

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.90 of 1993

Against the judgment of conviction, dated 25.02.1993, and order of sentenced dated 26.02.1993, passed by Shri Rakeshwar Dayal, Additional Sessions Judge, VII, Nalanda at Biharsharif, in Sessions Trial No. 124 of 1991/42 of 1991

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1. Sri Jamadar, son of late Rupan Jamadar
2. Arbind Jamadar, son of Sheobalak Jamadar
3. Bulcon Jamadar, son of Paroo Jamadar
4. Gorakh Jamadar, son of Ramphal Jamadar
5. Muni Jamadar, son of Bulkon Jamadar
6. Misri Jamadar, son of late Izbal Jamadar
7. Judagi Jamadar, son of Rupan Jamadar
8. Ram Pravesh Jamadar, son of Sri Jamadar
9. Jagdish Jamadar, son of Ramphal Jamadar
10. Sheonandan Jamadar, son of late Horil Jamadar
11. Chamru Paswan, son of late Barhu Paswan
12. Bihari Jamadar @ Bindeshwar Jamadar, son of late Horil Jamadar
13. Rajender Jamadar, son of late Badri Jamadar
14. Deo Nandan Jamadar, son of Ram Briksh Jamadar
15. Ram Briksh Jamadar, son of late Sanichan Jamadar
16. Sukhari Jamadar, son of Phagu Jamadar
17. Shyamdeo Jamadar, son of late Sukhari Jamadar
18. Chandeshwar Jamadar, son of late Horil Jamadar, all residents of village
Brahmsthan, P.S. Hilsa, district Nalanada Appellants

Versus

The State of Bihar Respondent

With

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Criminal Appeal (DB) No. 193 of 1993

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Shibalak Jamadar, son of Bhikhari Jamadar, resident of village Brahmsthan, P.S.
Hilsa, district Nalanada Appellant

Versus

The State of Bihar Respondent

With

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Criminal Appeal (DB) No. 130 of 1993

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Shrawan Jamadar, son of Sheonandan Jamadar, resident of village Brahmsthan, P.S.
Hilsa, district Nalanada Appellant

Versus

The State of Bihar Respondent

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Appearance :

(in all thecases)

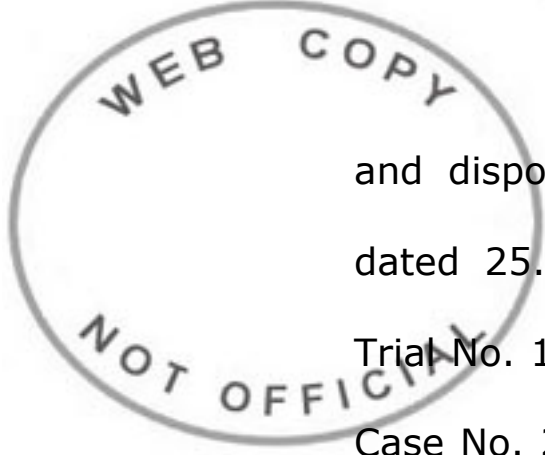
For the Appellants : Mr. Ajay Kumar Thakur, Sr. Adv. with

M/S Mukesh Kumar &
Nilesh Kumar, Advs.

For the Respondent : Mr. Dr. Mayanand Jha, APP

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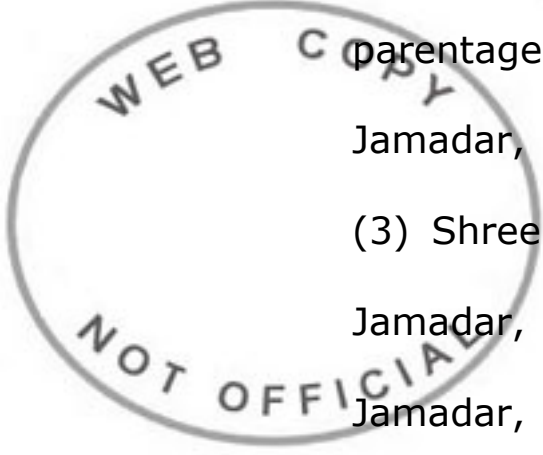
CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
and
HONOURABLE MR. JUSTICE GOPAL PRASAD
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE GOPAL PRASAD)
Date: 24 -04-2015

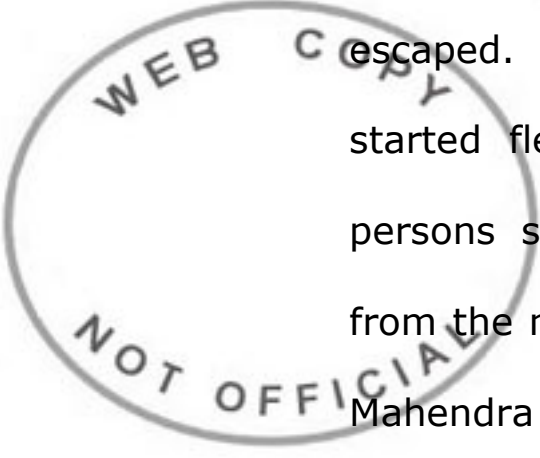


These three appeals have been heard together and disposed of by the common judgment and order, dated 25.02.1993 and 25.02.1993, passed in Sessions Trial No. 124 of 1991/42 of 1991 arising out of Hilsa P.S. Case No. 222 of 1990 by which the appellants, Sharavan Jamadar and Shivalak Jamadar have been convicted under Section 302 of the Penal Code and sentenced to undergo rigorous imprisonment for life and have, further, been convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years. However, it has been ordered that both the sentences shall run concurrently. Rest appellants, have been convicted under Sections 302/149 of the Penal Code and sentenced to undergo rigorous imprisonment for life. However, the appellants have, further, been convicted under Sections 147 and 148 of the Penal Code, but, there is no separate sentence in view of the fact that they have already been ordered for sentence for life imprisonment.

2. The prosecution case that on 03.08.1990 at 06.00 A.M., the informant, Govardhan Paswan, (P.W. 6) was sitting at the darwaza of Chandradeep Yadav, a co-

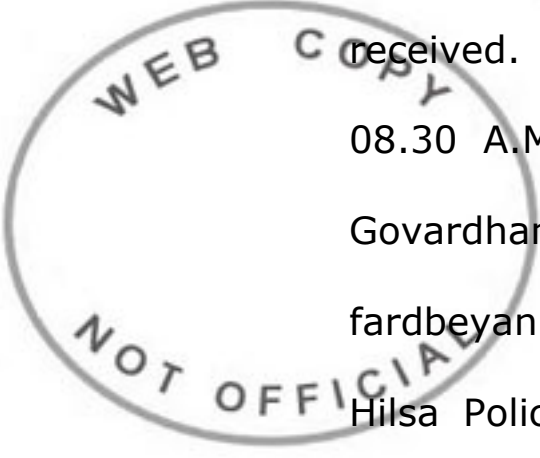
villager. He saw Mahendra Paswan coming from north after meeting the call of nature towards his house. At once, he saw 22 persons, named specifically with their parentage, (1) Sharavan Jamadar, son of Shivnandan Jamadar, (2) Shivalak Jamadar, son of Bhikhari Jamadar, (3) Shree Jamadar, (4) Gudagi Jamadar, son of Rupan Jamadar, (5) Ram Pravesh Jamadar, son of Shree Jamadar, (6) Misri Jamadar, son of not known, (7) Sukhari Jamadar, son of Fagu Jamadar, (8) Gorakh Jamadar, son of Ramphal Jamadar, (9) Jagdish Jamadar, son of Ramphal Jamadar, (10) Gorakh Jamadar, son of Punna Jamadar, (11) Bulkan Jamadar, son of Pairan Jamadar, (12) Munni Jamadar, son of Bulkan Jamadar, (13) Chandrika Jamadar, son of Meghan Jamadar, (14) Chamaran Paswan, son of not known, (15) Chandrashekhar Jamadar, son of Horil Jamadar, (16) Binde Jamadar, son of Horil Jamadar, (17) Shyamdev Jamadar, son of Sukhari Jamadar, (18) Shivnandan Jamadar, son of Horil Jamadar, (19) Arvind Jamadar, son of Shivalak Jamadar, (20) Rajendra Jamadar, son of Vadi Jamadar, (21) Dev Nandan Jamadar, son of Varat Jamadar and (22) Ram Varat Jamadar, son of Sanichan Jamadar, variously armed with country made rifles, lathi, bhala, garasa came from the sugar cane field of Rajendra





Yadav, which was at the north of the village. The 22 persons while coming out from the sugarcane field, shouted to kill Mahendra Paswan, he may not be escaped. On hearing the utterance, Mahendra Paswan started fleeing away towards the village. The 20-22 persons started chasing Mahendra Paswan behind him from the north towards the village in south while chasing Mahendra Paswan surrounded him in gali to the west of the house of Rajendra Das. The accused persons surrounded Mahendra Paswan in the gali and then Sharavan Jamadar fired from the country made rifle, then, Mahendra Paswan, the brother of the informant fell down and, thereafter, Shivalak Jamadar fired from his country made rifle at Mahendra Paswan, thereafter, all the accused persons indiscriminately fired. Thereafter, Sharavan Jamadar said that Mahendra Paswan is dead, flee away, then, accused persons fled away. Dadu Paswan, Kapil Paswan, Ram Varan Paswan, Kiran Paswan and others collected, who have seen the occurrence.

3. The police received the rumour at 08.05 A.M. that at village Brahmsthan firing is going on between the two groups. On the said information, police recorded a sanha bearing no. 30, dated 03.08.1990. The police party along with the Officer-in-Charge, V.

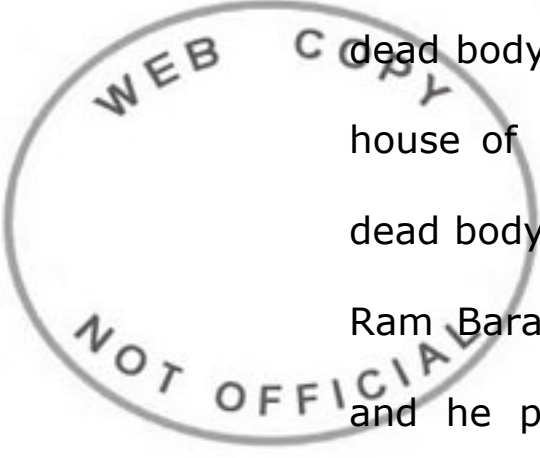


Sharma, A.S.I. S. Dwivedi, A.S.I. K. Kumar, as well as other police personnel with armed force proceeded for village Brahmsthan for verification of the rumour received. They reached village Brahmsthan at about 08.30 A.M. and there they recorded the fardbeyan of Govardhan Paswan, the informant (P.W. 6). The said fardbeyan was recorded by V. Sharma, Officer-in-Charge, Hilsa Police Station, and, then, read over and got the signature of Govardhan Paswan, the informant, and a witness, Ranjit Patel. On the fardbeyan (Exhibit 3) endorsement was made by the Officer-in-Charge and was sent for lodging of the first information report with a direction to produce number of first information report on the basis of fardbeyan a first information report was lodged, a formal first information report drawn and the investigation handed over to the investigating officer, P.W. 8.

4. The investigating officer proceeded with the investigation and recorded the statements of the informant and inspected the place of occurrence. The investigating officer also prepared the map of the place of occurrence. As per the description of the place of occurrence there was a 3½' wide gali (lane) to the west of the house of Rajendra Yadav and Chandradeep Das to

the east of the room of Brahmdeo Thakur. The said lane is situated to the west of the house of Rajendra Yadav and east of the room of Brahmdeo Thakur, running north to south about 35' long. This gali (lane) is 15' long across the house of Chandradeep Das from the northern end and, thereafter, 20' long across western side of the house of Rajendra Yadav, which cover the total length of 35'. The room of Brahmdeo Thakur is in the north west part of gali and to the south of the said room, there is a sahan in which there was a punj of heap of straw on both the ends of the gali (lanes) there is rasta towards the west. After the house of Brahmdeo Thakur there was a house of Mahendra Paswan, the deceased. The exit of the house of Chandradeep Das is towards north and, further, from the north at the distance of forty yards, from the room of Brahmdeo Thakur there is house of Kamal Das and from the house of Kamal Das the sugar cane field from which accused came out and chased Mahendra Paswan is, further, about 400 yards north.

5. The investigating officer prepared the sketch map of the place of occurrence. He found the blood in the galiara to the west of the house of Rajendra Das, i.e., about 15' to 20' from the northern corner of the gali (lane). He seized the blood stained earth and got the



signature of P.W. 1 (Exhibit 1) and also got the signature of P.W. 2 on the said seizure list (Exhibit 1/1) for the seizure of blood stained earth. After the occurrence, the dead body was taken from the place of occurrence to the house of Ram Baran Rai and investigating officer found dead body of Mahendra Paswan, itself, in the courtyard of Ram Baran Paswan where the fardbeyan was recorded and he prepared inquest report and signature of the witnesses on inquest report marked as Exhibits 1/2 and 1/3 and sent the dead body for post mortem examination and, thereafter, the police after investigation submitted the charge sheet for offences under Sections 302 and 302/149 of the Penal Code and 27 of the Arms Act and 147 and 148 of the Penal Code.

6. After submission of the charge sheet the cognizance was taken, case committed to the Court of sessions. After receipt of the police paper charge was framed for offence under Section 302 of the Penal Code against Sharavan Jamadar and Shivalak Jamadar and, further, charge was framed against all 20 accused persons for offence under Sections 302/149 of the Penal Code as well as 27 of the Arms Act and, further, under Section 148 of the Penal Code against all the accused persons.

7. The trial proceeded and the prosecution examined altogether eight witnesses out of which P.W. 1 Sohrai Paswan, who is a witness of the seizure and blood stained earth, P.W. 2 Sakaldip Paswan is a witnesses of seizure and inquest report who has proved the signature on the inquest report and seizure list. P.Ws. 3, 4, 5 and 6 (informant) Dahu Pandit, Rambaran Paswan, Shanti Devi and Gobardhan Paswan, claimed to be the eye witnesses to the occurrence. P.W. 7 Dr. Shankar Kumar Jha is the Doctor, who conducted the post mortem examination on the person of the deceased and P.W. 8 is Murari Lal Sharma, the investigating officer of this case.

8. After the examination of the eight witnesses, the evidence of the witnesses of prosecution closed and the statement recorded under Section 313 of the Criminal Procedure Code and, thereafter, convicted the appellants, as mentioned above.

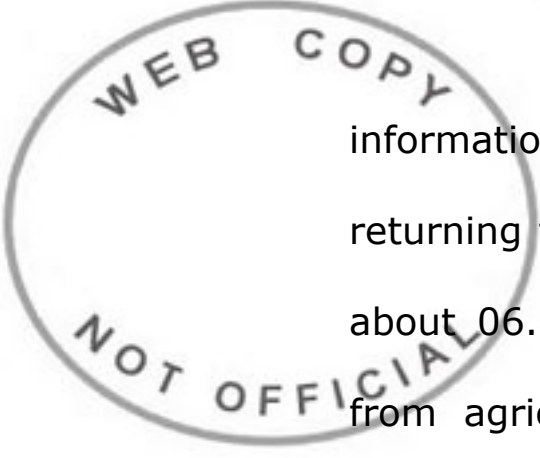
9. The learned counsel for the appellants have challenged the order of conviction and sentence recorded by the trial Court on the ground that the place of occurrence has not been established though the blood was seized from the west of the house of Rajendra Yadav where the dead body was found by the investigating officer in the aagan of Ram Baran Paswan and the seizure

list witnesses are not the witnesses of the occurrence. it has, further, been contended that the gali (lane) in which the occurrence alleged to have occurred and firing was made only 3½' wide and, further, the informant and witnesses claimed to have witnessed the occurrence from the house of Chandradeep Das which is northern side and, hence, there was no possibility of seeing and witnessing the occurrence from the house of Chandradeep Das and it has been contended that there is no possibility of either surrounding the victim in the gali nor seeing the occurrence in the gali (lane), which is only 3½' wide. It has, further, been contended that there is variation in between ocular evidence and the medical evidence and the medical evidence does not support the ocular evidence and, hence, contends that the order of conviction and sentence recorded by the trial Court liable to be set aside.

10. The learned counsel for the State, however, supported the order of conviction and sentence and submits that the witnesses stood the test of cross examination and has specifically stated about the occurrence, hence, prosecution has been able to prove the case.

11. Taking into consideration the respective

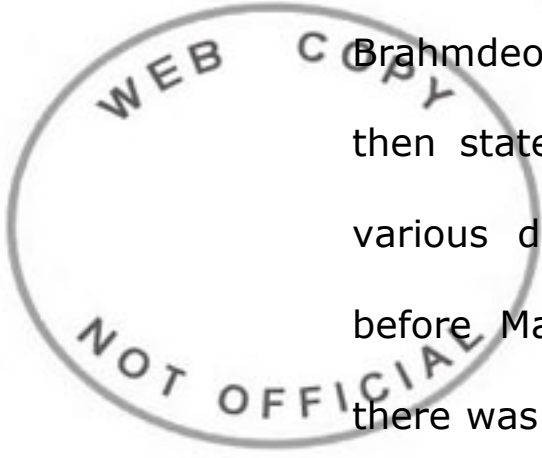
submissions, the question for consideration whether the prosecution has been able to prove the charges beyond reasonable doubts.



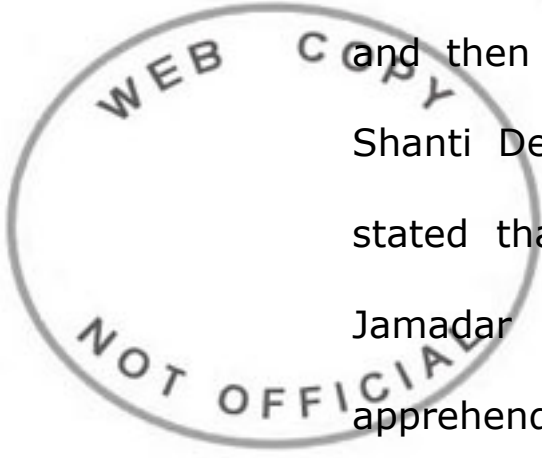
12. The prosecution case as alleged in the first information report that while Mahendra Paswan was returning to his house after meeting the call of nature at about 06.00 A.M. from the northern side of the village from agricultural field, then, 20-22 persons came out from the sugar cane field of Rajendra Yadav and started chasing with utterance to kill Mahendra Paswan, he may not be escaped today and, thereafter, Mahendra Paswan started fleeing away from the north to south towards the village and he reached in a gali (lane) going north to south, which is to the west of the house of Chandradeep Das and Rajendra Das. The gali (lane) is 3(1/2)' wide. The accused persons also reached there chasing Mahendra Paswan in between the house of Chandraddeep Das and room of Brahmdeo Thakur.

13. Though the witnesses, P.Ws. 3, 4, 5 and 6 claimed to be the eye witnesses. They have categorically stated that P.W. 6, the informant, saw the accused persons chasing Mahendra Paswan started fleeing away from north to south and reached in the gali (lane). The other witness P.W. 2 was to the south of the house Kamal

Das and he remained there and Mahendra Paswan was about to enter the gali (lane) the accused persons reached in between the house of Chandradeep Das and Brahmddeo Thakur at the north end of the gali (lane) and then stated that all the accused persons distributed in various direction. He has, further, stated that even before Mahendra Paswan entered into the gali (lane) there was 2 to 4 firings by the accused persons. He has, further, stated that the accused persons reached at the north end of the gali (lane). This witness also remained still north of the gali, i.e., behind the accused persons. The accused persons fired from the northern end of the gali (lane) and, then, he saw the fire hit Mahendra Paswan. However, P.W. 4 has also stated specifically that when Mahendra Paswan reached to the west of the house of Rajendra Yadav in the gali, then, Sharavan Jamadar fired from the corner of the house of Chandradeep Paswan and then it is alleged that the firing hit the jaw, beneath the cheek, of Mahendra Paswan and second shot by Shivalak Jamadar below the armpit of Mahendra Paswan and, then, he fell down. However, in the cross examination, this witness stated that Shivalak Jamadar and Sharavan Jamadar and some were inside the gali and some were outside the gali and Sharavan Jamadar fired



from 3 to 4 steps. However, it is stated that Mahendra Paswan did not fall down after receiving the first shot rather in process of felling down the second shot hit him and then Mahendra Paswan fell down. P.W. 5 is the Shanti Devi, the wife of Mahendra Paswan. She has stated that on hulla she came out, then, saw Munni Jamadar and Binod Jamadar came out and tried apprehend them she saw Sharavan Jamadar fired and Shivalak Jamadar also fired which hit Mahendra Paswan at his jaw and, thereafter, Shivalak Jamadar fired causing injury and P.W. 6 has also stated in his evidence that 20-22 persons came out and all of them were shouting to kill Mahendra Paswan, he could not be saved on the day and they chased and reached at the northern end of gali (lane) in between the house of Chandradeep Das and Brahmdeo Thakur and Mahendra Paswan reached in the gali at the end of the southern corner of the house of Chandradeep Das and northern corner of the house of Rajendra Das, then, Sharavan Jamadar fired. He has, further, stated that the fire hit at the jaw and he was shot of another injury by Shivalak Jamadar and on receiving both the shorts Mahendra Paswan fell down at the corner of the west of the house of Chandradeep Das and Rajendra Das. He has, further, stated that Ram Baran



(P.W. 4) Tirath Paswan (not examined) Dahu Paswan (P.W. 3), Kapil Paswan (not examined) and Shanti Devi (P.W. 5) have seen the occurrence. He has, further, stated that after the occurrence of accused persons fled away, then, dead body of Mahendra Paswan was carried to the house of Ram Baran Paswan, which is at the southern end of the gali.

14. Hence, from the evidence of P.Ws. 3, 4, 5 and 6, it is apparent that the accused persons came out from maize field and shouted that Mahendra Paswan should not escape, kill him, when Mahendra Paswan was coming after meeting the call of nature and after chase from the sugar cane field to the gali (lane), Mahendra Paswan entered into the lane in between the house of Chandradeep Das and room of Brahmdeo Thakur. The lane is to the west of the house of Chandradeep Das and Rajendra Das. The lane is 15' across west of the house of Chandradeep Das and 20' across west of the house of Rajendra Das and east of the room and sahan of Chandradeep Das and as per the evidence of the witnesses when Mahendra Paswan flee inside the gali (lane) and reached at about the southern corner of the house of Chandradeep Das and northern corner of the house of Rajendra Das, which is almost in the middle of

the gali (lane) at a distance of 15' to 20' in middle of the gali, then, Shivalak Jamadar and Sharavan Jamadar fired from the north end of the gali within one or two step inside the gali, which hit Mahendra Paswan so the factual position remains that firing was made from back of Mahendra Paswan while he was fleeing in the gali from north to south and firing was made from northern side when accused persons were also facing south. Further, gali was 3½' wide and two shots made, one after another, which hit Mahendra Paswan in standing position in the process he was felling down on hearing first shot on head as per the evidence of the witnesses.

15. Now coming to this factual position, I proceed to consider the evidence of the doctor and the injury found on the person of the deceased.

16. P.W. 7 is the doctor, who conducted the post mortem examination on 03.08.1990 at 04.30 P.M. and has found the following ante mortem injury :

(i) Lacerated wound with inverted and black margin oval in shape of size ¼" x 1/6" x cavity deep found just below the test identification parade of tight mastoid (wound of exit). On dissection clotted blood found under margin, occipital bone fractured

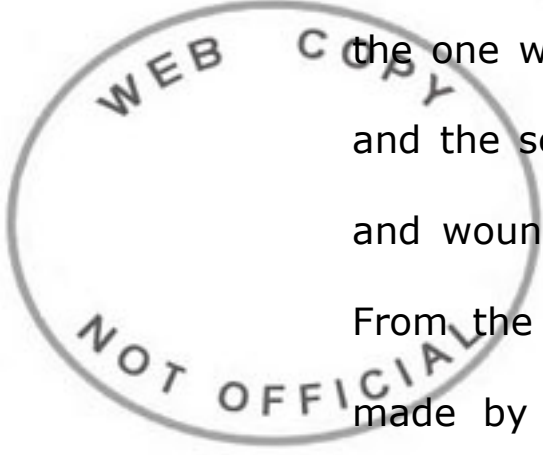


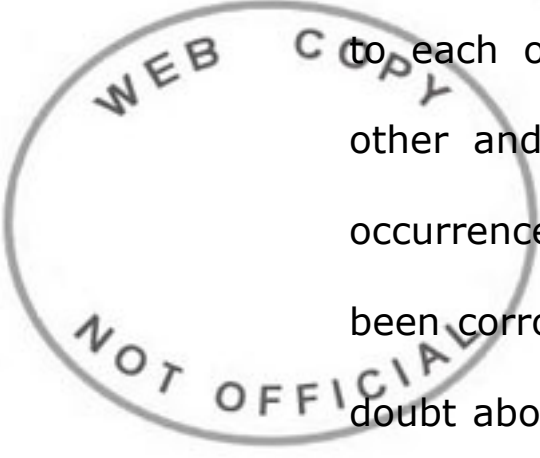
(ii) Lacerated wound with everted margin over left temporal area extending from upper portion of maxilla upwards 4" x 2" x cavity deep. Left eye ball intact. Brain tissue coming out of wound (wound of exit) of injury no. 1. On dissection clotted blood found under margin. On opening the skull left temporal and parietal bone fractured. Brain tissue extremely lacerated.

(iii) One round wound of size 1/5" in diameter with black and inverted margin found on left side of chest at the level of xiphisternum 1/2" lateral to sternum (wound of entry). On dissection clotted blood found under margin, would extending to chest cavity.

(iv) Lacerated wound on left side of chest on back, 1/2" medial to inferior angle of scapula of size 1" x 1/3" x cavity deep with everted margin (wound of exit of injury no. iii). On dissection of wound clotted blood found under margin. On opening the chest – left pleural cavity full of blood. Left lung lacerated. Right chamber of heart punctured. Left chamber of heart empty, right lung pale.

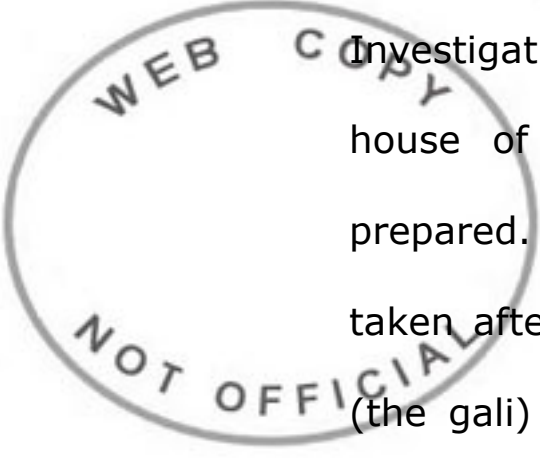
17. Hence, the doctor found in all four injuries on the person of Mahendra Paswan which were caused by two shots of firing, one shot caused the wound of entry, the one wound of exit which are injuries no. (i) and (ii) and the second shot caused another set of wound entry and wound of exit, which are injuries no. (iii) and (iv). From the evidence it is apparent that two shots were made by two accused persons, from the back of the deceased. However, injury no. 1 is deep of ripe mastoid which is wound of entry and the wound of exit is margin over left temporal area extending from upper portion of maxilla and, further, the second shot is inverted margin on the left side of chest and the wound of exit shows is the back of the chest. Hence, going to the two sets of injuries, it is apparent that these two sets of injuries are not possible while the accused persons firing from the back of the deceased while the deceased was fleeing chased by the accused persons, who fired from the back particularly when the gali (lane) is only 3½' wide and firing was made from 10' to 15' from the back of deceased. More over, the second shot is apparently not possible from back as it hit the front of chest which is wound of entry and the wound of exit is back of chest. Hence, it is not possible that the two injuries were





possible from the back rather the two injuries can only be possible by firing from front. Hence, going to the ocular evidence and the medical evidence are not corroborated to each other, but, the two are contradictory to each other and does not explain or confirm the manner of occurrence. Hence, the medical evidence having not been corroborated the oral evidence, it creates a serious doubt about the prosecution case, particularly, in respect of the manner of occurrence alleged by the prosecution. A person may lie, but, a circumstance does not. More over, it is not a case that the accused persons chased and fired at the deceased from the front of the deceased though some of the witnesses have stated that the time of firing some of the accused persons were inside the gali (lane) and some were out side the gali (lane), but, the consistent case of prosecution that the firing made by chasing the deceased in the gali. It has come in evidence of the witnesses that the firing was made from behind while accused persons were fleeing away and the injury suggested by prosecution is not possible by firing from back, hence, it creates a serious doubt to accept that the prosecution has come with a true version.

18. The point raised that the place of occurrence is the gali (lane) and the dead body was found



in the house of Rambaran Paswan. The house of Ram Baran Rai is few yard south from the place of occurrence at the end of gali. The dead body was found by the Investigating Officer at the southern end of the gali in the house of Ram Baran Rai, where the inquest report prepared. P.W. 6 has stated that the dead body was taken after the occurrence from the place of occurrence (the gali) to the courtyard of Rambaran Paswan where the statement of the informant was recorded. The Investigating Officer found sufficient blood in the gali where the deceased fell down on receipt of fire arm injury. Hence, there is no merit in statement that the place of occurrence has not yet been established and the Investigating Officer has found the pool of blood to the west of the house of Rajendra Das in the gali (lane) where the witnesses have stated.

19. Hence, taking into consideration the entire evidence and the facts and circumstances of the case, the ocular evidence is not corroborated with the medical evidence rather the medical evidence is quite contrary to the ocular evidence and it is not possible that the injury found on the person of the deceased, Mahendra Paswan, is possible by firing from back while he was being chased by the accused persons, hence, it casts a serious doubt

on prosecution case about the manner of occurrence. Hence, we have come to irresistible conclusion that prosecution has not been able to prove the manner of occurrence. Hence, in such circumstance, the appellants are entitled to benefit of doubt as it is not prudent to rely on the ocular evidence of the witnesses. Hence, we give the appellants the benefit of doubt and is hereby held that the prosecution has not been able to prove the charges beyond reasonable doubt. The order of conviction and sentence are hereby aside and the appeals are allowed.

20. Since the accused-appellants are on bail, they are discharged from the liabilities of their bail bonds.

21. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court, along with the Lower Court Records.

(Gopal Prasad, J)

I.A. Ansari, J. I agree.

(I. A. Ansari, J)

N.A.F.R.
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