
(2018) 09 PAT CK 0028

In the Patna High Court

Case No : Criminal Appeal (DB) No.190, 257, 284, 305 of 2012

Munni Khatoon

APPELLANT

Vs

State Of Bihar & Ors

RESPONDENT

Date of Decision : 20-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120(B), 149, 302
Code Of Criminal Procedure, 1973 — Section 161, 207, 313

Citation : (2018) 09 PAT CK 0028

Hon'ble Judges : Rakesh Kumar, J; Arvind Srivastava, J

Bench : Division Bench

Advocate : Yogesh Chandra Verma, Zeyaul Hodda, Ajay Mishra, Ajay Thakur, Ashhar Mustafa, Ajay Mishra, Nutan Sahay, Ajay Mishra, Yogesh Chandra Verma, Zeyaul Hodda, Ajay Mishra

Final Decision : Dismissed

Judgement

1. Appellants in all the aforesaid four Appeals were convicted and sentenced by a common judgment and order passed in Sessions Trial No. 73 of

2010 & 407 of 2010 / 49 of 2010 by learned Additional Sessions Judge, F.T.C. II, Sitamarhi, and as such, all the aforesaid four Appeals were heard

together and are being disposed of by this common judgment. By judgment dated-31.01.2012 all the aforesaid six appellants were convicted for

commission of offence under Section 302 / 34 and Section 120(B) of the Indian Penal Code, 1860 (hereinafter referred to as the "I.P.C.") and by

order dated:- 02.02.2012 all the aforesaid appellants under Section 302/34 of the I.P.C. were sentenced to undergo imprisonment for life and to pay

fine of Rs. 10,000/- each and in default of payment of fine they were directed to further undergo rigorous imprisonment for one year. Under Section

120(B) of the I.P.C. all the appellants were sentenced to undergo rigorous

imprisonment for seven years and to pay a fine of Rs. 1000/- each. In default of payment of fine they were directed to further undergo rigorous imprisonment for one month. The judgment of conviction and sentence was passed by Sri Sudhakar Singh, learned Additional Sessions Judge, F.T.C. II, Sitamarhi (hereinafter referred to as the "trial judge") in Sessions Trial No. 73 of 2010 & 407 of 2010 /49 of 2010 (arising out of Nanpur P.S. Case No. 53 of 2009).

2. Short fact of the case is that on 15.05.2009 at 21.00 Hours (9.00 P.M.) Officer-in-charge of Nanpur Police Station, S.I. Sri Asrar Ahmad (P.W. 8)

recorded fardbyan of Abdul Mallick Hashmi, S/o Late Md. Shoib, resident of village : Balasat , P.S. -Nanpur, District " Sitamarhi. The said

fardbyan was recorded near the house of Mukhiya - Munni Khatoon [appellant in CR. APP (DB) No. 190 of 2012]. The informant in his fardbyan

which was recorded near the door of Mukhiya - Munni Khatoon disclosed that since last two days Mukhiyapati / Abdul Allam [appellant in CR. APP

(DB) No. 305 of 2012] was asking the informant to call his son - Sadab so that bond for the purposes of marriage may be prepared. For this very

purpose on 15.05.2009 at 7.30 evening he with his son - Sadab and his Sarhu (husband of sister of his wife) / Manjoor Ahmed Gausi (P.W. 4)

reached to the house of Abdul Allam (Appellant) and they entered inside room whereas other co-villagers who had also gone with him namely Abdul

Majeed (P.W. 1), Aftab Alam (P.W. 3), Samud (P.W. 2) and Juhi (not examined) remained standing outside the house. Informant further stated

that all of them (three persons) in room sat on chairs and started discussing with Abdul Allam.

In the meanwhile, his son demanded water, which was provided by younger daughter of Abdul Allam. Thereafter, Abdul Allam asked from them as to

what they really wanted. Suddenly from inside, (1) son of Abdul Allam namely Md. Ekbal carrying iron rod, (2) son-in-law Ishteyaque @ Jaan Babu

carrying hathori (hammer), (3) brother of his son-in-law Heera carrying iron khanti in his hand (4) maternal nephew i.e. bhanja of Abdul Allam

namely-Rashid carrying piece of wood, (5) maternal nephew (bhanja)-Arshad carrying wooden Musal who were inside house arrived in the room.

Abdul Allam exhorted to tie Sadab by rope whereupon all of them caught hold of his son and by plastic rope they tied his hand and Abdul Allam with

wooden Musal started assaulting him and simultaneously he was exhorting using filthy language to break his hand and legs and kill him whereupon all

the accused persons who were in room also started brutally assaulting him. The informant and his Sarhu tried to save his son, however they were

pushed out of the room and he further stated that Mukhiya -Munni Khatoon who was outside the room, brother of son -in- law of Abdul Allam namely

- Mister , maternal nephew (bhanja) / Asjad all caught them and forcibly ousted them from the house and closed the door. Informant's son was

crying cpmk cpmk and all the accused persons were brutally assaulting him. While his son died then Abdul Allam with the help of other accused

persons untied the rope which was tied in the hands of his son and threw his son out of the house. The reason for the occurrence was explained by

the informant that his son - Sadab since last one year was in love with the married daughter of Abdul Allam namely :

Sabiha Saheen. They were meeting secretly and girl was also ready. The son of informant was studying Engineering in Jamia Milia, Delhi College.

About 15-20 days back daughter of Abdul Allam namely- Sabiha Saheen had fled from the house of her husband which was in Ahmedabad and came

to Delhi to his son-Sadab. Thereafter, Allam carried his daughter to his village - Balasath. The informant claimed that Abdul Allam with his associates

in deep conspiracy in the garb of preparing bond for marriage had called his son and in presence of him and his sarhu - Manjoor Ahmed Gausi killed

him. The fardbyan was read over to him and after finding the same correct he put his signature. On the basis of the said fardbyan on 15.05.2009 at

23.55 hours (11.55 P.M.) a formal F.I.R. vide Nanpur P.S. Case No. 53 of 2009 was drawn for commission of offence under Section 302, 120(B) of

the I.P.C. against (1) Abdul Allam, S/o Abdul Jalil; (2) Md. Ekbal, son of Md. Abdul Allam, (3) Ishteyaque @ Jaan Babu, (4) Heera [both sons of

Muzaffar Hussain] (5) Rashid, (6) Md. Arshad [both son of Mesih Alam], (7) Munni Khatoon , W/o Abdul Alam, (8) Mister and (9) Asjad.

3. After registering F.I.R. Police investigated the case and finding the accusation true against four accused persons, namely: (1) Abdul Allam (2)

Ishteyaque (3) Md. Heera and (4) Arshad on 09.11.2009 charge- sheet was submitted keeping investigation pending against others. Thereafter, on

11.11.2009 learned Chief Judicial Magistrate, Sitamarhi took cognizance of offence and case was committed to the court of Sessions on 08.02.2010

and it was numbered as Sessions Trial No. 73 of 2010. Subsequently, on 15.04.2010 supplementary charge-sheet was submitted against three accused persons namely: Munni Khatoon, Md. Ekbal and Rashid however, two F.I.R. named accused persons were exonerated by the Investigating Agency.

After submission of supplementary charge- sheet and completion of formalities under Section 207 of the Cr.P.C. case of three accused persons were committed to the court of Sessions on 26.07.2010 and it was numbered as Sessions Trial No. 407 of 2010. Subsequently, both the trials were amalgamated and trial proceeded. In the case on 09.06.2010 in Sessions Trial No. 73 of 2010 charges were framed against five accused persons, namely:

(1) Abdul Allam (2) Ishteyaque @ Jaan Babu (3) Md. Heera (4) Rashid (5) Arshad for offence under Section 302/ 34, 302/149 and 120(B) of the

I.P.C. and in Sessions Trial No. 407 of 2010 charge against remaining accused including Munni Khatoon was framed on 10.08.2010 for offence under

Section 302/34, 302/149 and 120(B) of the I.P.C. On 10.08.2010 itself both the trials were amalgamated and it proceeded.

4. During the trial to establish its case from the prosecution side altogether nine witnesses were examined. Out of them P.W. 1 -Abdul Majeed, P.W.

2 -" Md. Samud, P.W. 3 -" Md. Aftab Alam (cousin of informant), P.W. 4 - Manjoor Ahmed Gausi (Sarhu of informant) , P.W. 5 - Abdul Malik

Hasmi (informant) and P.W. 6 - Ashabul Haque were examined as eyewitnesses to the occurrence. P.W. 9 - Gopal Singh is a formal witness. P.W.

7 - Dr. Shakeel Anjum, Civil Assistant Surgeon, Sadar Hospital , Sitamarhi had conducted post- mortem examination on the dead body of the

deceased and P.W. 8 -" Ashrar Ahmad is the Investigating Officer of the case. After closure of prosecution evidence, on 05.07.2011 circumstances

and evidences collected during the trial were explained to the accused persons and their statement under Section 313 of the Cr.P.C. was recorded in

which they claimed to be innocent and also claimed to examine witnesses in defence and in the defence total seven witnesses were examined, who

were : (1) Md. Nasim Ajijul Rahman (D.W. 1) ;

(2) Dr. S.K. Sinha (D.W. 2) , (3) Shabiha Sahin (D.W. 3) , (4) Sitaram Pandit [D.W. 4] , (5) Md. Farooq [D.W 5], (6) Abdul Talib [D.W. 6] and

(7) Md. Khusroo Parwej [D.W. 7].

5. After placing entire evidences, learned counsel for the appellants have argued that it was a case of false implication and prosecution has not

established its case beyond all reasonable doubt. Sri Ajay Thakur, learned counsel assisted by Mr. Ashhar Mustafa, learned counsel for the appellant

in CR. APP (DB) No. 257 of 2012 [Ishteyaque Alam @ Md. Ishteyaque Alam @ Jan Babu & Anr. Versus The State of Bihar] has argued that

prosecution has virtually suppressed the first version and by suppressing first version subsequent fardbyan was introduced in which the appellants

were fabricated as accused. He has argued that during trial Police had not produced Station Diary Entry as to when Police received information

regarding the occurrence. He submits that though Investigating Officer (P.W. 8) has stated that dead body was sent for post -mortem examination

from the place of occurrence and fardbyan was sent to Police Station from the place of occurrence and as such there was no reason for mentioning

the case number i.e. Nanpur P.S. Case No. 53 of 2009 in the post- mortem examination report. He has drawn our attention specifically to the

evidence of P.W. 5 in paragraph- 81 & 82 and evidence of Investigating Officer i.e. P.W. 8 in paragraph - 35, 36 and 48.

He further stated that F.I.R. was received in the court belatedly on 18.05.2009. It was argued that P.W. 3 / Md. Aftab Alam in his evidence has

claimed that for the first time his statement was recorded by the Police at 9.00, however, he was not introduced as informant in the case. Learned

counsel for the appellants has also tried to persuade the court that due to non-examination of the witness who carried fardbyan to Police Station the

prosecution case appears to be doubtful. He submits that the Officer who drew the formal F.I.R. has not been examined. According to Sri Thakur,

learned counsel, none of the prosecution witnesses had seen the occurrence and nothing has been stated as to who threw the dead body. It has also

been argued that of- course as per prosecution occurrence had taken place after 7.30 P.M. the prosecution has miserably failed to establish as to

what was the mode / source of identification of accused persons. It has further been argued that the motive of the crime has not been established by

the prosecution since the prosecution failed to establish any relationship of deceased with Sabiha Saheen, who was examined as D.W. 3. The

prosecution has also not established any evidence that Sabiha Saheen was in love with the deceased. As per learned counsel for the appellants

prosecution has not been able to establish the place of occurrence. Regarding presence of appellant /Ishteyaque at the time of occurrence it has been

argued that in view of the nature of accusation that the informant with deceased was called for preparing bond for the purposes of marriage of

deceased with the wife of appellant / Ishteyaque there was no reason for the appellant/ Ishteyaque to remain present at the time of occurrence and

also the house where occurrence had taken place does not belong particularly to appellant / Ishteyaque Alam.

6. Sri Y.C. Verma, learned senior counsel, assisted by Sri Md. Ziyaul Hoda in CR. APP (DB) No. 190 of 2012 and CR. APP (DB) No. 305 of 2012

has reiterated that prosecution has completely suppressed the initial version which was received in the Police Station and this was the reason that Sub

Inspector of Police Sri Bindeshwari Rajak who carried fardbyan to Police Station for drawing formal F.I.R. was withheld by the prosecution and he

was not examined as prosecution witness. F.I.R., according to Sri Y.C. Verma, learned senior counsel, was ante- dated and anti -timed and

subsequently a new case was made out. Sri Verma, learned senior counsel has also reiterated that in the case actual informant was P.W. 3 " Md.

Aftab Alam, however his first version has not been brought on record. According to Sri Verma, learned senior counsel, the prosecution story appears

to be absurd and improbable. Even the prosecution version has not been corroborated by the medical evidence. He submits that it was specific case of

prosecution that all the accused persons were carrying weapons i.e. hammer, iron rod , etc. which were hard and blunt substance but on the person of

the deceased incised injuries were found which was not possible by the weapons which allegedly the appellants were carrying and using at the time of

occurrence.

7. Smt. Nutan Sahay, learned counsel for the appellant in CR. APP (DB) No. 284 of 2012 has argued that both the appellants i.e. Md. Rashid and

Md. Arsad has been implicated as accused due to old animosity. She has argued that earlier also a false case was instituted by the brother of P.W. 4

namely Manjoor Ahmad Gausi against the appellants and this fact is evident on examination of evidence of P.W. 5. Besides this, from the defence

side also to substantiate this point some documents have been got exhibited i.e. Ext. C and D .

8. Sri Ajay Mishra, learned Additional Public Prosecutor has strenuously opposed the aforesaid Appeals. It has been argued that in the case except

official witnesses and chance witness all the witnesses are eye witness, and as such, in a case supported by such large number of eye witnesses there

is no reason to raise any doubt on the prosecution case. He further submits that the appellants's side were influential persons since one of the

appellant /Munni Khatoon was Mukhiya of the village and Abdul Allam/ appellant in CR. APP (DB) No. 305 of 2012 was Mukhiyapati i.e. husband of

appellant / Munni Khatoon. It has been argued by Sri Mishra, learned A.P.P. that since the appellants were powerful and influential persons the

Investigating Officer started favouring the accused persons and this was the reason that from the informant's side a protest petition was also filed

particularly against non - arresting of any of the accused persons by the investigating Officer.

9. Sri Praveen Kumar, learned counsel for the informant also has opposed the aforesaid Appeals and he has argued that medical report supports the

prosecution case. He also submitted that conduct of the Investigating Officer was suspicious. Besides this, as per learned A.P.P. as well as learned

counsel for the informant it was a clear cut case of the prosecution that since the deceased was having love affair with the married daughter of Abdul

Allam, the appellants in a well designed manner conspiring with each other persuaded the deceased and his parent to come for a talk for the purposes

of preparing bond for the purposes of marriage of deceased with the daughter of Abdul Allam. When they reached at the house of the appellants they

captured the son of the informant and pushed out informant and his Sarhu from the room. It was locked from inside and he was brutally assaulted till

his death. From outside the informant and other witnesses had become helpless. Even from the window they peeped inside and saw the occurrence. It

has been argued that in the room in which the son of the informant was assaulted a lantern was already burning. As per learned A.P.P. as well as

learned counsel for the informant the learned trial judge appreciating entire evidences in its right perspective has passed judgment of conviction and

sentence which requires no interference.

10. Besides hearing learned counsel for the parties, we have also carefully examined entire evidences on record. Before proceeding , it would be

necessary to firstly examine the evidence of the informant, who is P.W. 5. The informant in his evidence has proved his signature on the fardbyan ,

which was marked as Ext. 1. He proved signature of P.W. 8 on the fardbyan which was marked as Ext. 1/1, signature on protest petition, marked as

Ext. 4 and signature of one Navin Kumar Mishra on protest petition, which was marked as Ext. 4/1. Abdul Mallick Hashmi (P.W. 5) who is

informant of the case in his evidence has stated that Abdul Kadir Hashmi @ Sadab was his son who was doing three year diploma Engineering course

in Jamia Milia, Delhi. Sabiha Saheen was daughter of Abdul Allam [accused]. Since last one year love affair was going in between Sadab and Sabiha

Saheen. Sabiha Saheen was married with Ishteyaque Ahmad @ Jaan Babu [accused]. About 15-20 days prior to the occurrence Sabiha Saheen had

run away from her husband's house i.e. from Ahmedabad and came to Delhi at Sadab (deceased). When Abdul Allam came to know then he

went to Delhi and brought his daughter Sabiha Saheen to his house. One or two days prior to the occurrence Abdul Allam told him that husband of

Sabiha Saheen namely:

Ishteyaque Ahmed now will not keep her, and as such, he asked him to get a bond prepared, so that, when her husband leaves her Sadab may

solemnize second marriage with her. In the garb of preparing such bond, Abdul Allam /appellant had called the informant to his house. At that very

time, Sadab had already come back to his house. Informant on this subject discussed with his Sarhu -Manjoor Ahmed Gausi and then, as asked, on

15.05.2009 at about 7.30 in the evening the informant with his Sarhu and his son (deceased) went to the house of the appellant /Abdul Allam where

his son was assaulted. Informant and his Sarhu were there outside the house. As per the facts disclosed in the fardbyan he stated that other witnesses

before start of beating remained outside the room and from outside also they noticed the occurrence. This witness in consonance with the facts

disclosed in the fardbyan has narrated the entire story that when his son died due to assault his dead body was thrown outside. He further stated that

when they went inside room, since there was inadequate light, in a corner a lantern was burning there. This witness reiterated that on the pretext of

marriage the accused persons had murdered his son /Sadab and said that Munni Khatoon was Mukhiya and wife of Md. Abdul Allam Police came

from the Police Station and registered the case. He further stated that he had filed protest petition which contained his signature and it was marked as

Ext. 2. This witness was cross -examined at length, however, after going through the same we do not find any apparent facts which may discredit the evidence of informant.

11. P.W. 1 - Abdul Majeed has deposed that on 15.05.2009 in between 7.00 â?" 7.30 he was near the door of Abdul Allam /appellant. He stated that

the informant told him that Abdul Allam had called for having discussion regarding marriage of Sadab with his daughter who was already married.

Thereafter, he with Abdul Mallick Hashmi , Manjoor Ahmed Gausi, Abdul Kadir @ Sadab (deceased), Aftab , Samud and Juhi went there. When

they reached at the house of Abdul Allam, the informant, his Sarhu and his son went inside the room and he and others remained outside. Thereafter,

he heard the sound of crying and then from the window from where sound of crying cpkvks cpkvks was coming he peeped inside and saw that all the

accused persons were assaulting Sadab. Abdul Allam, Munni Khatoon, Ekbal, Jaan Babu @ Ishteyaque, Heera, Mister, Rashid, Arshad, Asjad were

there. Abdul Allam was carrying wooden Musal and he described that others were carrying lathi and iron rod. Munni was beating by hands and legs.

They were exhorting to kill Sadab. Jaan Babu was carrying hathori (hammer) , Heera [khanti] , Mister by feast , Rashid [wooden peace] and one

another with Musal was assaulting . This witness in paragraph- 4 has specifically stated as to which of the accused was assaulting by which means.

Thereafter, Sadab died.

12. P.W. 2 - Md. Samud stated that informant had told him that Allam for the purposes of preparing bond for marriage of Sadab had called him. He

along with Abdul Mallick Hashmi, Manjoor Ahmed Gausi, Sadab (deceased), Aftab Alam, Abdul Majeed, Juhi went there and reached the house of

Allam where Abdul Mallick, Sadab and Manjoor Ahmed Gausi went inside. Remaining four persons remained outside room were present near the

window. Allam closed the door of room. From inside they heard the sound of crying cpkvks cpkvks which was raised by Sadab. Then from window

they started watching the occurrence. He saw that accused persons were assaulting Sadab. Allam, Ekbal, Munni Khatoon, Ishteyaque @ Jaan Babu,

Mister, Heera, Rashid, Arshad and Asjad all were there with hammer, Khanti,

Musal, piece of wood and they were assaulting. Abdul Mallick Hashmi and Manjoor Ahmed Gausi were trying to save. Thereafter, they were pushed outside the door. They were pushed by Mister, Allam and Asjad.

Saddam was killed by assaulting and thereafter, he was thrown outside. This witness was also cross -examined at length, however, on examination of

his cross- examination we do not find any apparent contradiction to Â see his evidence as doubtful.

13. P.W. 3 â?" Md. Aftab Alam too has stated almost in similar manner like other eye witnesses.

14. Similarly, P.W. 4 - Manjoor Ahmed Gausi (Sarhu of the informant) in his evidence has proved his signature on fardbyan, which was marked as

Ext. 1, signature on inquest report, marked as Ext. 2 and signature on seizure list [Ext. 3]. He deposed that occurrence had taken place on 15.05.2009

at 7.00-7.30 evening. On the said day he had gone to the house of Abdul Allam / appellant. He with his Sarhu - Abdul Mallick Hashmi (informant) had

gone. He stated that the informant was saying that for the marriage of Sadab bond was to be prepared , which was being told by Abdul Allam (

appellant). He stated that to the house of the accused -Abdul Allam seven persons had gone:

(1) he, (2) Abdul Mallick Hashmi, (3) Sadab, (4) Aftab, (5) Samud , (6) Juhi and (7) Abdul Majeed. They visited the house of Allam at about 7.15

P.M. After arrival he, Abdul Mallick Hashmi and Sadab entered inside the room where lantern was burning. At that very time it was slightly evening.

After entering, they occupied chairs. He further stated that in the said room on the wall there were two windows. He stated that three persons went

inside and Abdul Majeed, Samud, Aftab and Juhi remained standing outside the room. Sadab thereafter requested for a glass of water. Thereafter,

younger daughter of Abdul Allam provided it, which was consumed by him. Then, Abdul Allam asked as to what they want. Besides Abdul Allam,

there were eight other accused persons, namely : - Munni Khatoon, Ekbal, Jaan Babu, Heera, Mister, Rashid, Arshad and Asjad. He identified all

those persons. He further described that Abdul Allam was carrying Musal, Ekbal (iron rod) , Jaan Babu (hathaura), Heera (Khanti) and also

described the weapons which other accused persons were carrying.

Thereafter, Allam asked to bring rope which was brought by Munni /appellant,

and thereafter, all the accused persons tied Sadab and thereafter, they started assaulting him. Then he along with Abdul Mallick tried to save and requested not to assault him whereas, Sadab was crying. Thereafter, the accused persons pushed this witness and informant outside the room. In pushing them out Abdul Allam, Munni Khatoon, Mister and Asjad were active. He stated that accused-Mister gave assault by lakri danda on the left hand of Abdul Mallick. Sadab was crying and this witness and informant were requesting. They assaulted Sadab till his death and after death he was thrown outside. He stated that the reason for the occurrence was that the son of the informant was having love affair with the married daughter of Abdul Allam namely: Sabiha Saheen. The son of informant -Sadab was doing Engineering in Jamia Milia in Delhi. Sabiha Saheen with her husband was residing at Ahmedabad from where she ran away to Sadab at Delhi. Thereafter, Allam brought his daughter from Delhi to his house and he had committed this offence after calling Sadab on the plea of preparing bond for marriage.

He also identified his signature on Abdul Mallick's fardbyan, which was in Urdu and same was marked as Ext. 1. He also proved signature on inquest report, which was marked as Ext. 2. In his presence seizure list was also prepared and he put his signature on the seizure list, which was marked as Ext. 3. In cross-examination he stated that he was not aware as to who gave information to the Police. On further cross-examination he clarified that dead body of Sadab was lying on the road at 7.30 in the evening. In paragraph- 30 of his cross-examination he further stated that for the first time Daroga Ji saw the dead body at 9.00 and thereafter, in respect of dead body paper was prepared. In paragraph- 46 of his cross-examination he stated that assault continued for about 8-10 minutes. His attention was also drawn to his previous statement recorded during investigation, however after going through the same, we are of the view that though there were some inconsistencies, but those are not sufficient to reject the evidence of this witness.

15. P.W. 6 "Ashabul Haque in his evidence deposed that on 15.05.2009 at about 7.00-7.30 in the evening he was going somewhere then near the house of Md. Allam he heard the sound of crying. Then he went towards the house of Abdul Allam and saw that about 9-10 persons from outside the

house of Abdul Allam through window were seeing inside. Thereafter, he also went near the window and he saw that Abdul Allam, his wife Munni

Khatoon, his son Ekbal, son -in -law / Jaan Babu , Mister and Heera , Rashid , Arshad and Asjad by means of hathaura (hammer) , iron rod , lathi -

danda and khanti were assaulting Sadab and after assaulting him they threw the injured outside who had already died. In paragraph- 5 of his cross-

examination he stated that on 15.05.2009 there were Summer Vacation and he was studying in Jamia Milia Islamic College, New Delhi, however, at

that very time he was not studying. On examination of his evidence it appears that he was also a student of the same college and resident of the

village of the deceased. This witness too was cross -examined at length but nothing could be extracted to create doubt on his evidence.

16. P.W. 7 " Dr. Shakeel Anjum on 16.05.2009 was posted as Civil Assistant Surgeon in Sadar Hospital, Sitamarhi and on the same day at 2.20

P.M. he conducted post -mortem examination on the dead body of Abdul Kadir Hashmi @ Sadim, aged about 26 years , S/o Abdul Malik Hashmi,

resident of village -Balasath, P.S. -Nanpur, District " Sitamarhi and he noticed the following facts:-

"External Findings:-

(i) one lacerated wound on left side of forehead 3 ½" x 1½" x bone deep.

(ii) one lacerated wound on front right forearm near wrist 2 ½" x ¼" x bone deep. Surrounded by swelling 3 ½" x 3".

(iii) one lacerated wound on front of left forearm near wrist 2½" x ¼" x bone deep surrounded by a swelling 3 ½" x 3".

(iv) Three incised wound 2½" x ¼" x bone deep each on front of right leg.

(v) one incised wound 2½" x ¼" x bone deep on front of left leg.

Internal findings:-

(i) Skull- frontal bone fracture into three pieces cranial cavity full of blood, frontal lobe of brain lacerated completely.

(ii) Chest -ribs cage intact both lungs intact and pale. Heart intact, both sides empty.

(iii) Abdomen- all abdominal viscera intact and pale. Stomach empty, urinary bladder empty.

(iv) Distal ends of shaft of right radius- ulna fracture into two pieces.

(v) Distal ends of shaft of left radius ulna fracture into two pieces.

(vi) Shaft of right tibia and right fibula fracture into three pieces.

(vii) Shaft of left tibia and left fibula fracture into two pieces.

Time elapsed since death P.M. done within 24 Hrs.

Cause of death- haemorrhage and shock leading to cardio respiratory failure and death, due to above mention injury caused by injury no. 1, 2 and 3 by

hard and blunt substance such as iron rod, Musal, wooden pieces. Injury no. 4 and 5 of external findings caused by heavy sharp cutting weapon such

as sharp part of khanti. All injuries are sufficient to cause of death.â??

He proved the post -mortem examination report which was marked as Ext. 5. In his cross- examination his attention was drawn to incised injuries

regarding which in paragraph -2 of his cross- examination he stated that he had found incised injuries which were caused by farsa or garasa and he

also did not find any injury of tying by rope. On examination of the evidence of P.W. 7 there is no difficulty to draw an inference that the deceased

was brutally assaulted before death, however, there is one grey area i.e. incised injury, but fact remains that inside the room the deceased was being

assaulted by number of accused persons. Then, in that situation, merely on the ground that one injury i.e. incised injury was found on the person of the

deceased may not brush aside the entire prosecution case which is based on direct ocular evidence. It is settled law that in a case of conflict between

ocular evidence and medical evidence much, reliance is to be placed on ocular evidence, if it is otherwise credible.

17. P.W. 9 â?" Gopal Singh is a formal witness and he has proved the signature on protest petition, which has been marked as Ext. 4/2. The protest

petition is primarily an accusation that Police was not taking appropriate action in the case. This suggests that due to whatever reason may be at initial

stage the investigation was not proceeding in its right perspective. It is a fact that one of the accused was Mukhiya and one of the main accused was

Mukhiyapati.

18. P.W. 8 â?" Ashrar Ahmad on the date of occurrence i.e. 15.05.2009 was posted as Officer-in-charge in Nanpur Police Station. On the same day

at 20.00 Hours (8.00 P.M.) he received information on his official mobile that Md. Allam [Mukhiyapati] with his associates had killed someone. On

such information with Bindeshwari Rajak, S.I. and other armed forces on a Jeep he proceeded to the place of occurrence and he reached there at

21.00 Hours night (9.00 P.M.). He reached the place of occurrence i.e. door of appellant / Abdul Allam. There he met Abdul Mallick Hashmi and

others. Manjoor Ahmed Gausi was his (informant) Sarhu. He recorded fardbyan of Abdul Mallick Hashmi and obtained signature. He identified the

fardbyan, which was marked as Ext. 1/3. He also proved the formal F.I.R., which was marked as Ext. 6. After fardbyan , inquest report was

prepared in Petromax light and inquest report was got marked as Ext. 4 over which there was signature of Manjoor Ahmad Gausi and Asgar Hussain.

This witness has also proved blood stained khanti, which was marked as Material Ext. 1. Hammer (hathaura) [Material Ext. 2]. Mussal in two pieces

[Material Ext. III and III/I]. Iron rod [Material Ext. 4]. Plastic rope with blood stained [Material Ext. 5] and blood stained soil [Material Ext. 6]. In

respect of aforesaid seized material a seizure list was prepared, which was marked as Ext. 3/1. In paragraph- 10 of his evidence he gave description

of the place of occurrence. In description of the place of occurrence he has stated that at a distance of about 8 feet from the house of Abdul Allam /

appellant dead body of son of Abdul Mallick Hashmi was found. In paragraph â?" 11 he also described regarding windows in the room in question. In

paragraph â?" 13 he clarified that the articles described in the seizure list were seized from the place of occurrence i.e. from inside the room . The

size of window of the room was clarified in paragraph â?" 25 of his cross - examination that it was 3â??x3â?? however, in earlier statement he had

stated as if size of the window was 3â??x3â??. In paragraph â?" 38 of his cross - examination he stated that formal F.I.R. was drawn on 15.05.2009 at

23.55 Hours (11.55 P.M.). In paragraph â?" 44 of cross- examination fact has come that F.I.R. was received in the court on 18.05.2009. The inquest

report was prepared at the place of occurrence itself and seizure list was prepared on 15.5.2009 at 11.30. Attention of this witness was also drawn to

the statement of other witnesses particularly to their statement recorded under Section 161 of the Cr.P.C., however, on examining the same we have

noticed some inconsistencies, but those inconsistencies are not sufficient to reject the credibility of the witnesses.

19. During the trial from defence side also though seven witnesses were examined, at the time of argument learned counsel for the appellants has only

drawn our attention to the evidence of D.W. 3 / Sabiha Saheen to show that she had not accepted any relationship with the deceased.

20. On going through the entire evidences on record, of-course, we have noticed some facts which have not been properly explained particularly the

fact that once formal F.I.R. was lodged on the date of occurrence itself i.e. on 15.05.2009 at 11.55 P.M., under what circumstances the F.I.R. was

presented in the court on 18.5.2009. But considering the fact that informant's side at the very initial stage itself had raised suspicion on the

conduct of the Police and this was the reason that protest petition was also filed which was brought on record, certainly, only on the ground of delayed

receipt of F.I.R. in the court below, in such circumstances, would not be sufficient to reject the prosecution evidence, which is otherwise reliable and

credible. The appellant / Munni Khatoon was the Mukhiya and appellant / Abdul Allam is the Mukhiyapati.

The informant has categorically stated that since his deceased son was having love affair with the daughter of Mukhiya and Mukhiyapati who was

already married, the informant with his son and others were persuaded to come to Abdul Allam's house in the garb of preparing some bond. It has

also come that Abdul Allam / appellant had given a picture to the informant that since his daughter had run away from Ahmedabad i.e the house of

her husband and went to the son of the informant who was studying Engineering in Delhi, his son-in-law now may not keep his daughter with him.

This picture was given to the deceased through his father as if the appellant- Abdul Allam had decided to solemnize marriage of his daughter with the

deceased. This indicates that in a pre-planned manner in deep conspiracy the deceased was persuaded to come to the house of the appellant/ Abdul

Allam, who was assaulted till death. The appellants being Mukhiya & Mukhiyapati were so daring that after arrival they firstly allowed the deceased,

informant and his Sarhu to occupy chair and suddenly thereafter the son of the informant was tied by rope. Informant and his Sarhu were pushed out

and door was locked from inside and they brutally assaulted Sadab till his death. His dead body was thrown by the accused persons just at a distance

of 8 feet from the door.

This indicates that the main accused were of the view that being Mukhiya and Mukhiyapati they would have done anything. From perusal of the F.I.R.

it is evident that Police Station from the place of occurrence was at a distance of about 15 K.M. and this is reason that after receiving telephonic

information in the Police Station which was received at 8.00 in the evening they reached the place of occurrence at about 9.00 P.M. and thereafter,

fardbyan was recorded at the place of occurrence and inquest report was also prepared. On perusal of column - 3 of the inquest report i.e. Ext. 2 it is

evident that dead body was found in the village- Balasath opposite the main door of Mukhiya - Smt. Munni Khatoon on 15.05.2009 at 21.30 Hours.

P.W. 1, 2, 3, 4 and 5 who are eye witnesses to the occurrence are very much consistent about the manner of occurrence. Their evidence also gets

support from the evidence of one chance witness i.e. P.W. 6 /Ashabul Haque who at the time of occurrence while moving after hearing the cry near

the house of the Mukhiya went there and saw that 9-10 persons were peeping through window of the room of the Mukhiya and he also saw the

occurrence.

21. In a case of such type of credible ocular evidence, which is substantially corroborated by the evidence of Investigating Officer as well as medical

evidence, it would be difficult for this court to come to confusion that prosecution has not proved the case beyond all reasonable doubt. Accordingly,

we are of the opinion that prosecution has established its case beyond all reasonable doubt and as such, there is no reason to interfere with the

judgment of conviction and sentence. Accordingly, the judgment of conviction dated: 31.01.2012 and sentence dated-02.02.2012 passed in Sessions

Trial No. 73 of 2010 & 407 of 2010 / 49 of 2010 is hereby approved and all the aforesaid four Appeals are dismissed.

22. The bail bond of Munni Khatoon in CR. APP. (DB) No. 190 of 2012 is hereby cancelled and she is directed to surrender before the court below

forthwith for serving sentence.