

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 396 of 2012

Arising Out of PS. Case No.-13 Year-2009 Thana- Dharhara District- Munger

Vijay Yadav S/O Bhubneshwar Yadav R/O Vill-Charrapatti, P.S.-
Dharhara(Hemjapur O.P.), Distt-Munger

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 307 of 2012

Arising Out of PS. Case No.-13 Year-2009 Thana- Dharhara District- Munger

1. Ajay Yadav S/O Bhubneshwar Yadav
2. Prashant Chandra @ Prashant Yadav S/O Bijay Yadav
Both are resident of village-Charrapatti, P.S.Dharhara (Hemjapur
O.P.), Distt-Munger
3. Shashi Yadav S/O Longi Yadav R/O Vill-Lagma, P.S.Dharhara
(Hemjapur O.P.), Distt-Munger

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 396 of 2012)

(In Criminal Appeal (DB) No. 307 of 2012)

For the Appellants	:	Mr. K.P.Singh, Sr. Adv. Mr. Ranjan Kr. Jha, Adv. Mr. Pratik Mishra, Adv. Mr. Rajesh Kumar, Adv. Mr. G.C.Jha, Adv. Mr. Aashish Mishra, Adv.
For the State	:	Mr. Ajay Mishra(App)
For the Informant	:	Mr. Ram Sumiran Roy, Adv.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 18-04-2018



In both the appeals, the appellants were tried together and by common judgment in Sessions Trial No. 226 of 2010 (arising out of Dharhara P.S. Case No. 13 of 2009), they were held guilty, convicted and sentenced and as such, both the appeals were taken up together for final hearing and are being disposed of by this common judgment.

2. All the aforesaid four appellants by judgment dated 14-03-2012 were convicted for commission of offence under Section 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.') and by order dated 16-03-2012, all the appellants under Sections 302/34 of the I.P.C. were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- (five thousand) each. In default of payment of fine, they were directed to further undergo rigorous imprisonment for six months. Vijay Yadav (appellant in Cr.Appeal DB No. 396 of 2012) by judgment dated 14-03-2012, besides being convicted under Section 302/34 of the I.P.C., was also convicted for commission of offence under Section 27 of the Arms Act, 1959 (hereinafter referred to as 'Arms Act') and by order dated 16-03-2012, he was directed to undergo rigorous imprisonment for three years for commission of offence under Section 27 of the Arms Act and imposed a fine of Rs. 1,000/- (one thousand).



In default of payment of fine, he was directed to further undergo rigorous imprisonment for three months. All the sentences were directed to run concurrently. The appellants were convicted and sentenced in Sessions Trial No. 226 of 2010 by Sri Vijay Kumar Singh, learned Additional Sessions Judge-cum-F.T.C.-3, Munger (hereinafter referred to as 'Trial Judge').

3. Short fact of the case is that on 22-02-2009 at 10:20 AM, Sub-Inspector of Police Sri Satyendra Kumar (P.W.9), officer incharge of Hemjapur Police Station, Dharhara recorded *fardbeyan* of Sri Ramakant Kumar @ Ramakant Yadav (P.W.7) S/o Kamal Kishore Yadav, resident of Village – Chharapatti Hemjapur O.P., P.S. Dharhara, District – Munger. *Fardbeyan* was recorded in the village Chharapatti. In the *fardbeyan*, the informant disclosed that with his neighbour Vijay Yadav (appellant in Cr.Appeal No. 396 of 2012) dispute regarding raising of wall was earlier going on, in which, by intervention of village panchayat, dispute was settled. Today i.e. 22-02-2009, the work for the purposes of concreting of roof of appellants, rods were being laid, in which, the accused persons, encroaching over the land of the informant, were tying rods. Thereafter, his brother Ram Sevak Yadav (deceased) aged about 25 years inquired from Vijay Yadav as to why he was encroaching over



the land by way of extending rods, whereupon, Vijay Yadav (appellant in Cr.Appeal DB No. 396/12) S/o Bhuvaneshwar Yadav, Prashant Yadav (appellant no. 2 in Cr.Appeal DB No. 307/12) S/o Vijay Yadav, Ajay Prasad Yadav (appellant no. 1 in Cr.Appeal DB No. 307/12) S/o Bhuvaneshwar Yadav and Raja Yadav @ Niraj Yadav S/o Bhuvaneshwar Yadav (since died), who were present on the roof using filthy language, threatened to kill him. In the meanwhile, Prashant Yadav (appellant no. 2 in Cr.Appeal DB No. 307/12) got down from the roof and entered in his house, brought a pistol and came on the roof. Bhuvaneshwar Yadav (not chargesheeted) and Kanta Kumari w/o Vijay Yadav (not chargesheeted) and also one of the villager of village Lagma was carrying rifle came there and all exhorted to finish him (deceased). In the meanwhile, Vijay Yadav (appellant in Cr.Appeal DB No. 396/12) took pistol from the hand of Prashant Yadav (appellant no. 2 in Cr.Appeal DB No. 307/12) and with intent to kill his brother, fired from pistol, which hit below the nose of his brother Ram Sevak Yadav and thereafter, he fell down and he died instantaneously at the place of occurrence. He further disclosed that the occurrence took place at about 9:30 AM. After being satisfied with the contents of *fardbeyan* as correct, he put his signature on the *fardbeyan*.



4. On the basis of said *fardbeyan*, a formal F.I.R., vide Dharhara P.S. Case No. 13 of 2009 was registered on 22-02-2009 at 5:00 PM for offence under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act against following seven accused persons:-

1. Vijay Yadav (appellant in Cr.Appeal DB No. 396/12),
2. Prashant Yadav (appellant no. 2 in Cr.Appeal DB No. 307/12),
3. Ajay Prasad Yadav (appellant no. 2 in Cr.Appeal DB No. 307/12),
4. Raja Yadav @ Niraj Yadav (died during investigation),
5. Bhuvaneshwar Yadav (not chargesheeted),
6. Kanta Kumari (not chargesheeted), and
7. Shashi Yadav (appellant no. 3 in Cr.Appeal DB No. 307/12)

5. After investigation and finding the case true, firstly on 30-05-2009 chargesheet was submitted against Vijay Yadav (appellant in Cr.Appeal DB No. 396/12) and Ajay Yadav (appellant no. 1 in Cr.Appeal DB No. 307/12) keeping investigation pending against others. Subsequently, on 31-07-2009, supplementary chargesheet was submitted against Prashant Yadav (appellant no. 2 in Cr.Appeal DB No. 307/12) and Shashi Yadav (appellant no. 3 in Cr.Appeal DB No. 307/12), whereas, Kanta Kumari and Bhuvaneshwar Yadav, both F.I.R. named accused were found innocent and they were not forwarded. Accused Raja Yadav @ Niraj Yadav had already died



during investigation. Thereafter, on 01-06-2009, learned Additional Chief Judicial Magistrate (ACJM) took cognizance of the offences and on 24-02-2010, the case was committed to the court of sessions and it was numbered as Sessions Trial No. 226 of 2010. In the case, on 23-04-2011, charges were jointly framed against all the appellants under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act.

6. During trial, to prove its case on behalf of the prosecution, altogether nine witnesses were examined. Out of nine witnesses:-

“P.W.3 Rajesh Kumar (co-villager), P.W.4 Ranju Kumari (sister of the deceased), P.W.6 Subodh Kumar Yadav (co-villager) and P.W.7 Ramakant Kumar @ Ramakant Yadav (informant and brother of the deceased) were examined as eye-witnesses to the occurrence, whereas, P.W.1 Suresh Prasad Yadav (co-villager) and P.W.2 Laxmi Yadav (co-villager) both deposed that after hearing the sound of firing they reached near the place of occurrence and noticed accused persons fleeing away carrying arm. Besides this, both have said that immediately thereafter they informed the police regarding participation of the



accused persons. P.W.5 Amerika Devi, an independent witness, was examined as hearsay witness. Virtually, she was examined on the point of occurrence. P.W.8 Dr. Md. Fajiuddin, who was posted on 22-02-2009 in the Sadar Hospital on the same date, had conducted *post-mortem* examination on the dead body of the deceased and he proved the *post-mortem* examination report, which was marked as Ext. 3 and he also proved the signature of one of the doctor, who participated in the *post-mortem* examination and his signature was marked as Ext. 3/1. The investigating officer Sri Satyendra Kumar was examined as P.W.9. Surprisingly, despite the fact that PW-9 himself had recorded *fardbeyan* and investigated the case, he did not prove any document to the reasons best known to him and this was the reason that one of the witness namely Sri Binod Kumar was got examined, as court witness, and this witness had proved formal F.I.R., which was marked as Ext. 4, *fardbeyan* was marked as Ext. 5 and inquest report was marked as Ext. 6.”



7. After closure of the prosecution evidence, evidence and circumstances, which were collected against the accused persons, were explained to them and on 07-02-2012, statement of accused under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') was recorded, in which, they simply claimed to be innocent. On behalf of the defence, one witness namely Ajay Kr. Yadav was examined as D.W.1, however; at the time of hearing of the appeal, learned counsel for the appellants had not referred to the evidence of D.W.1.

8. Sri Kanhaiya Prasad Singh, learned senior counsel assisted by Sri Ranjan Kumar Jha, learned counsel has appeared on behalf of Vijay Yadav (appellant in Cr.Appeal DB No. 396/12), whereas, Sri Rajesh Kumar, learned counsel has argued on behalf of remaining appellants in Cr.Appeal DB No. 307/12. Sri Singh, learned senior counsel, after referring to entire evidence, has argued that the prosecution has not proved its case beyond all reasonable doubt and as such, it was a fit case for passing judgment of acquittal, however; the learned Trial Judge has incorrectly passed the judgment of conviction. At the very outset, it was argued by Sri Singh, learned senior counsel that there were serious contradictory depositions in the prosecution



evidence. He submits that P.W.7 Ramakant Kumar @ Ramakant Yadav in paragraph 3 of his evidence, had disclosed that he was on the roof at the time of occurrence and his two sisters namely Anju and Sanju alongwith his mother Seema Devi were present, but to the reasons best known to the prosecution, the prosecution did not examine one of the sister of the deceased and mother of the deceased. He submits that withholding of these two witnesses suggests that prosecution had not come out with clean hand. It has also been argued that on examination of the evidence of P.W.4 Ranju Kumari, it appears that she was the witness, who had noticed entire occurrence. As per her evidence, while she was in kitchen, on roof she had noticed that accused persons were extending rods to the land of the informant side, thereafter, she got down from the roof and informed the informant about the same and only thereafter, all the family members reached to the roof of house and in her presence, entire occurrence had taken place. However, to the reasons best know to the prosecution, this witness i.e. Ranju Devi was not cited as a witness in the F.I.R. He submits that non-mentioning of her name as F.I.R. witness in the F.I.R. suggests that she was not present at the time of occurrence and this creates doubt on the prosecution case. By way of referring to evidence of



P.W.9/investigating officer in paragraph – 8 of his evidence, he submits that the investigating officer in his evidence had said that in the *fardbeyan*, no time of occurrence was mentioned and even informant had not stated regarding bringing gun. He submits that it appears that prosecution has substituted original *fardbeyan* by the present *fardbeyan*. According to him, it appears that version of the prosecution is entirely different and this was the reason that prosecution has brought on record *fardbeyan*, which was either introduced subsequently or in the *fardbeyan* itself, certain words were subsequently incorporated, which according to him, creates serious doubt on the prosecution case. Sri Singh has also placed reliance on the evidence of P.W.8 Dr. Md. Fajiuddin. By way of referring to his evidence, in paragraph 5 he submits that this witness has stated that on noticing the injury found on the person of the deceased, there was possibility that shot was fired from the lower side. Taking clue from the evidence of P.W.8, Sri Singh has argued that it appears that none had seen the actual occurrence and after the occurrence, noticing the injury on the person of the deceased, a case was developed, as if, in a pre-planned manner, all the accused persons participated in the occurrence, in which, appellant Vijay Yadav (in Cr. Appeal DB No. 396/12), after



taking pistol from Prashant Yadav (A-2 in Cr.Appeal DB No. 307 of 2012), fired on Ram Sevak Yadav (deceased) causing fire-arm injury, which was the reason for his death. On aforesaid ground, it has been argued that prosecution has miserably failed to prove its case and as such, the judgment of conviction and sentence is required to be interfered with.

9. Sri Rajesh Kumar, learned counsel for appellants in Cr. Appeal DB No. 307 of 2012, after referring to evidence, submits that entire family member of the appellants were framed as accused in the present case. He submits that it was case of the prosecution itself that concreting of roof of the appellants was to be done and for that very purpose, rod was being tightened, but in the meanwhile, the said occurrence had taken place. He submits that it is case of the prosecution that in between both the parties only altercation had taken place. He submits that in between family member of Vijay Yadav and information side, altercation had taken place and to notice the same thing, all other family members reached to the roof and they were only spectators without any intention to participate in the occurrence and as such, except appellant Vijay Yadav, none of the other appellants were required to be framed as accused, rather it has been argued that being family member of Vijay Yadav, all the



appellants have been falsely made accused. He further submits that false accusation against entire family of the appellant had come only at the stage of investigation itself and this was the reason that though in the F.I.R., seven persons were arrayed as accused, the police did not notice involvement in respect of at least two of the F.I.R. named accused namely Bhubaneshwar Yadav, father of appellant Vijay Yadav and Kanti Kumari. This was the reason that out of seven FIR named accused persons, chargesheet was submitted against only four accused persons. Two F.I.R. named accused namely Bhubaneshwar Yadav and Kanta Kumari were exonerated by the investigating officer, however; one of the accused Raja Yadav @ Niraj Yadav died during the investigation itself. According to Sri Rajesh Kumar, in view of exonerating other accused persons, against whom almost similar accusation was made, it can be inferred that all the appellants in the present case were also innocent and they were falsely implicated in the case. According to him, all the appellants in Cr.Appeal DB No. 307 of 2012 deserve to be extended the benefit of doubt and acquitted.

10. Sri Ajay Mishra, learned Addl. Public Prosecutor as well as Sri Ram Sumiran Rai, learned counsel for the informant have vehemently opposed both the appeals. Sri



Mishra, learned Addl. Public Prosecutor submits that there is consistent evidence on record to show that all the appellants were participant in the occurrence, however; in the occurrence, it is case of the prosecution that on being asked by Vijay Yadav (appellant in Cr.Appeal DB No. 396/12), Prashant Yadav (appellant no. 2 in Cr.Appeal DB No. 307/12), who was none else but son of Vijay Yadav, went inside the house and brought country-made pistol, which was taken by Vijay Yadav and thereafter, Vijay Yadav fired. He submits that at the time of occurrence, all other appellants with same intent had assembled there. Ofcourse, there is evidence that only one shot was fired, which was fired by Vijay Yadav. According to him, the learned Trial Judge, besides convicting Vijay Yadav, had rightly convicted all other appellants and as such, there is no reason to interfere with the judgment of conviction and sentence.

11. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record. On going through the evidence, *prima facie*, so far as appellant Vijay Yadav is concerned, we are of the opinion that prosecution has proved its case beyond all reasonable doubt and as such, the learned Trial Judge has committed no error in passing judgment of conviction of Vijay Yadav (appellant in Cr.Appeal DB No.



396/12). So far as Prashant Yadav (appellant no. 2 in Cr.Appeal DB No. 307/12) is concerned, it is consistent case of the prosecution that he was the person, who from roof after some altercation, got down and from inside house he brought country-made pistol, which was taken by Vijay Yadav and he fired. Once after noticing that altercation in between the parties had already taken place and some of the accused had asked him to bring arm and thereafter, he brought the country-made pistol in the occurrence and in his presence, his pistol was used and deceased was shot at, certainly, this appellant may not be exonerated. So far as Ajay Yadav (appellant no. 1 in Cr.Appeal DB No. 307/12) and Shashi Yadav (appellant no. 3 in Cr.Appeal DB No. 307/12) are concerned, they are close relatives of Vijay Yadav (appellant in Cr.Appeal DB No. 396/12).

12. Considering the fact that on the roof, concreting work was to commence and for that very purpose, rods were being erected, there was every possibility that after noticing altercation in between Vijay Yadav (appellant in Cr.Appeal DB No. 396/12) and Ram Sevak Yadav (deceased), they might had gone to the roof to witness the occurrence. In the meanwhile, firing was made by appellant Vijay Yadav. Ofcourse, many of the witnesses have categorically stated that they were present,



but against them, there was no direct evidence of commission of any overt act or any of his conduct showing their involvement in the occurrence and accordingly, the Court may proceed to extend the benefit of doubt to Ajay Yadav (appellant no. 1 in Cr.Appeal DB No. 307/12) and Shashi Yadav (appellant no. 3 in Cr.Appeal DB No. 307/12). In the case during trial, even independent witnesses i.e. P.W.1 Suresh Prasad Yadav, P.W.2 Laxmi Yadav, P.W.3 Rajesh Kumar had given vivid picture of the occurrence showing at least participation of appellant Vijay Yadav and appellant Prashant Yadav in the occurrence.

13. P.W.1 Suresh Prasad Yadav has deposed that after hearing gun shot firing he moved towards the place of occurrence and he noticed that Vijay Yadav (appellant in Cr.Appeal DB No. 396/12) and others were fleeing away. Similarly, Laxmi Yadav (P.W.2), who was also co-villager, has deposed in the same manner.

14. P.W.3 Rajesh Kumar, who was co-villager, has supported the prosecution case like the informant, which was stated by him in his *fardbeyan*.

15. Ranju Kumari P.W.4, sister of the deceased, in her evidence has deposed that at the time of occurrence, she was in the kitchen and from the kitchen, she had noticed that the



accused persons were extending to the land of the informant side while erecting rods for concreting of the roof. It was anxious thing thereafter she got down from the roof and informed to her family members. Thereafter, other family members including deceased Ram Sevak Yadav reached to their roof which was in between 3 and 4 feet of both the houses. She deposed that Ram Sevak tried to restrict accused side not to encroach over the land, which raised a situation of altercaton and altercation in between the parties took place. This witness has further stated that on being asked by other accused person, Prashant (appellant no. 2 in Cr.Appeal DB No. 307/12) from roof got down and from inside room, he brought a country-made pistol, which was taken by Vijay Yadav (appellant in Cr.Appeal DB No. 396/12) and he gave shot from the pistol, which hit the upper portion of Ram Sevak Yadav, brother of the P.W.4 and after receiving shot, he fell down and died instantaneously.

16. So far as submission of Sri Kanhaiya Prasad Singh, learned senior counsel for the appellant (Vijay Yadav) that the evidence of P.W.8 suggests that projectile went towards up side and it was suggested that from lower portion firing was made, the Court, on examination of entire evidence, is not in agreement with the submission of learned senior counsel for the



appellant. It was case of the prosecution that shot was fired from the roof of the appellant side from a country-made pistol, which hit upper portion of the deceased. If from a pistol, a firing was made and had it been an injury on abdomen side or lower portion, in that event, such submission was required to be appreciated, but since the gun shot injury was caused on the upper portion i.e. near the nose of the deceased, certainly, such submission may not be appreciated.

17. Regarding non-examination of mother of the informant and one of the sister of the informant is concerned, it is not case of the defence that during investigation they had made statement under Section 161 of the Cr.P.C., contrary to the case of prosecution. Had it been a case that those witnesses had stated contrary to the prosecution case during investigation and they were not examined by the prosecution, this would have been a good ground for interfering but no suggestion has been given either to the investigating officer or to any of the witnesses as to whether those witnesses had stated contrary to the prosecution case. Accordingly, in such situation, merely due to non-examination of those witnesses, no benefit can be granted to the defence side. Moreover, in criminal trial, it is not necessary that each and every witness must be examined. In a



criminal trial, quality of the witnesses is to be examined nor number of witnesses. The evidence of informant and P.W.4 is very much specific showing involvement of Vijay Yadav (appellant n Cr.Appeal DB No. 396/12) and Prashant Chandra @ Prashant Yadav (appellant no. 2 in Cr.Appeal DB No. 307/12). It would be better to simply incorporate what the doctor has found during *post-mortem* examination.

18. P.W.8 Dr. Md. Fajiuddin had conducted *post-mortem* examination on the dead body of the deceased and he noticed following facts:-

“1. Lacerated wound 1” x ½” x bone deep communicating with the mouth cavity on the right side of face between upper lip and right nostril. Blackening of margin of wound was present. Tatooing present on face and anterior aspect of neck. Blood coming out of mouth and nose.

2. On dissection, blood and blood clot present beneath skin in the soft tissue around the injury mentioned. Fracture of right maxillary bone including alveolar process right upper jaw fractured and dislodged with teeth in the socket. Hard palate found fractured on opening of skull meninges and brain tissue found lacerated and torn on the posterior aspect. Blood and blood clot present in the cranial



cavity. One bullet received from cranial cavity, which was sealed, signed and handed over to the police.

3. Death in our opinion was due to haemorrhage and shock and injury to vital organ; caused by fire-arm.

Time elapsed since death within 24 hours.”

This witness also proved the *post-mortem* examination report, which was marked as Ext. 3 and he proved signature of one another doctor namely Sudhir Prasad, who was also one of the member in conducting *post-mortem*, marked as Ext. 3/1.

19. Sri Singh, learned senior counsel for the appellant has also tried to create some doubt on the prosecution case by way of referring to certain fact stated by P.W.9 Satyendra Kumar/I.O. He has referred to paragraph 8 of his evidence. In paragraph 8, P.W.9 has deposed that in the *fardbeyan* time of occurrence was not there, the fact that which of the accused had asked for gun was not there, he (learned senior counsel) submits that those facts were subsequently incorporated in the *fardbeyan*. He has referred to *fardbeyan* i.e. Ext. 5 and submits that time of occurrence was subsequently added in just above last paragraph of the *fardbeyan* i.e. 9:30 AM.

20. We have perused *fardbeyan* i.e. Ext. 5 and after going through the same, at least we do not find any reason to



infer as if the sentence “घटना का समय करीब साढ़े नौ बज रहा था।” was inserted. Moreover, no question was asked to the investigating officer as to whether while he had recorded *fardbeyan*, this sentence was mentioned or not or this sentence was not shown in the *fardbeyan*, even then the investigating officer, without examining *fardbeyan*, had deposed in this manner. Certainly this suggests regarding conduct of the investigating officer. It appears that due to some ill motive, this witness had deposed a fact, which was out-rightly contrary to the record. Since the conduct of the investigating officer itself appears to be doubtful, the defence may not get any benefit from such illegality committed by the investigating officer.

21. Sri Singh has also referred to paragraph 10 of cross-examination of investigating officer i.e. P.W.9. He submits that this witness in cross-examination has stated that in inquest report, time of preparation of inquest report has not been mentioned, however; on perusal of the inquest report i.e. Ext. 6, it is evident that in column no. 1, date and time of preparation of the inquest report has already been mentioned. Meaning thereby that again investigating officer had deposed contrary to the record. Moreover, in his cross-examination, his attention was not at all drawn exactly as to what was stated in the inquest



report. This again suggests regarding the conduct and ill motive of the investigating officer. P.W.9 to the extent of getting information regarding the occurrence had stated truly that while he was in police station, he got information that some occurrence had taken place in village Chharapatti and thereafter, he proceeded to verify the same and thereafter, he reached place of occurrence and prepared inquest report, recorded *fardbeyan* and also recorded statement of witnesses. It is pertinent to notice that the investigating officer Satyendra Kumar, who had recorded *fardbeyan*, was examined as P.W.9, but to the reasons best known to him or prosecution, he did not prove the *fardbeyan* nor he proved formal FIR or inquest report. Since such illegality was committed by the investigating officer, one Sri Binod Kumar was got examined, as court witness, and this court witness had virtually proved those document i.e. formal F.I.R., which was marked as Ext. 4, *fardbeyan* marked as Ext. 5 and inquest report, which was marked as Ext. 6.

22. On examination of entire evidence, we are of the considered opinion that learned Trial Judge has not committed any error in convicting and sentencing appellant Vijay Yadav in Cr.Appeal DB No. 396/12 and Prashant Yadav (appellant no. 2 in Cr.Appeal DB No. 307/12).



23. Accordingly, the judgment of conviction and sentence dated 14-03-2012 and 16-03-2012 respectively passed in Sessions Trial No. 226 of 2010 (arising out of Dharhara P.S. Case No. 13 of 2009) by Sri Vijay Kumar Singh, learned Additional Sessions Judge-cum-F.T.C.-3, Munger in respect of Vijay Yadav in Cr.Appeal DB No. 396/12 and Prashant Yadav (appellant no. 2 in Cr.Appeal DB No. 307/12) is, hereby, affirmed and their appeals stand dismissed.

24. So far as case of Ajay Yadav (appellant no. 1 in Cr.Appeal DB No. 307/12) and Shashi Yadav (appellant no. 3 in Cr.Appeal DB No. 307/12) is concerned, on examination of entire evidence, we are satisfied that prosecution has not proved its case beyond all reasonable doubt against these two appellants and as such, by way of extending benefit of doubt, their conviction and sentence can be interfered with. Accordingly, by way of extending benefit of doubt to Ajay Yadav (appellant no. 1 in Cr.Appeal DB No. 307/12) and Shashi Yadav (appellant no. 3 in Cr.Appeal DB No. 307/12), their conviction and sentence is, hereby, set aside.

25. Since the appeal of Prashant Yadav i.e. Cr.Appeal DB No. 307 of 2012 has already been rejected and he was on bail, his bail-bond is, hereby, cancelled and he is directed to



surrender to the court below forthwith. Ajay Yadav (appellant no. 1 in Cr.Appeal DB No. 307/12) and Shashi Yadav (appellant no. 3 in Cr.Appeal DB No. 307/12), who are on bail and their conviction and sentence has been set aside, they are discharged from the liability of their bail-bond.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
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