

(2022) 08 PAT CK 0027

Patna High Court

Case No: Death Reference No. 7 Of 2021, Criminal Appeal (DB) No. 513, 556 Of 2021

State Of Bihar

APPELLANT

Vs

Samsher Miyan

RESPONDENT

Date of Decision: Aug. 17, 2022**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 120B, 302, 307, 387
- Code Of Criminal Procedure, 1973 - Section 207, 313, 366
- Arms Act, 1959 - Section 27

Hon'ble Judges: Ashwani Kumar Singh, J; Harish Kumar, J**Bench:** Division Bench**Advocate:** J.P. Singh, Kamlesh Kumar Singh, Rajani Ranjan Prasad Singh, Pratik Mishra, Shashi Bala Verma, Ravindra Kumar, Ashutosh Nath, Yash Singh**Final Decision:** Dismissed/Allowed

Judgement

1. The appellants Furchan Miyan @ Fuchan Miyan, Samsher Miyan and Guddu Miyan have been held guilty vide order dated 09.03.2021 passed in

Sessions Trial No.209 of 2019 arising out of Ara Town P.S. Case No.739 of 2018 by the learned Additional Sessions Judge-IXth, Bhojpur at Ara to

the charges under Sections 302 read with 34, 307 read with 34, 387 read with 34 and 120B of the Indian Penal Code (for short "IPC") and

Section 27 of the Arms Act.

2. Consequent upon the conviction, vide order dated 14.06.2021, the aforesaid convicts have been sentenced to death and to pay a fine of Rs.one lakh

each for the offence punishable under Section 302 read with 34 of the IPC, rigorous imprisonment for ten years and a fine of Rs.50,000/- each for the

offence punishable under Section 307 read with 34 of the IPC, rigorous imprisonment for seven years and a fine of Rs.50,000/- each for the offence

punishable under Section 387 read with 34 of the IPC, rigorous imprisonment for seven years and a fine of Rs.50,000/- each for the offence under

Section 120B of the IPC and rigorous imprisonment for seven years and a fine of Rs.10,000/- each for the offence punishable under Section 27 of the

Arms Act and in default of payment of fine to undergo simple imprisonment for a further period of three months. The Trial Court has directed that all

the sentences shall run concurrently.

3. Reference made by the Trial Court under Section 366 of the Code of Criminal Procedure (for short "CrPC") for confirmation of death

sentence awarded to the convicts in the aforesaid sessions trial has been registered as Death Reference No.07 of 2021.

4. The appellant Furchan Miyan @ Fuchan Miyan has challenged his conviction and sentence awarded in the aforesaid sessions trial by filing Criminal

Appeal (DB) No.513 of 2021. The appellants Samsher Miyan and Guddu Miyan have challenged their conviction and sentence imposed by the Trial

Court by filing Criminal Appeal (DB) No.556 of 2021.

5. These appeals preferred by the appellants as well as the reference made by the Trial Court under Section 366 of the CrPC have been heard

together and are being disposed of by a common order.

6. The sessions trial in which the impugned judgment and order were passed relates to the first information report (for short "FIR") that had

been registered at 6:30 pm on 06.12.2018 in Bhojpur Town Police Station in respect of an incident that had occurred at Shobha Market, Dharman

Chowk situated at a distance of 0.5 kilometre in the eastern direction from the Ara Town Police Station on the basis of the written report submitted by

one Akil Ahmad.

7. In his written report, Akil Ahmad stated that on 06.12.2018, at around 12:48 pm, when he, his brother and family members were running the shop in

Shobha Market, suddenly, Khurshid Qurashi, Md. Naiyer, Raju Khan, Babli Miyan, Abdullah Qureshi, Sarla Miyan, Ahmad Miyan, Shamsheer Miyan

and Taushif Miyan, all residents of Mohalla-Milki and Kasai Tola, P.S.- Ara Town, District- Bhojpur and 4-5 unknown persons came to the shop and

demanded Rs.10,00,000/- (Ten Lakh) as extortion money. When his brother denied to pay the said amount, all the accused persons took out pistol from their lower back and started hurling abuses. When his brother Imran opposed, Khurshid Qurashi and Naiyer Miyan opened indiscriminate firing upon Imran because of which he died on the spot. At the same time, Babli Miyan and Shamsheer Miyan also opened fire with an intention to kill him and a bullet hit him in his abdomen as a result of which he became unconscious. When he regained consciousness, he came to know that one another person had also sustained gun shot injury in the said incident. He attributed the motive for the said incident to be demand of Rs.10,00,000/- as extortion money by the accused persons because he and his family members had purchased a shop in the Shobha Market.

8. Upon receipt of the aforesaid written report, Jay Prakash Singh, Station House Officer (for short "SHO") of Ara Town Police Station handed over the investigation of the case to Jay Prakash Rai, a Sub-Inspector of Police (P.W.7) and registered Ara Town P.S. Case No.739 of 2018 on 06.12.2018 under Sections 387, 302, 307 read with 34 of the IPC and Section 27 of the Arms Act against altogether nine named accused persons and 4-5 unknown accused persons.

9. While the investigation was still continuing, Jay Prakash Rai (P.W.7) was transferred to a different police station. He handed over the investigation of the case to J.P. Singh, the SHO of the Ara Town Police Station on 31.12.2018. Subsequently, the investigation of the case was handed over to one Rahmatullah (P.W.8) who took over the investigation of the case on 19.01.2019. After completing investigation, he submitted charge sheet under Sections 387, 302, 307/34, 120B of the IPC and Section 27 of the Arms Act finding the allegations made in the FIR to be true. On perusal of the police report, the learned Chief Judicial Magistrate took cognizance of the offences on 09.07.2019.

10. After complying with the statutory requirements under Section 207 of the CrPC, the learned Chief Judicial Magistrate, Ara committed the case to the court of sessions for trial.

11. On receipt of the record from the court of Chief Judicial Magistrate, Ara, learned Sessions Judge, Ara transferred the case to the court of

Additional Sessions Judge, IXth, Ara.

12. Thereafter, the appellants were charged for the offences punishable under Section 302 read with 34, 387 read with 34, 307 read with 34, 120B of

the IPC and Section 27 of the Arms Act vide order dated 23.07.2019 to which they did not plead guilty. Hence, the trial commenced.

13. During trial, the prosecution examined altogether eight witnesses and proved certain documents in support of charges.

14. Amir Faiyaj (P.W.1) stated in his examination-in-chief that the incident took place at 12:30 pm on 06.12.2018. At that time, Suhail (not examined),

Imran, Suhaib, Akil Ahmad (not examined) and Saddam (not examined) were present with him in the shop situated at Dharman Chowk, Ara. They

were talking together. In the meantime, about 13-14 persons came to the said shop. Out of them, he could identify Khurshid Quraishi, Naiyer Quraishi,

Babli Miyan, Haji Shamsheer, Raju Khan, Fuchan, Guddu Chor, Sarla Miyan, Abdullah Quraishi, Ahmad Miyan. He stated that Khurshid, Naiyer and

Babli started arguing with Akil Ahmad and Imran and asked as to why the demand of Rs.10 lakh as rangdari was not fulfilled. They started abusing

them and, thereafter, they resorted to indiscriminate firing. He stated that Akil Ahmad sustained gun shot injury in his abdomen and head and Imran

sustained gun shot injury near his nose, throat, back and head. He sustained two shots in his chest. He also sustained gun shots in his waist and legs as

a result of which he fell down and died on the spot. He stated that due to the firearm injury in abdomen, Akil Ahmad also fell down. While leaving the

place of occurrence, the accused persons resorted to indiscriminate firing in air in order to terrorise the local people and, in the process, one Farukh

also sustained gun shot injury. He stated that after the occurrence, he, Suhail and Saddam carried the body of Imran on one rickshaw and Suhaib and

Saddam sat on that rickshaw and went to the Sadar Hospital, Ara. Thereafter, he and Suhail put the injured Akil on another rickshaw and took him to

the Sadar Hospital, Ara. Akil Ahmad was treated in the hospital whereas Imran died on the spot and his postmortem examination was conducted at

the Sadar Hospital, Ara. When they were taking the deceased and the informant to the hospital, Suhaib informed the police on telephone. The police

seized the CCTV footage of 06.12.2018 of the Shobha Market and he put his signature on the seizure list. He also identified the signature of Akil

Ahmad and Suhaib on the seizure list which were marked as Exhibit- 1/1 and 1/2 respectively. He identified the accused Samsher in the dock. He also

identified two other accused, namely, Guddu and Furchan by face and stated that they were also involved in the offence but he could not identify them

by their name.

15. In cross-examination, he admitted that it is true that in the previous trial arising out of the same police case, he had deposed that he did not see

who had fired. He stated that he had given such evidence in nervousness. He further stated that the deceased Imran had sustained 16-17 firearm

injuries. He had sustained gun shot injuries in his front and back both. He stated that there was blood on the floor as well as on the street. He admitted

that when he had put his signature on the seizure list, others were also present there. He further admitted that after sustaining injury Akil Ahmad was

throughout conscious. He denied the defence suggestion that he had not witnessed the incident. He also denied the defence suggestion that he

together with his brother Imran and Suhail are involved in trade of liquor. He further denied knowledge that Imran and Suhail had been sent to custody

in connection with the offence under the Excise Act.

16. Suhaib (P.W.2) stated in his testimony that the incident took place at about 12:30 pm on 06.12.2018. At the relevant time, when he and his brothers

Akil Ahmad, Imran, Amir Faiyaj and Md. Saddam were present in the shop situated at Shobha Market, the accused persons, namely, Khurshid

Quraishi, Raju Khan, Babli Miyan, Saral @ Anwar Miyan, Guddu Miyan, Shamsher, Taushif and Ahamad came and asked as to why they have not

sent the ransom amount of Rs.10 lakh. They told them that they have recently opened the shop and they do not have the capacity to pay Rs.10 lakh.

At best, all the brothers can jointly afford to pay Rs.5 lakh only. Upon this, they started abusing, which was protested by them. Thereafter, the

accused persons took out pistol from their lower back and resorted to indiscriminate firing upon them causing injury to his brother Imran near his nose,

neck, chest and both legs. His brother Akil Ahmad sustained gun shot injury in his abdomen. One Farukh, a BSNL employee also sustained gun shot

injury in the incident. He stated that due to the gun shot injuries, his brother Imran died on the spot and all the accused persons fled away by resorting

to firing. He stated that they and others present there took Imran and Akil Ahmad to Sadar Hospital, Ara where the doctor declared his brother Imran

as "brought dead". They started treatment of his brother Akil Ahmad. He stated that the inquest report of the deceased Imran was prepared in

his presence. He identified the carbon copy of the inquest report and proved his signature on it which was marked as Exhibit-1/2. He further stated

that on 05.01.2019, the police officer of Ara Town Police Station had seized the CCTV footage of 06.12.2018 from the shop on which he had put his

signature, which was marked as Exhibit-1/2. He identified the accused persons, namely, Guddu Miyan, Shamser and Furchan in the dock.

17. In cross-examination, he stated that rangdari was demanded by the accused persons two days before they had taken the possession of the shop.

He admitted that no information was given to the police. He admitted that they had arranged for Rs.5 lakh from different sources and had decided to

pay the said amount to the accused persons. He stated that on the date of occurrence, 20-25 rounds of firing were made and his brother Imran had

sustained 7-8 gun shots. He admitted that his brother Imran did die on the spot. His body was taken to the hospital where the doctor declared him

"brought dead". He stated that blood had fallen on the floor to a great extent. The Daroga had seen the blood. He further admitted that from the

place of occurrence, Gopali Chowk is at a very short distance of 8-9 paces. He admitted that the police station is situated at a distance of 0.5

kilometre. He denied the defence suggestion that on the date of occurrence, he and his brother Suhail were not present at the place of occurrence. He

further denied the defence suggestion that he came to know about the occurrence after he visited Sadar Hospital, Ara. He also denied that the

accused persons have falsely been implicated due to old enmity.

18. Dr. Jitendra Nath Mishra (P.W.3) stated in his testimony that he was posted as Medical Officer at Ara Sadar Hospital. He conducted the

postmortem examination on the body of the deceased Imran at 3:10 pm on 06.12.2018 and found the following antemortem injuries on his person:-

- a) 1st entry wound-Lacerated inverted wound 1/2 inch X 1/2 inch X cavity deep over route of nose (right side).
- b) IInd entry wound- Lacerated, inverted wound of size 1/2 inch X 1/4 inch X cavity deep over right cheek.
- c) IIIrd entry wound-Lacerated, inverted wound of size 1/2 inch X 1/2 inch X cavity deep over right side of upper neck.
- d) IVth entry wound- Lacerated, inverted wound of size 1 inch X 1 inch X cavity deep, just below right clavicle (Lateral side).
- e) Vth entry wound-Lacerated, inverted wound of size 1 inch X 1 inch X cavity deep on upper chest, 1 inch right from the middle.
- f) VIth entry wound- Lacerated, inverted wound of size 1/2 inch X 1/2 inch X cavity deep on right chest above and medial to right nipple.
- g) VIIth entry wound- Lacerated, inverted wound of size 1/2 inch X 1/2 inch X cavity deep at right inguinal region.
- h) VIIIth Exit wound- Lacerated, everted wound of size 3/4 inch X 3/4 inch X cavity deep at posterior to left ear.
- i) IXth Exit wound- Lacerated, reverted wound of size 3/4 inch X 3/4 inch X cavity deep on left chest on back side.
- j) Xth Exit wound- Lacerated, everted wound of size 3/4 inch X 3/4 inch deep over left iliac crest.
- k) XIth Exit wound- Lacerated, everted wound of size 1 inch X 1 inch X cavity deep on upper natal cleft (2 inch lateral to mid line).
- l) XIIth Exit wound- Lacerated, everted wound of size 3/4 inch X 3/4 inch X cavity deep on anterior aspect or left upper thigh.
- m) XIIIth Exit wound- Lacerated, everted wound of size 3/4 inch X 3/4 inch X cavity deep at upper thigh (left lateral).
- n) XIVth Exit wound-Lacerated, everted wound of size 3/4 inch X 3/4 inch X cavity deep on posterior thigh.

19. According to him, the time elapsed since death was 6 to 36 hours and the cause of death was shock and haemorrhage caused by the abovementioned firearm injuries. He proved his writing and signature on the postmortem report which was marked as Exhibit-4. He stated that he had held the postmortem examination on the body of the deceased Imran in presence of Dr. M. H. Ansari and Dr. Sujit Kumar.

20. In cross-examination, he stated that all the wound of entries are situated on the right side of the body of the deceased meaning thereby that the injuries were caused from the right side of the body of the deceased. He stated that he cannot say the distance from which the firing was caused at the deceased. He admitted that he had not mentioned the contents of stomach of the deceased. He further admitted that rigor mortis was present on the whole body of the deceased. He stated that rigor mortis develops within 3 to 6 hours and, thereafter, appears on the whole body. He stated that normally rigor mortis starts disappearing after 36 hours of the death of the deceased. He admitted that in the postmortem examination report the police station case number is not mentioned.

21. Dr. Sujit Kumar (P.W.4) stated in his examination-in-chief that on 06.12.2018, he was posted as Medical Officer at the Sadar Hospital, Ara. On this date, a medical team was constituted for conducting the postmortem examination on the person of the deceased Imran. He was one of the members of that team. He stated that postmortem of the deceased Imran was done in his presence and the report was prepared before him over which he had put his signature. He identified his signature, which was marked as Exhibit-4/1.

22. Dr. Md. Mobinul Haque Ansari (P.W.6) stated in his examination-in-chief that on 06.12.2018, he was posted as Medical Officer at the Sadar Hospital, Ara. On this date, he was made a member of the team constituted for conducting the postmortem examination on the body of the deceased Imran. The postmortem examination of deceased Imran was done in his presence. He identified his signature on the postmortem examination report, which was marked as Exhibit-4/2.

23. Dr. Arun Kumar (P.W.5) stated in his testimony that on 06.12.2018 he was posted at the Sadar Hospital, Ara in the Emergency Department. On this date, he had examined the injured Akil Ahmad in the Emergency Ward and found a lacerated wound 1 inch X 1/4 cm X 1/4 cm in left lower side of his abdomen. He advised ultra sound and plane X-ray of abdomen of the injured. The opinion regarding the nature of injury was kept reserved till receipt of the X-ray report. Since the X-ray report showed that no bony injury was caused on the person of the injured Akil Ahmad, the nature of

injury was opined to be simple. He identified his own writing and signature on the injury report which was marked as Exhibit-5/1.

24. In cross-examination, he stated that he cannot say as to who had brought the injured before him in the Emergency Ward. He stated that he cannot

say the distance from which the firing was made. He further admitted that there was no blackening at the place of injury. He denied that he was

known to the injured Akil Ahmad from before and had issued the injury report just in order to help him due to the old acquaintance.

25. Jay Prakash Rai (P.W.7), the first Investigating Officer of the case stated in his testimony that on 06.12.2018, he was posted as Sub-Inspector of

Police at Ara Town Police Station. On this date, he was handed over investigation of the Ara Town P.S. Case No.739 of 2018 by the SHO, Jay

Prakash Singh. He stated that the formal FIR of Ara Town P.S. Case No.739 of 2018 was in the writing of an Assistant Sub-Inspector of Police,

namely, Jagniwas Sharma and it was duly signed by the SHO, Jay Prakash Singh. He identified and proved the signature of the SHO, which was

marked as Exhibit-3/1. The seizure list was prepared by the Assistant Sub-Inspector of Police, namely, Pawan Kumar Singh of Ara Town Police

Station. He identified the signature of Pawan Kumar Singh on the seizure list which was marked as Exhibit-3/2. He stated that the inquest report of

the deceased was prepared by one Ramanuj Singh, a Sub-Inspector of Police of Ara Town Police Station. He identified the signature and writing of

Ramanuj Singh, which was marked as Exhibit-1/2. He stated that he received the copy of the FIR and seizure list after the investigation was handed

over to him. Thereafter, he recorded the subsequent statement of the informant Akil Ahmad. The informant had supported the contents of the FIR in

his subsequent statement. Thereafter, he perused the seizure-list and inspected the place of occurrence. He recorded the statements of the witnesses,

namely, Md. Suhaib Ahmad and Md. Farooq. He took the FIR named accused Abdullah Quraishi on remand for 24 hours. On 31.12.2018, he was

transferred to Aayar Police Station whereafter he handed over the investigation to the SHO, J. P. Singh.

26. In his cross-examination, he admitted that he did not find a single drop of blood at the place of occurrence. He admitted that he did not record the

statement of any independent witness except the injured. He admitted that the place of occurrence is situated at a distance of 500 metre from Ara

Town Police Station. He admitted that he received information regarding the incident firstly on his mobile no.7004118107, but he did not remember

number by which the call was made. The said call was made by one Manoj, a Sub-Inspector of Police posted at Ara Town Police Station. He

admitted that he did not record the statement of said Manoj in the case-diary. He admitted that when he reached at the place of occurrence, neither

the family members of the deceased nor any other person was present there. He did not seize any article from the place of occurrence. He admitted

that the place of occurrence is in the Shobha Market where many people came for shopping. He admitted that he did not make any effort to know the

antecedent of the deceased Imran. He further admitted that he did not seize any weapon of crime.

27. Rahmatullah (P.W.8) is the second Investigating Officer of the case. He stated in his testimony that he took over the investigation of the case

under the orders of SHO, Jay Prakash Singh on 19.01.2019. After taking over the investigation of the case, he recorded the statements of witnesses,

namely, Amir Faiyaj and Suhaib Ahmad. On finding the allegations made in the FIR to be true during investigation, he submitted charge sheet No.151

of 2019 on 31.05.2019 under Sections 387, 302, 307 and 120B of the IPC and Section 27 of the Arms Act against Shamsher Miyan, Guddu Miyan and

Fuchan Miyan.

28. In cross-examination, he admitted that when the witnesses had seen the CCTV footage, they did not identify Shamsher Miyan. He admitted that

he had shown CCTV footage of Shobha Market to Md. Suhail, which was produced by him as material Exhibit-1 before the court. However, he could

not locate Ahmad Miyan, Abdullah Qureshi and Khurshid Qurashi in the CCTV footage when it was shown to him on 20.01.2019. He admitted that

during investigation, Suhail has not stated him that Amir Faiyaj and Md. Saddam were present at the place of occurrence. He admitted that during

investigation Suhail did not tell him that at the time of occurrence Amir Faiyaj and Md. Saddam were present at the place of occurrence. He admitted

that when the incident had taken place, he was posted at Aurangabad District. He joined at Ara Town Police Station on 31.12.2018. He had no concern with the investigation of the case prior to 31.12.2018. He admitted that he has not mentioned in the case diary as to when he took over the investigation of the case. He admitted that he had not prepared the seizure list of CCTV footage. He admitted that there is no mention that the CD of CCTV footage was kept in sealed cover. He stated that he had sent the CD to FSL, Patna, but it was reported to him that examination of CD is not done at the FSL, Patna. After the Material Exhibit-1 was shown to him, he admitted that there is no mention on the envelop as to when it was sealed. He admitted that there is no seal of the police station on the envelop. He admitted that he did not record the statement of any independent witness during investigation. He also admitted that the CD of CCTV footage was not played before the court and he categorically stated that he is not aware as to when the CD was prepared. He stated that he does not remember as to when it was received by him. He also admitted that the envelop of CD appears to be new. He denied the defence suggestion that he had made an erroneous investigation and had illegally submitted the charge sheet in the case.

29. After examination of P.W.8, the prosecution closed its case. Thereafter, in order to enable the appellants to explain the circumstances appearing against them, the Trial Court recorded their statements under Section 313 of the CrPC in which they denied the charges and pleaded their innocence.

30. The defence did not lead any oral or documentary evidence during trial.

31. Since the defence did not lead any oral or documentary evidence, the Trial Court closed the defence case.

32. Thereafter, arguments advanced on behalf of the parties were heard and, on appreciation of evidence on record, the Trial Court held the appellants guilty to the charges noted hereinabove vide impugned judgment dated 09.03.2021 and sentenced them vide impugned order dated 14.06.2021.

33. Mr. Pratik Mishra, learned counsel for the appellant Furchan Miyan @ Fuchan Miyan in Criminal Appeal (DB) No.513 of 2021 submitted that in

the instant case, there was an inordinate delay of about six hours in the institution of the FIR. He contended that it is admitted by the witnesses that the police station was situated at a distance of 0.5 kilometre from the place of occurrence and the police had arrived at the place of occurrence immediately after the incident and prepared the seizure list and the inquest report. He contended that the undue delay caused in the institution of the FIR specially when the witnesses were present at the place of occurrence when the police reached there immediately after the incident creates a serious doubt about the veracity of the prosecution case. He contended that the FIR becomes a suspicious document also because the same was instituted after the major part of the investigation was over. He contended that the medical evidence in the present case is highly inconsistent with the prosecution story. The doctor who conducted the postmortem examination on the body of the deceased stated that the time elapsed since death was 6 to 36 hours whereas the postmortem examination on the body of the deceased was conducted within 3 hours of the commission of the crime. Lastly, he contended that the non-examination of the material witnesses like the injured informant, police officers, who lodged the FIR formally, prepared the inquest report and the seizure list on the date of occurrence and the brothers of the informant and the deceased, namely, Suhail and Md. Saddam has caused serious prejudice to the defence case. He urged that the findings of the Trial Court are erroneous as the prosecution has miserably failed to prove its case beyond reasonable doubts.

34. Mr. Ashutosh Nath, learned counsel for the appellants Samsheer Miyan and Guddu Miyan in Criminal Appeal (DB) No.556 of 2021 has also made submissions on the same line. He submitted that the impugned judgment of conviction and order of sentence passed by the Trial Court is illegal, perverse, unwarranted and against the materials on record. He contended that though the incident took place in a busy market, no independent witness has been examined in the present case. He further contended that the Material Exhibit-1 is an electronic evidence, which was neither played before the court nor it is known what are its contents. Furthermore, it was not proved in accordance with law.

35. Mr. J. P. Singh, learned amicus curiae appearing in Death Reference No.07 of 2021 submitted that though P.W.1 and P.W.2 have stated in their testimony that blood had fallen on the floor from the wound of the deceased, the first Investigating Officer admitted in this cross-examination that he did not find a single drop of blood at the place of occurrence. He submitted that the inquest report (Exhibit-2) would suggest that it was prepared at 1:45 pm on 06.12.2018 and P.W.2 Suhaib was a witness to the inquest. The inordinate delay caused in the institution of the FIR would make the entire prosecution case unbelievable. He submitted that even if the prosecution story is believed to be true, awarding death penalty to all of the named accused in the instant case seems to be erroneous and exaggerating as the guidelines issued by the Supreme Court in Bachan Singh vs. State of Punjab, reported in (1980) 2 SCC 684 and Machhi Singh & Ors. vs. State of Punjab, reported in 1983 SCR (3) 413 for awarding death sentence in the rarest of rare case have been overlooked by the Trial Court.

36. On the other hand, Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State being assisted by Mr. Ravindra Kumar, learned counsel for the informant submitted that the Trial Court has correctly appreciated the evidence on record. She submitted that two brothers of the deceased Imran and the injured Akil Ahmad are witnesses to the occurrence. Their evidence is fully corroborated by the medical evidence. They have fully established the place of occurrence and the manner of occurrence in their testimony. She further contended that P.Ws. 1 and 2 have given vivid description of the manner in which the incident took place and P.W.3, the doctor, who conducted the postmortem examination on the body of the deceased Imran found seven entry wounds on his person. Further, the doctor, who examined the injured Akil Ahmad also found gun shot injury in his abdomen as narrated by the eye witnesses to the occurrence. She further contended that the Trial Court has rightly awarded the death sentence in the present case as the incident was committed in broad day light in a busy market at Ara township.

37. We have heard the submissions advanced on behalf of the parties and the learned amicus curiae and perused the materials on record.

38. Upon scrutinizing the evidence adduced on behalf of the prosecution, we find that in the instant case, apart from the deceased, there are two injured witnesses, namely, Akil Ahmad and Md. Farukh. Neither the injured informant nor Md. Farukh has been examined on behalf of the prosecution. There is no explanation as to why they have not been examined in the case.

39. We further find from the evidence of P.Ws. 1 and 2 that at the time of incident, their brothers, namely, Suhail and Saddam were also present in the shop at the Shobha market. They also accompanied the deceased and the injured when they were taken to the Sadar Hospital from the place of occurrence. However, they have been withheld by the prosecution during trial.

40. Similarly, the formal FIR was drawn by one Jagniwas Sharma, a police officer posted at Ara Town Police Station, which was duly signed by Jay

Prakash Singh, the SHO of Ara Town Police Station. They too have been withheld by the prosecution. The other two police officers, namely, Pawan

Kumar Singh and Ramanuj Singh, who had prepared the seizure list and the inquest report respectively on 06.12.2018 have also not been examined by

the prosecution. The Sub-Inspector of Police, namely, Manoj, from whom the Investigating Officer, Jay Prakash Rai came to know about the incident

first has also not been examined by the prosecution. They all were material witnesses. Their examination would have unfolded several relevant facts

of the case. Their withholdment by the prosecution without any reasonable explanation has certainly caused prejudice to the case of the defence.

41. As per the prosecution case, the offence was committed at 12:48 pm on 06.12.2018. The distance of the police station from the place of

occurrence was merely 500 metre. The police officer had reached at the place of occurrence at 1:30 pm itself which would be evident from the

seizure list which was prepared on 06.12.2018. The body of the deceased Imran was taken to the Sadar Hospital, Ara where the inquest report was

prepared at 1:45 pm on 06.12.2018 by the Sub-Inspector of Police Ramanuj Singh. The evidence would suggest that P.W.1 and P.W.2 were present

with the body of the deceased when it was taken from the place of occurrence to the Sadar Hospital, Ara. Not only this, P.W.2 Suhaib is a witness to

the inquest report. He has proved his signature on it, which has been marked as Exhibit- 1/1. The postmortem examination on the body of the deceased was conducted at 3:10 pm on 06.12.2018 by P.W.3, Dr. Jitendra Nath Mishra. The body of the deceased Imran at the time of postmortem examination was identified by one Yugal Manjhi, a Havildar. P.W.3 has admitted in his deposition that in the postmortem examination report, police station case number has not been mentioned. Till the completion of the postmortem examination on the body of the deceased, no statement was given to the police either by the P.W.1 Amir Faiyaj or by P.W.2 Suhaib and the present FIR was lodged on the basis of written report by the injured Akil Ahmad much latter at 6:30 pm on 06.12.2018.

42. At this stage, it would be pertinent to note that P.W.1 had admitted in cross-examination that the injured informant was conscious after sustaining gun shot injury in his abdomen. He was also under treatment in the Sadar Hospital, Ara where the police had prepared the inquest report. Dr. Arun Kumar (P.W.5), who examined the injured informant, opined that the injury sustained by him was simple in nature. However, he did not give any statement to the police when the police visited the place of occurrence and the hospital. Thus, if the prosecution evidence is to be believed, a definite information about the killing of Imran and causing injury to the injured Akil Ahmad was brought to the notice of the police pursuant to which the police party reached at the place of occurrence and prepared the inquest report at 1.30 pm on 06.12.2018.

43. Under such circumstance, the FIR ought to have been registered promptly on 06.12.2018 specially when the police station was at a distance of only 500 metre only and several police officers were present at the place of occurrence. But, in the instant case, despite the knowledge of a heinous offence having been committed, no FIR was lodged by the police and after a considerable lapse of time, the FIR was instituted on a purported written report submitted by the injured Akil Ahmad, who has not even turned up to depose before the court during trial.

44. It is well known that the object of FIR is to set the criminal law in motion. It is the information given to the police on the basis of which the criminal

law is set in motion. It enables the officer-in-charge of the police station to initiate the investigation and to collect evidence as soon as possible.

Though, there is no duration of time, which is fixed for giving information of a crime to the police, if the police officer deliberately fails to record the

FIR on receipt of information of a cognizable offence and registers FIR after considerable lapse of time, the entire investigation gets contaminated.

Many a time, the faulty investigation leads to the collapse of the prosecution case and the criminal justice system.

45. In *State of Andhra Pradesh vs. Punati Ramulu and Ors.* reported in 1994 Supp (1) SCC 590, the Supreme Court observed:

“The investigating officer has deliberately failed to record the FIR on receipt of information of a cognizable offence of the nature, as in this case,

and had prepared the FIR after reaching the spot after due deliberations, consultations and discussions, the conclusion becomes inescapable that the

investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer

would be stopped to fabricate evidence and create false clues”.

46. In *Mukesh and Ors. vs. NCT of Delhi and Ors.* reported in (2017) 6 SCC 1, the Supreme Court observed:

“Delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by courts with suspicion because

there is possibility of concoction of evidence against an accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the

delay. Whether the delay is so long as to throw a cloud of suspicion on the case of the prosecution would depend upon a variety of factors. Even a

long delay can be condoned if the informant has no motive for implicating the accused.”

47. The discussions made above would make it evident that in the instant case the police have deliberately failed to institute the FIR on receipt of an

information about a cognizable offence of heinous nature and started investigation even without registration of the case. The police failed to register

the FIR even after reaching the spot and commencing the investigation. They allowed the injured and the deceased to be taken to the Sadar Hospital,

Ara where they prepared the inquest report and handed over the body of the deceased to the doctor for postmortem examination and the doctor commenced and completed the postmortem examination at 3:10 pm on 06.12.2018. The institution of the FIR in the evening at 6:30 pm on the basis of the written report by the injured Akil Ahmad clearly gives an impression that the same was instituted after due deliberations, consultations and discussions. Thus, in view of the observations made by the Supreme Court in Punati Ramulu (supra) and Mukesh and Ors. (supra), it can safely be said that it would be highly unsafe to rely upon such a tainted investigation, as one would not know to what extent the police officers fabricated evidence and created false clues.

48. Insofar as the testimony of P.W.2 Suhaib is concerned, he stated that he has signed on the inquest and his signature has been marked as Exhibit-

1/2. The deceased was none other than the brother of P.W.2 Suhaib. It was prepared by the police almost one hour after the occurrence on which

P.W.2 had also signed. It is beyond comprehension what prevented P.W.2 Suhaib to give statement to the police about the alleged occurrence if he had actually witnessed the occurrence.

49. It may be a case of blind murder and nobody knew who were the real culprits and that is the reason despite signing on the inquest report, P.W.2 failed to give any information to the police.

50. Insofar as the testimony of P.W.1 is concerned, he stated that Akil Ahmad sustained firearm injury in his abdomen and head. However, the

doctor, who had examined the injured informant did not find any injury on his head. He admitted in his cross-examination that the deceased had

sustained 16-17 firearm injuries, which is contrary to the postmortem report where only 7 entry wounds have been found by the P.W. 3 Dr. Jitendra

Nath Mishra, who had held the postmortem examination. He admitted in his cross-examination that in the previous trial arising out of the same police

case in which some other accused persons were put on trial he had not taken name of any of the accused persons involved in the crime.

51. Now coming to the medical evidence of the doctor (P.W.3), we notice that he had held the postmortem examination on the body of deceased

Imran at 3:10 pm on 06.12.2018, i.e., less than 2 hours and 13 minutes from the time of incident. He further stated that the time elapsed since death was 6 to 36 hours. According to him, rigor mortis was present on the whole body of the deceased. As discussed hereinabove, the alleged time of occurrence is 12:48 pm.

52. As per Chapter XIV of Modi's Textbook of Medical Jurisprudence and Toxicology: 24 Edition, 2012, the time of onset of rigor mortis varies greatly in different cases, but the average period of its onset may be regarded as 3 to 6 hours after death in temperate climates, and it may take 2 to 3 hours to develop. In India, it usually commences in 1 to 2 hours after death. In temperate regions, rigor mortis usually lasts for 2 to 3 days. In Northern India, the usual duration of rigor mortis is 24 to 48 hours in winter and 18 to 36 hours in summer. On the basis of the study of various books on Medical Jurisprudence, it can easily be inferred that in general, rigor mortis sets in one to two hours after death and is well developed from head to foot in about 12 hours. In the instant case, the doctor stated that the rigor mortis had developed on the body of the deceased when he had conducted the post mortem examination within 3 hours of the death. Thus, we are of the opinion that the medical evidence is definitely not in alignment with the ocular evidence relating to the time of incident and the death of the deceased.

53. Insofar as the place of occurrence is concerned, P.W.1 has stated that there was blood on the floor as well as on the street. Even P.W.2 has

stated in his evidence that the Investigating Officer had seen the blood on the floor, which was flowing from the head and waist of the deceased.

However, the Investigating Officer (P.W.7) stated in his evidence that not a single drop of blood was found at the place of occurrence. When multiple

firearm injuries were caused on the deceased and the informant had also sustained firearm injuries, not a single drop of blood was found at the place

of occurrence indicates that the occurrence did not take place at the so-called place of occurrence. Thus, the prosecution has failed to establish the

place of occurrence by leading cogent evidence.

54. Insofar as the CD of CCTV footage is concerned, the same in itself does not prove anything. The said seizure was prepared on 05.01.2019 by the

first Investigating Officer. In his entire evidence, P.W.7 has not stated anything about the seizure of the so-called CD of the CCTV footage nor has

proved the contents of the seizure list. P.W.7 stated that he was transferred to another police station on 31.12.2018 and handed over the charge of

investigation to the SHO JP Singh. He stated that he was posted at Ara Town Police Station from 18.12.2017 to 31.12.2018. Hence, it is a mystery

that if P.W. 7 was the Investigating Officer of the case till 31.12.2018 then under what capacity he had prepared the seizure list dated 05.01.2019.

This may be reason why he did not whisper a word in his entire evidence about the seizure list dated 05.01.2019. Moreover, JP Singh, the SHO of Ara

Town Police Station, who was handed over the charge of investigation on 31.12.2018 by P.W.7 has not been examined. It raises question on the

genuineness of the seizure list dated 05.01.2019 in respect of the CD of the CCTV footage of the alleged occurrence.

55. Thus, on consideration of the entire evidence, we are of the opinion that the prosecution has miserably failed to prove the case beyond reasonable

doubt against the appellants.

56. For all the reasons discussed above, the appeals are allowed. The impugned judgment of conviction dated 09.03.2021 and the consequent order of

sentence dated 14.06.2021 passed in Sessions Trial No.209 of 2019 arising out of Ara Town P.S. Case No.739 of 2018 by the learned Additional

Sessions Judge-IXth, Bhojpur at Ara are, accordingly, set aside.

57. The appellants, namely, Furchan Miyan @ Fuchan Miyan (in Criminal Appeal (DB) No.513 of 2021), Samsher Miyan and Guddu Miyan (in

Criminal Appeal (DB) No.556 of 2021) are acquitted of the charges levelled against them. They shall be released from the jail forthwith unless they

are required in any other case.

58. Since, we have allowed the appeals and set aside the impugned judgment of conviction and the consequent order of sentence passed by the Trial

Court, the reference made by the Trial Court for confirmation of death sentence vide Death Reference No.07 of 2021 is, hereby, rejected.

59. Before parting with the death reference and these appeals, we would record our appreciation for the able assistance rendered by Mr. J. P. Singh,

learned amicus curiae.

60. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs.7500/- to Mr. J. P. Singh, learned amicus curiae in Death

Reference Case No.07 of 2021 as a consolidated fee for the services rendered by him.