

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.615 of 2019

Arising Out of PS. Case No.-118 Year-2016 Thana- SATHI District- West Champaran

Shambhu Yadav S/O late Chhedi Yadaav R/O Village- Basantpur, P.S.- Sathi,
District- West Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 591 of 2019

Arising Out of PS. Case No.-118 Year-2016 Thana- SATHI District- West Champaran

Banka Yadav, son of late Jagranath Yadav, Resident of village-Basantpur, P.S.-
Sathi, District-West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 719 of 2019

Arising Out of PS. Case No.-118 Year-2016 Thana- SATHI District- West Champaran

1. Dhruv Yadav @ Dhruv Yadav. son of late Jagdeo Yadav, Resident of village-
Badanpur, P.S.-Sathi, District-West Champaran.
2. Garjan Yadav, son of late Jagdeo Yadav, Resident of village-Badanpur, P.S.-
Sathi, District-West Champaran.
3. Ram Parsan Yadav, son of Dhruv Yadav @ Dhruv Yadav, Resident of
village-Badanpur, P.S.-Sathi, District-West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 748 of 2019

Arising Out of PS. Case No.-118 Year-2016 Thana- SATHI District- West Champaran



Guddu Yadav, son of Garjan Yadav, Resident of village - Basantpur, P.S.-
Sathi, Dist.- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 615 of 2019)

For the Appellant/s : Mr. Bimlesh Kumar Pandey, Advocate.
Mr. Vikash Shukla, Advocate.
Mr. Krishnakant Pandey, Advocate.
Mr. Mithilesh Kumar, Advocate.
Ms. Anjali Kumari, Advocate.

For the State : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 591 of 2019)

For the Appellant/s : Mr. Umesh Chandra Verma, Advocate.
Mr. Abhishek Kumar, Advocate.
Ms. Rashmi Jha, Advocate.
Mr. Hemant Ray, Advocate.

For the State : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 719 of 2019)

For the Appellant/s : Mr. Uday Pratap Singh, Advocate.
Ms. Bharti Rai, Advocate.
Mr. Rajesh Kumar, Advocate.

For the State : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 748 of 2019)

For the Appellant/s : Mr. Bimlesh Kumar Pandey, Advocate.
Mr. Vikash Shukla, Advocate.
Mr. Krishnakant Pandey, Advocate.
Mr. Mithilesh Kumar, Advocate.
Ms. Anjali Kumari, Advocate.

For the State : Mr. Abhimanyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV Judgment.**

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 11-09-2024

All the appeals have been taken up together as they
have been preferred against the same impugned judgment of
conviction and order of sentence dated 22.04.2019 and
26.04.2019 respectively, passed by learned Additional Sessions



Judge, FTC-II, West Champaran at Bettiah, in Sessions Trial No. 418 of 2017 arising out of Sathi P.S. Case No. 118 of 2016, whereby all six appellants have been found guilty for the offence punishable under Sections 147 and 302/149 of the Indian Penal Code. Appellant/Garjan Yadav has been further found guilty under Section 148 of the Indian Penal Code and Appellant/Dhruv Yadav has been further found guilty under Section 27 of the Arms Act. All the appellants have been sentenced to undergo rigorous imprisonment for one year under Section 147 of the Indian Penal Code and to undergo life imprisonment and to pay a fine of Rs.5,000/- each under Section 302 of the Indian Penal Code. Appellant Garjan Yadav has been further sentenced to rigorous imprisonment for two years under Section 148 of the Indian Penal Code and appellant Dhruv Yadav has been further sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- under Section 27 of the Arms Act. In default to pay the fine, the appellants have been directed to undergo additional rigorous imprisonment for three months. All the sentences have been directed to run concurrently.

2. The prosecution case as emerging from the Fardbeyan of the informant Mannan Yadav recorded by Sub



Inspector of Sathi Police Station at 23:50 O'clock on 08.09.2016 near the emergency ward of MJK Hospital is that at 5:15 P.M. on 08.09.2016 the informant along with his father Jhapas Yadav and uncle Jhagru Yadav had just sat at Chhathia Ghat Chabutra (Platform) after inspecting their agricultural field. All of a sudden, all the six appellants and co-accused Ramdat Yadav, Shivparsan Yadav, Jawahar Yadav, Bachu Yadav, Rajendra Yadav and 4-5 unknown persons came there and surrounded them. Appellant Dhruv Yadav exhorted the co-accused to kill them stating that they (victim side) are pursuing litigation after getting the land registered. They would be finished today. With such exhortation, Dhruv Yadav fired at his father with his gun hitting his leg. Seeing the occurrence, he somehow sneaked away from there and hid himself in nearby field and kept watching the occurrence. He saw that the appellant Rajendra Yadav fired at his uncle Jhagru Yadav by his gun hitting his thigh. In the meantime, Garjan Yadav, Ramdat Yadav and Shivparsan Yadav having farsa in their hands and Ramparsan Yadav, Guddu Yadav, Jawahar Yadav, Bachu Yadav and Shambhu Yadav along with others having lathi and spear in their hands, were assaulting his father and uncle indiscriminately, whereas Dhruv Yadav and Rajendra Yadav



started doing indiscriminate firing hitting his father and uncle on different parts of their body. His father and uncle received injury caused by *Lathi*, *Bhala* and *Farsa* also on their heads and other parts of their bodies, resulting into fracture in their hands and legs on different places. Having seen the occurrence, he rushed to the village crying. When the villagers came there on his hulla, the accused persons fled away, leaving his father and uncle in injured condition. Both the injured persons were taken to Chanpatia Hospital by him with the help of co-villagers, wherefrom seeing the very serious condition of his father, he sent his father directly to Bettiah by vehicle but he died on way to Bettiah. His uncle Jhagru Yadav was sent to Bettiah MJK Hospital, wherefrom the doctor referred him to Patna. But he died when he was being lifted in the ambulance for taking him to Patna. The reason of the occurrence is stated to be land dispute between the accused and informant sides. The grandfather of the informant had got some land registered from Mishraji and Koina Ji, in regard to which, the accused persons always used to quarrel with them. Even Panchayti was held between them. They were always extending threat to them. The informant has also claimed that the accused persons have killed both the deceased.



3. On the basis of the *Fardbeyan* of the informant, Sathi P.S. Case No. 118 of 2016 was registered on 09.09.2016 against 11 named accused persons including the appellants herein and 4-5 unknown persons for the offence punishable under Sections 147, 148, 149, 341, 323, 324, 302 and 504 of Indian Penal Code and Section 27 of the Arms Act.

4. After investigation, charge-sheet was submitted against all six appellants keeping the investigation pending against rest co-accused persons. After cognizance, the case was committed to the Court of Sessions by learned Magistrate. Hence, Charge was framed against them under Sections 147, 148, 341/149 and 302/149 of the Indian Penal Code and Section 27 (3) of the Arms Act, 1959. The appellants, however, pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined the following nine witnesses:-

- (i) **P.W.-1** – Tara Devi (aunt of the informant)
- (ii) **P.W.-2** – Rajdeo Pandit
- (iii) **P.W.-3** – Megha Yadav (cousin of deceased Jhapas)
- (iv) **P.W.-4** - Binod Yadav
- (v) **P.W.-5** - Dina Nath Rai
- (vi) **P.W.-6** - Mannan Yadav (Informant)
- (vii) **P.W.-7** – Dr. Sanjay Kumar Gupta, Medical Officer.
- (viii) **P.W.-8** – Dr. Vijay Kumar, Medical Officer.
- (ix) **P.W.-9** - Manjar Alam, Investigating Officer.



6. The prosecution also brought on record the following documentary evidence:

- (i) **Ext.-1** – Signature of Binod Yadav on the seizure list.
- (ii) **Ext.-1/1**- Signature of Dadan Yadav on the seizure list.
- (iii) **Ext.-2** – Postmortem report of Jhapas Yadav.
- (iv) **Ext.-2/1**- Postmortem report of Jhagaru Yadav
- (v) **Ext.-2/2** - Signature of observer on Postmortem of Jhapas Yadav.
- (vi) **Ext.-2/3**- Signature of observer on Postmortem report of Jhagaru Yadav.
- (vii) **Ext.-3** – Endorsement of registration of F.I.R. on *Fardbeyan*
- (viii) **Ext.-4** – *Fardbeyan* with signature of PW-6 (informant)

7. After closure of the prosecution evidence, accused persons were examined under Section 313 Cr.PC confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination, they admitted that they had heard the evidence of prosecution witnesses against them. But they did not explain any circumstance, though they claimed that the prosecution evidence is false and they are innocent.

8. The defence has also examined the following five witnesses in their defence:

- (i) **D.W.1**- Jainuddin Gaddi
- (ii) **D.W.2**- Yogendra Yadav
- (iii) **D.W. 3**- Banka Yadav (accused himself)



- (iv) **D.W. 4-** Laxman Yadav
- (v) **D.W.5** – Sabhapati Yadav @ Pashupati Yadav

9. The accused/appellants have also brought on record the following documents in their defence:-

- (i) **Ext.-A-** The certified copy of the order dated 17.7.2018 in Sathi P.S. Case No. 115/11.
- (ii) **Ext.-B-** The C.C. of F.I.R. of Sathi P.S. Case No. 115 / 11.
- (iii) **Ext.-C/1-** The C.C. of F.I.R. of Sathi P.S. Case No. 231/15.
- (iv) **Ext.-B/2-** The C.C. of F.I.R. of Sathi P.S. Case No. 82/2001.
- (v) **Ext.-B/3-** The C.C. of F.I.R. of Sathi P.S. Case No. 13/2000
- (vi) **Ext. B/4-** The C.C. of F.I.R. of Sathi P.S. Case No.22/2000.
- (vii) **X** – for identification of Photocopy of F.I.R. of Sathi P.S. Case No. 38/2000.
- (viii) **X/1** – for identification of Photocopy of C.S. of Sathi P.S. Case No. 38/2000.
- (ix) **X/2** – for identification of Photocopy of F.I.R. of Sathi P.S. Case No. 97/1999.
- (x) **Ext. C-** The C.C. of the order dated 9.7.2015 to 14.7.2016 in Sathi P.S. Case No. 77/14.
- (xi) **Ext. C/1-** The C.C. of the order sheet dated 17.10.16 and 20.09.2016 of Trial No. 3773 of 2016.
- (xii) **Ext. D-** The C.C. of F.I.R. of Sathi P.S. Case No. 77/14.
- (xiii) **Ext. E-** The C.C. of Chargesheet of Sathi P.S. Case No. 77/14.
- (xiv) **Ext. F-** The C.C. of attendance sheet in Trial No. 3773/16 dated 23.12.2016
- (xv) **Ext. F/1-** The C.C. of pairvi of dated 20.9.2016.
- (xvi) **Ext. F/2-** The C.C. of pairvi of dated 08.09.2016.
- (xvii) **Ext. F/3-** The C.C. of pairvi of dated 17.10.2016.

10. Learned Trial Court after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment of conviction and order



of sentence whereby all the appellants have been found guilty and sentenced accordingly.

11. We have heard learned counsel for the appellants and learned APP for the State.

12. Learned counsel for the appellants submit that the learned Trial Court has not properly appreciated the evidence on record and erroneously passed the impugned judgment and order. They have further submitted that none of the non-official witnesses have seen the occurrence but they- P.W.-1, P.W.-2, P.W.-3, P.W.-4, P.W.-5 and P.W.-6 have falsely projected themselves to be the eye-witnesses. Moreover, five of them i.e., P.W.-1 to P.W.-5 are chance witnesses and their presence at the place of occurrence is not established. Hence, their evidence cannot be relied upon.

13. They have also submitted that P.W.-1, Tara Devi, P.W.-3, Megha Yadav and P.W.-6, the informant, are relatives of the deceased and hence, their evidence is not reliable. They have further submitted that prosecution witnesses have developed their statements during trial regarding the occurrence and there are material contradictions in their statements. They have also submitted that as per the evidence adduced by the appellants in their defence, they were not on the place of occurrence. They



have been falsely implicated on account of previous enmity.

14. They have further submitted that inquest report was prepared prior to institution of the F.I.R. and the prosecution has not brought on record the first version of the prosecution case withholding the information which was given by the informant to the police telephonically with regard to the incident.

15. However, learned APP for the State has defended the impugned judgment and order submitting that there is no illegality or impropriety in the impugned judgment. The prosecution has proved its case beyond all reasonable doubts and the appellants have been appropriately sentenced.

16. We have thoroughly perused the material on record including the evidence and given thoughtful consideration to the submissions advanced by both the parties.

17. In view of the submissions of learned counsel for the appellants, it would be imperative to refer to some principles of appreciation of evidence before we proceed to discuss the evidence on record.

18. In regard to a chance witness, it is well settled principle of law that his evidence cannot be brushed aside or viewed with suspicion merely on the ground that he was a



chance witness. However, his evidence requires a very cautious and close scrutiny and his presence at the place of occurrence should be adequately explained so as to make his testimony reliable. In this regard, one may refer to the following judicial precedents:

(i) Ravi Mandal Vs. State of Uttrakhand,

AIR 2023 SC 2554

(ii) Baby @ Sebastian & Anr. Vs. Circle Inspector of Police, Adimaly, (2016) 13 SCC 333

(iii) Jarnail Singh Vs. State of Punjab, (2009) 9 SCC 719

(iv) Sarvesh Narain Shukla Vs. Daroga Singh, (2007) 13 SCC 360

(v) Acharaparambath Pradeepan Vs. State of Kerala, (2006) 13 SCC 643

(vi) Sachchey Lal Tiwari Vs. State of U.P., (2004) 11 SCC 410

(vii) Harjinder Singh Vs. State of Punjab, (2004) 11 SCC 253

(viii) State of A.P. Vs. K. Srinivasulu Reddy, (2003) 12 SCC 660

(ix) Shankarlal Vs. State of Rajasthan, (2004) 10 SCC 632

(x) Satbir Vs. Surat Singh, (1997) 4 SCC 192

19. It is also settled principle of law that the evidence of any relative or family members cannot be discarded only on account of his or her relationship with the deceased. The evidence of such evidence has to be weighed on the touchstone of truth and at most a court is required to take care and caution



while appreciating their evidence. In this regard, one may refer to the following judicial precedents:

- (i) Abhishek Sharma Vs. State (NCT of Delhi),**
2023 SCC OnLine SC 1358;
- (ii) Yogesh Singh Vs Mahabeer Singh & Ors;**
(2017) 11 SCC 195;
- (iii) Mano Dutt and another Vs. State of Uttar Pradesh;**
(2012) 4 SCC 79;
- (iv) Daulatram Vs. State of Chhattisgarh,**
2009 (1) JIJ 1;
- (v) State Vs. Saravanan,** (AIR 2009 SC 152);
- (vi) State of U.P. v. Kishanpal,** (2008) 16 SCC 73;
- (vii) Namdeo Vs. State of Maharashtra,**
(2007) 14 SCC 150;
- (viii) State of A.P. Vs. S. Rayappa,** (2006) 4 SCC 512;
- (ix) Pulicherla Nagaraju Vs. State of A.P.,**
(2006) 11 SCC 444;
- (x) Harbans Kaur Vs. State of Haryana;**
(2005) 9 SCC 195;
- (xi) Hari Obula Reddy and Ors. Vs. The State of**
Andhra Pradesh, (1981) 3 SCC 675
- (xii) Piara Singh and Ors. Vs. State of Punjab,**
(1977) 4 SCC 452

20. In regard to contradictions and discrepancies in the evidence of the prosecution witnesses, it is again settled principle of law that minor discrepancies on trivial matters, not touching the core of the case; hyper-technical approach by taking sentences taken out of context here or there from the evidence; attaching importance to some technical error



committed by the investigating officer not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observations, normal errors of memory due to lapse of time, mental disposition, shock and horror at the time of occurrence and threat to the life. Therefore, it is the duty of the court not to attach undue importance to minor discrepancies unless they go to the heart of the matter and shake the basic version of the prosecution witnesses as the mental ability of a human being cannot be expected to be attuned to absorb all the details of the incident. Minor discrepancies are bound to occur in statements of witnesses. In fact minor discrepancies in deposition are indication that the witnesses are not tutored and they are truthful. In case of rustic witnesses coming from villages, court should not be oblivious of the fact that their behaviour pattern and perceptive habits are not attuned to sophisticated approaches familiar in Courts. In this regard, one may refer to the following judicial precedents:

- (i) C. Muniappan & others Vs. State of T.N.,**
(2010) 9 SCC 567;
- (ii) State of U.P. Vs. Krishan Master,**



(AIR 2010 SC 3071);

(iii) Appabhai & Anr. Vs. State of Gujrat,

AIR 1988 SC 696;

(iv) Shivaji Sahebrao Bobade & Anr Vs. State Of Maharashtra, (1973 AIR 2622);

(v) Sanjay Kumar Vs. State of Bihar,

2019 SCC OnLine Pat 1077;

(vi) State of Madhya Pradesh Vs. Dal Singh,

(2013) 14 SCC 159;

(vii) Smt. Shamim Vs. State (GNCT of Delhi),

2018 (4) PLJR 160;

(viii) S. Govidaarju Vs. State of Karnataka,

2013 (10) SCALE 454

(ix) Narotam Singh vs. State Of Punjab And Anr.

(AIR 1978 SC 1542)

(x) Leela Ram Vs. State of Haryana, (1999) 9 SCC 525;

(xi) Subal Ghorai and Ors. Vs. State of West Bengal,

(2013) 4 SCC 607;

(xii) Yogesh Singh Vs. Mahabeer Singh & Ors.,

(2017) 11 SCC 195.

21. It is also settled principle of law that the **defect in the Investigation** by itself cannot be a ground for acquittal unless the said defect causes prejudice against the accused. The conclusion of a trial in a case cannot be allowed to be dependent solely on provity of investigation. If primacy is given to such designed or negligent investigation or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration



would get eroded. Hence, criminal trials could not be made casualties for any lapses committed by the Investigating Officer. As such, in Criminal trials, even if the investigation is defective, the rest of the evidence must be scrutinized independently of the impact of the defects in the investigation, other wise the criminal trial will plummet to the level of the investigation. In this regard, one may refer to the following judicial precedents:

(i) Ranjeet Kumar Ram @ Ranjeet Kumar Das Vs. The State of Bihar [2015 (2) PCCR 416]

(ii) C. Muniappan & others Vs. State of T.N.
(2010) 9 SCC 567

(iii) Sukhdeo Yadav & Ors. Vs. State of Bihar,
(2001) 8 SCC 86.

22. In regard to alibi, **Hon'ble Supreme Court** in **Binay Kumar Singh Vs. State of Bihar, (1997) 1 SCC 283** has held that 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.

23. In **Kamal Prasad Vs. State of Chhattisgarh, (2023) 10 SCC 172, Hon'ble Supreme Court** after referring to various judicial precedents has summarized the principles



regarding the plea of alibi as follows:-

"24.1. It is not part of the General Exceptions under IPC and is instead a rule of evidence under Section 11 of the Evidence Act, 1872.

24.2. This plea being taken does not lessen the burden of the prosecution to prove that the accused was present at the scene of the crime and had participated therein.

24.3. Such plea is only to be considered subsequent to the prosecution having discharged, satisfactorily, its burden.

24.4. The burden to establish the plea is on the person taking such a plea. The same must be achieved by leading cogent and satisfactory evidence.

24.5. It is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. In other words, a standard of "strict scrutiny" is required when such a plea is taken."

24. It is also relevant to point out that it is settled position of law that the proof beyond reasonable doubts is not necessarily a perfect proof to mathematical precision. All that it requires is the establishment of such a degree of probability that a prudent man may on, its basis, believe in the existence of the facts in issue. The accused are entitled to get benefit not of all doubts, but only of reasonable doubts. Every hesitancy, hunch or doubt are not reasonable doubts. The following Authorities may be referred to in this regard:

(i) **Collector of Customs Vs. D. Bhoormal**, (1972) 2 SCC 544

(ii) **Kali Ram Vs State of HP**; (1973) 2 SCC 808

(iii) **Dharm Das Wadhwani Vs. State of U.P.**

(1974) 4 SCC 267

(iv) **Shivaji Sahabrao Bobade Vs. State of Maharashtra**,

(1973) 2 SCC 793

(v) **Dilavar Hussain Vs. State of Gujarat**, (1991) 1 SCC 253



(vi) **Narender Kumar Vs. State (NCT of Delhi),**
(2012) 7 SCC 171

25. Now coming to the evidence of the prosecution, we find that the **informant Mannan Yadav** has been examined as **P.W.-6**. In his **examination-in-chief**, he has deposed in consonance with his *fardbeyan*. In his **cross-examination**, he could not say how many times *garansa*, *lathi* and *bhala* were used. His father had not suffered assault of *garasa* on his chest, shoulder, back and stomach and even on forehead. He received injury of *farsa* after gunshot. When he along with deceased was sitting at the *Chabutra*, he had seen Binod Yadav grazing his buffaloes at the distance of 2-3 *laggis*. After sitting for 10-12 minutes at *Chabutra*, the occurrence had taken place. The gunshot was fired from North direction. The occurrence had taken place for 10 minutes. Nobody had come to rescue them. When gunshot started, he walked away from the place of occurrence. The gunshot had hit left leg of his father and the pellet came out from his body. Both gunshots were made within a minute. He has denied the suggestion that Jhagru has not received gunshot injury in his thigh. However, he could not say whether the pellet had come out from his thigh or not. Jhagru had not received *farsa* injury on his arms and legs. The only one of his legs had received injury of *bhala*. He has denied the



suggestion that he was not present at the place of occurrence. When the appellants came to the place of their sitting, they did not flee away. He also did not raise any hulla. But when he was fleeing away, he had raised hulla. However, the appellants did not assault him. Appellant Rajendra had fired at Jhagru hitting his right thigh. When he fled away from the place of occurrence, he came back after half an hour at the place of occurrence and found that his father was dead and his uncle was unconscious. By that time, the police had also come. Whether any written work was done by the police at the place of occurrence, he could not say. His *fardbeyan* was recorded at Bettiah hospital. He could not say for how long there was enmity with the accused/appellants. But there always used to be quarrel between two sides and in Sathi P.S. Case No. 32 of 2001 his father and uncle had gone to jail also for murder. He could not say whether his father and uncle were accused in Sathi P.S. Case No. 38 of 2000 lodged by Dhruv Yadav. He also knows nothing about Sathi P.S. Case No. 97 of 1999, Sathi P.S. Case No. 231 of 2015, Sathi P.S. Case No. 13 of 2000, Sathi P.S. Case No. 82 of 2001, Sathi P.S. Case No. 115 of 2011 and Miscellaneous Case No. 04 of 2008. He could not say whether the police had seized the blood soaked clothes of the deceased. He has denied the



suggestion that his father and uncle were criminal and they have been killed on account of partition dispute amongst the family members. Rajendra Yadav and Jhagru Yadav have contested the Mukhiya election. Tara Devi is his aunt. The place of occurrence is situated at 1 ¼ kilometer away from the village. Tara Devi was also cutting grass there. He has not seen whether the grass was seized by the police or not. At the time of firing, he was at the place of occurrence and only after 10-12 minutes, he fled away from there. He has denied the suggestion that he has named Shambhu Yadav on account of enmity.

26. P.W.-1 Tara Devi is a grass cutter illiterate lady. At the time of occurrence, she was cutting grass near the place of occurrence. She has supported the prosecution case deposing in her **examination-in-chief** in consonance with the *fardebayan* of the informant. She also identified the accused standing in the dock. In her **cross-examination**, she has deposed that after the occurrence, she is living at Sirasia village. At the time of occurrence, she was standing to lift the cut grass. To the north of the place where she was standing, is sugarcane field of Dhruv Yadav and to the west of the place, is her own land and to the east, there is land of Dhruv Yadav. She was standing facing east direction and the accused came from north-east side from the



sugarcane field. They were carrying gadasa, bhala and gun. They were cutting the victims like a butcher by farsa and gadasa. She did not go to the injured, instead she went to the village raising halla. She has denied the suggestion that the accused persons have lodged several criminal cases against her and that is why she has deposed falsely. She has no idea about the murder of Chandrika and Rameshwar. She is not aware whether the police had seen her grass. When she was watching the occurrence, the accused persons threatened her and that is why she fled away. Jhapas Yadav was wearing *baniyan* and *lungi*. Jhagru Yadav and Jhapas Yadav were sitting facing the south direction. She has denied the suggestion that she was not present at the place of occurrence.

27. P.W.-2 is Raj Deo Pandit. In his **examination-in-chief**, he has deposed that the occurrence had taken place about one year and nine months back. He had given his land on *batai* to Binod Rai and he had gone to see that land. That land is situated at Chhathia Ghat. He saw that Dhruv Yadav was carrying gun, Bacchu Yadav was carrying *bhala* and Rajendra Yadav was carrying *gadasa* etc. However, he could not remember the names of the other accused. Dhruv Yadav had given order to kill Jhapas and Jhagru because they did not allow



them to plough the land and he fired. Consequently, Jhapas received gunshot in his leg and fell down and rest people were wielding *lathi* and *bhala*. Then he fled away. Thereafter, he heard that Jhapas and Jhagru had died. He identified Shiv Prasan Yadav, Ram Prasan Yadav, Garjan Yadav, Banka Yadav, Shambhu Yadav and Dhruv Yadav but he could not identify the rest accused. In his **cross-examination**, he has deposed that after firing, he did not flee away immediately. He saw the occurrence for a while. However, he did not go the place of occurrence. He could not see who were carrying what arms. He was at the distance of ten *deg* from the place of occurrence. The accused persons had surrounded Jhagru Yadav and Jhapas Yadav who were sitting on *Chabutra*. He heard three gunshots. Dy. S.P had visited the place of occurrence. His village is at the distance of half kilometer from the place of occurrence.

28. P.W.-3 is **Megha Yadav**, who is an illiterate villager has deposed in his **examination-in-chief** in consonance with the *fardbeyan* of the informant. He is cousin of the deceased Jhapas Yadav and Jhagru Yadav. He is a cultivator and works at Chanpatiya Chura Mill of Rajiv Singh and Santosh Prasad. He works in night and stays at home during day. At the time of occurrence, he had gone towards his fields. Total 18



persons were at the place of occurrence. 11 persons were accused who had surrounded the victims and the rest persons were passers-by and grass cutters. The firing was done from the distance of 5-10 deg. The *Chhathia Ghat Chabutra* is at the distance of half kilometer from the village Basantpur. Dhruv Yadav and Rajendra Yadav were carrying gun in their hands. They had fired from their guns. The pellets had passed through the thigh of Jhagru Yadav. The firing was done from 10-15 deg. Jhagru Yadav received this gunshot from the front. Mannan Yadav was standing at the place of occurrence during firing. Ram Prasan Yadav was assaulting Jhagru Yadav by *farsa*. 4-5 persons were wielding lathi. Jhapas has also got his hand and legs broken. He had received several *lathi* assaults. He had found even gunshot injury in his body. However, there was no injury caused by *Bhala*. But he had received *farsa* injury. He was at the distance of 10-15 *degs* at the time of assault but he was not assaulted by the accused persons. His father, Rajdeo Pandit, Jhapas, Jhagru and Lal Bahadur were accused in Sathi P.S. Case No. 82 of 2001 lodged by Dhruv Yadav. Sathi P.S. Case No. 231 of 2015 was also lodged by Dhruv Yadav in which both the deceased were accused. He has denied the suggestion that the deceased were killed by their own persons. When he



was at the place of occurrence, police had also come and inquired from him about all the occurrence. Police had seized some cartridges and clothes. The dead body was carried by the police. The statement was recorded by the police. He denied the suggestion that he was not present at the place of occurrence.

29. P.W.-4 is Binod Yadav who was grazing his buffalo at the time of occurrence. In his **examination-in-chief**, he has deposed in consonance with the *fardbeyan*. Police has also reached the place of occurrence and seizure list was prepared in his presence on which he had put his signature. Dadan Yadav had also put his signature on the seizure list. Seizure lists have been marked as **Ext.-1 and 1/1**. His statement was also recorded by the police. He had identified all the accused standing in the dock. He had taken his buffalo for grazing at 2:00 pm. When the accused persons started assaulting, there was hulla. Then he saw the occurrence. At the time of firing, the accused was not surrounded from all sides. It was Dhruv Yadav who had fired first. In Sathi P.S. Case No. 82 of 2001 he was an accused and Dhruv Yadav was a witness. He also saw Megha Yadav, Tara Devi, Mannan Yadav, Dinanath Rai, Rajdeo Pandit and others fleeing away from *Chabutra*. Tara Devi was to the South of the *Chabutra*, Megha was to the West,



Mannan was to the South. But nobody who were present at the place of occurrence tried for stopping the occurrence. The occurrence took place in five minutes. Mannan Yadav fled away just after start of the occurrence. However, the accused persons did not follow him. After ten minutes of the occurrence, he fled away to the village leaving behind the buffalo. Mannan Yadav was hiding himself in bush of Munj. Rajendra Yadav and Dhruv Yadav had done 5-7 firing. Jhagru had received gunshot injury in thigh. Writing work had been done by the police on the place of occurrence. It was not late night at that time. Police had taken away the injured persons along with their clothes. He went back to his village and raised hulla. He has no litigation with the accused persons. In his statement to the police, he has stated that Shambhu Yadav was present at the place of occurrence.

30. P.W.-5 is Dinanath Roy. He has also supported the prosecution case. In his **examination-in-chief**, he has deposed that on the date of occurrence, he had gone to the house of Binod Yadav to purchase his buffalo. But his father told him that the buffalo is grazing at Chhathia Ghat. Hence, he went there and met Binod and saw his buffalo. When he started returning after seeing the buffaloes, and moved 7-8 *laggis*, he saw Dhruv Yadav, Garjan Yadav, Ramdat Yadav, Guddu Yadav,



Ramparsan Yadav, Shiv Parasan Yadav and other accused coming out from the sugarcane field. Dhruv Yadav was carrying gun in his hand. Another man was also carrying gun whom he did not know. Jhagru, Jhapas and Mannan Yadav were sitting at Chabutra of Chhathia Ghat. Dhruv Yadav exhorted his men and fired hitting the leg of Jhapas who fell down. Other persons started assaulting by *Lathi*, *Garansa* and *Bhala*. He identified Dhruv, Garjan, Guddu and Ramparasan Yadav standing in the dock. He could not identify the rest two. The names of persons who could not be identified are Shambhu and Banka Yadav. In his **cross-examination**, he has deposed that he is resident of Chhardewaji Dowa and not Basantpur. The buffalo was grazing to the South of Chabutra where he met Binod and who took him to the buffalo. He also saw Binod, Jhagru, Jhapas, Bhabhu of Binod and Jhagru, Mannan, Megha, Rajdeo Pandit, Jhagru, Jhapas and Mannan were sitting at the Chabutra and others were at some distance from Chabutra to the South East. He also saw the accused persons surrounding Jhagru and Jhapas from three sides. It was also vacant to the West of Chabutra. Before surrounding the deceased, the firing was done. The gun was fired from the distance of 4-5 *laggis*. The sugarcane field of Dhruv Yadav is just 50-60 Gaz away from the Chabutra. The



firing was not done from the sugarcane field. He has denied the suggestion that he was not present at the place of occurrence.

31. P.W.-7 is Dr. Sanjay Gupta who had conducted the postmortem examination on the dead body of the deceased Jhapas Yadav and Jhagru Yadav. In the **postmortem examination of Jhapas Yadav**, he had found as follows:-

“(i) Skull lacerated wound 2" x 1/2" left side-parietal region-skin deep 1/2" x 1/4" skin deep lacerated wound perito-occipital region.

(ii) Right arm incised wound 2" x 1" muscle deep longitudinally outer side of arm above elbow. Multiple abrasion with bruise 5" x 2", 1"x 1" on outer side of the arm with deformity of forearm. On dissection fracture of soft of radius and ultra bone.

(iii) Left arm incised wound 1"x 1/2" x 1/2" at elbow outer side. Multiple bruise 4" x 1" 1"x1" on outer side with deformity of left fore-arm. On dissection fracture of radius and ulna soft.

(iv) Lt. leg one punctured lacerated wound with inverted irregular margin 1" in diameter (wound of entry) presented on medial side above emple, this wound was communicating with one another wound on lateral side above ankle i.e. lacerated inverted irregular margin 1 1/2" in diameter fracture of tibia fibula lower third on dissection.

No foreign body present. The above noted injuries are ante mortem in nature.

Injury No. I, II, III caused by Hard Blunt substance and IV and V caused by fire-am and Injury No. II, III also caused by sharp object. Death was caused due to hemorrhage and shock and time since death 12 to 24 hours.”

32. On the same day at 11.30 A.M. he also conducted **post-mortem examination** on the dead body of **Jhagaru Yadav** and found as follows:-



“(i) Rt. arm abrasion anteriorly 1/2" x 1/2" with deformity of arm on dissection, fracture of soft of humerus.

(ii) Rt. scapula multiple abrasion with measuring 2 x 1", 2" x 2".

(iii) Rt. thigh, punctured lacerated wound 1/4" x 1/4".

(iv) Rt.leg lacerated wound 1 1/2" skin deep up to bone above ankle on medial side on dissection fracture of tibia lower third.

(v) Lt.leg incised wound 1 1/2" skin deep medial side of leg above ankle with another 1/2" x 1 1/4" punctured lacerated wound just above previous wound.

These injuries have been caused by hard blunt and sharp object time since death 12 to 24 hours. This P.M. is also in his pen and signature under the observation of Dr. S. K. Dubey, Dr. Vijai Kumar who also put their signatures.”

33. In cross-examination, P.W.-7 has deposed as follows:-

“I did not mention about blood stained clothes. Incised wound may be caused by sharp cut weapon. It may be caused by sword also. I can not say as to the difference between injury caused by sword and *garasa*. *Bhala* causes punctured wound & *Farsa* causes incised wound with clean margin. Laceration may be caused by fall on hard object. In case of Jhapas Yadav as to injury No. 1, Skin deep near 5.6" in deep. It is not fatal Injury. Injury No. II not on the vital parts of the body. Injury No. IV may be caused by Sharp weapon or rod. Injury No. V may be caused by rod & Sharp weapon. It is not a fact that, I am not confirmed about II and IV. Abrasion may be caused by fall on hard surface. In case of Jhapas, I did not find injury in internal part of the body i.e. stomach, chest, belly etc. Hence I did not mention about viscera. I did not mention hemorrhage specifically. I am not expert of postmortem examination because it is mainly concerned with forensic department. It is based on basic principles of medical jurisprudence. I



have not found any pellet in the body of Jhapas”.

34. P.W.-8 is Dr. Vijay Kumar. Under him, the postmortem was conducted by **Dr. S.K. Gupta (P.W.-7)** and Dr. Srikant Dubey. He has proved the signature of himself as well as Dr. S.K. Dubey in the postmortem report. In his cross-examination, he has deposed that there is no indication of persistent oozing of blood and he could not say the distance of gunshot.

35. P.W.-9 is Manjar Alam. He is Investigating Officer of the case. After taking over charge of investigation, he visited the place of occurrence situated at Basantpur village under Sathi Police Station. The occurrence was said to have taken place at Chabutra under Pipal tree at Chhathia Ghat near Sikrahana river. The place of occurrence was surrounded by land of Dhruv Yadav to the North, Sugarcane field of deceased Jhapas Yadav to the South, Sikrahana river to the East and land of Bholu Yadav to the West. He inspected the place of occurrence and found blood fallen on the ground. He also found four live cartridges which he seized. He prepared the seizure list in his own handwriting in the presence of Binod Yadav and Dadan Yadav as witnesses and the same have been exhibited as Ext. 1 and 1/1. He also recorded the statement of Binod Yadav,



Tara Devi, Megha Yadav, Rajdeo Pandit, Dinanath Rai and others on the place of occurrence itself who supported the alleged occurrence. Awadhesh Jha had prepared the inquest report. He had not recorded the re-statement of the informant prior to coming to the place of occurrence. The informant has not clearly stated that in whose hand what types of arms were there. He had stated about their sudden surrounding by the accused persons. He had also stated that Dhruv Yadav and Rajendra Yadav were doing indiscriminate firing and he had hidden himself in the field. He had also stated to him that Ramrut Yadav, Garjan Yadav and Ramprasan were carrying farsa in their hand. Ramprasan Yadav and Guddu Yadav were also carrying lathi. Rajendra Yadav and Dhruv Yadav were stated to have done indiscriminate firing. Binod Yadav had stated to him that he was grazing buffalo. Witness Tara Devi is resident of Basantpur and not Sirsiya. Rajdeo Pandit is also resident of Basantpur.

36. Jainuddin Gaddi has been examined as **D.W.-1**.

In his **examination-in-chief**, he has deposed that on the date of occurrence appellants/ Shambhu Yadav and Bachhu Yadav were not at the place of occurrence. On that day Shambhu Yadav had gone to *Kachahari* from his *sasural*. In his **cross-examination**,



he has deposed that he had come to court to depose in the case at the instance of appellant/Shambhu Yadav, who is also present. He has also deposed that he along with Shambhu Yadav does the business of Milk. He has denied the suggestion that he has deposed falsely to protect his friend.

37. Yogendra Yadav has been examination as **D.W.-2.**

In his **examination-in-chief**, he has deposed that he knows appellant/Banka Yadav. He is his neighbour. He further deposed that he and Banka Yadav work at Saidpur since prior to date of occurrence and lived there. In his **cross-examination**, he has deposed that he and Banka worked with a mason. But they are not working under any company. They were working there on the call of a house owner. But he does not remember the name of the house owner. He could not tell even the first day when he had started his work, nor could he tell last date of work with the mason. He could not tell even how long he had worked with mason. He used to get wage of Rs. 300/- per day. Besides him and Banka, other labourers were also working with the mason. He could not tell even how much wage he got. He has denied the suggestion that he has deposed falsely.

38. Banka Yadav, who is a appellant himself, has been examined as **D.W.-3.** In his **examination-in-chief**, he has



deposed that on the date of occurrence, he was not at home. He along with Dhruv Yadav, Garjan Yadav and Ram Prasan Yadav had gone to his relative. They had gone to the house of Pasupati. When he came back to his village, he came to know about the occurrence. In his **cross-examination**, he has deposed that he has come to depose not on summons but at the instance of Dhruv Yadav. He had gone to the house of Pasupati in regard to the marriage. But he could not tell how many people were there along with him at the house of Pasupati. He could not remember any person who were present along with him at the house of Pasupati.

39. Lakshman Yadav has been examined as **D.W.-4**. In his **examination-in-chief**, he has deposed that he sells milk in Court. On the date of occurrence, Shambhu Yadav, Bachhu Yadav and Jaitun Ansari had gone to Court along with him and from the Court, Shambhu Yadav went to Dumra and Bachu Yadav went to his sasural at Nokia Toka. In his **cross-examination**, he has deposed that he is not literate. He has been doing business of milk for 10 years. He sells 20 kg. milk every day. He has come to depose at the instance of appellant/Shambhu Yadav.

40. Sabhapati @ Pasupati Yadav has been examined



as **D.W.-5**. In his **examination-in-chief**, he has deposed that on the date of occurrence, Ramdat Yadav, Dhruv Yadav, Garjan Yadav, Ram Prasan Yadav and Shiv Prasan Yadav had come to his house to see his daughter for marriage and whole day they stayed at his house and returned to their home next day. In his **cross-examination**, he has deposed that he had come to depose not on summons of the Court. Dhruv Yadav is father-in-law of his daughter. He has denied the suggestion that he has deposed falsely.

41. From the aforesaid evidence, we clearly find that all six non-official witnesses have seen the occurrence. Their presence on the place of occurrence is well established. They are also consistent and trustworthy. They inspire confidence of the Court. There are no material contradictions in their statements. Minor discrepancies are found to occur, more so, when the witnesses are villagers and illiterate. Moreover, the ocular evidence is corroborated by the medical evidence which clearly shows that the deceased had received gunshot injuries besides injury caused by sharp edged weapons like spear, farsa and hard and blunt substance like lathi/danda. We also find no major defects in the investigation nor is any unnecessary delay in lodging FIR or in transmission of the FIR to the jurisdictional



Magistrate. Nor is any delay in preparation of the inquest reports. The inquest reports of both the deceased were prepared immediately at the hospital after their death. The FIR was lodged after the death of the second deceased. We don't find any evidence of false implication or embellishment in the FIR. Nor is any such cross-examination or suggestion of the appellants during trial. There is also strong motive of the appellants to eliminate the deceased due to enmity on account of land disputes and consequent litigations between the two sides. There is also no substance in the plea of alibi taken by the appellants. The Defence Witnesses do not appear to be trustworthy. Moreover, the place where they are claiming to be present at the time of occurrence was not so far away from the place of occurrence that they could not reach the place of occurrence at the relevant time. Moreover, their presence at the place of occurrence is well established by the eye-witnesses account. Hence, the appellants failed to prove the plea of alibi. The burden of proof to prove their plea of alibi was on them. They had not taken such plea even in their statements under Section 313 Cr.PC.

42. Hence, we clearly find that prosecution has been able to prove its case against the appellants beyond all



reasonable doubts and the Trial Court has rightly convicted them. There is no illegality or infirmity in the impugned judgment of conviction of the appellants. The impugned order of sentence against the appellants have been also appropriately passed by Ld Trial Court.

43. The Appeals are accordingly, dismissed.

44. The appellants are already in custody.

45. The records of the case be returned to the Trial Court forthwith.

46. Interlocutory Application/s, if any, also stand disposed of accordingly.

(Jitendra Kumar, J.)

I agree.

(Ashutosh Kumar, J.)

S.Ali/Ravishankar
/Shoaib/Chandan

AFR/NAFR	NAFR
CAV DATE	29.08.2024
Uploading Date	11.09.2024
Transmission Date	11.09.2024

