable. In Para-5, he had stated that his cousin brother



Abhay Pratap Singh and Sonu Singh were returning from their shop lying at Repura bazaar, his maternal uncle had a grocery shop at Repura bazaar, which was being looked after by Abhay Pratap Singh and Sonu Singh. In Para-6, he had stated that Abhay Pratap Singh and Sonu Singh were carrying vegetable to their house and Uday Pratap Singh was at counter of the shop. In Para-8, he had stated that at the time when Abhay Pratap Singh fallen down from motorcycle, at that very time, he was 100 metres away there from. Even thereafter he proceeded towards place of occurrence and reached there at an interval of 2-3 minutes. In Para-9, he had stated that till his arrival, the accused persons have already cut and then thereafter, proceeded towards northern direction. He tried to apprehend the accused and for that, he raised alarm. Sonu Singh was also raising alarm since before. 3-4 minutes thereafter, people assembled there, some of them also chased accused persons while some had taken the injured to hospital. He also accompanied. He had identified his signature over inquest on recall and in his presence, Ravi Kumar Singh had also put his signature.

16. PW-2 Dharmnath Singh, who had stated that on the alleged date and time of occurrence, while he was returning to his house after purchasing household articles from Repura bazaar over bicycle, during midst of way, Abhay Singh and Vijay Singh crossed him over motorcycle. They were also returning towards their house.



When they reached near Banauli bridge, he heard one firing sound. When he reached at the place of occurrence, he saw Surendra Singh armed with pistol, Annu Kumar Singh and Babloo Singh armed with Bhujali along with two unknown persons, running away towards northern side. Abhay Singh was lying in a wheat field south to the road. Vijay Singh was raising alarm. Motorcycle was lying on the road. Vijay Singh had disclosed that Surendra Singh had shot at his brother while Annu Kumar Singh and Babloo Singh cut him by means of Katta. So many persons assembled there, who took Abhay Singh to Medical College. On following day, he came to know regarding death of Abhay Singh. He had further disclosed that both the parties are litigating since before. During cross-examination, he had stated that occurrence took place on the Banauli bridge. In Para-8, he had stated that he heard sound of firing at a distance of half kilometer. 7-8 minutes thereafter, he reached at the place of occurrence. When he reached at the place of occurrence, he found Surendra Singh, Annu Singh and Babloo Singh were fleeing away. At that very time, they were 10 feet away from the injured.

17. PW-3 is Uday Pratap Singh, who had stated that on the alleged date and time of occurrence, he along with Mithilesh Kumar Singh (brother in-law of Abhay Singh, deceased) were going to Repura bazaar over bicycle. When they were hundred feet away from Banauli bridge, they saw his brother Abhay Pratap Singh and



Sonu @ Vijay Pratap Singh coming towards their house on motorcycle. He also saw Surendra Singh, Babloo Singh and Annu Kumar Singh along with two unknown persons standing over bridge. When brother reached at the bridge, Surendra Singh threw bicycle in front of motorcycle of his brother on account of which, his brother fell, thereafter Annu Singh shot at his brother causing injury over his left hand. Thereafter two unknown persons caught hold his brother and Surendra Singh and Babloo Singh began to cut with Bhujali. They gave several blows over his head and other parts of body. Firing was made over Sonu, but he managed to escape. On hue and cry, so many persons assembled there over which accused persons escaped towards northern side. He identified the accused in dock. During cross-examination at Para-5, he had stated that his brother Abhay Singh sustained firearm injury. He had further stated that his brother reached at the bridge prior to his arrival. His brother fell down and on that very time, he was hundred feet away from him. He had further stated that just after reaching at bridge, Surendra Singh and Babloo Singh gave Bhujali blow. They continued to blow for 7-8 times within the span of 2-3 minutes. At that very time, he was west to the bridge. He raised alarm, but did not try to apprehend the accused. However, on their alarm, people assembled there.

18. PW-4 is Punya Deo Singh. He had deposed that on the alleged date and time of occurrence while he was returning from



Repura bazaar and reached near Banauli bridge, he saw Surendra Singh, Babloo Singh, Annu Singh and two unknown persons standing there. At that very moment, Abhay Pratap Singh crossed over the motorcycle. Sonu Singh was also sitting at the back seat of the motorcycle. When Abhay Pratap Singh came over bridge, Surendra Singh threw bicycle in front of motorcycle of Abhay Singh whereupon both the brothers fell down. Then thereafter, Annu Singh fired from pistol which struck Abhay. Sonu Singh rushed there raising cry. Annu Singh also shot at aiming him, but he had narrow escape. Then thereafter, two unknown persons caught hold Abhay Singh and Surendra Singh, his son Babloo Singh gave repeated Bhujali blow. On hue and cry, so many persons assembled there, but accused persons managed to escape. He went near the injured and found firearm injury over his hand as well as severe cut injuries over his head. During cross-examination, he had stated that Surendra Singh had instituted a case against Dr. Nagendra Singh for causing murder of his wife. He had further stated that Surendra Singh himself assaulted his wife on account of which she committed suicide. He had further stated that his father was Advocate Clerk and was murdered. He had further stated that he also happens to be a Law Clerk. He had further stated that accused is a Homeguard Constable.

19. PW-6 is Mithilesh Kumar, brother in-law (Sala of Abhay Pratap Singh). He had stated that he had gone to place of his



sister on the eve of “Makar Sankranti”. He along with Uday Pratap Singh proceeded towards Repura chowk. While they were near about bridge, he saw Annu Singh, Babloo Singh, Surendra Singh along with two unknown persons. He further stated that Annu Singh fired pistol over Abhay Singh which caused injury over his hand. Annu Singh made second attempt over Sonu, but the aforesaid firing did not strike. Sonu moved from there. Then thereafter, Abhay Singh was caught by two unknown persons, after his fall, Surendra Singh and Babloo Singh gave Bhujali blows over head, mouth of Abhay Singh. He raised alarm on which so many persons assembled there. He had further stated that Abhay Singh and Sonu Singh were returning from Repura bazaar on motorcycle and during course thereof, the aforesaid occurrence took place. He had further stated that Abhay Singh was taken to Muzaffarpur Hospital. He died in the midst. During cross-examination, he had stated that there happens to be litigation amongst his brother in-law as well as accused persons. Father of his brother in-law had instituted a case against Surendra Singh. He is unaware whether Surendra Singh had instituted a case against them or not. In Para-14, he had stated that on the alleged date and time of occurrence, he along with Uday Pratap Singh were going on same bicycle. In Para-20, he had stated that while he was 2-3 laggi away from the P.O., the vehicle fell stumbled whereupon he witnessed the occurrence. In Para-21, he had further stated that first of all, he had seen Sonu



running there from towards western direction. In Para-23, he had stated that after falling from vehicle, Abhay Singh tried to escape, but was apprehended. In Para-24, he had stated that he saw the occurrence at a distance of 2-2 ½ laggi. In Para-26, he had stated that two rounds of firing were made. In Para-28, he had stated that none dared to come at the place of occurrence till commission of the crime. In Para-29, he had stated that accused persons fled away in his presence. In Para-35, he had stated that he along with others had gone to hospital.

20. PW-7, Vijay Pratap Singh is the informant, who had stated that on the alleged date and time of occurrence, he along with his elder brother Abhay Pratap Singh were going to their house. Abhay Pratap Singh was driving motorcycle while he was pillion rider. When they reached near Banauli bridge, he saw Surendra Singh, Annu Kumar Singh, Babloo Kumar Singh and two unknown persons standing over bridge having a bicycle. When they reached over the bridge, Surendra Singh threw bicycle in front of motorcycle whereupon they fell down from motorcycle. During midst thereof, Annu Singh fired from his pistol over his brother, which caused injury over his hand. He ran there from to save his life and after, covering some distance, began to raise alarm. Then, he saw two unknown persons holding his brother, and Surendra Singh and Babloo Singh began to inflict Bhujali blow repeatedly on his brother. Annu Singh had also fired aiming him, but he escaped. On hue and cry, so many





persons came whereupon they lifted Abhay Singh to hospital where during course of treatment, he died. He further disclosed that in year 2001, Surendra Singh had made murderous attack upon his father and for that, a case was instituted wherein he was arrested and after release on bail, Surendra Singh began to pressurize his father to withdraw the case. In Para-7, he had admitted that Surendra Singh is a Homeguard Constable, but he had denied that his (Surendra Singh) alias name is Surendra Prasad. He was cross-examined on point of criminal antecedent of his brother which he denied and in likewise manner, with regard to institution of a case by Surendra Singh for kidnapping, murder of his wife against his father. He had further denied that on the alleged date and time of occurrence, Surendra Singh was deputed at G.R.P. Rail P.S., Sitamarhi. In Para-21, he had stated that they have gone to market to purchase articles. They have gone at about 3.00 p.m. They have purchased vegetables as well as Chokar and were returning containing the same. P.O. lies half kilometer away from Repura bazaar. It was winter season, but there was no fog. In Para-23, he had stated that he along with his brother proceeded over vehicle, others were also passing through. In Para-24, he had also stated that P.O. is not a lonely place rather village lies at a distance of 50 yards. In Para-26, he had stated that while they were at some distance from bridge, they have seen the accused persons standing there. In Para-27, he had stated that as soon as they fell down



from motorcycle, firing was made. On account of throwing of bicycle in front of motorcycle, they fell down, vegetable, choker fell down over road. They had purchased Potato, cauliflower. In Para-28, he had stated that one firing was made which hit over hand of his brother. Out of fear, he ran from there, where another firing was made at him. During course of fleeing, accused persons also fired, which he did not count. The other firing did not hit either him or his brother. When he came near his brother, he found him in injured condition having cut mark over his head and face. His brother was in pool of blood, cloths were drenched with blood. Blood had fallen on ground also. His brother was unconscious. In Para-34, he had stated that he raised alarm since the time of occurrence. Many people came at the place of occurrence, out of whom, some have also seen the occurrence. He had not disclosed anybody. In Para-38, he had further stated that Dharmnath Singh, Punya Deo Singh, his brother Uday Pratap Singh, son of his fua also came, who were coming from market. 20-25 minutes after the occurrence, injured was lifted to hospital. He had further stated that after death of his brother, he gave his fard-bayan.

21. PW-8 is Dr. Nagendra Singh, father of deceased. Admittedly, he is not an eye witness to occurrence. He simply narrated the incidence having been informed over mobile whereupon he rushed to the place of occurrence and found his son Abhay Pratap Singh in an injured condition. His son Sonu was weeping. So many



persons were present there. On query, Sonu had narrated the incidence. Then, he had disclosed regarding the litigation having in between. He took the injured to hospital where, during course of treatment, he died. During cross-examination at Para-6, he had stated that after examining the patients at his shop, he was alone at that very time. He received information regarding mis-happening who had not identified the person who had informed. He was not remembering mobile number of the person, who had informed. In Para-10, he had stated that he had gone to P.O. alone. He had not informed anybody. In Para-11, he had stated that when he reached at the place of occurrence, he found his son lying in an injured condition in wheat field south to the road. At that very time, his son was unconscious and under pool of blood. So many persons were present including Sonu, who narrated about the occurrence. Then, he admitted that accused Surendra Singh happens to be a Homeguard Constable. He had further stated that illegal gun factory was running at the house of accused who was apprehended and during course thereof, younger son of Surendra Singh was apprehended. He had further admitted with regard to case having been launched at the end of Surendra Singh regarding kidnapping, murder of his wife, but the police concluded the same as false. He had stated that the deceased had got no criminal antecedent. He had denied the suggestion that on the alleged date and time of occurrence, Surendra Singh was deputed at G.R.P. Sitamarhi



where he was discharging his duty.

22. PW-9 is Surendra Dubey, the I.O. He had stated that on 18.01.2008 at about 6.15 p.m., he received fardbeyan of Vijay Pratap Singh from Ahiyapur P.S. He also received inquest report, dead body challan. On the basis of fard-bayan, Saraya P.S. Case No. 13 of 2008 was registered (Exhibited). Then thereafter, he was entrusted with the investigation. He took statement of Dharmdeo Singh, Punya Dev Singh and Bhrameshwar Singh. In Para-3 of his examination-in-chief, he had stated that P.O. is near Banauli Bridge over Repura to Kubauli Dhala road which happens to be at lonely place. The road passes East to West at the place of occurrence. Repura bazaar lies towards East while Kubauli dhala towards West. In South of the P.O., there happens to be open land and after covering one kilometer Gorigama village lies. In Northern side, there happens to be an open land and then, at a distance of one kilometer, Chintamanpur village lies. At the place of occurrence, motorcycle of deceased was found. He recorded further statement of informant, recorded statement of Ajit Kumar Singh, Nagendra Singh, Uday Pratap Singh, Mithilesh Kumar. On 19.01.2008, he along with O/c of Saraya P. S. and other police personnel conducted raid at the house of accused wherefrom Babloo Singh was apprehended. At that very moment, illegal mini-gun factory was being run and accordingly, seizure list was prepared and for which, separate case was instituted. On interrogation, Babloo



Singh made inculpatory extra-judicial confessional statement and as pointed out by Babloo Singh, Bhujali was seized from his house, which was seized (exhibited), received post mortem report and after completing investigation, chargesheet was submitted against Surendra Singh and Babloo Singh showing Annu Kumar Singh as an absconder.

23. During cross-examination at Para-8, he had stated that he only saw motorcycle at the place of occurrence for which, no seizure list was prepared. He had prepared seizure list only with regard to Bhujali. He further stated that he is unable to say whether Dharmnath Singh, Punya Deo Singh and Brahmdeo Singh happen to be relative of the informant. He had further stated that he recorded statement of witnesses at the place of occurrence, who were present there. In Para-18, he had stated that he had not sent Bhujali for chemical examination.

24. So, from the evidences of the witnesses, it is apparent that PW-5 has been declared hostile as he had not supported prosecution case. PW-8 Dr. Nagendra Singh himself happens to be not an eye witness to the occurrence. With regard to status of other witnesses, PW-1 in Para-6 had stated that Uday Pratap Singh was sitting over a counter of a shop while Abhay Pratap Singh and Sonu proceeded towards their house. This Uday Pratap Singh is PW-3 and PW-6 is brother in-law (sala) of deceased, who had stated that he



along with Mithilesh Kumar were going to Repura bazaar over bicycle. If that part of evidence is considered then neither PW-3 nor PW-6 would be an eye witness to occurrence. Furthermore, though PW-1 had shown his presence at the Repura Bazar, but he had not stated with regard to presence of PW-7 along with deceased, and so, his presence at Repura Bazar became suspicious. Moreover, from the evidence of PW-7, informant, he had not named either PW-1 or PW-3, PW-4, PW-6 at the place of occurrence during course of commission of the occurrence. Not only this, PW-2 also did not claim to an eye witness to occurrence rather he had stated that when he reached at the place of occurrence, he saw Surendra Singh having pistol in his hand. Annu Kumar Singh and Babloo Singh having Bhujali in their hand along with two other persons running away there from. Therefore, presence of PW-1, PW-2, PW-3, PW-4 and PW-6 at the place of occurrence at the time of occurrence became doubtful and whereupon their status as an eye witness became unacceptable. Now, coming to the evidence of PW-7, it is evident that he has not been cross-examined over the manner of occurrence. So far other part is concerned, he fairly stood test of cross-examination. His conduct which happens to be a natural one is found duly exposed from Para-30 of his cross-examination whereunder he had stated that on account of firing, he became apprehensive to save his life. He ran from the place of occurrence and began to raise alarm. So, there happens to be



nothing on record to discredit testimony of PW-7, the informant.

25. Though, the other witnesses have stated that when he reached at the place of occurrence, body of injured was lying in a wheat field adjacent to the road. On that very score, none of the PWs including the informant has been cross-examined at least to the extent whether the aforesaid wheat field was away from the alleged P.O. that means to say, Banauli bridge. Had there been an attempt to discredit PW-7 over his status, certainly defence would have taken him on that very score to suggest that as he was not an eye witness to occurrence, therefore, such discrepancy was there. In likewise manner, PW-9 would have been cross-examined. As, the status of other witnesses have already been identified, and further, non-cross-examination of PW-7 as well as PW-9, will not adversely affect upon the prosecution version.

26. In terms of Section 134 of the Evidence Act, it is quality not the quantity which requires for proving the fact in issue. That means to say, presence of single witness whose evidence is found credible one, could be found to be sufficient to sustain with the conviction and sentence. In *Sudip Kumar Sen alias Biltu v. State of West Bengal and others. With Goutam Ghosh v. State of West Bengal with Apu Chatterjee alias Soumitra v. State of West Bengal. With Sankar Das alias Bhai v. State of West Bengal. With Tapas Das alias Bhambal v. State of West Bengal reported in 2016 Cri.L.J.*



**1121**, it has been held:-

*“11. It is well-settled that the court may act on a testimony of a single witness though uncorroborated, provided that the testimony of single witness is found reliable. Trial court which had the opportunity of seeing and hearing PW-6 found him wholly reliable and trustworthy and held that evidence of Sandipan Majumdar-PW6 cannot be doubted as far as the role attributed to A-1 to A-6 except Jishu Jain is concerned, which was affirmed by the High Court. We find no ground to interfere with the concurrent finding recorded by the Courts below as to the reliability of PW-6 and to record the conviction.*

*12. Observing that there is no impediment for recording conviction based on the testimony of a single witness provided it is reliable in Prithipal Singh & Ors. vs. State of Punjab & Anr., (2012) 1 SCC 10, it was observed as under:-*

*“49. This Court has consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of*





*a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.” [See Vadivelu Thevar v. State of Madras, AIR 1957 SC 614, Sunil Kumar v. State (Govt. of NCT of Delhi, (2003) 11 SCC 367, Namdeo v. State of Maharashtra, (2007) 14 SCC 150 and Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91]: (AIR 2010 SC 3638).”*

27. Though, we have perceived the evidence of PW-7, informant reliable and on account thereof, having been accepted, but



before that plea of alibi as raised, pleaded and evidences have also been adduced by way of examining the appellant on his own apart from others. Therefore, needs to be properly scrutinized in order to say whether the same has been properly substantiated or not.

28. Section 11 of the Evidence Act prescribes that the other fact which are relevant to the facts in issue could be accepted whereunder plea of alibi is found engrafted. The principle to be followed up while appreciating the plea of alibi has been thoroughly discussed and reiterated in ***Jumni and others v. State of Haryana and Prem Nath and another v. State of Haryana reported in 2014 Cri.L.J. 1936***, wherein it is has been held:-

***Plea of alibi***

*“24. On a consideration of the material before us, what strikes us as a little odd is that insofar as Prem Chand and Raj Bala are concerned, both the Trial Judge and the High Court have given us the impression that they proceeded on the basis that these two accused persons are required to prove their innocence. In fact it is for the prosecution to prove their guilt and that seems to have been lost in the consideration of the case.*

*25. It is no doubt true that when an alibi is set up, the burden is on the accused to lend credence to the defence put up by him or her.*



*However the approach of the court should not be such as to pick holes in the case of the accused person. The defence evidence has to be tested like any other testimony, always keeping in mind that a person is presumed innocent until he or she is found guilty.*

26. Explaining the essence of a plea of alibi, it was observed in **Dudh Nath Pandey v. State of U.P.** (1981) 2 SCC 166 that:

*“The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed.”*

This was more elaborately explained in **Binay Kumar Singh v. State of Bihar** (1997)1 SCC 283 in the following words:

*“We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant.”*



*Illustration (a) given under Section 11 of the Evidence Act is then partially reproduced in the decision, but it is fully reproduced below:*

*“The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant.*

*The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.”*

*This Court then went on to say,*

*“The Latin word alibi means “elsewhere” and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the*



*defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi.”*



*This view was reiterated in **Jayantibhai Bhenkarbhai v. State of Gujarat.** (2002) 8 SCC 165.*

*27. On the standard of proof, it was held in **Mohinder Singh v. State** AIR 1953 SC 415: that the standard of proof required in regard to a plea of alibi must be the same as the standard applied to the prosecution evidence and in both cases it should be a reasonable standard. **Dudh Nath Pandey** goes a step further and seeks to bury the ghost of disbelief that shadows alibi witnesses, in the following words:*

*“Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses.”*

29. Two DWs have been examined. The first one is Mithilesh Kumar and the second is appellant himself. Mithilesh Kumar is the Homeguard Inspector of Muzaffarpur, who had stated that Surendra Singh @ Surendra Prasad Singh Homeguard Constable No.11012 has reported on 08.01.2008 and then thereafter, he was referred to Sergeant Major, Rail for duty. He is unaware where he was deputed. However, he had exhibited the attendance register sent



through Memo No.257. From the attendance register, it is evident that it bears name of Surendra Prasad at Serial No.114 having Constable No.11012. Then thereafter, with red ink another number has been pasted at 11017. From photo copy of command containing name of Sone Lal Singh (Marked-x for identification) had contained the name of Sone Lal Singh, but again at back portion the same contains the name of Sone Lal Singh, Rajdev Rai, Pramod Kumar Singh and Surendra Prasad Constable No.11012, no document has been adduced nor identity card has been furnished at the end of the appellant in order to clarify whether Surendra Prasad and Surendra Singh happens to be the same person and further, bears the Constable No.11012 or 11017. PW-1 failed to depose on that very score and in likewise manner, DW-2 appellant himself failed to substantiate. Furthermore, as is evident, he, DW-2 had stated in Para-1 of his examination-in-chief that he is known as Surendra Prasad, then at least with the parentage and place of address his proper identification would have been substantiated so that proper identification would have materialized. Being deficient on that very score, the plea of alibi having been raised on behalf of appellant could not be accepted.

30. Now, coming to the judgment impugned, it is evident that though charge has been framed against the appellant, apart from Section 302/34 of the I.P.C., Section 27 of the Arms Act. But from the evidence of PW-7, it is crystal clear that appellant is not at all



responsible for causing firearm injury nor he has been shown to be in possession of the firearm and used it during course of occurrence, on account thereof, the conviction and sentence recorded by the learned lower Court relating to Section 27 of the Arms Act does not attract concurrence at our end whereupon the same is set aside. However, the remaining finding relating to conviction and sentence of the appellant to the extent of Section 302/ 34 of the I.P.C. is concerned, the same is affirmed. Consequent thereupon, appeal is dismissed with the aforesaid finding. Appellant is under custody, hence is directed to continue till saturation of the period of sentence so inflicted against him.

**(Aditya Kumar Trivedi, J)**

**(Samarendra Pratap Singh, J)**

**(Samarendra Pratap Singh, J)**

Vikash/-

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