

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1318 of 2019**

Arising Out of PS. Case No.-34 Year-2017 Thana- JURAWANPUR District- Vaishali

Munaki Rai Son of Late Gulabi Rai Resident of Village-Raghupur Purvi, P.S-
Jurawanpur, District-Vaishali.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1266 of 2019

Arising Out of PS. Case No.-34 Year-2017 Thana- JURAWANPUR District- Vaishali

Ajay Rai Son of Dashrath Rai @ Dasa Rai Resident of Village - Raghupur
Purvi, P.S.- Jurawanpur, District - Vaishali

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1323 of 2019

Arising Out of PS. Case No.-34 Year-2017 Thana- JURAWANPUR District- Vaishali

1. Shiv Chandra Rai Son of Late Gulabi Rai Resident of Village-Raghupur
Purvi, P.S-Jurawanpur, District-Vaishali.
2. Subodh Rai Son of Munaki Rai Resident of Village-Raghupur Purvi, P.S-
Jurawanpur, District-Vaishali.
3. Uma Shankar Rai Son of Late Beni Rai Resident of Village-Raghupur Purvi,
P.S-Jurawanpur, District-Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1447 of 2019

Arising Out of PS. Case No.-34 Year-2017 Thana- JURAWANPUR District- Vaishali



Vijay Rai Son of Dashrath Rai @ Dasa Rai Resident of Village - Raghupur
Purvi, P.S.- Jurawanpur, District - Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1318 of 2019)

For the Appellant : Ms. Archana Sinha, Advocate
Mr. Nishikant, Advocate
Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For the State : Mr. Binod Bihari Singh, APP
For the Informant : Mr. Dilip Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 1266 of 2019)

For the Appellant : Ms. Archana Sinha, Advocate
Mr. Nishikant, Advocate
Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For the State : Mr. Binod Bihari Singh, APP
For the Informant : Mr. Dilip Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 1323 of 2019)

For the Appellants : Ms. Archana Sinha, Advocate
Mr. Nishikant, Advocate
Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For the State : Mr. Binod Bihari Singh, APP
For the Informant : Mr. Dilip Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 1447 of 2019)

For the Appellant : Ms. Archana Sinha, Advocate
Mr. Nishikant, Advocate
Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For the State : Mr. Binod Bihari Singh, APP
For the Informant : Mr. Dilip Kumar Singh, Advocate

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

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 30-10-2024

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 03.09.2019 and
04.09.2019 respectively, passed by learned 2nd Additional



District and Sessions Judge-, Vaishali at Hajipur, in connection with Sessions Trial No. 10 of 2018 + 452 of 2017, CNR No. BRVA010017112017 arising out of Jurawanpur P.S. Case No. 34 of 2017, whereby all six appellants have been found guilty under Sections 302/34, 341/34 and 452/149 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.50,000/- each under Section 302 of the Indian Penal Code. All the appellants have been further sentenced to undergo rigorous imprisonment for four years under Section 452/149 of the Indian Penal Code. They have been further sentenced to undergo rigorous imprisonment for one month under Section 341/34 of the Indian Penal Code. In addition to the aforesaid sentences, all the appellants have been further awarded four years rigorous imprisonment under Section 27 of the Arms Act. It was further directed that in case of default to pay the fine of Rs. 50,000/- by the appellants each, all the appellants would be required to undergo an additional rigorous imprisonment for six months. All the sentences have been directed to run concurrently. By the order of sentence, ninety percent of the fine has also been directed to be paid to the successors of the deceased persons in equal proportion as compensation.



Prosecution case

2. The prosecution case as emerging from the *fardbeyan* of the informant/Santosh Rai as recorded by A.S.I. Sushil Paswan of Jurawanpur Police Station on 19.06.2017 at 13:05 O' clock at the door of Santosh Rai is that when the informant was digging out soil from his agricultural field situated to the south and east, the appellant/Shiv Chandra Rai came with *farsa* in his hand and with intent to kill him, he assaulted him with *farsa* whereupon he fled away leaving the soil and soon thereafter, at 08:30 O' clock, he gave information to the Police Station and came to his village. When the informant was with his family members at about 12:30 O' clock, the appellants, viz., Munaki Rai, Vijay Rai, Ajay Rai, Shiv Chandra Rai, Subodh Rai and Uma Shankar Rai, all of whom were carrying country made pistols and Dasa Rai came at his home. The accused Dasa Rai exhorted the appellants to shoot the family of the informant dead. Whereupon, the appellant/Vijay Rai fired at his father Bhagwat Rai causing injury on the right side of his chest. Consequently, his father fell on the place of occurrence after getting injured. Later on, he died on the place of occurrence itself. In the meantime, the nephew of the informant, namely, Mithilesh Rai came out from



his home, whereupon, Munaki Rai, who was carrying country made pistol, fired at him, causing injury in his stomach. Appellant/Shiv Chandra Rai also fired at his nephew. In the meantime, Subodh Rai, Uma Shankar Rai, Ajay Rai also fired by their country made pistol at his brother Anil Rai causing injury in his left hand. Seeing the firing, the informant fled away raising his voice to save his life and informed the police. All the accused persons fled away directing the informant to leave the village failing which his whole family was threatened to be finished. This occurrence had taken place on account of land dispute. His nephew died en-route to hospital for treatment.

Factual Background

3. On the basis of the *fardbeyan* of the informant, Jurawanpur P.S. Case No. 34 of 2017 was registered on 19.06.2017 against seven named accused persons including the appellants herein for the offence punishable under Sections 147, 148, 149, 341, 323, 324, 307, 302, 504, 506, and 452 of the Indian Penal Code and Section 27 of the Arms Act.

4. After investigation, first charge-sheet bearing no. 43 of 2017 dated 19.06.2017 was submitted against five accused persons, who are appellants herein, viz., Vijay Rai, Ajay Rai, Shiv Chandra Rai, Subodh Rai and Uma Shankar Rai and



thereafter, supplementary charge-sheet bearing no. 27 of 2017 dated 18.09.2017 was submitted against the appellant/Munaki Rai. Both the charge-sheets were submitted for the offence punishable under Sections 147, 148, 149, 341, 323, 324, 307, 302, 504, 506 and 452 of the Indian Penal Code and Section 27 of the Arms Act. After cognizance, both the charge-sheets were committed to the Court of Sessions giving rise to Sessions Trial No. 452 of 2017 and Sessions Trial No. 10 of 2018 respectively. After framing of charge in both the Sessions Trial under Sections 307/149, 302/149, 302, 341/149, 452/149, 504/149 and 27 of the Arms Act against all the accused, both the Sessions Trial were amalgamated vide order dated 14.03.2018 and thereafter, trial started with examination of witnesses. The charges were read over to the accused which they pleaded not guilty and claimed to be tried.

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

- (i) **P.W.-1** – Shivji Rai (co-villager of the informant)
- (ii) **P.W.-2** – Jimdar Rai (agnate of the deceased)
- (iii) **P.W.-3** – Santosh Rai (Informant/son of the deceased Bhagwat Rai)
- (iv) **P.W.-4** - Ramji Rai (son of the deceased Bhagwat Rai and father of the deceased Mithilesh Rai)
- (v) **P.W.-5** - Machiya Devi (wife of the deceased Bhagwat Rai)
- (vi) **P.W.-6** - Sail Devi (daughter of the deceased Bhagwat Rai)



- (vii) **P.W.-7** – Bipin Kumar (son of Shail Devi)
- (viii) **P.W.-8** – Anil Rai (Injured and brother of the informant)
- (ix) **P.W.-9** – Dr. Brajesh Kumar Singh (who conducted postmortem examination of the deceased)
- (x) **P.W.-10** – Rajesh Kumar (First I.O. of the case)
- (xi) **P.W.-11**- Shiv Kumar Ram (formal witness to the seizure list and inquest reports.

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

- (i) **Ext.-1/1** – Postmortem report of deceased Bhagwat Rai
- (ii) **Ext.-2**- CS No 43/2017
- (iii) **Ext.-3** – Fardbeyan of the informant, Santosh Rai
- (iv) **Ext.-4**- Confessional Statement of the Accused, Munaki Rai
- (v) **Ext.-5** - Seizure list
- (vi) **Ext.-6**- Inquest report of the deceased
- (vii) **Ext.-7**- Inquest report of case no.25/2015
- (vii) **Ext.-8**- Charge Sheet
- (vii) **Ext.-9**-Order of proceeding under Section144 Cr.PC
- (vii) **Ext.-10**- Revenue receipt dated 25.09.2018 in the name of Mahendra Rai
- (vii) **Ext.-10/1**-Revenue receipt dated 25.09.2018 in the name of Sukhadev Rai.

Statements under Section 313 Cr.PC

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 have claimed that the prosecution evidence is false and they are innocent. The appellant/Munaki Rai has also claimed that on account of land dispute, he has been falsely implicated. The appellant/Vijay Rai has claimed that his sister-in-law had defeated Parmanand Rai in the election for Upmukhiya and that is why he has been falsely implicated. The appellant/Ajay Rai has also claimed that his wife had defeated Parmanand Rai in the election for Upmukhiya and that is why he has been falsely implicated. The appellant/Shiv Chandra Rai has claimed that he has been falsely implicated on account of land dispute. The appellant/Subodh Rai has also claimed that he has been falsely implicated on account of land dispute. The appellant/Uma Shankar Rai has also claimed that on account of land dispute, he has been falsely implicated.

8. However, no evidence has been adduced by any of the appellants in his defence.

Finding of the Trial Court

9. Learned Trial Court after appreciating the evidence on record and considering the submissions advanced by the parties, passed the impugned judgment of conviction and order of sentence finding that the prosecution has proved its case



against the appellants beyond all reasonable doubts and they were sentenced accordingly as per the impugned order.

10. We have heard learned counsel for the appellants, learned APP for the State and learned counsel for the informant.

Submissions of the Parties

11. Learned counsel for the appellants has submitted that the impugned judgment of conviction and order of sentence passed by learned Trial Court are not sustainable in the eye of law or on facts. Learned Trial Court has not properly appreciated the evidence on record and has erroneously convicted the appellants, whereas all the appellants should have been acquitted of all the charges for want of any cogent legal evidence on record which could have connected the appellants with the alleged offence.

12. To substantiate her submissions, she has submitted that formal FIR has been lodged at 20:30 O' clock on 19.06.2017 after preparation of the inquest reports of Mithilesh Rai and Bhagwat Rai at 15:20 O' clock and 16:00 O' clock on 19.06.2017 respectively and formal FIR was lodged after about four hours. She has further submitted that the FIR was also sent to the concerned Jurisdictional Magistrate on 22.06.2017. Hence, she submitted that on account of such delay, the



prosecution case against the appellants have become suspicious on account of possible concoction and embellishment in the FIR.

13. Learned counsel for the appellants has further submitted that out of 11 total non-official witnesses, seven witnesses are family members of the deceased and hence, closely related and interested witnesses and their evidence cannot be relied upon for convicting the appellants. Hence, out of total non-official witnesses, only one witness is independent witness, whereas at the place of occurrence, there were many independent witnesses. Hence, for want of independent witnesses, prosecution case cannot be relied upon. She has further submitted that there are material contradictions in the statements of the prosecution witnesses making them unreliable. She has also submitted that witnesses to the seizure list and the inquest reports have not been examined. Even second Investigating Officer of the case has not been examined. She has further submitted that enmity between the informant and appellants' sides is admitted fact as appears from the prosecution evidence on record. Hence, on account of enmity, there is all possibility of false implication of the appellants by the informant. Hence, prosecution case is not reliable against the



appellants.

14. However, learned APP for the State and learned counsel for the informant vehemently submitted that there is no illegality or infirmity in the impugned judgment of conviction and order of sentence. The prosecution has proved its case against the appellants beyond all reasonable doubts and the appellants have been properly sentenced. They have further submitted that there was no delay either in recording the *fardbeyan* of the informant, or in registration of the formal FIR. The inquest reports were prepared subsequent to the recording of the *fardbeyan* and though the formal FIR was recorded thereafter, it does not make the prosecution case unreliable.

15. They have further submitted that it also transpires from the record of the case that formal FIR was seen and signed by Jurisdictional Magistrate on 22.06.2017. But it did not mean that the FIR was sent by the police to the office of the Jurisdictional Magistrate on 22.06.2017 itself. Generally, it takes time for the office to put the FIR before the Jurisdictional Magistrate for his perusal and endorsement. Moreover, the appellants have not put any question to the Investigating Officer in regard to delay in sending the FIR to the Jurisdictional Magistrate. Had the I.O. got such opportunity, he could have



explained why there was one or two days delay. But Investigating Officer had not got such opportunity to explain the delay. It is possible that the police might have sent the formal FIR to the office of the Jurisdictional Magistrate in time and office could have taken time to put it before the Jurisdictional Magistrate. There is also possibility of holiday in the Court in between lodging of the FIR and sending of the same to the Court. Hence, such apparent delay of two days in sending the FIR before the Jurisdictional Magistrate has no bearing on veracity/authenticity of the case against the appellants.

16. They have also submitted that there is no material contradictions found in the evidence of the prosecution witnesses. The non-official witnesses are illiterate villagers and some minor discrepancies in their statements are nothing but natural and there are no material contradictions found in their evidence rendering them unreliable.

17. We have thoroughly perused the material on lower court records including evidence and given thoughtful consideration to the submissions advanced by all the parties.

Some Principles of Appreciation of Evidence

18. In view of the submissions of learned counsel for the parties, it would be pertinent to refer to some principles of



appreciation of evidence before we proceed to discuss evidence on record.

19. It is a settled position of law that the prosecution case cannot be thrown out or doubted on the sole ground that the independent witnesses were not examined because as per experience, civilized people are generally insensitive when a crime is committed in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. The Court is therefore required to appreciate the evidence of even related witnesses on its own merit, instead of doubting the prosecution case for want of independent witnesses. [Refer to **Appabhai and another Vs. State of Gujarat, 1988 Supp SCC 241**].

20. It is also a settled position 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 witnesses has to be weighed on the touchstone of truth and at most the 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 UP**;



- (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. State of AP**,
(1981) 3 SCC 675
(xii) **Piara Singh and Ors. Vs. State of Punjab**,
(1977) 4 SCC 452

21. This is also a settled position of law that minor discrepancies, contradictions, improvements, embellishments or omissions on trivial matters not going to the root of the prosecution case should not be given undue importance. But if they relate to material particulars of the prosecution case, the testimony of such witnesses is liable to be discarded. 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 S. 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 WB,**
(2013) 4 SCC 607;
- (xii) **Yogesh Singh Vs. Mahabeer Singh & Ors.,**
(2017) 11 SCC 195.

22. It is also a settled position of law that in case of FIR being preceded by inquest report, the veracity/authenticity of the prosecution case is not automatically lost. It has to be tested by appreciating the attending circumstances. Though, in the case of **Ramesh Baburao Devaskar & Ors. Vs. State of Maharashtra, (2007) 13 SCC 501, Hon'ble Supreme Court** has observed that first information report cannot be lodged in murder case after inquest has been held. However, subsequently in **Sambhu Das Vs. State of Assam, (2010) 10 SCC 374, Hon'ble Apex Court** again had occasion to deal with a situation where inquest report was prepared two hours prior to lodging of the FIR. Here, it was argued that FIR had lost its authenticity on account of it being recorded subsequent to the inquest report. Disapproving such contention, the Hon'ble Supreme Court had held that it might not be true in all cases and all circumstances. Such general proposition could not be applied universally by holding that if the FIR was lodged for whatever reason after recording the inquest report, the same would be fatal to the



prosecution.

23. It is also a settled position of law that enmity is a doubled-edged weapon. Existence of a motive on the part of an accused may be held to be the reason for committing crime, the same may also lead to false implication, as held by **Hon'ble Supreme Court in Ramesh Baburao Devaskar & Ors. Vs. State of Maharashtra, (2007) 13 SCC 501.**

24. It is also a settled position of law that motive plays an important link to complete the chain of circumstances in a case of circumstantial evidence. But in case of direct evidence, motive has no much importance as held by **Hon'ble Supreme Court in Shivaji Chintappa Patil Vs. State of Maharashtra, (2021) 5 SCC 626.**

Prosecution Evidences

25. Now coming to the prosecution evidence, we find that the **informant/Santosh Rai** has been examined as **P.W.-3**. He has supported the prosecution case by deposing in his **examination-in-chief** in consonance with his *fardbeyan*. In his **cross-examination** on behalf of Ajay Rai, Uma Shankar Rai and Subodh Rai, he has deposed that he has no information about whom Ajay Ray had defeated in the election for Upmukhiya. He has land dispute with Munaki Rai. The land in



dispute was in possession of the informant on the date of occurrence. Litigation is going on in regard to the land dispute. Even proceeding under Section 144 Cr.PC was initiated in regard to the land dispute. He has admitted that the proceeding under Section 144 Cr.PC, the informant's side was prevented from going on the land in dispute. Even till date, litigation is going on in regard to the disputed land. All the accused persons had come in group and they had done indiscriminate firing on exhortation of Dasa Rai leading to injury of Bhagwat Rai, Mithilesh Rai and Anil Rai. The appellants had fired at Bhagwat Rai, Mithilesh Rai and Anil Rai from the front. After one hour of the occurrence, the police had reached at the place of occurrence and after coming to the place of occurrence, the police lodged his *fardebayan*. He does not know on whose information, the police had come to the place of occurrence. The police had seen blood on the place of occurrence. When the police had reached at the place of occurrence, injured Mithilesh Rai was taken to Fatehpur hospital and at 03:30 O' clock, he came to know that he died. At the time of arrival of the police at the place of occurrence, Bhagwat Rai was lying dead. The police had seized soil soaked in blood from the place of occurrence. The police had also seized blood soaked clothes of



the deceased. The dead bodies of Mithilesh Rai and Bhagwat Rai were taken to Hajipur hospital for postmortem examination. Besides the deceased and the accused persons, many other persons were also present at the place of occurrence. However, he could not tell the names of those persons. He has denied the suggestion that he was not present at the place of occurrence.

26. In his further **cross-examination** on behalf of Munaki Rai, Shiv Chandra Rai and Subodh Rai, he has deposed that proceeding under Section 144 Cr.PC was initiated on his complaint. His restatement was recorded by the police at 08:30 PM on the date of occurrence itself. At present, neither he nor the accused persons have possession over the disputed land due to Court's order. The police had prepared the inquest report of dead body of Mithilesh Rai at about 03:00 PM on the date of occurrence, but he does not remember who had signed on it. He had seen injury on the left hand of Anil Rai and his whole hand was having spots of blood. Besides clothes and dead body, four empty cartridges were also seized by the police. Seizure list was prepared at 01:30 PM.

27. P.W.-1 is Shivji Rai. He has also supported the prosecution case in his **examination-in-chief** deposing that the occurrence had taken place about nine months ago at 12:30 PM.



Munaki Rai, Vijay Rai, Uma Shankar Rai Shiv Chandra Rai, Subodh Rai and Dasa Rai were all abusing Santosh Rai. He reached the place of occurrence when the accused persons were abusing Santosh Rai and heard Dasa Rai exhorting others to kill all. Vijay Rai shot at Bhagwat Rai hitting his right side on the chest. Thereafter, Munaki Rai shot at Mithilesh Rai. Both Mithilesh Rai and Bhagwat Rai died. Anil Rai also had got gunshot injury on left hand. Police came on the place of occurrence after the appellants had fled away. During his **cross-examination** on behalf of Uma Shankar Rai Vijay Rai and Ajay Rai, he has deposed that Bhagwat Rai is his uncle on account of relationship in the village. Disputed land is claimed by Munaki Rai as well as Bhagwat Rai. The dispute is going on between them for 1-2 years. On the day of occurrence, the disputed land was in possession of Munaki Rai. When Bhagwat Rai was digging soil from the disputed land, the family members of Munaki Rai prohibited him leading to altercation between the two sides. He heard the sound of firing. He was already present at the place of occurrence. At the time of receiving gunshot injury, Bhagwat Rai was standing facing east direction and the assailants were standing facing west direction. Vijay Rai had shot at Bhagwat Rai and Mithilesh Rai from the front.



Consequently, they fell down after getting injured. However, he could not tell whose gunshot hit Anil Rai. Vijay Rai had fired from the distance of 15 feet. He had done one firing which hit Mithilesh Rai. The pellet/bullet did not come out from the body of Mithilesh Rai and Bhagwat Rai. They had only one gunshot injury each. However, pellet/bullet exited from the body of Anil Rai. He had also received only one gunshot injury. The land dispute is between Munaki Rai and Bhagwat Rai. Ajay Rai and Vijay Rai are brothers. Their house is situated at the distance of one kilometer from the place of occurrence. The place of occurrence is surrounded by Government land to the east, land of Rameshwar Rai to the north, land of Santosh Rai to the south and land of Santosh Rai to the west. Blood had fallen on the ground at the place of occurrence. Blood was seized by the police from the place of occurrence. The police had reached the place of occurrence at 1:30 PM. The police had recorded his statement at 8:00 PM. He has denied the suggestion that Ajay Rai, Vijay Rai and Uma Shankar Rai are innocent and they have been falsely implicated on account of village groupism and on account of election of Upmukhiya.

28. During **cross-examination** on behalf of Munaki Rai, Subodh Rai and Shiv Chandra Rai, he has deposed that



there was bleeding from the arm of Anil Rai. When he reached the place of occurrence, there were about 20 people, but he could not tell the names of any of them. When all the people fled away, he also went away from the place of occurrence at 1:00 PM. He again went to the place of occurrence when the police called him and his statement was recorded by the police. He had seen gunshot injury on the stomach of Mithilesh Rai. Inquest report was not prepared by the police in his presence. He has no enmity with the accused persons.

29. P.W.-2 is Jimdar Rai. He has also supported the prosecution case by deposing in his **examination-in-chief** that the occurrence had taken place about 10 months ago at 12:30 PM. At that time, he was at his home. He went to the house of Santosh Rai after hearing hulla and sound of firing. Bhagwat Rai came out from his house and asked why they were abusing, upon which, the appellants came with country made pistol and one Dasa Rai came with lathi. Munaki Rai shot at Mithilesh Rai hitting his stomach. Vijay Rai shot at Bhagwat Rai hitting his right side of the chest. After one and half hour, the police came at the place of occurrence. Anil Rai received gunshot injury in his left arm, but he could not tell by which firing he got this injury. Mithilesh Rai and Bhagwat Rai died on account of



gunshot injury. In his **cross-examination** on behalf of Ajay Rai, Vijay Rai and Uma Shankar Rai, he has deposed that Bhagwat Rai is his agnate. The occurrence had taken place on account of land dispute. The disputed land situated near soling road where the house of Mithilesh Rai is situated to the east of road. The house of Bhagwat Rai situated to the west of soling road. The house of Judgment Rai, Bhulu Rai, Nanki Rai, Naval Rai, Jaimangal Rai and Balab Rai are also situated near the place of occurrence. He has further deposed that he had come to the place of occurrence after hearing the sound of firing and after reaching the place of occurrence, he saw Bhagwat Rai was lying on the ground and he had received gunshot injury on the right side of his chest. He was bleeding also. He was dead. He could not tell who of the appellants fired. When police had come, he was present at the place of occurrence.

30. In his **cross-examination** on behalf of Munaki Rai, Shiv Chandra Rai and Subodh Rai, he has deposed that he was not present at the time of preparation of inquest report. Anil Rai is his cousin. On his complaint, proceeding under Section 144 Cr.PC was initiated against Munaki Rai, Shiv Chandra Rai and Subodh Rai.

31. P.W.-4 is Ramji Rai. He is son of the



deceased/Bhagwat Rai, father of the deceased/Mithilesh Rai and brother of injured Anil Rai. He has supported the prosecution case in his **examination-in-chief** deposing that the occurrence had taken place about one year back at 12:30 PM. At that time, he was at the door of his house. In the morning at about 7:00 – 8:00 O' clock, his brother Santosh Rai was digging soil from the land. Thereafter, Shiv Chandra Rai came bearing *farsa* in his hand and started abusing and even wielded *farsa*. Then Santosh Rai fled away and came to his house and at that time, all his family members were at the door of his house. All the appellants were carrying country made pistols in their hand. When they reached at the door of his house and started abusing, they were protested by his father, whereupon Dasa Rai exhorted them to kill. Vijay Rai had shot Bhagwat Rai hitting on the right side of chest. Consequently, his father fell down and died. Mithilesh Rai was shot by Munaki Rai hitting his stomach. He also died on way to hospital. Uma Shankar Rai, Subodh Rai, Ajay Rai, Vijay Rai and Shiv Chandra Rai were also doing indiscriminate firing hitting the left arm of his brother Anil Rai. After hitting, all the appellants fled away. The police came at 1:05 PM on the place of occurrence and his statement was recorded at 8:30 PM. In his **cross-examination** on behalf of Munaki Rai, Subodh Rai



and Shiv Chandra Rai, he has deposed that the house of Bhagwat Rai is situated near soling road at the distance of 30 feet to the west. There is one hand pump at the disputed land. The occurrence had taken place at the place of occurrence situated to the east of the road. Neither inquest report was prepared, nor any seizure was made in his presence. The police had returned from the place of occurrence at 9:00 PM. He was not in a position to give his statement on the date of occurrence. Hence, his statement was recorded on the next day of the occurrence.

32. In his **cross-examination** on behalf of Ajay Rai, Vijay Rai and Uma Shankar Rai, he has deposed that Jimdar Rai is his cousin.

33. P.W.-5 is **Machiya Devi**. She is wife of the deceased/Bhagwat Rai. In her **examination-in-chief**, she has supported the prosecution case deposing that at the time of occurrence, she along with her family members was at the door of her house. Vijay Rai shot at Bhagwat Rai hitting his stomach. Munaki Rai shot at Mithilesh Rai hitting his stomach. Dasa Rai and Ajay Rai exhorted others for firing. Shiv Chandra Rai, Uma Shankar Rai were also involved in the occurrence. Subodh Rai shot at Anil Rai hitting his left arm. During **cross-examination**



on behalf of Ajay Rai, Vijay Rai and Uma Shankar Rai, she has deposed that the accused persons had come on the place of occurrence and started indiscriminate firing. They did about 5-7 firings. Seeing the firing, she had started raising hulla and on hulla, Shilpi Rai, Jimindar Rai, Shail Devi and Santosh Rai had come to the place of occurrence. Anil Rai was hit by Subodh Rai.

34. In her **cross-examination** on behalf of Shiv Chandra Rai, Munaki Rai and Subodh Rai, she has deposed that on the day of occurrence, she was in shock. Hence, her statement was recorded after three days.

35. P.W.-6 is **Shail Devi**, who is daughter of the deceased/Bhagwat Rai, has been living at her father's house for 12 years because she is a widow. In her **examination-in-chief**, she has supported the prosecution case by deposing that on the date of occurrence, when Santosh Rai was digging soil from the land, Shiv Chandra Rai came with *lathi* and *garasa* and started wielding. All the appellants came near the house of her father carrying country made pistols. Dasa Rai stated that if other side does not desist, kill them one by one. Subsequently, Vijay Rai shot at Bhagwat Rai. Munaki Rai shot at Mithilesh Rai. Subodh Rai shot at Anil Rai and after doing 4-5 firings, they fled away.



In her **cross-examination** on behalf of Munaki Rai, Shiv Chandra Rai and Subodh Rai, she has deposed that the police had reached at the place of occurrence at 12:30 PM. At that time, she was at her door.

36. In her **cross-examination** on behalf of Ajay Rai, Vijay Rai and Uma Shankar Rai, she has deposed that after marriage, she has been living at her father's house temporarily and she has one son. The occurrence had taken place on account of land dispute.

37. P.W.-7 is **Bipin Kumar**. He is son of Shail Devi, who is daughter of the deceased/Bhagwat Rai. He is aged about 15 years, but learned Trial Court has not given certificate regarding his competence to depose as required under Section 118 of the Evidence Act. As such, evidence of this witness is of no use.

38. P.W.-8 is **Anil Rai**. He is son of the deceased Bhagwat Rai and injured in the alleged occurrence. He has supported the prosecution case by deposing in his **examination-in-chief** that the occurrence had taken place at 12:30 PM about one year ago. All the appellants came and started abusing and on exhortation of Dasa Rai, Vijay Rai shot at Bhagwat Rai and Munaki Rai shot at Mithilesh Rai. Bhagwat Rai died on the



place of occurrence and Mithilesh Rai died after half an hour in the hospital and Subodh Rai had shot at him hitting his arm. He has also shown the injury that he had received on his left arm due to gunshot to the Court. The appellants have fled away doing firing. His treatment was done in Agamkuan Government hospital. The occurrence had taken place on account of digging soil from the land. In his **cross-examination** on behalf of Ajay Rai, Vijay Rai and Uma Shankar Rai, he has deposed that at the time of occurrence, he was at his door. His statement was recorded by the police after seven days of the occurrence. In his cross-examination on behalf of Munaki Rai, Shiv Chandra Rai and Subodh Rai, he has deposed that he was admitted in NMCH for three days and after he returned from the NMCH, his statement was recorded by the police.

39. P.W.-9 is **Dr. Brajesh Kumar Singh**, who had conducted the postmortem examination of deceased Mithilesh Rai and Bhagwat Rai on 20.06.2017 at 1:45 PM. After the postmortem examination of deceased Mithilesh Rai, he found as follows:-

“Rigor mortis absent in all four limbs.

Following antemortem findings are present during postmortem examination of deceased:

External- Swollen face, neck, chest, left eye bulging, peeling of skin at few places present.

Lacerated wound – ½ inch in diameter with blackening of skin (surrounding), margin – inverted at right lumber region of



abdomen (wound of entry) another wound lacerated about 1 inch in diameter, margin – everted at left side of lateral abdominal wall in middle (wound of exit).

On Dissection-

Skull-bone, meninges intact, brain pale.

Neck- blood vessels, trachea intact.

Chest- wall (bony caze), plura intact, lungs pale, heart all chambers empty.

Abdominal- peritoneal cavity contains blood, moderate to severe laceration of small, large intestines, mesentry. Stomach is empty, Intestine contains gas and faecal matters, bladder is empty.

Cause of death is haemorrhage and shock due to above mentioned injury.

Nature of weapon- by fire arm.

Time elapsed since death between 18 to 36 hours from the time of postmortem examination. Injury no. 2 is exit wound.”

40. After postmortem examination of the deceased

Bhagwat Rai, he (P.W.-9) found as follows:-

“External- Rigor mortis absent in all four limbs.

Eyes open, mouth open, peeling of skin at some places present. Lacerated wound 1.25 inch in diameter, margin inverted with blackening of skin at left middle chest – lateral side (wound of entry). Another wound lacerated 2.50 inch in diameter, margin everted at right lower chest lateral side.

On Dissection-

Skull-Bony caze, meninges intact, brain pale.

Neck- Trachea, blood vessels intact.

Chest – fracture of rib on lateral side – bilateral with laceration of both lungs and presence of blood in pleural cavities. Heart – all chambers empty.

Abdomen- wall, peritoneum intact, intestine contains-gas and faecal matter.

Stomach contains 75 ml. Of fluid, bladder is empty.

Weapon used- fire arm.

Time elapsed since death between 18 to 36 hours from the time of postmortem examination.”

41. In his **cross-examination**, he has deposed that he

found that there was no foreign body like pellet or any other metallic substance inside the body of Bhagwat Rai. He has also deposed that he could not say whether injury was caused by



pistol or rifle.

42. P.W.-10 is **Rajesh Kumar**, who was Investigating Officer of the case. In his **examination-in-chief**, he has deposed that there were two places of occurrence. The first place of occurrence is situated at the distance of 30 feet to the east of corridor of house of the informant where there is hand pump. It is surrounded by grass cottage to the south open Government land to the east, house of the informant to the west and open land of the informant to the south. At the second place of occurrence, Mithilesh Rai was shot at. It is also near the house of the informant surrounded by store of husk of the informant to the east, land of the informant to the west, entry door to the house of the informant to the north, land of the informant to the south. The inquest report of Mithilesh Rai was prepared by A.S.I. Vidya Shankar Singh and that of the deceased Bhagwat Rai was prepared by Sushil Paswan. Seizure list of four empty cartridges and one bullet was prepared by Sushil Paswan. Investigation of the case was later on given to Baleshwar Prasad Yadav and officer-in-charge of Jurawanpur Police Station after him, who submitted the charge-sheet. In his **cross-examination** on behalf of Ajay Rai, Vijay Rai and Uma Shankar Rai, he has deposed that the inquest report of Bhagwat Rai was prepared at



1:45 PM at the place of occurrence on the day of occurrence itself. The dead body of Bhagwat Rai was found in front of the house of Ramji Rai. There was no injury on the stomach of Bhagwat Rai. The empty cartridges and the bullet was seized from banana plant standing near the house of the informant situated to the east and south of the door of the informant. During investigation, it was found that Dasa Rai was 65-70 years old suffering from paralysis and he could not move well and his house is situated at the distance of one kilometer from the place of occurrence. The allegation against Dasa Rai was not found to be correct during investigation. Witness Shivji Rai had not stated to him that Vijay Rai had shot at Mithilesh Rai. During his **cross-examination**, he has deposed that information was received by police station on 19.06.2017 at 12:40 PM. The *fardebayan* was recorded of the informant at 13:05 O' clock by Sushil Paswan and the case was registered at 20:30 O' clock. The inquest report of Mithilesh Rai was prepared at 15:20 O' clock on 19.06.2017 at Primary Health Centre, Fatehpur. He did not obtain any injury report of Anil Rai.

43. P.W.-11 is Shiv Kumar Ram. He is a formal witness to the seizure list who identified the signature of Sushil Paswan, who had prepared the seizure list. He has also proved



the inquest report of Bhagwat Rai prepared by A.S.I. Sushil Paswan. He has also proved the inquest report of Mithilesh Rai prepared by A.S.I. Vidya Shankar Singh by identifying the signature of Vidya Shankar Singh, A.S.I. He is an Advocate Clerk for 15 years in Hajipur Civil Court.

Appreciation of the Evidence and Findings of the Court

44. From the perusal of the prosecution evidence, we find that out of total eight non-official witnesses, seven witnesses (P.W.-2 to P.W.-8) are family members closely related with the deceased. Only one witness (P.W.-1) is a co-villager of the informant. All non-official witnesses (P.W.-1 to P.W.-8) are eye-witness to the occurrence. Their presence at the place of occurrence is not doubtful in view of the facts and circumstances of the case as has come in the prosecution case. The occurrence had taken place near the door of the house of the deceased and P.W.-2 to P.W.-8 have naturally seen the occurrence. P.W.-1 is also co-villager, who also came at the place of occurrence when the altercation had started between the two sides. However, P.W.-7/Bipin Kumar being 15 years old was a minor at the time of deposition. However, learned Trial Court has not examined his competency as required under Section 118 of the Evidence Act. Hence, for want of any



certificate regarding his competency by the learned Trial Court, his evidence is of no use and he cannot be relied upon for passing any judgment.

45. We further find that the two prosecution witnesses (P.W.-9 and P.W.-10) are official witnesses. P.W.-9 is a doctor who conducted the postmortem examination on the dead bodies of both the deceased (Bhagwat Rai and Mithilesh Rai). However, P.W.-11 is a formal witness to the seizure list and inquest reports. He is an Advocate Clerk and he has proved the seizure list and inquest reports by identifying the signature of the officer who had prepared the seizure list and inquest reports, deposing that being an Advocate Clerk for 15 years, he was acquainted with signature of those officers.

46. We further find that non-examination of the witnesses of the seizure list and inquest reports are not fatal. In such facts and circumstances, we also find that there were two Investigating Officers of the case. First Investigating Officer, who is P.W.-10, has been examined and second Investigating Officer, who had submitted charge-sheet, has not been examined. Non-examination of the second Investigating Officer has not been shown to have caused any prejudice to the appellants. Hence, non-examination of the second Investigating



Officer is not fatal to the prosecution case.

47. We further find that the occurrence had taken place around 12:30 PM on 19.07.2017 and police came at the place of occurrence and recorded the *fardebayan* at 13:05 O' clock. Thereafter, inquest reports of Mithilesh Rai and Bhagwat Rai were prepared at 15:20 and 16:00 O' clock respectively and formal FIR was lodged at 20:30 O' clock. Hence, there is no substantial delay in recording the *fardebayan* and lodging of the formal FIR. It is true that formal FIR was lodged after preparation of the inquest reports. However, the sequence of the events does not create any doubt for concoction and embellishment in the prosecution case. It is also true that formal FIR was seen by the Jurisdictional Magistrate on 22.06.2017 and as such, there is gap of about three days between lodging of the formal FIR and endorsement of the learned Jurisdictional Magistrate on the FIR. But such time gap may be on account of the office of the jurisdictional Magistrate putting the formal FIR before the Jurisdictional Magistrate after delay or there may be holiday in the Court during the period of the time gap. More importantly, the appellants have not put any question to the Investigating Officer in regard to such time gap giving him opportunity to explain it. So for want of such cross-examination



on the part of the appellants, this Court has no reason to doubt the veracity/authenticity of the prosecution case.

48. We further find that there is no material contradictions in the statements of any witnesses including the non-official witnesses going to the root of the prosecution case. Some minor discrepancies may be found here and there in the prosecution evidence which is natural even in the case of truthful witnesses. In fact, minor discrepancies in the statements of the witnesses show that the witnesses are not tutored. Moreover, we also find that the witnesses are villagers not accustomed to legal and Court procedures. Moreover, all the non-official witnesses except P.W.-7 are illiterate. They have put their thumb impressions on their depositions. We find no reason to disbelief their testimonies. They are reliable witnesses. We further find that the place of occurrence is well proved which is situated near the house of the informant and the deceased. Even the motive of the occurrence and manner of the occurrence are also well proved. There was strong enmity between the two sides on account of land disputes.

49. We further find that the victims have died on account of gunshots injuries as proved by medical evidence (P.W.-9) and corroborated by ocular evidence. There is no



substantive contradictions between ocular evidence and medical evidence.

50. However, in regard to the assailants who caused the death of the victims (Bhagwat Rai and Mithilesh Rai), we find that there is consistent testimony of all the eye witnesses P.W.-1 to P.W.-8 that it is the appellant/Vijay Rai, who caused the death of Bhagwat Rai by his gunshot, whereas deceased/Mithilesh Rai died on account of gunshot given by appellant/Munaki Rai. Such *actus rea* by these appellants were committed with *mens rea* as is clear from the facts and circumstances of the case.

51. However, in regard to the role of other co-appellants, there is no consistent evidence of the eye witnesses that they have played any role in causing death of the deceased Bhagwat Rai and Mithilesh Rai, despite the evidence that they were also carrying country made pistols. As such, there is reasonable doubt that they have committed any *actus rea* with *mens rea* in causing the death of the two deceased persons.

52. We also find in regard to alleged injury of Anil Rai that there is some evidence that some of the appellants have caused fire arm injury to him. However, injury report of Anil Rai has not been brought on record. Moreover, there is no



consistent evidence in support of the allegation that any particular appellant has caused fire arm injury to Anil Rai. For want of such consistency in the prosecution evidence and absence of any injury report of Anil Rai on record, the Court is unable to find beyond reasonable doubt that any of the appellants have caused fire arm injury to Anil Rai. Hence, the appellants other than Munaki Rai and Vijay Rai are entitled to get benefit of doubt.

53. Hence, the appellants/Vijay Rai and Munaki Rai are found to be guilty of the charge framed against them. But other appellants are acquitted of all the charges framed against them. Therefore, the impugned judgment of conviction and the order of sentence are upheld with reference to the appellants, viz., Vijay Rai and Munaki Rai, but the same are set aside with reference to the rest appellants, viz., Ajay Rai, Shiv Chandra Rai, Subodh Rai and Uma Shankar Rai.

54. Accordingly, **CRIMINAL APPEAL (DB) No. 1318 of 2019** filed by the appellant/Munaki Rai and **CRIMINAL APPEAL (DB) No. 1447 of 2019** filed by the appellant/Vijay Rai are dismissed. They are already in custody. They shall serve out the sentence imposed on them.

55. **CRIMINAL APPEAL (DB) No. 1266 of 2019**



filed by the appellant/Ajay Rai and **CRIMINAL APPEAL (DB) No. 1323 of 2019** filed by the appellants/Shiv Chandra Rai, Subodh Rai and Uma Shankar Rai are allowed.

56. Appellants Ajay Rai, Shiv Chandra Rai, Subodh Rai and Uma Shankar Rai are already on bail. Hence, they are discharged from their liabilities of their bail bonds.

57. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

58. The record of the case be returned to the Trial Court forthwith.

59. Interlocutory application/s, if any, also stand disposed of.

(Jitendra Kumar, J.)

I agree.

(Ashutosh Kumar, J.)

S.Ali/Shoaib/ravish
ankar

AFR/NAFR	NAFR
CAV DATE	01.10.2024
Uploading Date	30.10.2024
Transmission Date	30.10.2024

