

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 77 of 2014

Arising Out of PS. Case No.-62 Year-2006 Thana- BAIRIYA District- West Champaran

Sanjay Yadav S/O Late Ishwarchand Yadav @ Ganga Yadav R/O/V- Fatu
Chhapar, P.S.- Bairiya, District- West Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv Md. Imteyaz Ahmad, Adv Mr. Amir Alam, Adv Mr. Ritwik Thakur, Adv Ms. Vaishnavi Singh, Adv For the Respondent/s
	:	Dr. Maya Nanda Jha, A.P.P

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 02-12-2021

An appeal has been filed against the judgment of conviction dated 27.11.2013 and consequent award of sentence dated 29.11.2013 by the Court of Sri Jitendra Mishra, learned Additional District and Sessions Judge – 1st, Bettiah, West-Champaran in Sessions Trial No. 296 of 2010. The appellant has been convicted under Sections 302/34 of the Indian Penal Code (I.P.C. for short) and Section 27 of the Arms Act.

The Trial Court has sentenced the appellant to undergo rigorous imprisonment for life with fine Rs. 10,000/- (Ten



thousand) for the offence under Sections 302 and 34 of the I.P.C. The consequence of default in payment of fine of Rs. 10,000/- (Ten thousand), is an additional one year of imprisonment. For the offence under Section 27 of the Arms Act, the appellant has been directed to undergo rigorous imprisonment for three years and fine Rs. 5,000/- (Five thousand). The consequence of the default in payment of fine has been fixed as six months imprisonment. The trial court has directed that both the sentences shall run concurrently.

One Jay Kumar has given his *fardbeyan* on 30.5.2006 at about 08:45 p.m. at his '*darwaja*' before the clerk of Bairiya Police Station. He has stated that his father was a candidate for the *Mukhiya* election. At about 06:15 p.m. earlier that evening, his father had gone for canvassing. Apart from the informant, his elder brother Subhash Prasad @ Ravi Prakash, another brother Vijay Kumar and the informant's uncle Chandrashekhar Prasad were also moving around with the informant's father for the purpose of canvassing. When they reached the *Purwari Tola*, one Sanjay Yadav, son of Ishwar Chandra Yadav @ Ganga Yadav, carrying a rifle in his hand, Nagendra Yadav, son of Ramchandra Yadav, carrying a rifle in his hand and Mukesh Yadav ,son of Thakur Yadav, carrying a rifle in his hand were



waiting in ambush. The three criminals are residents of Fattu Chhapar P.S. Bairiya in the district of Bettiah. Two-three unknown persons along with them suddenly opened fire. The informant hid himself behind the bamboo partition (*Tanti*) to save his life, from where he could see everything. He saw Sanjay Yadav was firing upon his father and when his father tried to save himself then Nagendra Yadav fired upon him with his rifle thereafter his father fell down. He was writhing in pain when Mukesh Yadav fired upon him with his rifle, thereafter they started shouting slogan “*Sanjay Yadav Jindabad*” and while firing in the air fled in the South direction. He stated that due to old enmity and political conspiracy the murder has been committed by these persons.

Investigation was taken up by the Investigating Officer, Suman Mahto, who conducted the inquest and prepared Inquest Report and upon completion of the investigation submitted the Charge-sheet bearing Charge-sheet No. 125/2007 dated 30.9.2007 against the appellant.

Considering the charge-sheet and material noticed during investigation, the Court of C.J.M., Bettiah, vide order dated 30.6.2010, found prima-facie case was made out for the offence under Sections 302/34 I.P.C and Section 27 of the Arms Act



against the appellant along with two other accused persons, namely, Nagendra Yadav son of Ramchandra Yadav and Mukesh Yadav son of Thakur Yadav. Accordingly, the Court took cognizance on 30.6.2010. After taking cognizance, the Court found that the case was triable by the Court of Sessions. It directed that police paper be compiled, thereafter the same was compiled and handed-over to the accused persons on 12.7.2010, ensuring compliance with Section 207 Cr.P.C. On the very same date, the case was committed to the Court of Sessions for trial, where it was registered as Sessions Trial No. 296/2010.

Since the accused Mukesh Yadav and Nagendra Yadav had not appeared on 3.10.2010, charges were framed against the appellant only for the offence under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act to which he pleaded not guilty, and claimed to be tried.

In so far as accused Mukesh Yadav and Nagendra Yadav, the trial was separated and numbered as Sessions Trial No. 296A/2010. Co-accused Mukesh Yadav thereafter appeared in Sessions Trial No. 296A/2010.

The Court considered the fact that co-accused Mukesh Yadav had appeared in Sessions Trial No. 296A/2010 and was to be tried for the same offence arising out of the same P.S. Case



based on the same set of witnesses/evidence. Thus, charges were framed against co-accused Mukesh Yadav for the offence under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act and the trial in so far as co-accused Mukesh Yadav is concerned, was amalgamated back into the original Sessions Trial No. 296/2010 on 17.1.2011. The trial thereafter proceeded in respect of two accused persons, namely, the appellant and Mukesh Yadav.

The other Session Trial No. 296A of 2010 continued only for co-accused Nagendra Yadav.

To prove the charges, prosecution examined seven witnesses, namely, the informant Jai Kumar (P.W.5), Subhash Prasad @ Ravi Prakash (P.W.1), Panna Lal Sah (P.W.2), Chandrashekhar Prasad (P.W.3), Ramjee Prasad (P.W.4), Dr. Vijay Kumar (P.W.6) and I.O of the case Suman Mahto (P.W.7).

The prosecution has also proved the following documentary evidence:

Sl. No.	Exhibit	Description
1	1	Signature of Subhash Prasad (P.W.1) on seizure list.
2	2	Signature of Jai Kumar (P.W.5) on <i>fardebayan</i> .
3	2/1	Signature of Chandrashekhar Prasad (P.W.3) on <i>fardebayan</i> .
4	3	Signature of Ramjee Prasad (P.W.4) on inquest report.
5	3/1	Signature of Jai Kumar(P.W.5) on inquest report.
6	1/1	Signature of Jai Kumar(P.W.5) on seizure list.



7	5	Post-mortem report of Babu Lal.
8	2/3	Handwriting and signature of Suman Mahto (I.O) on <i>fardbeyan</i> .
9	2/4	Signature and handwriting of I.O on endorsement of the <i>fardbeyan</i> .
10	6	Signature of I.O on formal F.I.R.
11	3/2	Signature of I.O on carbon copy of the inquest report.
12	1/2	Signature of I.O on seizure list.

Jai Kumar (P.W.5) is the informant of the case. He has stated in court that the occurrence occurred 5-6 years prior to his examination, when he was canvassing for votes along with his father. Subhash Prasad (P.W.1), Vijay Kumar, Chandrashekhar Prasad (P.W.3) and Ramjee Prasad (P.W.4) were also with him. When they reached near the house of Mahant Shaw in *Purwari Tola*, then appellant carrying a rifle in his hand and Nagendra Yadav carrying a rifle along with other two-three persons suddenly arrived at the place from the west. They chased the appellant and others accompanying him and he fled along with his father. Sanjay Yadav (appellant) fired which hit his father (Babu Lal) on his stomach. Sustaining this injury, he fell in front of the '*dalan*' of one Ramdeo Mukhiya, thereafter the appellant again shot at him which hit below his chest. Nagendra Yadav fired on his father's face and his father died there itself. The accused persons thereafter fled away raising slogan "*Sanjay Yadav Jindabad*". The informant has stated about animosity



with the appellant and that it is due to such animosity his father had been shot at. As per his version, two and half hours later, Police reached the place of occurrence where his statement was recorded and read over to him. On finding the same to be correct, he has put his signature on the *fardbeyan*. He has identified his signature on the *fardbeyan* “**Exhibit 2**”. He has stated that at the place of occurrence itself, inquest report was prepared in his presence. He has identified carbon copy of this inquest report and stated that it was prepared along with the main inquest report at the place of occurrence and his signature on the inquest report has been marked as “**Exhibit 3/1**”. He has stated that the shells were recovered by the Police from the place of occurrence and seizure list of the same was prepared in his presence by the Police and he had put his signature on the same. He has identified the seizure list and his signature on the same thereafter the same has been marked as “**Exhibit 1/1**”. He has identified Sanjay Yadav who was present in court and stated that he could identify the others. **In his cross-examination**, he has stated that his father was a candidate for the *Mukhiya* election and he was killed while canvassing. He has stated that the appellant was not a candidate for the election. He has stated the names of the rival candidates as Ved Prakash, Ravi Shankar,



Pannalal Sah and Akshay Lal Sah. He has stated that he is unable to recall that he had stated before the Police that his father has been killed under the conspiracy based on old enmity. He has affirmed that he had not made any false statement before the police and that Police had re-examined him. He has further stated that when the police arrived, he was the first person to meet the police at *Fattu Chhapar* in *Purwari Tola*. He does not remember whether he had met with police at his own '*darwaja*'. He does not remember whether the inquest report was prepared first or that his *fardbeyan* was recorded first. He has stated that the same police personnel had recorded his *fardbeyan* and prepared the inquest report. He had not seen any person from *Purwari Tola* at that time. He had stated that he saw Ramjee Prasad at the place of occurrence before the occurrence took place. His brother Subhash Prasad, Vijay Kumar, uncle Chandrashekhar Prasad and Baba Ramjee Prasad were accompanying his father for canvassing. He has stated the name of Ramjee Prasad as being one who was also canvassing. He has stated that appellant is one amongst three brothers and that he recognized all of them. He has named his two brothers as Prithivi Yadav and Lal Babu Yadav who are own brothers and Raja Prasad Yadav is step-brother. At the time of occurrence,



two brothers of Sanjay Yadav, namely, Prithivi Yadav and Lal Babu Yadav were predeceased. He has further stated that he had heard the name of Mohan Sharma and Manoranjan Mishra. Manoranjan Mishra was a candidate in the election. On the very same date some occurrence took place with Mohan Sharma and Manoranjan Mishra. After the killing of his father, the same gang which had committed the crime with his father, later on the same day committed an occurrence with Mohan Sharma and Manoranjan Mishra which he had learnt later. He has stated that a case was also lodged in respect of this occurrence. Case had also been lodged against cousin brother of Sanjay Yadav, namely, Nagendra. He does not remember that he had stated about Nagendra Yadav being his cousin while giving his *fardbeyan* before the Police. He has stated to the Police that when Sanjay Yadav and his brother carrying weapons had arrived then he wanted to flee away. He has stated that Sattan Yadav, Rajharan Yadav and Dhruv had been killed. He does not remember the name of all persons who had been killed. His brother Vijay Sah is accused in a massacre and had gone to jail for which the trial is still continuing. His brother had been arrested with arms and that he had no enmity with the village where his father had been killed. He has stated that the people of



that village would be recognizing Sanjay Yadav (appellant) other than his family members, Pannalal Sah is also witness and he has no enmity with him. Due to fear many don't come forward to depose. He does not remember that he has disclosed the name of the persons who had killed his father. He has denied the suggestion that on suspicion he has named the three persons as being the assailants. He has reiterated that the appellant and Nagendra Yadav had shot his father and that he does not remember the name of the third person. He does not remember the number of rounds fired. As there were indiscriminate firings, he cannot say which firing of Sanjay Yadav and Nagendra Yadav hit his father. The firing by Sanjay Yadav hit him on the stomach and that of Nagendra Yadav on his face. He does not remember where the other firearm injury was sustained as a result of firing by the other accused persons. He has stated that the first firing by the appellant was from a distance of about ten hands away from his father and second was from close range. At the time of first firing by the appellant his father was fleeing towards the east. The first bullet hit his stomach and he knows the difference between stomach and chest. Sanjay Yadav was chasing his father from the west towards the east, and in the midst of chase the appellant had fired first shot upon his father.



About four to five minutes later, the other miscreants had fired upon his father after chasing him for about 50-100 meter. During chase miscreants were at a distance of about 10-50 arms length from his father. His father had sustained three bullet injuries. The firearm injury was sustained on his chest and on his face. The bullet which hit his father on the face had exited from near his ear, whether the bullet which hit him on his chest had exited or not he does not remember. There is only one wound of entry below his father's chest. He does not remember on which side of the chest the bullet had hit him. He does not remember that there were three holes on his chest. He does not remember whether his father was facing at an angle, when he was fired upon. He does not remember that when his father fell down, whether he was fired upon by pressing the barrel against him and whether the barrel was straight or at an angle. When he fell down his head was in the east direction and feet towards the west. From which side of his father the assailants were firing he does not remember. He has stated that the house of Mahant Shah is about 100-150 paces away in the west direction from the place of occurrence. Daulat Mukhiya's *bathan* is on the east and south corner of Mahant Shah's house in between there were about 15-20 houses. After describing the locality he has stated



that he was witnessing the occurrence from the '*dalan*' of Bhikhari Mukhiya while hiding himself behind '*Tanti*'. His uncle Chandrashekhar Prasad was hiding next to the '*dalan*' of Daulat Mukhiya. He has denied the suggestion that there was no line of sight to the place of occurrence from the place where he was hiding. He has also denied the suggestion that the appellant's cousin brother had been killed in a massacre in which his brother is an accused and that implication is based on such enmity. He has stated that Mukesh Yadav has not participated in the occurrence.

Subhash Prasad @ Ravi Prakash (P.W.1) is elder brother of the informant. He has deposed in his examination in chief that on 30.05.2006 at about 6.15 pm, he along with others and his father late Babul Lal Prasad had gone to canvass and solicit votes for his father who was a contestant in the *Mukhiya* election. All of a sudden, firing started at *Purwari Tola* village. His father started fleeing away and he concealed himself behind a house of '*Tanti*'. His father sustained bullet injury on his face. The second bullet hit his stomach causing him to fall down. The first firing, as per his version, is by the appellant and the second by Nagendra Yadav. He has stated that there were other accused persons also. He has no count of the number of rounds fired in



total. He has stated that his brother Jay Kumar, informant, uncle Chandrashekhar Prasad (P.W.3) and Baba Ramjee Prasad (P.W.4) were also accompanying him and they have all fled and concealed themselves here and there. His brother Vijay Kumar was also fired upon while he was fleeing but he did not sustain any injury. His father succumbed to the injuries at the place of occurrence itself thereafter the accused persons fled away raising slogans of '*jindabad*'. The police as per his version had come to the village about one to two hours after the occurrence. They have recovered shells etc. from the place of occurrence but he cannot say whether seizure list was prepared or not. He however, has identified his signature on the seizure list which has been marked as "**Exhibit 1**". He has said that he recognizes the persons who participated in the occurrence. He has identified Sanjay Yadav in court. He has also identified the second accused Mukesh but has stated that he does not remember whether Mukesh had participated in the occurrence or not. **In his cross-examination**, he has stated that he has identified Mukesh because he is a resident of his village, which comprises of about a hundred (100) houses. The occurrence has taken place less than half kms from his house. The place of occurrence is more than half kms away from the accused



persons' home. His house is hardly 200 yards East from the house of accused person. His father had contested the *Mukhiya* election in 2005 also and that prior thereto no one from his family had ever been a *Mukhiya*. He does not remember whether he had accompanied his father for nomination or the date on which the election was to be conducted. He has stated that Ved Tiwari, Ravi Shankar Prasad, Akshay Lal Prasad, Panna Lal Sah, Hardeo Mukhiya were all contesting the election in 2006 and that he does not remember the name of other contestants. He has stated that the deceased were four brothers from which only one Chandra Shekhar (P.W.3) survives. Apart from Babu Lal Prasad. Sukhdeo Singh and Sashi Bhushan had also been killed. He has stated that he had sustained a bullet injury on his arm as a result of firing by Sanjay Yadav, for which a police case had been lodged. He had not lodged any case, whether he had deposed in the said case in presence of the accused or not he does not remember. He has claimed total ignorance regarding details of the case lodged earlier. He was the only one who had sustained firearm injury on the arm in that case and Sanjay Yadav and Lal Babu were made accused in that case, he does not remember when the occurrence had taken place. Lal Babu was brother of Sanjay who had been killed by



the police. Shanti Devi has not lodged any case for murder of Lal babu against him. He had sustained firearm injury before Lal Babu in the same occurrence in which Lal Babu was killed at the door of Ram Awatar Bhagat. Lal Babu had sustained firearm injury at *Fattu* Chhapar. He has denied the submission that Lal Babu was killed at his home and that his crusher was operating at the place and therefore he had gone there. He has stated that where he sustained the firearm injury there was cross firing going in between the police and some criminals. He had denied that he had gone with the police. None of the police personnel has sustained any injury. He had denied the suggestion that he had not sustained the firearm injury in the occurrence. He has stated that the house of Daulat Mukhiya, Bhikari Mukhiya and Kashi Mukhiya is situated at the place where his father was shot when the firing started all the family members of these persons fled away from this place including the female members and children. He further says that he does not know whether these persons had gone into their houses or fled away. One hour after the criminals fled away he had seen these persons. Many persons thereafter arrived. His family members had also arrived at that time. Amongst those who arrived after the occurrence were Chandra Shekhar (P.W.3) and



Ramjee Prasad (P.W.4). Mohan Sharma had not come. Vijay and Jay Kumar (informant-P.W.5) had also come. Chandra Shekhar, Ramjee and Vijay are his relatives. He has stated that none from the 'Tola' concerned had come forward as witness and that he does not remember whether he spoke to anyone who had arrived at the place of occurrence upon hearing his cry after the occurrence. He does not remember whether other contestants of the Mukhiya election had come to *Fattu Chhapar* or not. He does not remember when the election was scheduled. He got an opportunity to see the accused persons for the first time at the 'darwaja' of Mohan Sah while canvassing. He stated that the house of Mohan Sah is at a distance of hundred meters from the House of Daulat Mukhiya. He has stated that the house of Daulat Mukhiya and Mohan Sah is not near the passage. He does not remember the name of the persons who live in the three out of four houses in between the house of Mohan Sah and Daulat. The neighbors of Mahanta had fled away on hearing the sound of firing. He has said that all of us did not try to save our lives by going in the house of Ricky. Thereafter he says he was trying to save his life by hiding behind 'Tanti' inside the house of Jagannath Mukhiya whose house is facing West and the house of Daulat is facing North and in between there is one



house. Bhikari's house is towards West of Daulat. He gives the dimensions of the house of Bhikari and states that it is facing East he has witnessed the occurrence from behind the '*Tanti*' from inside the house of Jagannath. He has denied the suggestion that it was not possible to see while he was hiding behind the '*Tanti*' in Jagannath's house. He has stated that his father sustained the bullet injury while he was fleeing with his face towards the east and that the assailant was towards the West. He has stated that his father turned his face towards West when he sustained the bullet injury fired from the east. He says that firing was going on from both sides east and west. He has stated that there were altogether five or six accused. On the east there were two to three and there were two on the west out of which one was Sanjay Yadav, whom he has recognised. He does not recognise the other. He also does not recognise the accused persons on the East. Firing started from the West side by the accused persons but he does not remember how many rounds were fired. He however, states that the first firing was from a distance of about 200 meters from the '*darwaja*' of Mahant when they were talking to the voters. He does not know whether Mahant or his son was in their house. While they were fleeing from the '*darwaja*' of Mahant there was no firing from behind



them and they were only being chased. He does not remember in which house his father was. As per his version, the bullet which hit his father in the face had come out from the side of the nose he however does not remember whether it was towards the left or the right cheek. No one was with him when his father had been shot. He does not remember whether there was anyone beside his father when he was shot. He states that the firing from the East hit his father but he does not remember where the bullet had hit his father. He states that about four bullets had hit his father. He has not seen all these persons who had fired. He had seen only two. He has stated the name of father of the appellant and that the appellant is three brothers. He has given the name of his brothers as Prithivi Lal Yadav and Lal Babu Yadav. He has stated that Ram Prasad Yadav is appellant's step-brother from a different mother. He does not remember that he had stated to the Police that Sanjay Yadav and his brothers had fired upon his father. He has stated that there is an orchard towards 100 feet west of Daulat Mukhiya's house and in between there are no houses. He has stated that there was no sunlight at the time of occurrence. He does not remember taking the name of Nagendra and Mukesh before the police. He has seen the shells at the place of occurrence but he does not know



whether all were of the same kind. He has denied the suggestion that no such occurrence had taken place. He has denied the other suggestions including the suggestion that his entire family is of criminal bend of mind. He has also denied the fact that his brother Vijay is an accused in the murder of an agnate of the appellant.

Pannalal Sah is P.W.2. He has denied any knowledge of the occurrence. He has denied giving any statement before the police and has been declared hostile. He has denied **in his cross-examination** that he had stated before the police that he was standing at his '*darwaja*' at the time of occurrence from where he had seen this occurrence where two of the assailants carrying rifle in their hands were chasing Lal Babu Prasad who fled from the front of his house or that Sanjay Yadav, Nagendra Yadav and Mukesh Yadav were chasing him. He has denied the occurrence.

Chandrasekhar Prasad is (P.W.3). He is uncle of the informant. He has corroborated the prosecution case as narrated in F.I.R. He has stated that he was along with his brother Babulal who was the candidate for the *Mukhiya* election while they were canvassing towards the east of *Fattu Chhapar Tola* High School. (P.W.5), Vijay Kumar, (P.W.4) and (P.W.1) were also with him. When they heard the sound of firing, they started flee-



ing towards the east and concealed themselves behind the ‘*Tanti*’ next to the house of Daulat Mukhiya. Five-six persons including Sanjay Yadav and Nagendra Yadav surrounded Babulal Prasad, he does not recognize the others. Appellant fired on the face of Babulal and he fell on the ground thereafter Nagendra Yadav fired on his stomach raising slogans of “*Sanjay Yadav Jindabad*”. The Miscreants went towards the *Bazaar Chowk* where they again indulged in firing where Mahesh Sharma sustained firearm injury on his hand. He however states that he was not present there and he had heard about this. Babulal died as a result of firearm injury thereafter he was taken home in the night at about 8:30. The police came and took the dead body to the police station, post-mortem was also conducted. Police had taken the statement of Jai Kumar (informant) and on that basis lodge the F.I.R. He has claimed to be witness of lodging of the F.I.R. and that the informant put his signature in the F.I.R. in his presence. He has identified the signature which has been marked as “**Exhibit 2**”. He has also identified his own signature as witness to the *fardebayan* which has been marked as “**Exhibit 2/1**”. He has identified Sanjay Yadav (Appellant) in court. **In his cross examination**, he has stated that Ved Prakash Tiwari became the *Mukhiya*. He has stated the name of some of the other



contestants in the *Mukhiya* election and denied knowledge of names of all the contestants. He has stated that he is the only one surviving out of four brothers. Remaining three brothers were killed and that the informant Jai Kumar is his own nephew. He remembers that Jai Kumar had lodged the case against three persons namely Sanjay Yadav, Nagendra Yadav and Mukesh Yadav. He has denied that he was with Jai Kumar at the time of occurrence and that only Jai Kumar was present. He has stated that he had left home together for canvassing on the date of occurrence. First they had gone for canvassing to *Fattu Chhapar* in *Purwari Tola*. They were canvassing together from 7:00 in the morning till about 11:00 or 12:00 o'clock in the day. After resting awhile they again left for canvassing at about 2:00 o'clock and were canvassing till the occurrence. Though he claims to have seen *Fattu Chhapar* High School but he states that there is no school in *Fattu Chhapar* at *Purwari Tola*. He has stated that many candidates were canvassing in *Fattu Chhapar*. He has stated that on that day he had heard about other incidents apart from this occurrence. He has also stated about the occurrence of *Fattu Chhapar* Bazaar and from his village there was only one occurrence. He has stated that he had only heard about the firing. He has stated about another occurrence of snatching of mo-



torcycle though he was not there. He does not remember whether he had given his statement to the police regarding the motorcycle snatching. He has denied about any enmity with Mohan Sharma and Manoranjan Mishra. He has stated that Mohan Sharma had sustained firearm injury at *Fattu Chhapar Bazaar* and the same perpetrators who had shot on Mohan Sharma had shot his brother. Thereafter he has stated regarding Rajharan and Sukhdev (cousin brothers of Sanjay). Rajharan and Sukhdev had been murdered along with Sattan Yadav and Dhruv Singh. He has stated about occurrence with Mohan Sharma at *Fattu Chhapar Bazaar*. He has denied that anyone from his family was an accused in the murder of Sanjay Yadav's brother Lalbabu. Shanti Devi has not lodged any case in this regard implicating anyone from the family. Lalbabu's murder took place in village *Fattu Chhapar*. He had enmity with others. On his own volition, P.W.3 has stated that Lalbabu has committed the murder of his brother. There was a thatched hut at the place where his brother had been shot. At that time he claims to be at the '*darwaja*' of Mukhlal Mukhiya where he was canvassing along with his brother Jai Kumar (informant). The occurrence took place four to five houses after the house of Mahna Sah. There are 10 to 12 houses in between the house of Mukhlal



Mukhia and Daulat Mukhiya. At that time Jai Kumar was canvassing next to the house of Mahna Sah. He has stated that the victim had sustained firearm injury while he was standing facing east. He claims to have witnessed his brother sustaining the firearm injury but does not remember whether the bullet had crossed his body or it remained inside but then goes on to say that the bullet had crossed the body of his brother and that it has hit him on his head thereafter he says that the bullet had hit him on his face and that the bullet from the second firearm injury did not exit the body. He has stated that the firing was done by the assailants by pressing the barrel on the victim. House of Daulat Mukhiya is towards the east from the place from where his brother had fallen and on the west was the '*dalan*' of Bikhari he was heading in the south of '*Tanti*' of Daulat Mukhiya and Babulal was about 10-20 feet behind him in the north. The first firing was from close range and the second one after he had fallen also from close range which had hit his stomach. He has heard 3-4 shots. He does not remember to have seen any blood stains at the place of occurrence. Babu Lal was at the east and south corner of the house of Bikhari Mukhiya at about 5-7 feet distance. He was fleeing away and was caught hold of and was being bitten. At that time he had not sustained any firearm injury



but was being beaten with the rifle. They were beating him on his head and on his face. He has stated that Babu Lal was shot when he was standing from a close range. The second shot was after he had fallen also from close range on the stomach.

Ramjee Prasad is (P.W.4). He has stated that occurrence took place at about 6:15 in the evening. He was canvassing along with Babu Lal Prasad. When he reached '*darwaja*' of Gaya Yadav others accompanying him spread in the village for canvassing. When he was soliciting votes at the '*darwaja*' of Gaya Mahto then he saw Sanjay Yadav, Nagendra Yadav and 4-5 persons were running in the village with rifles and guns in their hands. 4-5 minutes later, he heard the sound of firing from the east. Thereafter the villagers started fleeing. Five minutes later, he saw persons fleeing who were raising the slogans "*Sanjay Yadav Jindabad*". They got on their motorcycles and left in the south direction, the motorcycle was parked there from before. Thereafter he went towards the east where he had heard the sound of firing where he saw the dead body of Lal Babu surrounded by Subhash, Vijay and others. He saw firearm injury on the face and in the stomach. Blood was oozing out. Police came one hour after the incident. He has recognised Sanjay Yadav in the court and stated that he does not recognise the others. He has



identified his signature on the inquest report which has been marked as “**Exhibit 3**”. **In his cross examination**, he has stated that Police had come at the place of occurrence where the papers regarding the dead body were prepared. He has also stated about recording of the informant’s version at the place of occurrence. He has stated that he has not heard regarding involvement of Mukesh Yadav in this case. He has stated that the dead body of Babu Lal was in front of ‘*dalan*’ of Daulat Mukhiya, which is separate from his house. Both ‘*dalan*’ and his house are like huts. He has admitted to the enmity between Sanjay Yadav and these persons. He has stated that Subhash Prasad (P.W.1) was with him during canvassing. Subhash, Vijay, Jai, Chandrashekhar Prasad and the deceased had moved ahead of him. As he had paused at the house of Gaya Yadav, he has heard 3-4 shots and does not remember the exact number of firing. He has admitted that he told the police that at the time of occurrence he was in his village and that he had heard the sound of firing from there. Thereafter he had rushed to place of occurrence. He met Subhash at that place only. Chandrashekar and Jai Kumar were also there. He has stated that the firing was not in his presence.

Dr. Vijay Kumar is P.W.6. He has prepared the post-mortem report at 11:50 in the day. On 31.05.2006, he has found



the following injuries,

1. *One lacerated punctured wound 1" in diameter with inverted irregular margin (wound at entry) was present on left side of face at angle of mouth. This wound was found connecting through a track, through brain tissue to another wound about 1½"x1"xinto track situated on right side of head above right ear. Margin of this wound was irregular and everted (wound at exit). Scalp bones and facial bone were fractured in multiple pieces.*
2. *Three lacerated punctured wound about 1" in diameter with irregular and inverted margin (wound at entry were present on left side of the chest. One on left axillary fold (anterior fold) at the level of nipple second below the nipple and third about 5" behind the nipple. These wound were communicated to another wound through track measuring 2"x1"xtrack, 2½"x1"xtrack and 2"x1½"x track, situated on back of right shoulder (at medial scapular line) and two wounds found on right side at back just lateral to vertebral column. Margin of these wounds were irregular and everted (wound of exit) the soft tissue and vessels in and around. The track were lacerated, both lungs were ruptured, heart was ruptured, blood clots*



were present in thoracic cavity.

3. *One lacerated punctured wound about 1" in diameter with everted and irregular margin (wound of entry) was present on right side of abdomen just right to umbilicus. The wound was communicating with another wound, measuring 5"x5" abdominal cavity situated on right side of abdomen and trunk, margin of these wounds were everted (wound at exit) Omentum and intestinal coil was coming out through these wound.*

On dissection-

Liver and intestine were found lacerated at several pieces. Blood and clots were present in abdominal cavity.

Liver was lacerated. Spleen and kidney were pale.

The above injuries were antemortem and caused by fire arms.

Death was due to hemorrhage and shock.

He has found injuries to be antemortem and caused by firearm. The cause of death has been stated to be hemorrhage and shock due to blood loss based on these firearms injuries. He has stated that the death had occurred within 24 hours of the post-mortem. He has accepted the hand-writing and signature on the post-mortem report to be his and the same has been marked



as “**Exhibit 4**”. In his cross examination, he has stated that he cannot say whether all the firearm injuries have been caused by the same firearm. He has not written in the post-mortem report that firearm injury was sufficient to cause death. He has stated that he cannot say that the injury has been caused by high velocity arm. He has not denied that the firearm injury could have been used from a distance.

Suman Mahto is P.W.5. He has conducted the investigation. He has stated that he was posted in Bairia police station on 30.05.2006. He has recorded the *fardbeyan* of informant at 8:45 in the evening at village *Fattu Chhapar* at the ‘*darwaja*’ of the informant. He has identified his handwriting and signature on the *fardbeyan* which has been marked as “**Exhibit 2/3**”. He had also identified that the endorsement of the *fardbeyan* is in his handwriting and his signature on the same which has been marked as “**Exhibit 2/4**”. The formal F.I.R. has also been proved by him and marked as “**Exhibit 6**”. He has stated that he had taken up the investigation himself and had prepared the inquest report “**Exhibit 2/3**” along with carbon copy. He had recovered three shells from near the ‘*dalan*’ of Daulat Mukhia from village *Fattu Chhapar*. The seizure list “**Exhibit 1/3**” has been prepared by him. He has stated that during investigation he



had recorded the statement of Jai Kumar, Subhash Prasad, Ramjee Prasad and Pannalal Sah. He has also stated that he had investigating the place of occurrence at *Purwari Tola* in village *Fattu Chhapar* in front of the 'dalan' of Daulat Mukhiya. He has given a brief description of the place of occurrence that on the north is the hut of Bikhari Mukhiya and vacant land. Single storey house of Kashi Mukhiya is on the South from the place of occurrence. The west facing house of Daulat Mukhiya is situated on the east of the place of occurrence and Bikhari Mukhiya house is on the west from the place of occurrence. He has stated that he had also recorded the statement of Chandrashekhar Prasad during investigation. he had obtained the post-mortem report and submitted the charge-sheet under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act, showing the accused as absconding. **In his cross examination**, he has stated that in the case diary that he had mentioned Sanha No. 563 dated 3.05.2006 and that after the recording the same he had proceeded to *Fattu Chhapar* for verification. *Fattu Chhapar* is about 12 km from the police station. On reaching the place of occurrence at *Fattu Chhapar* he recorded *fardbeyan* of Jai Kumar and prepared the inquest report of the deceased. He has stated that the place of occurrence is the vacant land in front of



the '*dalan*' of Daulat Mukhiya. He recorded *fardbeyan* of Jai Kumar at his house. He has not recorded evidence of any person near the bounds of the place of occurrence. He has denied the suggestion that none of the persons near the bounds of place of occurrence had supported the allegation therefore they had not been examined.

After closure of the prosecution evidence, statement of the appellant was recorded under Section 313 of the Cr.P.C. He denied the allegations and claimed to be innocent.

Thereafter, 4 witnesses were examined on behalf of defence as defence witnesses.

Abdul Karim Mia is D.W.1. He has stated that along with Mubarak Mia, Idris Mia and Rajendra Mukhiya etc he was canvassing with Babu Lal, since deceased. There was no one from the house of Babu Lal. During canvassing when they reached near the '*darwaja*' of the Dihi Mukhiya then 5-6 persons came and started firing indiscriminately which hit Babu Lal Prasad and he died on the spot. Several persons thereafter assembled at the place of occurrence. Subhash Prasad, Chandrashekhar, Jai Kumar, Ramjee and other persons also arrived. He has stated that none of the assailants were from the village.



He has a house north of the house of Dihi Mukhiya in the same village and the house of Babu Lal is at about 1 Km from that place.

Mubarak Mia is D.W.2. He had stated that he was accompanying Babu Lal in canvassing at *Purwari Tola* in *Fattu Chhapar*. When they reached the '*darwaja*' of Moti Mukhiya then five-six persons started firing which hit Babu Lal causing his death. He has stated that Sanjay Yadav was not one of the assailants.

Daulat Mukhiya is D.W.3. He has stated that he was knowing Babu Lal Prasad. It was about 6:00 or 7:00 o'clock when he was at his '*darwaja*'. Babu Lal Mukhiya came there soliciting votes. Manju, Mubarak and others were with him. There was none from the family of Babu Lal accompanying him when he had come to his '*darwaja*'. 10-12 miscreants suddenly arrived and shot Babu Lal causing his death after the assailants fled. The family members of Babu Lal arrived. none of the assailants were from village *Fattu Chhapar*. **In his cross examination**, he has stated that wife of Sanjay Yadav had asked him to depose as witness.

Idris Mia is D.W.4. He has also said that he was solicit-



ing votes with Babu Lal Prasad and when he reached on '*darwaja*' of Daulat Mukhiya, miscreants 8-10 in number arrived and started firing sustained firearm injury. Babu Lal died. He has stated that Sanjay Yadav was not amongst the assailants. He has stated **in his cross examination** that persons from the side of Sanjay Yadav had called him to depose as a witness.

It is submitted by Mr. Ajay Kumar Thakur, counsel for the appellant that there is nothing in the First Information Report or deposition of prosecution witnesses at the trial to show that who has given the information to the police about the alleged occurrence. The informant has stated regarding arrival of the police, two to two and a half hours after the occurrence. He has stated that he met the police for the first time at the place of occurrence at *Purwari Tola* in *Fattu Chhapar*. He does not remember whether he met the police at his '*darwaja*' or not. He also does not remember, the Inquest Report and *fardbeyan* were recorded and prepared respectively at the same place. P.W.1 is an attesting witness on the *fardbeyan*. He however, has not stated at the trial about lodging of the *fardbeyan* nor has he identified his signature on the *fardbeyan*. He however, has identified his signature on the seizure list in his examination-in-chief. In the same breath he has stated that he cannot say



whether the seizure list was prepared by the police or not and whether there was recovery of the '*khokha*' at the place of occurrence. P.W.3 Chandrashekhar Prasad has stated that dead body of the deceased was brought at his house and police arrived there at about 8.30 and took the dead body to the police station. On that date, statement of the informant was recorded and FIR was registered. He has identified his signature on the *fardbeyan* "**Exhibit-2/1**". He however, has not stated at which place the *fardbeyan* was recorded. P.W.4 Ramjee Prasad has given another version, he has stated that police reached the place of occurrence after one hour. He has stated that he had given the statement to the I.O. He has stated that informant Jai Kumar was also examined prior to preparation of the Inquest Report. At about 7:30 pm, the Investigating Officer (P.W.7) has stated in para-9 of his cross-examination, that he had made a station diary entry on 30.05.2006, that is the date of the occurrence bearing Station Diary Entry No.563. Thereafter, he proceeded for verification regarding the occurrence. In his examination-in-chief, he stated that he recorded the statement of the informant at his '*darwaja*' in village *Fattu Chhapar*.

A very vital inconsistency has thus emerged based on deposition of these prosecution witnesses. Deposition of P.W.4,



P.W.5 and P.W.7 at the trial is to the effect that informant's *fardbeyan* was recorded at the place of occurrence, thereafter inquest report of the deceased was prepared, then and there. P.W.1 and P.W.3, who are attesting witnesses to the F.I.R., have not stated where the *fardbeyan* was recorded. The details regarding recording of the *fardbeyan* is inconsistent even in respect of the time of recording of the *fardbeyan*, apart from the fact that the earliest version of the occurrence has been suppressed. P.W.4 states that inquest report was prepared at 7.30 pm. The informant (P.W.5) however, has stated that police arrived at the place of occurrence two to two and half an hour after the occurrence which would mean that as per informant, police arrived at the place of occurrence at about 8.30 pm. The *fardbeyan* is shown to have been recorded at 8.45 pm at the house of the informant about half a kilometer from the place of occurrence. The consistent case of the P.Ws. is that inquest was prepared subsequent to recording of the *fardbeyan*. However, the inquest report was prepared at 7:30 pm therefore the fact regarding lodging of the FIR prior to preparation of inquest report is clearly unsustainable. The Station Diary entry no.563 dated 30.5.2006 has also been withheld by the prosecution. Only if the Station Diary entry had been produced at the trial it could



have been ascertained as to who gave the said information to the police station and what was the nature of the first information which was recorded as Sanha No.563 dated 30.5.2006. Suppression of the same has caused grave prejudice to the accused and casts a big shadow of doubt on the prosecution case.

The aforesaid inconsistency and suppression of vital facts are to be viewed keeping in background the fact that the appellant and his brother have been made accused along with one Mukesh Yadav, as per F.I.R. alleging that they had fired upon the deceased. Specific allegation has been made by the informant in his *fardbeyan* claiming to be an eye-witness to the occurrence that Mukesh Yadav also fired upon his father. At the trial, however, he has stated that Mukesh Yadav was not involved in the occurrence. Other family members who have deposed as P.Ws. have also taken the same stand at the trial.

The inconsistency in the time and place of recording of the *fardbeyan*, suppression of the earliest version bearing Sanha no.563 dated 30.05.2006 and stark inconsistency regarding the role attributed to Mukesh Yadav by the prosecution in the First Information Report; and the stand taken at the trial discredits the case of the prosecution and casts a grave suspicion and doubt on



the credibility and quality of the witnesses supporting the prosecution case. This aspect needs further to be examined having regard to the fact that evidence is replete with regard to animosity between the prosecution parties and the appellant.

It is also submitted by counsel for the appellant that prosecution has failed to establish the place of occurrence. The *fardbeyan* states the place of occurrence to be *Purwari Tola* in village *Fattu Chhapar* without fixing the specific location within *Purwari Tola* where the occurrence has taken place. P.W.5 (informant) has stated at the trial that when he reached near the house of Mahanta Sah in the course of canvassing he saw the appellant, Nagendra Yadav along with two-three other persons, who started chasing him with firearm. They were fleeing towards the East. While fleeing his father was shot at causing injury on his stomach due to which he fell down in front of the '*dalan*' of Ramdeo Mukhiya thereafter appellant fired the second round causing injury on his chest. It is stated that Nagendra Yadav thereafter fired on his face. As per his version, the place of occurrence is in front of the '*dalan*' of Ramdeo Mukhiya. P.W.1 brother of the informant has stated that the place of occurrence was about half a kilometer from his house. In para-12 he has stated that his father (deceased) received



injury. He has stated that the place where his father sustained the firearm injury is situated near the house of Daulat Mukhiya, Bhikari Mukhiya and Kamu Mukhiya.

P.W.3 has yet another version regarding the place of occurrence. He has stated that the occurrence took place two houses after the house of Mukhlal in *Purwari Tola* and that there are ten to twelve houses in between the house of Mukhlal Mukhiya and Daulat Mukhiya. In para-25 of his cross-examination, he has stated that the deceased received injury on the western side of the hut of Daulat Mukhiya. He has stated that in the north-west and at the corner of this house the deceased has sustained the firearm injury. P.W.7 has not witnessed the occurrence, he has arrived at the place of occurrence after the deceased was shot dead. He has stated that he saw the dead body in front of the '*dalan*' of Daulat. He has stated that the '*dalan*' of Daulat Mukhiya and his house are at a distance. P.W.7, the I.O. as per his version has found the dead body of the deceased in front of the '*dalan*' of Daulat Mukhiya. He has stated that a hut of Bhikari Mukhiya and vacant land was to its north. Single storey house of Kashi Mukhiya was to its South. West facing house of Daulat Mukhiya was to the east of place of occurrence and house of Bhikari Mukhiya was west to



the place of occurrence. Para-6 of the statement of the Investigating Officer shows that the house of Daulat Mukhiya is behind his '*dalan*'. Place of occurrence is in front of the '*dalan*' of Daulat Mukhiya and the same is surrounded by the hut of Bhikari Mukhiya, Kashi Mukhiya. The deposition of the various P.Ws. is inconsistent as regards the place of occurrence.

The manner of occurrence has also not been established at the time of trial and there is inconsistency regarding the same striking at the root of the prosecution case. As per FIR, appellant fired the first shot, which his father tried to dodge thereafter Nagendra Yadav fired upon his father and sustaining this firearm injury, his father fell on the ground and started writhing. Thereafter, Mukesh Yadav has fired on his father. At the trial, the same informant has changed the version regarding manner of occurrence, and stated that it is the appellant who fired causing firearm injury on the stomach of his father due to which he fell to the ground. He has alleged that the appellant also fired a second shot on the chest of his father. Regarding Nagendra Yadav, he at the trial states that he fired at the mouth/face of his father. P.W.1 states that the first firearm injury was sustained by his father on his mouth. This firearm injury is attributed by P.W.1 to Sanjay Yadav. Thereafter, it is alleged that Nagendra



Yadav fired on his stomach. P.W.3 has another version regarding the manner of occurrence. He has stated that the appellant fired on the face of his father thereafter Nagendra Yadav has fired on his stomach.

P.W.4 has stated that he arrived at the place of the occurrence after the deceased had sustained firearm injury. P.W.1 has stated in his cross examination that P.W.3, P.W.4, P.W.5 (informant) all had come to the place of occurrence after the occurrence. P.Ws. 2, 3 and 5 however have stated consistently that P.W.4 was with them when the occurrence took place. This is also a vital inconsistency which has emerged at the trial.

Learned APP appearing on behalf of the state has submitted that after a thorough appreciation of the facts and circumstances emerging at the trial, including the deposition of witnesses, the trial court has recorded the conviction. He has referred to the deposition of the informant (P.W.5) and P.Ws. 1 and 3. From the deposition of P.Ws. 1,3 and 5, the manner of occurrence in so far as fatal firearm injury is concerned, has consistently been attributed to the instant appellant. The submissions of the learned counsel for the appellant with regard to the inconsistency in the manner of occurrence are based on



inconsistencies which are very natural and not fatal to the prosecution case. The consistent case of the prosecution is that there were several persons present at the time and place of occurrence. The occurrence, as per prosecution case, has occurred suddenly. Under the circumstances it would not be proper to expect that the P.Ws. at the trial should sustain the prosecution case with arithmetical precision as regards who fired on which part of the body and who fired first, or later. Consistent case of the prosecution supported at least by P.Ws. 1,3 and 5 at the trial is with regards firing by the instant appellant causing fatal firearm injury to the deceased.

It has further been submitted that with the aforesaid facts in background, the court should appreciate the fact that the other, not so relevant details as regards the exact place of the recording of the *fardbeyan* or regarding preparation of inquest report, naturally would have some level of inconsistency in the surcharged atmosphere and clouded perception based on the preceding assault by perpetrators including the appellant. The fact that witnesses including the informant, have not supported the allegations made in the FIR against Mukesh Yadav is an indication that at the trial they have stated the truth. Had the prosecution any intention of falsely saddling criminal liability



for the assault on the perpetrators named in the FIR, surely they would not have let off Mukesh Yadav knowing well that by doing so there would be a chance to discredit the allegations. The animosity referred to by the learned counsel for the appellant, supplies the motive for the occurrence. He has gone on to add that the court should take into consideration the fact that the *fardbeyan* was recorded within a couple of hours of such a disturbing occurrence having taken place, which naturally would have some effect on the details having been stated with regard to the occurrence. He has submitted that therefore courts have repeatedly taken a view that the FIR is not an encyclopedia regarding all the facts relating to a crime. The facts stated in the dock and the quality of witnesses at the trial are to be taken into consideration by the court. As per the established law, it is not necessary that the minutest details are to be stated in the FIR. The stress is on promptness of lodging of the FIR giving a broad picture containing a broad feature of the crime. On this score, the prosecution case is sustainable as per settled law.

The prosecution case regarding the commission of murder by firearm injury caused on the face and stomach is also corroborated by evidence of the doctor (P.W.6). Minor



contradictions here and there in statement of witnesses may occur due to lapse of time or other reasons. Some minor discrepancies in description of the details amongst the witnesses as regards who assaulted and how many times or on which part of the body, per se cannot be made basis of discrediting the prosecution case.

Conclusion

The court has carefully considered the case of the prosecution, deposition of witnesses at the trial and submissions advanced on behalf of the appellant as well as the state. Submission of the appellant's counsel is based on the inconsistency in statement of witnesses in so far as time and place of recording of the *fardbeyan* as well as inquest report. He has laid emphasis on the fact that as per P.W.4's statement inquest report was prepared at 7:30 pm whereas the consistent case of the prosecution witnesses including the informant is regarding arrival of the police and recording of the *fardbeyan* at about 8:30 to 8:45 pm, thus it is clear that preparation of inquest report is prior to recording of the *fardbeyan*.

As per the deposition of the Investigating Officer (P.W.7), he had recorded a Station Diary Entry No. 563 at the station before proceeding to the place of occurrence. The same however



was not brought at the trial. The very fact that the first version of the prosecution in Station Diary No. 563 has been suppressed, when considered with the fact that prosecution has relied upon *fardbeyan* recorded after inquest report had been prepared, leaves a large scope for embellishment and casts a grave doubt on the case of the prosecution. Had the Station Diary Entry No. 563 been produced at the trial, the court could have ascertained who gave information to the police station and what was the first version of the prosecution given to the police. Suppression of the first version undoubtedly cause grave prejudice to the accused and casts a big shadow of doubt on the prosecution case.

Veracity of the prosecution case and conviction recorded by the trial court further gets discredited by the fact that P.Ws. have not supported the prosecution case as stated in the *fardbeyan*, and there is stark inconsistency in this regard. In the *fardbeyan* there is specific allegation regarding Mukesh Yadav also firing upon father of the informant. At the trial, however, all witnesses are consistent in stating that Mukesh Yadav was not involved in the occurrence. This aspect needs to be viewed having regard to the replete evidence regarding prior animosity between the prosecution parties and the appellant.



The place of occurrence has also not been established at the trial. The *fardbeyan* states that the informant's father fell down in front of the '*dalan*' of Ramdeo Mukhiya. His brother P.W.1 has stated that his father sustained firearm injury near the house of Daulat Mukhiya, Bhikhari Mukhiya and Kamu Mukhiya. Yet another version has occurred regarding the place of occurrence in deposition of P.W.3 who has stated that occurrence took place two houses after the house of Mukhlal in *Purwari Tola* and that there are 10 to 12 houses in between the houses of Mukhlal and Daulat Mukhiya. P.W.7 (I.O) who has arrived at the place of occurrence after the occurrence has stated that the dead body was in front of the '*dalan*' of Daulat Mukhiya which is at a distance from his house. As per description of the place of occurrence given by him, it seems that the place of occurrence is not in front of the '*dalan*' of Ramdeo Mukhiya as stated by the informant. It is also not consistent with the place of occurrence as described by other P.Ws.

The inconsistencies emerging from deposition of witnesses as regards the manner of occurrence are not mere minor contradictions.

There is inconsistent evidence even in respect of the number of perpetrators. At the trial one of the named



perpetrators, who as per FIR was one of the assailants who had also fired upon the deceased, has been absolved by all the P.Ws. consistently.

Even the firearm injuries attributed to the appellant stated by P.Ws., claiming to be eye-witnesses is inconsistent.

P.W.5, at the trial, has stated that after his father had been fired upon on his stomach he fell down in front of the 'dalan' of Ramdeo Mukhiya. As per his version, appellant fired upon his father which hit on his stomach. After he fell down due to the said injury, it is alleged by him that the appellant again shot him below his chest. This deposition of the informant is at variance with his version of the manner of occurrence as stated in the *fardbeyan* (FIR). As per FIR, he saw the appellant fire upon his father, who dodged the same. Thereafter Nagendra Yadav fired upon him with his rifle which hit his father and he fell on the ground thereafter Mukesh Yadav has fired upon his father with his rifle. The case of the prosecution as per FIR has completely been changed at the trial.

P.W.1 (elder brother of the informant) who has deposed as an eye-witness has given a totally different version being the third version. As per his version, the first firing was by the appellant and a second by Nagendra Yadav. The first firing



caused bullet injury on his face whereas the firing by Nagendra Yadav has hit his father in his stomach causing him to fall down.

P.W.2 has not supported the prosecution case or any allegation of firing what so ever.

P.W.3, in so far as the firearm injuries are concerned, has assigned the role and injuries sustained consistent with the deposition of P.W.1.

P.W.4 has arrived at the scene later and is not an eye-witness to the firing.

At least three different versions about the manner of assault have been stated by witnesses, all of whom are claiming to be eye-witness. Informant himself has changed his own version at the trial from that which he had stated in the *fardbeyan*.

The inconsistency in the version regarding manner of occurrence since P.Ws. are claiming to be eye-witnesses to the occurrence is clearly casting a grave suspicion on the entire prosecution case. This aspect has to be considered keeping in background suppression of the first version, inconsistency in evidence regarding time and place of recording of *fardbeyan*, and whether *fardbeyan* was recorded prior to preparation of inquest report, or thereafter, and the fact that prosecution has



failed to even establish the place of occurrence. The submissions of the State counsel regarding such contradictions in statement of eye-witnesses not being sufficient to discard the evidence is to be viewed in light of the law laid down in this regard.

In this regard, this court would refer to and rely upon a very recent decision of the Hon'ble Apex Court in the case of **Achhar Singh vs. the State of Himachal Pradesh, (2021) 5 SCC 543**. The Hon'ble Apex Court in the said case was considering whether the High Court in appeal had rightly reversed the acquittal of the accused. In that case, the acquittal by the trial court was based on inconsistencies, exaggerations, contradictions or embellishments claimed by the accused persons based on the evidence on record. The Hon'ble Apex Court proceeded to consider whether the reversal of acquittal by the High Court was correct or not.

In this regard this Court considers it useful to reproduce relevant extract of the judgment which reads:

“17. The trial court in the instant case rightly observed that the evidence was chaotic with regard to many accused persons and no definite view could be formed regarding their participation. The High Court also shared the view of the trial court and expressed concern regarding the exaggerations and contradictions within the evidence. Keeping in mind the attempts by the prosecution witnesses to



implicate numerous people, the High Court delineated the strands of consistent evidence against some of the accused which were overlooked by the trial court amid the chaos. While analysing the witness statements and other evidence, we will now consider whether the High Court did so correctly.

18. Complainant Netar Singh (PW 1), deposed that when the accused persons broke open the door and entered their house, Budhi Singh, Achhar Singh, Narinder Singh were armed with axes, Prakash had a spear, Sodha Ram had a sickle and other accused (Jai Singh and Hem Singh) were bearing sticks. While mentioning the present appellants he said that:

“Budhi Singh, accused gave two axe-blows on the head of my mother, while Narender, accused gave two axe-blows one above the left ear and second below the left ear of my mother, and my mother Swari Devi died on the spot... Achhar Singh and Sodha also gave blows of drat and axe to my father. As a result of the beatings my father became unconscious and fell down. Hem Singh and Jai Singh accused gave me danda-blow.”

It was also mentioned that the accused had broken the door, windows and utensils. He then described how he went to the Pradhan's house at 2.00 a.m.

19. Meera Devi, PW 11, the daughter-in-law of the deceased stated in her testimony that Budhi Singh and Narinder Singh were armed with axes, while Prakash carried a spear and Sodha Ram carried a sickle. She said that:

“Budhi Singh, accused gave two blows of axe on the head of my mother-in-law Smt Swari Devi on which my mother-in-law raised cry. Narinder Singh, accused gave two blows of axe on the ear of my mother-in-law and my mother-in-law fell down and died. Narinder Singh gave blow from back side of the axe to Beli Ram on his face and Achhar Singh gave blow of axe on the neck of Beli Ram. Sodha Ram gave drat-blow on the leg of my father-in-law Beli Ram... Jai Singh and Hem Singh gave danda-blow to my husband Netar Singh.”



She stated that her husband escaped to the roof, reported the matter to the Pradhan and came back with the police the next day. Her husband and father-in-law were taken for medical examination and her mother-in-law's body was sent for post-mortem. During her cross-examination, she mentioned that the police came at about 8-9 a.m. in the morning.

20. Injured witness, Beli Ram (PW 12) was also examined and he stated that Budhi Singh, Narinder and Achhar Singh came bearing axes, while Prakash had a spear, Sodha Ram had a sickle and Jai and Hem Singh were armed with sticks. While describing the attacks, he said that:

“Budhi Singh gave two blows of axe on the head of my wife, Swari Devi and two blows of axe were given by Narinder near the ear of my wife and my wife died on the spot. Achhar Singh accused gave axe-blow on the back side of my head while Sodha accused gave drat-blow on my leg.... Netar Singh was given beatings by Jai Singh and Hem Singh with danda and stones.”

He added that his son escaped through the roof. It was mentioned that the accused persons had formed a committee to boycott them and thus nobody from the village gave evidence in their favour. He also disclosed that “Narinder Singh accused also gave blow blunt side of the axe on my face near ear”. Thereafter, he fell unconscious and was medically examined at the hospital.

21. Dr D.D. Rana, who conducted the post-mortem of the deceased and medically examined the injured (Netar Singh and Beli Ram) was examined as PW 3 with regard to Swari Devi, he described one incised wound on the left temporal region, which he stated, could have been caused by the axe shown in court. On medically examining Beli Ram, he stated that he found incised wounds on the face and the back of his skull, a lacerated wound on the right foot, fracture in the facial bone and a black eye. He said that the incised wounds were possible by the axe shown in court and the rest were possible by stick-blows. During cross-



examination, he added that the incised injuries on Beli Ram could be inflicted by falling on a sharp-edged stone and other injuries were possible from falling on a hard surface. After medically examining Netar Singh (PW 1), he is stated to have found abrasions on the right foot, left leg and forehead. He added that such injuries were possibly a result of stick-blows and could also be from a fall.

22. A meticulous reading of the above statements makes it clear that even if the exaggerations of multiple axe-blows being given to the deceased were discarded, the allegation that Budhi Singh entered the house of the victims armed with an axe and hit Swari Devi on her head, and that Swari Devi died due to a head injury was consistent and undisputed throughout the FIR and the deposition by prosecution witnesses. The same is also supported by the post-mortem report stating one fatal injury to the head by a sharp-edged weapon and the medical officer's testimony that her injury could have been caused by the axe shown in court. Considering this, the trial court's confusion as to who caused Swari Devi's fatal injury was unwarranted and uncalled for.

23. The fact that Budhi Singh executed an axe-blow on Swari Devi's head knowing fully well that an axe-blow on an old woman's vital body part would in all probability cause her death, justifies his conviction for the offence under Section 302 IPC. As for Achhar Singh, we find that the injuries sustained by Beli Ram (incised wounds on the face and posterior skull along with fracture in the facial bone) being a combination of grievous and simple injuries were opined to have been caused by both sharp and blunt-edged weapons. Considering that all the witnesses have been consistent about Achhar Singh's attack on Beli Ram with an axe, his conviction under Sections 326 and 323 IPC cannot be found faulty and deserves to be upheld.

24. The appellants' contention that the testimony of PW 1, PW 11 or PW 12 was wholly unbelievable and inconsistent with the evidence of the doctor (PW 3) and the post-



mortem report, is unacceptable. As noticed earlier, the prosecution witnesses have given an over-exaggerated version of the injuries suffered by the deceased. They have, however, consistently deposed that the head injury which proved to be fatal, was caused by Budhi Singh. Their statement, to this extent, is consistent and in conformity with the medical evidence on record. Despite the fact that the presence of many persons inside the room of occurrence created chaos and some of such persons were bystanders or fence sitters, the eyewitnesses have been able to see that the fatal blow to the deceased was caused by none else than Budhi Singh.

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28. An eyewitness is always preferred to others. The statements of PW 1, PW 11 and PW 12 are, therefore, to be analysed accordingly, while being mindful of the difference between exaggeration and falsity. We find that the truth can be effortlessly extracted from their statements. The trial court apparently fell in grave error and overlooked the credible and consistent evidence while proceeding with a baseless premise that the exaggerated statements made by the eyewitnesses belie their version.”

It was under these circumstances, the High Court in that case had re-appreciated the entire evidence and set-aside the acquittal of the appellants therein, namely, Achhar Singh and Budhi Singh and upheld the acquittal of the rest of five accused. The conclusions of the High Court and reasons for such conclusions have also been taken note of in paragraphs 7 and 8 of the judgment in the case of Achhar Singh (supra) which reads



as follows:

“7. The High Court upon reappreciation of the entire evidence, set aside the acquittal of the appellants Achhar Singh and Budhi Singh though it has upheld the acquittal of the rest of the five accused. While acknowledging the contradiction between the contents of FIR, the witness testimonies and the medical reports, the High Court stated that a thread of consistent evidence against the appellants could still be extracted from the material on record, howsoever messy it was. Disregarding the exaggerations and improvements made by the complainant party, the High Court observed that the allegation of the first axe-blow by Budhi Singh on the head of Swari Devi was corroborated by the FIR, the prosecution witnesses, the post-mortem report which mentioned one fatal head injury by a sharp weapon and the recovery of axe from him. The High Court noted that the allegations against Achhar Singh with regard to his assault on Beli Ram with an axe were also consistent, and medical evidence showed that some injuries could have been caused by an axe.

8. It was noticed that Govind Ram (DW 2) being the son-in-law of the appellant Budhi Singh could not have deposed against him. While dealing with the delay in filing the FIR, the High Court considered the unavailability of buses at night, terrain of the area and the distance between the complainant's house and Jogindernagar Police Station (24 km) while concluding that he could not have reached there until next morning. With regard to the trial court's confusion about the spot of the occurrence, it was held that the evidence regarding the broken windowpanes, scattered articles in the room, plates with leftover food, etc. was enough to conclude that the occurrence took



place inside the room and the presence of random blood marks elsewhere ought not to be given undue credit. It was also observed that since the marriage of Budhi Singh's daughter was solemnised on 21-2-1996, no marriage function could have been underway at Budhi Singh's house on the night of the incident. While observing that the evidence on record did not suggest a common intention to kill Swari Devi or cause grievous hurt to Beli Ram, the appellants were held to be liable for their individual acts. Budhi Singh was thus convicted for the offences under Sections 302 and 452 IPC and Achhar Singh was convicted for the offences under Sections 452, 326 and 323 IPC. They have now come to this Court against their conviction by the High Court.”

The Hon’ble Apex court in the said case has taken note of the consistent evidence on record which was capable of being extracted from amidst the chaos. The credible evidence which was available was sufficient to arrive at the conclusion of guilt. It is under such circumstances that the acquittal by the Trial Court had been reversed.

As noticed above based on the evidence at the trial, in the instant case, this Court would find that no credible consistent evidence has emerged at the trial to sustain the findings of appellant’s guilt. The stark inconsistencies and deficiencies at the trial including failure to produce the first version of the prosecution case arising out of Station Diary Entry No. 563, inconsistency regarding time and place of recording of



fardbeyan and whether it was recorded prior to or after the preparation of inquest report are also worth considering. The evidence is also inconsistent as regards the place of occurrence and manner of assault including the number of assailants. At the trial, evidence is also replete with regard to the animosity between the prosecution parties and the appellant. In fact the informant himself at the trial has changed the case of prosecution from that which he had stated earlier in the *fardbeyan*. All these deficiencies and inconsistencies are substantial and vital to the prosecution case. While analyzing the statement of the witnesses and other evidence we cannot find any strain of consistent evidence against the appellant.

The various stark inconsistencies have already been taken note hereinabove.

We are of the opinion that the trial court while recording the conviction has fell in error. Clearly, prosecution has failed to prove charges levelled against the petitioner beyond doubt. The judgment of conviction recorded by the trial court is unsustainable in view of the factual and legal discussions hereinabove.

The appeal stands allowed. The judgment of conviction dated 27.11.2013 and consequent order of sentence dated



29.11.2013 by the learned Trial Court in Sessions Trial No. 296 of 2010 arising out of Bairiya P.S Case No. 62 of 2006 are, accordingly, set-aside.

The appellant shall be set at liberty forthwith, if not, required in any other case.

(Madhuresh Prasad, J)

Ashwani Kumar Singh, J :

(Ashwani Kumar Singh, J)

SUMIT/-

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