

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1238 of 2011

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1. Sanjay Sao @ Gorki S/O Sri Naresh Sah Resident Of Village - Naya Tola Phulka
 Gumti , District - Munger. Appellant/s

Versus

1. The State Of Bihar Respondent/s
 with

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Criminal Appeal (DB) No. 132 of 2012

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1. Akbar Mandal S/O Sri Vidya Mandal Resident Of Village- Naya Tola, Phulka,
 P.S.- Jamalpur, District- Munger. Appellant/s

Versus

1. The State Of Bihar Respondent/s
 with

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Criminal Appeal (DB) No. 34 of 2015

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1. Amit Mandal Son of Late Medni Mandal Resident of Village-Nayatola
 Phulka,P.S-Jamalpur,Distt.-Munger. Appellant/s

Versus

1. The State of Bihar. Respondent/s

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Appearance :

(In CR. APP (DB) No. 1238 of 2011)

For the Appellant/s : Mr. Md. Salahuddin Khan, Advocate
 Mr. Md. Naseem Mukhtar, Advocate

For the State : Mr. A. K. Sinha, APP

(In CR. APP (DB) No. 132 of 2012)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
 Mr. Md. Imteyaz Ahamad, Advocate
 Mr. Ravi Ranjan, Advocate
 Mrs. Babita Kumar, Advocate
 Mr. Nilesh, Advocate
 Mr. Pravin Kumar, Advocate

For the State : Mr. Dilip Kumar Sinha, APP

For the Informant : Mr. Dharendra Nath Jha, Advocate

(In CR. APP (DB) No. 34 of 2015)

For the Appellant/s : Mr. Ravindra Kumar, Advocate

For the State : Mr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI)

Date: 21-12-2016

At an initial stage charges were framed against four



accused namely, Amit Mandal, Prince Yadav, Sanjay Sao @ Gorki and Akbar Mandal. During conduction of trial accused, Prince Yadav claimed himself to be juvenile and the aforesaid plea was entertained whereupon vide order dated 02.02.2010, his trial was separated and sent to Juvenile Justice Board, Munger for an enquiry during course of which he was found juvenile, whereupon his trial was entrusted to Juvenile Justice Board, Munger. Furthermore, as is evident after examination of eight PWs, accused Amit Mandal escaped from PMCH where he was undergoing treatment being under judicial custody and on account thereof, his trial was separated. Subsequently thereof, in the main trial bearing Sessions Trial no. 607/2009 one more witness, i.e. Investigating Officer as PW 9 was examined and vide judgment, dated 07.12.2011 and order of sentence dated 09.12.2011 was finally disposed of by the learned trial court, subsequently thereof, accused Amit Mandal was apprehended whereupon separated trial bearing Sessions Trial No. 607A/2009 proceeded with and during course of which PW 9, the Investigating Officer was examined and then thereafter vide judgment dated 08.12.2014 and sentence, dated 09.12.2014, his trial has also been finally concluded.

2. Cr. Appeal No. 1238/2011 has been filed on behalf of appellant/convict, Sanjay Sao @ Gorki, Cr. Appeal No.



132/2012 has been filed on behalf of appellant/convict, Akbar Mandal and Cr. Appeal No. 34/2015 has been filed by appellant, Amit Mandal and in the aforesaid facts and circumstances of the case, all the appeals have been tagged together whereupon, have been heard analogous and in the facts and circumstances of the case, as stated above, are being decided by a common judgment.

3. The evidences of PWs 1 to 8 remained the same against all the appellants save and except evidence of PW 9, the Investigating Officer and on account thereof, it will be separately dealt with relating to individual appellant wherever will be found necessary.

4. All the three appellants under the aforesaid two judgments as detailed hereinbefore have been found guilty for an offence punishable under Sections 302/34 wherein they have been directed to undergo life imprisonment, fine of Rs. 10,000/- and in default thereof, to undergo RI for one year, under Section 27 of the Arms Act directing to undergo RI for three years, fine of Rs. 1,000/- and in default thereof, to undergo RI for three months with a further direction to run the sentences concurrently by the Additional Sessions Judge-FTC-3rd Munger in Sessions Trial No. 607/2009 as well as Sessions Trial No. 607A/2009, as per judgment of conviction and sentence indicated above.

5. Arun Kumar Yadav (not examined on account of his



death) had filed a written report on 10.10.2008 disclosing therein that while he along with Kapildeo Yadav and Rajendra Tanti were gossiping in their verandah at about 8:30 PM., Amit Mandal, Prince Yadav, Sanjay Sao @ Gorki, Akbar Mandal along with four unknown persons made house trespass and began to fire indiscriminately by rifle, musket and country made pistol upon them. During course thereof, he slipped towards his room and survived while Kapildeo Yadav and Rajendra Tanti died on the spot. His mother, Dayawati Devi, who rushed in their rescue, also sustained fire arm injuries over her right ankle as well as left thigh. It has further been specified that Amit Mandal shot at Kapildeo Yadav, while Prince Yadav at Rajendra Tanti. Sanjay and Akbar shot at his mother. He had further narrated that he had seen all the persons in the light and so, also claimed identification against the unknown persons. It has further been stated that the accused persons are dreaded criminals and indulged in antisocial activities which is being protested by him and in the aforesaid background the aforesaid occurrence took place.

6. Furthermore, Kanchan Devi (Wife), Sanjay, Rajiv and Ranjit have seen the occurrence. Then thereafter, police was informed over mobile and after arrival of the same, the aforesaid written report was filed. It has also been disclosed that on 09.10.2008 at about 4:00 PM, the aforesaid accused persons had fired at his house which was



reported to the police whereupon, the police after visiting the place in course of investigation had taken cognizance thereof.

7. Jamalpur PS Case No. 129/2008 was registered on the basis of the aforesaid written report followed with investigation which ultimately concluded by way of filing of charge-sheet against the appellants/accused persons and accordingly, the trial proceeded before court of sessions in a manner as indicated above on account of offences having been triable by the court of sessions, ultimately meeting with the result, subject matter of the instant appeals.

8. The defence case as is evident from the mode of cross-examination as well as statement having been recorded under Section 313 of the Cr.P.C. is of complete denial of the occurrence.

9. It has also been pleaded that prosecution party is responsible for the misdeeds as indicated above, which they committed on account of brawl during course of event of partition of the family property and out of malice and grudge, they got appellants involved in this case putting false and frivolous allegations. To substantiate the same, one DW has also been examined.

10. While assailing the judgment of conviction and sentence impugned, it has been submitted on behalf of the appellants that the learned trial court had not exercised proper scrutiny of the materials whatever been adduced by the prosecution, judiciously



rather dealt with in mechanical manner which did not justify its sanctity. In order to substantiate such a plea, it has been submitted that the learned lower court should not have believed the evidence having been adduced on behalf of prosecution in the background of the fact that all the witnesses are related to each other and so they possess common interest in getting the appellants involved. Furthermore, it has also been submitted that from the evidence of the witnesses, it is apparent that one Vidyanand was present there but for the reasons best known to the prosecution, he was left out and for that no explanation has been furnished. Non examination of Vidyanand, could be, in the facts and circumstances of the case, perceived to be an independent witness has bearing over the prosecution case creating doubt over genuineness, reliability authenticity.

11. It has also been submitted that there was no source of identification disclosed in the written report and so identification of the appellants was not at all probable, plausible. In likewise manner, it has also been submitted that witnesses, Sanjay, Rajive and Ranjit have stated that they were over roof of the house and on account thereof, their claim regarding identification of the appellants could not be found reliable. In likewise manner, PW 1, the father who was lying inside the room could not be identified to be competent enough to identify the appellants. Kanchan Devi, being an inmate of the house,



was not at all expected to know by name as well as by face each of the appellants and in the aforesaid background, evidence of PW-6, Shila Devi is to be perceived, whereunder she had not identified the appellants. Therefore, identification of the appellants, as claimed by the prosecution, is not at all credible one, on the other hand, it suggests false implication in pre-planned manner.

12. It has further been submitted that in the facts and circumstances of the case, when indiscriminate firing was made, two persons were murdered, mother had sustained injuries, blood was oozing out from her injuries. Whether it was not a natural conduct of the prosecution to lift Dayavati Devi to hospital to save her life, which was of first priority and instead thereof, allowing the situation to worsen, drafting present application, awaiting arrival of the police is another circumstance which create doubt over the manner of occurrence.

13. Further, strengthening his plea, it has been submitted that the written report itself speaks that it has been written in calm and quiet manner which a person, who has faced such a horrifying situation, would not preserve and so the sanctity of written report should also be viewed with suspicious eye.

14. It has further been submitted that the evidence of interested witness requires close scrutiny along with minute



observation and during course of such exercise, it is apparent that none of the witnesses, is able to stick to their status to be an eyewitness. Their aforesaid status is found duly substantiated from the evidence of PW 9, the Investigating Officer of both the cases who had not found blood at the alleged place of occurrence though claimed by the witnesses over presence of copious blood at the place of occurrence on account of having it fallen from the injuries sustained by the deceased.

15. Furthermore, exposing the illegality committed by the learned lower court during conduction of the trial, it has been submitted that Dayavati Devi succumbed to her injuries at the hospital itself. Her postmortem was conducted during course of investigation but, for the reason best known to the learned lower court, charge was not framed relating to her and so, convicting the appellant with regard to her murder would not justify the finding recorded by the learned lower court. So, in sum and substance, learned counsel for the appellants has submitted that the evidences on record are insufficient to identify the appellants to be authors of the crime whereupon they deserve acquittal.

16. Rebutting the submissions having been made on behalf of the appellants, learned APP submitted that the arguments, raised on behalf of appellants, appear to be imaginary, fallacious and suffers



from illusion. Occurrence was committed at the verandah of the house of the informant where the deceased as well as informant were gossiping and so, presence of source of light neither could be allowed to be challenged nor it could be perceived like so. On account thereof, proper identification of the appellants, more particularly, being co-villager and further, were engaged in such nefarious activity since before with the prosecution party, could not be found to be a question of fact, that being so, proper identification of the appellant was very much there and accordingly, being properly identified with regard to role having been played by them during course of occurrence which, the learned lower court had minutely observed while recording finding of guilt against the appellants. So, the judgment impugned needs no interference.

17. In order to substantiate its case, the prosecution had examined altogether nine witnesses out of whom PW-1, Bhism Kumar Yadav @ Bablu, PW-2, Sanjay Kumar Yadav, PW-3 Rajiv Kumar @ Bablu, PW-4, Kanchan Devi (wife of late informant), PW-5, Ranjit Kumar, PW-6, Shila Devi, PW-7, Dr. Anil Kumar Singh, PW-8, Dr. Vijay Kumar and PW-9, Anant Kumar Singh.

18. Side by side, the prosecution had also exhibited the following documents:-

Ext-1, Identification of written report of Arun Yadav on the



FIR, Ext-2, Identification of writing and signature of Dr. Anil Kumar Singh on the PM report of Dayavati Devi, Ext-2/1, Identification of writing and signature of Dr. Vijay Kumar on the PM report of Rajendra Tanti, Ext-2/2, Identification of writing and signature of Dr. Vijay Kumar on the PM report of Kapildeo Yadav, Ext-3, Carbon copy of inquest report of deceased, Dayavati Devi, Ext-3/1, Carbon copy of inquest report of deceased, Rajendra Tanti, Ext-3/2, Carbon copy of inquest report of deceased, Kapildeo Yadav, Ext-4, Certified copy of chargesheet of Jamalpur PS Case No. 47/2009, Ext-5, Cognizance order of Jamalpur PS Case No. 47/2009.

19. PW-1, Bhism Kumar Yadav @ Bablu had stated that on the alleged date and time of occurrence he was lying over a Chouki in a room. Door and windows were opened. Arun Yadav, Rajendra Tanti, Kapildeo Yadav and Vidyanand Yadav were gossiping. At that very moment, Amit Mandal, Prince Yadav, Sanjay Sao @ Gorki and Akbar Mandal came and began to fire indiscriminately. His son, Arun slipped towards his room. Vidyanand rushed towards roof of the house. Amit Mandal had shot at Kapildeo Yadav. He fell down. Prince Yadav shot at Rajendra Tanti who also fell down. Sanjay and Akbar shot at his wife Dayavati Devi causing injury over her thigh as well as ankle. They all escaped. 2-4 unknown persons were also there who escaped along with them. He identified the accused in dock.



20. During cross-examination, he had stated that he was lying over Darwaza but again corrected that he was lying in a room adjacent west to the Verandah. Door was opened on the eastern as well as western side of the room. 3-4 unknown persons were along with the accused. However, he had not seen them duly armed with and accordingly, he is unable to say whether they fired or not. He went near the dead body. He had not caught hold of the deceased. He did not carry the deceased outside. Police had come after an hour. In para-7, 8 and 9, his attention has been drawn up towards his previous statement. From evidence of PW-9 of the original trial no. 607/2009, it is evident that the aforesaid piece of evidence has not been confronted to him and on account thereof, it is not at all substantiated. That being so, his evidence lacks contradiction. In the aforesaid background, there happens to be no embellishment in his evidence. It is further evident that no cross-examination has been made over manner of occurrence as well as place of occurrence. It is also apparent that manner of identification has also not been challenged at the end of appellants.

21. PW-2, Sanjay Kumar Yadav had stated that on the alleged date and time of occurrence, he was at his roof. At that very moment, accused, Amit Mandal, Prince Yadav, Sanjay Sao @ Gorki and Akbar Mandal came inside his house and fired indiscriminately.



At that very time, his elder brother Arun Kumar Yadav was gossiping with Rajendra Tanti, Kapildeo Yadav and Vidyanand Yadav. He had seen the occurrence from the roof. At that very time, his younger brother, Rajiv Kumar, corrected it as Ranjit Kumar tried to shout but he forbade him as in case alarm is raised, then the accused persons will also cause their murder. Four persons were in Angan. All the accused fled away after firing. Then thereafter, they got down from the roof and found Rajendra Tanti and Kapildeo dead. His brother Arun anyhow managed to escape. His mother had also sustained injuries over her legs. He identified the accused persons in the dock. During cross-examination, he had stated that he along with his younger brother Ranjit and Rajiv were over the roof. During course of occurrence, none of them got down from the roof. He further stated that occurrence took place below the roof over which they were present. In para-6, he had further stated that the assailants were standing having their front towards Verandah. They had got down from the roof about 10 minutes after the occurrence. Thereafter, they had gone to deceased. They had not lifted the deceased. However, his leg was stained with blood which he did not show to the Investigating Officer. Accused persons had their presence over verandah at the time of firing. The breadth of Angan happened to be 15-20 Yard. They had seen the occurrence from the roof. The verandah is not fenced. It is



open. He met Arun after getting down from the roof. He had seen blood over his clothe. He had not stated before the police regarding presence of blood over clothe of Arun. He had not raised alarm seeing the accused persons. They have not tried to escape from the roof. They continued to see from the roof as there was no railing. Police had come along with torch. Therefore, from the evidence of this PW, it is apparent that he has not been cross-examined over the manner of occurrence as well as with regard to source of identification, although in his examination-in-chief he had not spoken like so. However, the fact remains that occurrence took place at verandah while the informant along with deceased were gossiping.

22. PW-3, Rajiv Kumar @ Bablu had stated that on the alleged date and time of occurrence, he along with his brother Sanjay Kumar (PW 2) and Ranjit Kumar (PW 5) were over their roof. They heard some sounds coming from Angan whereupon they began to see and during course thereof, they had seen Amit Mandal, Prince Yadav, Sanjay Sao @ Gorki and Akbar Mandal along with 3-4 unknown persons armed variously who came to verandah and began firing indiscriminately. He was to cry but was prevented by Sanjay to lie down otherwise, they will also be murdered. At that very time, his elder brother, Arun was gossiping along with his friends, Rajendra Tanti, Kapildeo Yadav and Vidyanand Yadav. He could not perceive



independently who shot at whom but, while the accused persons were to flee, Sanjay and Akbar shot at his mother, on account of which, she sustained injury on her legs and then thereafter, accused persons fled away. It has further been narrated by this PW that at that very time, the lantern was burning. Emergency light was also flashing. After fleeing of accused persons, they got down from the roof and then found Kapildeo and Rajendra Tanti dead. His mother was in an injured condition. Anyhow, his brother Arun managed to save himself. His brother Arun informed the police. His mother was taken to hospital wherefrom she was referred to Patna and in the midst of way to Patna, she died. He identified the accused in the dock. It has also been disclosed at his end that on 20.05.2009, his brother was also murdered. His father was also shot at by the accused persons. He had further exhibited the written report in pen of Arun. During cross-examination, he had stated at para-7, that at the time of occurrence, they were over the roof. Lantern was burning at the southern western corner of the verandah. He had further stated that at the time of occurrence he had not raised alarm nor he dared to get down from the roof. He had not tried to escape from his roof after jumping therefrom. Soon after departure of the accused, they got down from the roof. He wept along with injured. His clothe and body were stained with blood and the same were shown to the police. Police had not taken the



clothes. In para-8, he had given topography of his house. In para-9, he had stated that he had not tried to know with regard to the unknown criminals who came along with named accused. He is not remembering whether they were also armed with or not. In para-10, he had stated that four persons came over verandah and then shot at while four remained in Angan. The aforesaid unknown criminals were not identified even by other family members. Again, in defence could not be able to sack his evidence more particularly with regard to manner of occurrence as well as identification of the accused.

23. PW-4, Kanchan Devi is the wife of Arun(informant) had stated that on the alleged date and time of occurrence, her husband was gossiping along with his friends, Rajendra Tanti, Kapildeo Yadav and Vidyanand Yadav. All of a sudden, 6-7 persons came inside. She identified Amit Mandal, Prince Yadav, Sanjay Sao @ Gorki and Akbar Mandal who began to fire indiscriminately as a result of which Rajendra Tanti and Kapildeo Yadav died instantaneously. Her mother-in-law also sustained injuries. Her husband, anyhow, slipped and closed the doors. Vidyanand also slipped towards the staircase. After firing the accused persons left. Police came. She identified the accused in the dock and further stated that they are threatening that in case of deposing against them, whole family will be eliminated. During cross-examination, she had stated



that at the time of occurrence, she was in a room lying adjacent north to verandah. After departure of the accused persons, she came out and then rushed towards her husband. She had seen her mother-in-law in an injured condition as well as the deceased. In para-5, she had given topography of her house. In para-6, she had stated that the deceased persons were friends of her husband who had come to meet him. Her clothe was soaked with blood. However, the police had not taken her clothe. In para-7, she had stated that her family members had not raised alarm. Seeing the accused duly armed with, they had not tried to run for their safety. At the time of occurrence, there was no direct enmity with the deceased. She had further stated that her statement was taken by the police on the following day. This witness stood fairly in cross-examination and no inconsistency is found in her evidence.

24. PW-5 is Ranjit Kumar. He had stated that on the alleged date and time of occurrence, he was at his roof over his house. His brother was gossiping with Rajendra Tanti, Kapildeo Yadav and Vidyanand Yadav. After some time, they heard some sounds whereupon he began to see and during course thereof, he saw 6-7 persons coming inside his Angan out of whom, he identified Amit Mandal, Prince Yadav, Sanjay Sao @ Gorki and Akbar Mandal who began to fire indiscriminately. He tried to raise alarm but his brother



Sanjay pressed his mouth and further whispered not to raise alarm otherwise they will also be murdered. In same condition, they began to see the occurrence. Akbar and Sanjay were firing at his mother on account of which she fell down. After departure of accused persons, all of them got down. Arun Kumar Yadav (informant) had informed the police. They took away their mother to the doctor wherefrom was referred to Patna and on the way, she died. During cross-examination, he had stated that he took shelter of wall till departure of the accused person. That wall is over staircase. At that very time, he was over eastern roof. In para-7, he had stated that occurrence took place over Verandah beneath eastern roof. His family comprises of 20-23 persons. About five months earlier, the deceased had come to him with his brother. At the time of occurrence, his brother, Arun was gossiping with the deceased. No document was being seen by them. At that very moment, firing began. The persons who were engaged in firing were inside verandah. It was an indiscriminate firing. None came from outside. Police came, at that very moment, main door was opened. They got down from the roof. They had not wept grappling his brother. His clothe was soaked with blood which was seen by the police.

25. PW-6 is Shila Devi who had simply stated that the criminals intruded inside her house and shot at. She could not identify



criminals whereupon, was declared hostile.

26. PW 7 is Dr. Anil Kumar Singh who had conducted postmortem on the dead body of Dayavati Devi and found following ante-mortem injuries:-

(i) Lacerated wound 2 cm x ¼ cm. Skin deep on forehead near hair line. (ii) bandaged wound on left thigh and right ankle. On removing the blood soaked bandage following injuries were found:-

(a) left thigh region on wound of entry 2 cm circular lacerated wound, inverted margin charring present over front of mid thigh left.

(b) wound of exit 5" x 3" x bone deep back of lower thigh left on lacerated wound with everted margin.

(c) right ankle region wound of entry 2 cm circular lacerated wound, inverted margin, charring present over lateral surface of right ankle, wound of exit 3"x 1" x bone deep lacerated wound with everted margin over medial surface of right ankle.

On dissection blood and blood clots were found in the surrounding underline tissues of above mentioned injuries. Fracture of left femur and right tibia fibula were present with laceration of muscles and vessels etc. Injuries of left thigh and right ankle were communicating with each other. Left thigh and right ankle injuries were caused by fire arm. Injury over forehead was caused by hard blunt object. The death was due to haemorrhage and shock caused by injuries of left thigh and right ankle. Time elapsed since death within 24 hours of postmortem examination.

27. PW-8 is Dr. Vijay Kumar who had conducted postmortem over the dead bodies of Rajendra Tanti as well as Kapildeo Yadav and found the following injuries:-



(A) Rajendra Tanti

(i) Lacerated wound over right arm at the mid part of humerus with charring seen around the margin size about 1" x ½" skin deep.

(ii) Circular wound one inch diameter right side of the chest 1" just below the right nipple deep to chest cavity. And circular wound size about 1 ½" in diameter just below the left scapular region.

(iii) Circular wound ½" diameter left side of the abdominal wall at the level of umbilicus at a distance of 6" deep to muscle. It was wound of entry.

(iv) Circular wound 1" in diameter at the level of left iliac crest.

On dissection— Chest cavity full of blood and blood clots, both lungs, heart and large vessels were ruptured. Cause of death was due to haemorrhage and shock as a result of fire arm injuries. Time elapsed since death within 24 hours of postmortem examination.

(B) Kapildeo Yadav

(i) Wound of entry from back side just above the left iliac crest size about ½" in circular deep to abdominal cavity.

(ii) Wound of exit just above the pubic symphysis size about 1" circular in diameter. Small intestine coming out from the wound of exits.

(iii) Abrasion over scrotal sack size about 1" length ½" breadth and skin deep.

On dissection— Abdominal cavity full of blood and blood clots peritrium both kidney, small intestine, large intestine, winner bladder were found ruptured. Cause of death was due to haemorrhage and shock as a result of fire arm injuries. Time elapsed since death within 24 hours of postmortem examination.

28. After examination of these PWs, appellant Amit Mandal escaped from judicial custody while he was undergoing



treatment at PMCH. At that very moment, only Investigating Officer was left to be examined. After bifurcating his trial, the Investigating Officer was examined as PW-9.

29. PW-9 during course of his examination, had stated that a literate Constable had informed him over mobile that firing has been made at the house of Arun Yadav, whereupon he rushed to place of Arun Yadav . Main gate was closed whereupon, he called. Gate was opened and then he had gone inside. After going inside, he saw two dead bodies lying over verandah. Dayavati Devi was lying in a room situated at left side of verandah having injuries over her legs, whereupon she was sent for treatment. In a torch light, he had seen copious blood at the place of occurrence. He came to learn about names of both the deceased. At that very moment, informant furnished written report whereupon, he proceeded himself with investigation. As it was the dead of the night, therefore, he simply conducted raid and returned. On the following morning, he reached at the place of occurrence, prepared the inquest report (exhibited), found empty cartridges for which seizure list was prepared (exhibited) and inspected the place of occurrence. In para-6 of his examination-in-chief, he had detailed the topography of the place of occurrence. He had also found remnants of firing over wall, doors, and walls of the room. He had also found lantern in burning condition. He had given



boundary of the house. Recorded statements of the witnesses. Subsequently thereof, postmortem reports of respective deceased along with Dayavati Devi were received. Inquest report relating to Dayavati Devi was also received (exhibited). Then after concluding investigation, submitted charge-sheet. During cross-examination, he had stated that information with regard to occurrence was received by the literate constable. At that very moment, the details of occurrence as well as names of accused were not disclosed. He had further stated that when he reached at the place of occurrence, the main gate was closed from inside. At para-13, he had further stated that when he reached at the place of occurrence, only family members were present. Dead bodies of the deceased were lying on the verandah. At that very time, he had not prepared inquest report nor detailed the place of occurrence. At that very moment, written report was placed by the informant. In para-14, he had stated that he inspected the place of occurrence on the following morning. At that very time, he had not found the lantern in burning condition. He had not tested whether kerosene oil was present or not. In para-16, he had stated that he had not inspected the place of occurrence before receiving written report. Before that he had recorded further statement of informant. He had copied the written report in the case diary. In para-17, the averments relating to written report have been questioned by him though



inadmissible in the eye of law as he does not happen to be maker of the document and in likewise manner para-18 happens to be with regard to, Ram Hirday Paswan has not been examined and in the same breath para-19 happens to be relating to statement of Naresh Mandal which has also not been examined. Therefore, same are not admissible in the eye of law.

30. After bifurcating trial, S.Tr. No. 607A/2009 proceeded against accused, Amit Mandal, and after apprehension of the Amit Mandal, the remaining witness, Investigating Officer has been summoned who deposed as PW-9, who as is evident deposed contrary to CD as well as his evidence as PW-9 relating to S.Tr. No. 607/2009 to some extent.

31. During examination-in-chief, this witness stated that he received information with regard to making firing by the accused persons at the house of Arun Kumar Yadav. He had further received information that at about 8:30 PM, Amit Mandal, Prince Yadav, Sanjay Sao @ Gorki and Akbar Mandal along with 3-4 unknown persons came and began to fire indiscriminately from rifle. After receiving information, he rushed along with other police officials, constable to the place of occurrence. Main gate of informant was closed. He directed to open the door whereupon the door was opened and then went inside. He saw dead bodies of two persons lying in the



verandah. One old lady was injured with oozing wound. There was copious blood over the place of occurrence. The inquest report was not prepared at that very moment instead thereof, the injured was sent for medical treatment. On the following morning, he again came to the place of occurrence, prepared inquest report, sent the dead body for postmortem. He also seized three empty cartridges from the place of occurrence. On the basis of the written report received from the informant on the following day, he registered the case. Inspected the place of occurrence and detailed the same under para-4. At para-5, he had stated that he came to know regarding death of Dayavati Devi. Recorded statement of witnesses. Received postmortem report and then thereafter submitted the charge-sheet after completing investigation.

32. During cross-examination, he had stated that after knocking the door for 2-3 minutes, the door was opened. He had not seen anybody running away therefrom. He had not seen any body in an injured condition or dead outside verandah as well as room. Then he had stated that he is unable to say that after how much time of altercation, this occurrence took place. He is unable to say that what kind of dispute relating to partition was there. When he reached at the place of occurrence, he found only one lantern. He had shown the occurrence to be true during his investigation.



33. In Sessions Trial No. 607/2009, DW-1, namely, Maheshwar Sah has been examined on behalf of defence who had stated that he knew Arun Yadav as well as Sanjay Yadav. He further stated that Sanjay used to say that Arun Yadav has shown dishonesty. On the day of Vijaydashmi in the year 2008, Kapildeo Yadav was going to Arun Yadav. On query, he disclosed that he is going to conduct Panchayati. Thereafter, he had gone to the house of Arun Yadav. At about 8:30 PM, he heard sound of firing coming from the house of Arun Yadav wherefrom he along with others rushed. He had not seen anybody running away therefrom. He found gate of Arun Yadav closed. Police came and then forced them to open the door. They were not allowed by Arun and Sanjay to go inside. At that very moment, there was no electric connection. During cross-examination, he had stated that he came to know regarding murder of two persons. Then he stated that an allegation has been levelled against Amit Mandal, Prince Yadav, Sanjay Sao @ Gorki and Akbar Mandal to have murdered the deceased.

34. From the ocular evidence, it is clear that all the deceased had sustained fire-arm injuries which are found duly corroborated by the respective doctors who conducted the postmortem i.e., PWs 7 and 8. On account thereof, there happens to be no controversy regarding death of respective deceased by means of fire



arms. Furthermore, from the evidence of PW-9, it is apparent that the dead bodies were found in the verandah. The remnants of the firing were also perceived by the Investigating Officer though while examining as PW 9 under Sessions Trial No. 607A/2009, he had deviated from his earlier version, even contrary to the case diary but due to ignorance of the prosecuting agency, the same went unnoticed. From the ocular evidence, it is also evident that though appellants have tried to confront their evidence towards their previous statements so recorded under Section 161 of the Cr.P.C. However, they have not been able to get it corroborated from PW 9(Investigating Officer) whereupon, it cannot be said that there happens to be exaggeration or embellishment in the evidence of these PWs. In the aforesaid background, when the evidences of the individual PW have minutely been gone through, it is evident that none has been cross-examined over the manner of occurrence as well as source of identification. Therefore, the evidence whatever stated by the PWs is found unshaken.

35. The only question remains as to whether the witnesses being family members could be discarded.

36. *In Anwar Ali v. State of U.P* as reported in (2011) 15 SCC 360, it has been held as follows:-

8. Once the prosecution has been able to prove its case by leading admissible and cogent evidence



with reference to statement of the witnesses, the investigation conducted by the police officer and documentary evidence, then the statements of the eyewitnesses which are corroborating the prosecution case cannot be brushed aside only because they are relatives of the deceased. These statements even otherwise are reliable and trustworthy. This is further supported by the medical evidence of Dr D.P. Mishra who had performed the post-mortem upon the body of the deceased, he noticed as many as 29 injuries upon the body of the deceased including injuries caused by knife, lacerated wounds, punctured wounds and it was clearly stated by the doctor that the death was caused due to shock and haemorrhage as a result of ante-mortem injuries caused upon the body of the deceased.

37. In the case of *Kartik Malhar v. State of Bihar* as reported in (1996) 1 SCC 614, it has been held thus:-

15. As to the contention raised on behalf of the appellant that the witness was the widow of the deceased and was, therefore, highly interested and her statement be discarded, we may observe that a close relative who is a natural witness cannot be regarded as an interested witness. The term ‘interested’ postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason. In *Dalbair Kaur (Mst) v. State of Punjab*[(1976)4 SCC 158] it has been observed as under: (SCC pp. 167-68, para 11)

“Moreover, a close relative who is a very natural witness cannot be regarded as an interested witness. The term ‘interested’ postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. Such is not the case here.”

38. In *Ashok Rai v. State of U.P.*, as reported in (2014) 5 SCC 713 it has been held:-

12. It is argued that the prosecution case rests



on evidence of interested witnesses. No independent witnesses are examined. Unless there is corroboration to the evidence of interested witnesses, their evidence cannot be accepted. We cannot accept this submission. The evidence of interested witnesses is not infirm. It would be good to have corroboration to their evidence as a matter of prudence. But corroboration is not always a must. If the evidence of interested witnesses is intrinsically good, it can be accepted without corroboration. However, as held by this Court in *Raju*, [Raju v. State of T.N. (2012) 12 SCC 701] the evidence of interested witnesses must be scrutinised carefully. So scrutinised, the evidence of PW 1, PW 2 and PW 4 appears to be acceptable.

39. In the *State of Punjab v. Suraj Prakash* as reported in *2016 Cri.L.J. 1604*, it has been held as follows:-

Though an attempt has been made to contend that the witnesses are all relatives of the deceased and, therefore, partisan having regard to the substance and the coherence of their testimony, we are of the view that this factor per se cannot discredit them or adversely affect the probative worth of their statements on oath.

40. On account of non examination of Vidyanand Yadav, much stress has been laid on behalf of appellants. A similar has been taken into consideration in the case of *Sadhu Saran Singh v. State of U.P.* reported in *2016 Cri. L. J 1908*, where in under para 21(vi), it has been held as follows:-

(vi) As far as the non-examination of any other independent witness is concerned, there is no doubt that the prosecution has not been able to produce any independent witness. But, the prosecution case cannot be doubted on this ground alone. In these days, civilized people are generally



insensitive to come forward to give any statement in respect of any criminal offence. Unless it is inevitable, people normally keep away from the Court as they feel it distressing and stressful. Though this kind of human behaviour is indeed unfortunate, but it is a normal phenomena. We cannot ignore this handicap of the investigating agency in discharging their duty. We cannot derail the entire case on the mere ground of absence of independent witness as long as the evidence of the eyewitness, though interested, is trustworthy.

41. After all, the event is to be perceived in its totality. No apparent motive save and except whatsoever incorporated by Arun Yadav in the written statement disclosing with regard to character of the appellants being dreaded criminals and further their activities were the motive for commission of the crime being resisted at his end, has been shown by the prosecution. However, from the evidence on record, it is conclusively found that eye witnesses have firmly substantiated the prosecution version and on account thereof, having absence of clear motive will not affect upon acceptability of the prosecution case, as held in *Inder Singh & Ors. v. State of Rajasthan reported in (2015)2 SCC 734* under para-19 which is as follows:-

“19. same argument was advanced on there being lack of any clear motive but that is not at all necessary or material when the offences have been proved by clear and cogent evidence including eye witness.

42. In *Upendra Pradhan v. State of Orissa* reported in *(2015) 11 SCC 124*, it has been held as follows:-



“18. The *second* ground pleaded before us by the counsel for the appellant-accused, that the testimonies of PW 1 and PW 7 should not have been considered, as they were interested witnesses, holds no teeth. We are of the opinion that the testimonies of interested witnesses are of great importance and weightage. No man would be willing to spare the real culprit and frame an innocent person. This view has been supplemented by the decision of this Court in *Mohd. Ishaque v. State of W.B*”(2013)14 SCC 581(*Bindeshwari Prasad Singh v. State of Bihar*):(2014)4 SCC (Cri) 299

43. It is further evident from the evidence of the PW-8 that during course of trial two family members are gunned down by the appellant and so non presence of Vidyanand was but natural.

44. With regard to non framing of charge relating to murder of Dayavati Devi, though convicted therefor also, as objected by the appellants is found legally non maintainable in the background of the fact that death had occurred on the same day, postmortem was conducted on the same day and all those documents along with statement of witnesses have already been received by the appellants in compliance of Section 207 CrPC. Apart from this, Section 464 CrPC takes care thereof. More interestingly, the appellants could not be able to show as to what kind of prejudice they have, on account of non framing of charge for Dayavati Devi.

45. Now coming to the evidence of the DW-1, it is apparent that he had not stated with regard to his presence at the time



of occurrence rather his presence, according to he, himself was along with arrival of police which effected admittedly, after some time. Hence this evidence is not going to rescue the appellants from the allegation whatever been attributed by the prosecution.

46. Having minute observation of the facts, evidences as well as legal propositions as detailed hereinabove, it is crystal clear that these appeals san merit, hence dismissed.

47. Since appellants are in custody, they are directed to serve remaining parts of sentence.

(Aditya Kumar Trivedi, J)

I agree
(Samarendra Pratap Singh, J)

(Samarendra Pratap Singh, J)

Patna High Court
21st December 2016.
Perwez/AFR

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