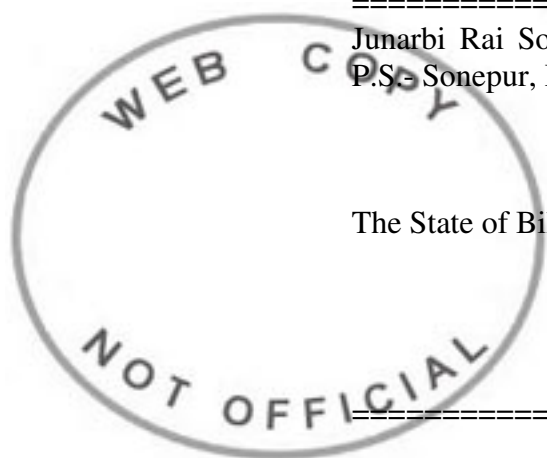




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.701 of 2014

=====

Junarbi Rai Son of Late Deonath Rai resident of village- Sabalpur Nawal Tola,
P.S. Sonepur, District- Saran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 666 of 2014

=====

1. Kismatia Devi Wife of Junarbi Rai
2. Nathuni Rai Son of Late Laldas Rai Both are resident of Village - Sabalpur
Nawal Tola, P.S. - Sonepur, District - Saran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 700 of 2014

=====

1. Lalit Rai Son of Sri Nathuni Rai
2. Manoj Rai
3. Ashok Rai @ Kariman Rai @ Kariman Mahto Both are sons of late Deonath Rai
All are resident of village- Sabalpur Nawal Tola, P.S.- Sonepur, District- Saran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 739 of 2014

=====

1. Brij Kishore Rai son of Jagdish Rai
2. Prem Lal Rai son of Bhagwan Rai
3. Ram Baboo Rai son of Late Bishundhari Rai
4. Dilip Mahto son of Siya Ram Mahto
5. Mohan Rai son of Sitab Rai
6. Jagat Rai son of Ram Sewak Rai

7. Awadh Kishore Rai @ Awal Kishore Rai son of Jagdish Rai
8. Upendra Mahto son of Late Sital Mahto
9. Sitab Lal Rai son of Megh Nath Rai All are resident of village - Sabalpur, P.S. - Sonpur, District - Saran.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. S.N.P Sinha, Sr. Adv.
Mr. Mukesh Kumar
Mr. Rohit Kumar
Mr. Jitendra Narain Sinha
Mr. Rashmi Bharti
For the State : Mr. A.K. Sinha, A.P.P.
Mr. S.C. Mishra, A.P.P.
Mr. A. Sharma, A.P.P.
Mr. D. K. Sinha, A.P.P.
For Informant : Mr. Naresh Dikshit
Mr. Brij Bihari Tiwary

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)
Date: 30-06-2016

Heard learned counsel for the Appellants, learned counsel for the Informant and learned counsel appearing on behalf of the Additional Public Prosecutor.

2. The above Appellants have been convicted and sentenced by a Judgment dated 16/24.07.2014 passed by the Adhoc Additional Sessions Judge-V, Saran at Chapra in Sessions Trial No. 603 of 2006 arising out of Sonapur P.S. Case No. 190 of 2005 whereby the Appellant Junarbi Rai has been convicted under sections 302 and 27 Arms Act and sentenced to undergo Life



Imprisonment and fine of Rs.10,000/- and 3 years Rigorous Imprisonment and fine of Rs. 1000/- respectively, in default of which, 6 months further Simple Imprisonment. The Appellants Nathuni Rai and Kismatia Devi have been convicted under sections 115 I.P.C. and sentenced to undergo Rigorous Imprisonment for 7 years and fine of Rs.5000/- each, in default of which, 3 months further Simple Imprisonment. Further rest of the Appellants have been convicted under sections 148 and 452 I.P.C. and sentenced to undergo one year and two years Rigorous Imprisonment respectively.

3. The case of the prosecution, according to Informant Kamal Kumar @ Milan Rai (P.W. 12), is that on 18.10.2005 at about 7:00 am when he was at home, 16 accused persons variously armed with rifles, including the above named Appellants came inside his house and when he protested, they ran to assault. He, however, locked himself in one room in the house. Then the accused persons committed dacoity in his house and also threatened his wife Manju Devi on the terrace. They then left the house abusing them and on the orders of the Appellant Nathuni Rai, wife of Junarbi Rai brought a licensee gun and gave it to Junarbi Rai. Junarbi Rai fired with the same at his wife Manju Devi who fell down on the terrace itself and died. There were other



accused persons namely Appellants Dilip Mahto, Upendra Mahto and accused Ramesh Mahto, who were abusing and assaulting them. When he shouted, Appellant Junarbi Rai fled away whereafter the villagers gathered. The reason for occurrence was old dispute. This information was given by the Informant before the S.I. of Sonapur Police station on 18.10.2005 at 2:00 pm at the village itself.

4. During trial, the prosecution examined 15 witnesses. P.W. 1 Suresh Rai @ Rakesh Kumar Rai, who is the cousin of the Informant and lived in the same court-yard stated that on 18.10.2005 at about 7:00 am. while he was in his house, he heard some *hulla* at which he came and saw 17 accused persons committing robbery in the house of the Informant Kamal Kumar (P.W. 12). He names all of them which includes the Appellants. When the 17 accused persons left the house, he entered and went to Terrace where his family was present. Then he saw Appellants Nathuni Rai, Junarbi Rai and his wife Kishmatia Devi standing about 2-3 *laggis* away towards East of his house. When 17 accused persons joined there Appellant Nathuni Rai ordered that the rifle be brought. On his orders, Kishmatia Devi brought out a rifle and gave it to her husband Junarbi Rai. He then fired at the deceased Manju Devi, on account of which she fell down dead on the

Terrace itself. At that time, the deceased was pregnant. He stated that some of the accused persons had *lathi* and *danda* as well and they took away the jewellery from the house.

5. He explained his relationship with the Informant, according to which, he was the first cousin and lived in the same house. He specifically stated that there was no enmity between the parties from before. He explained in his cross-examination that he was inside the house before the occurrence but on hearing *hulla*, he came out but did not see anyone towards South of the house of Millan Rai (Informant). There was *hulla* going on from the Terrace of the Informant and it was the deceased, Manju Devi, who was screaming. None of the accused persons were on the terrace but he stand there. He did not see anyone injured on the terrace then and it was through the courtyard of the Informant that he had gone up to the terrace, while the accused persons were still in the courtyard. None of the accused persons saw him going up and he got down after two hours. He stated that some latches of the doors were broken but he did not count the exact number, nor did he see anyone removing the articles, when he came down from the terrace. No one assaulted him or the Informant. He saw the accused persons standing in the fields of Siya Ram Mahto. It was about 2-3 *laggis* away and they stood there for about 5-10 minutes

and then went home. He specifically stated that the firing was resorted to the fields of Siya Ram Mahto and it was when the deceased was abusing that she was shot at whereafter the accused fled away. He did not know as to who had informed the Police Station nor did he see as to when the Darogajee came.

His attention was drawn to the earlier statement that he had not stated that he had not seen the accused persons committing robbery and had not named the Appellants. Raju Rai, Kariman rai, Manoj Rai, Sitab rai, Mohan Rai, Rambabu Rai, Jagat Rai, Rajeshwar Rai, Raj Kishore Rai, Kishore Rai, Braj Kishore, Premlal Rai, Ram Prabesh Rai, Ramesh Mahto, Kapindar Mahto, Dilip Mahto, dineshwar Rai and Arbind Rai. He asserted that it was on the orders of the Appellant Nathuni Rai that Kismatia Devi had brought out the rifle and gave it to the Appellant Junarbi Rai. He admitted that he had heard Arun Kumar, the brother-in-law of Informant had been arrested three days earlier with illegal arms.

6. P.W. 2 Laxmi Yadav @ Laxman Rai stated that on 18.10.2005 at about 7:00 am. when he was returning from the fields, he saw 15 to 20 persons with *lathi*, *bhala*, *farsa* coming to the house of the Informant. 17 accused persons went inside whereas 3 persons namely Appellants Junarbi Rai, Nathuni Rai and Kismatia Devi stood outside. He names 17 persons, who went



in. Allegedly, after having committed robbery, when they came out they all went and joined the 3 Appellants, who were standing outside. The wife of the Informant namely deceased Manju Devi was along with his mother and aunty on the roof at which Appellant Nathuni Rai directed his daughter-in-law Kismatia Devi to bring the rifle so she went inside the house, brought out the rifle and gave it to her husband, Junarbi who shot dead the deceased Manju Devi on account of which she fell down dead. He learnt that the accused persons had committed dacoity of articles and cash of Rs. 50,000/- On firing, several persons came to the place of occurrence.

There were about 70-75 houses in the locality and his house was in the middle whereas that of the Informant was at the far most west at a distance of 30-40 laggis from his house. Several other persons stayed in between, some of whom were witnesses and he named them. He denied that Prem Lal Rai had instituted a case against him. He also stated that Informant had a Hotel in Patna Civil Court and he used to reside at both the places. He confirmed that there was no enmity between the parties from before and they had a good relationship. He stated that when he went to the house of Informant, he did not find him but his mother, sister-in-law, wife and aunt as also children were standing outside



on the Veranda and the house was open. None of the accused assaulted them and he had seen the main door damaged. He stated that the accused persons were armed with *bhala*, *talwar* and *fersa* and stayed inside the house for 15-20 minutes and he himself was standing about 4-5 laggis away. He stated that the person who had fired was about 4 laggis (around 24-30 feet) away from the house of the Informant. He asserted that the firing had taken place from the East of the house from the Brinjal fields where the women folk was standing whereas the house was North facing.

His attention was drawn to the earlier statement and that he had not named the Appellant Nathuni Rai or that it was on his orders that Kismatia Devi had brought out the rifle. He denied that he had not named Appellants Nathuni Rai, Sitab Rai, Mohan Rai, Jagat Rai, Awadh Rai and Braj Kishore Rai. He stated that the Police Station was about 3 kilometer away from his house and it would take about 20 minutes to reach it. He did not know as to who informed the Police or brought it, nor as to when it arrived. He conceded that there was a criminal case against him which had been instituted by Appellant Dilip Mahto, in which the father of the Informant was also an accused. He confirmed that no one apart from Manju Devi had been injured. He denied the suggestion that it was because the accused persons had opposed him in the

Mukhiya Elections in the year 2006 that he had falsely implicated them. It was suggested to him that Jagat Rai was employed in the Railways and was not at the place of occurrence on the fateful day.

7. P.W. 3 Braj Nandan Rai is a formal witness, who on the point of recovery of blood stained earth, piece of flesh and bone of which seizure list was prepared. He proves his signature on the same as Exhibit-1. He is the son of Dev Nandan and who had contested the election against the Appellant Junarbi Rai and lost the same.

8. P.W. 4 Phool Kumari Devi is an inmate of the house, who stated that on 18.10.2005, 17 accused persons entered inside the house whereas 3 persons stayed outside. They committed loot in the house and fled away with jewellery and cash of Rs. 50,000/-. After having committed robbery, they joined the Appellants Nathuni Rai, Junarbi Rai and Kismatia Devi. She herself went to the terrace along with the deceased and other female inmates and started screaming at which Appellants Nathuni Rai directed his daughter-in-law Kismatia Devi to bring out the gun, so she did so and handed over the same to Junarbi Rai, who fired at the deceased Manju Devi, on account of which she died then and there. She conceded that there was no enmity with the accused from before. However, she stated that one Siya Ram



Mahto, father of Appellant Dilip Mahto and nephew of Appellant Upendra Mahto had promised to sell land for which he had taken consideration amount but neither did he execute the sale deed nor did he refund the money. She stated that when the accused entered the house, she was in the *Osara* whereas the deceased was on the terrace and none of the accused persons assaulted them. They had only threatened her. The passage of the terrace was a stair-case from inside the court-yard but she did not see any accused persons going up. The accused persons stayed inside the house for half an hour but did not assault the Informant. She asserted that three of the accused persons including the Appellants Nathuni Rai and Junarbi Rai were standing outside. She explained that the accused persons belonged to 4-5 families and that they had a house in Patna. She also explained the relationship between herself Amarnath Rai (P.W. 8), P.W. 1 Rakesh Rai, Upendra Rai (P.W. 9), Suresh (P.W. 5) and Shanti Devi (P.W. 10). She admitted that Appellant Jagat Rai used to work in the Railways.

9. P.W. 5 Suresh Kumar Rai stated that in the morning of 18.10.2005 when he was going to a shop, he saw 15-20 persons standing at the door of the Informant and abusing and entered his house, including the present Appellants and committed robbery. Out of which, Jagat Rai was one of them. After having



committed dacoity, they came out and joined Appellants Nathuni Rai, Junarbi Rai and Kismatia Devi, who were standing nearby. When the accused came out, he saw deceased Manju Devi his mother-in-law, sister-in-law and uncle-in-law screaming from the terrace. At this, the Appellant Nathuni Rai directed that the gun be brought so Kismatia Devi brought out the rifle and gave it to the Appellant Junarbi Rai, who fired at Manju Devi on account of which she fell down dead. He is a seizure witness to a tin box which was recovered by the Investigating Officer of which a seizure list was prepared. He proves his signature on the same as Exhibit-1/1. He stated that Darogajee came to the place of occurrence at 3:00 to 3:30 pm. whereas the Sonpur Police Station was 3 to 4 kilometer away. No Chowkidar came there nor did he know as to whether anyone had gone to inform the Police.

His attention was drawn to the earlier statement that he had not stated the names of Appellants Kismatia Devi, Ashok Rai, Mohan Rai, Awadh Rai, Braj Kishore Rai, Jagat Rai, Upendra Mahto and Dilip Mahto and some others. He also denied the suggestion that he had not stated that 17 accused persons had entered the house of the Informant and committed dacoity whereas three accused persons stood outside or that the deceased along with rest of the women folk was screaming on the terrace at which the



Appellant ordered and Kismatia Devi brought out the rifle and gave it to Junarbi Rai after which he fired. He stated that in a case instituted by Chandeshwar Mahto he had obtained bail. He clarified that the box was recovered from inside the house of the Informant and Lalit Rai had a pistol when he entered the house of the Informant. He also explained that three accused persons, mentioned above, did not enter the house.

10. P.W. 6 Dineshwar Rai is a formal witness on the point of preparation of Inquest Report and Seizure List regarding one cartridge upon which he signed which he proved Exhibit-1/2 and 1/3. He explained that the Informant was his nephew by relation.

11. P.W. 7 Amrendra Rai stated that while he was at home having tea on the date and time of occurrence, he heard *hulla* at which he saw some persons including the present Appellants coming out of the house of the Informant armed with fire arms and *lathi, farsa* and *bhala* and joined Appellants Jagat Rai, Nathuni Rai and Kismatia Devi. The wife of the Informant started screaming at which the Appellant Nathuni Rai directed his daughter-in-law to bring the rifle. She did so and handed it over to the Appellant Junarbi Rai, who fired at the deceased Manju Devi. He was a signatory to the recovery of empty cartridge. He proves his

signature on the seizure list as Exhibit-1/4.

He said he had no knowledge of the Informant having enmity or dispute with the accused persons. He denied that he stated before the Police that Siya Ram Mahto (father of the Appellant Dilip Mahto) had entered into the agreement with the Informant which had led to a dispute between them and about 10-15 years back a Panchayati had been held and soon thereafter, a Panchhayati was to be again convened. He explained that Suresh Rai P.W. 1 was his own brother.

He denied the knowledge about a case having been instituted by Siya Ram Mahto or Premlal Rai. He stated that no one asked the accused persons as to why they stood with arms. The accused persons had not assaulted the villagers, who had gathered there and kept standing there in the fields till after about 15-20 minutes he had reached. The distance between where they were standing and the house of the Informant was about 75 meters.

His attention was drawn to the earlier statement that he had stated that while he was at home, he heard sound of two firing then he went to the place of occurrence. Also he had not taken the names of Appellants Lalit Rai, Jagat Rai, Rambabu Rai, Raj Kishore Rai, Awadh Rai, Dilip Mahto and Upendra Mahto. He asserted that had he stated before the Police that he had seen the

accused persons coming from the house of the Informant.

He admitted that Appellant Jagat Rai used to work in the Railways but denied that on the date of occurrence, he was working. He also denied that he and Informant were from common ancestors.

12. P.W. 8 Amarnath Rai, father of the Informant, stated that on 18.02.2005, while he was going to Chapra, his relative, who was along with him, received a phone call from the Informant that his wife had been murdered so he returned. The Informant and others informed him that on the orders of the Appellant Nathuni Rai, Kismatia Devi brought out a rifle and gave it to Junarbi Rai, who had fired at the deceased on the account of which she died. He further learnt that the accused persons whom he names including Appellants Kismatia Devi, Junarbi Rai and Nathuni Rai had committed dacoity in his house. He stated that he did not know as to why the dispute had taken place and earlier there was no cause of friction between the parties. He did not know as to what exactly had been stolen from his house. He admitted that the father of Appellant Dilip Mahto i.e. Siya Ram Mahto instituted a criminal case against him in which he was on bail and two brothers-in-law of the Informant had been caught in the market with illegal arms two days before the occurrence.

13. P.W. 9 Upendra Kumar is a formal witness on the point of seizure of a broken box and proves the signature as Exhibit-1/5.

14. P.W. 10 Shanti Devi is mother-in-law of the deceased and mother of the Informant, who has given a different picture. She stated that on the date of occurrence, about 22-25 persons came looking for her son Informant and started threatening him. She names the present Appellants as one of them. They forced themselves into the house even after she locked the door and they committed dacoity. Some accused persons had firearms whereas the rest had *hasua* and such weapons. They allegedly took away of Rs. 50,000/- in cash and Jewellery. She stated that the accused persons were directing them to get all the articles together at which she started abusing so Appellant Nathuni Rai abused her and then Junarbi Rai went to his house and brought out a rifle and fired which did not hit anyone then the second shot was fired at her daughter-in-law, Manju Devi, who was pregnant, on account of which she fell down dead.

In cross-examination, she denied that there was land dispute in between the parties and explained the inter se relationship of the family of Appellant Dilip Mahto. She denied there was a dispute of cutting away of the earth before the

occurrence, but the Court noticed that he had down cast eyes when she replied.

She described the manner of occurrence and stated when the accused persons stayed inside the court-yard, she ran up to the terrace but the accused did not follow her. She then stated that the accused persons went out of the house and stood on the lands of Siya Ram Mahto where Appellants Nathuni Rai and Junarbi Rai were standing and there was altercation between both the parties, but they had not pelted stones. She asserted that her son had also gone up to the terrace. There is nothing else which is of note in her cross-examination.

15. P.W. 11 Kaushaliya Devi is another inmate of the house, who stated while she was at home, 19-20 persons entered into the house at which she ran up to the terrace along with Informant and rest of the women folk. She names the accused persons namely Appellant Awadh Kumar, Mohan Rai, Sitab Rai, Jagat Rai and Lalit Rai, who committed dacoity in her house and then went on the fields of Siya Ram Mahto from where they started abusing. It was then that Appellant Nathuni Rai directed Junarbi Rai to bring out rifle then Kismatia Devi brought the rifle and handed it over to Junarbi Rai, who fired, but did not hit anyone. Then again he fired from the field of Siya Ram which hit the

deceased Manju Devi, who fell down dead. She stated that she did not know as to why the dispute had arisen.

She stated that Amarnath Rai (P.W. 8) was her brother-in-law but did not know about any dispute between Siya Ram and him. She denied that she had stated about a dispute with the accused persons on cutting earth and that accused entered the house with fire arms but no one was assaulted inside but had stated that they had said that in case, they would come to the fields, they would kill them.

She also conceded that there were an altercation from both sides. This had happened after the accused had left the house. Surprisingly she twisted the story and said that when the accused persons entered the house, all of them were empty handed and it was only later Kismatia Devi had given arms to her husband while Junarbi Rai was empty handed.

16. P.W. 12 Kamal Kumar @ Milan Rai is the Informant, who stated about dacoity on 18.10.2005. While he was at home 18-20 persons including the present Appellants came inside his house and started abusing him. They were all armed with weapons and started to chase him. He ran and locked himself in a room. Then the accused persons entered the house and committed dacoity and took away Rs. 50,000/- As soon they left, he went to

the terrace and saw all the accused persons standing on the fields of Siya Ram Mahto and abusing them. Then Appellant Nathuni Rai directed the rifle be brought so the licensee rifle was brought with which Appellant Junarbi Rai fired at the deceased, who was pregnant. Several persons came after he raised *hulla*.

The reason for occurrence was that Siya Ram Mahto (father of the Appellant Dilip Mahto) and Ramesh Mahto had taken some money for executing the sale deed but had not done so and the same was in his possession. He stated that after the Police came he recorded the *fardbeyan* and he proves his signature as Exhibit-2/B.

He stated that he did not have any document with regard to the transaction between himself and Siya Ram Mahto or his family and two of his family members i.e. his son and brother were accused in the present case namely Dilip Mahto and Ramesh Mahto. He described that the Police Station was about 4-5 kilometer away from his house but neither did he go to the Police Station nor did he instruct anyone to do so and stated that the accused had tried to force themselves inside the room where he had hidden himself. He remained inside for about 10-15 minutes and when he came out, the accused had already left. None of the inmates was assaulted inside the house. He stated that the firing

was resorted to from a distance about 3-4 *laggies*, each *lagga* was of about 9 feet. He stated that the box was not taken from the house and it was broken there itself. It was suggested to him that after the death of his wife, he had married, his sister-in-law but he denied but the Court noticed he had done so with the down cast eyes. It was suggested to him that he had got his wife murdered and falsely instituted the present case.

17. P.W. 13 Dr. Jai Prakash Singh held the Postmortem of the deceased on 18.02.2005 and proved the Postmortem Examination Report as Exhibit-3. He found the following injuries on her person :

External Examination : *Lacerated wound on left side of skull 8" x 6" with craniofacial bones, left parietal, frontal, occipital, left temporal, left maxilla, left mandible were fractured with charring of surrounding skin – the brain matter were out of cranial cavity.*

On Dissection : *All other viscera were intact and pale. Uterus contains a fourteen week size dead female features. In my opinion the cause of death was hemorrhage. Shock and injury to brain which were caused by firearms.*

In cross-examination, he stated that charring was possible if fire was resorted to from a distance within 5 feet.

18. P.W. 14 Chowkidar Arse Alam produced the material exhibit; a box and in formal in nature.

19. P.W. 15 Sayyad Wasiullah was posted at Sonepur Police Station at 7:30 am. He learnt that there was firing going on in village Sabalpur. He then recorded a *Sanha* in the register and left for Sabalpur for verifying this information. When he reached the house of the Informant, he saw the dead body of the deceased Manju Devi on the terrace after which he recorded the *fardbeyan* of her husband Kamal Kumar @ Milan Rai (P.W. 12) on which some witnesses signed. He proved the signature as Exhibit-2/c. He proved the First Information Report as Exhibit-4 and prepared the Inquest Report which is marked as Exhibit-1/3. He inspected the place of occurrence, which was the house of the Informant and on the terrace, the dead body was found. The house had three rooms and inside the house, there was one broken tin box. He prepared the seizure list of the articles which is marked as Exhibit-5. He also seized the blood stained earth, which was marked material Exhibit-1. He proves the box as material Exhibit-2 and the seizure of the same as Exhibit-5/A. He seized one cartridge in the field, which was produced as material Exhibit-3.

He stated that immediately, he raided the house of the Appellant Junarbi Rai but he along with other family members was found absent. He arrested Prem Lal and Nathuni Rai.

In cross-examination, while he refused to divulge as to who had informed about firing at the village, he stated he reached at the place at about 8:50 am. but inspected the place of occurrence at 2:15 pm. However, he did not find any mark of violence on any of the doors including the main door. He did not mention as to where the articles were found scattered but the battered tin box was recovered from a room but the latch or lock were not broken. He described the box being intact on all sides except that the top portion was depressed. It did not contain any article nor was any broken lock produced before him. He stated that the place, where the cartridge was found was about 10-20 yards away.

His attention was drawn to the statement of P.W. 1 Suresh Rai @ Rakesh Kumar Rai and he confirmed that he had not named Appellants, Kariman Rai, Manoj Rai, Sitab Rai, Mohan Rai, Rambabu Rai, Jagat Rai, Braj Kishore Rai and Dilip. He had also not stated about the Appellants giving orders or that Kismatia Devi had brought rifle and had given it to Junarbi Rai.

20. P.W. 2 Laxmi yadav @ Laxman Rai stated that

at the time of the occurrence, he was in the Latrine and then he had heard sounds of firing. He had not stated that it was on the orders of the Appellant Nathuni that Kismatia Devi had brought out rifle and had not named Appellants Nathuni Rai, Sitab Rai, Awadh, Mohan Rai, Jagat Rai and Braj Kishore Rai. He had not stated about 17 persons having entered the house of the Informant and Rs. 50,000/- being stolen.

21. Witness Phool Kumari Devi (P.W. 4) had stated that on the date of occurrence, the accused persons were digging the earth at which they asked them to stop.

22. P.W. 5 Suresh Kumar Rai had not disclosed the names of Appellants Kismatia Devi, Ashok Rai, Mohan Rai, Awadh Rai, Braj Kishore, Jagat Rai, Upendra Mahto and Dilip Mahto. He had also not stated that 17 persons entered the house and committed robbery and started looting. He had, in fact, stated that Junarbi Rai entered the house along with others and started looting as also that when the deceased started abusing, Kismatia Devi brought a rifle and gave it to the Junarbi Rai.

Amarendra Kumar Rai (P.W. 7) had stated that at the time of occurrence, he was having tea and on hearing *hulla*, he had gone to the place of occurrence. He had not named Appellants Mohan, Jagat Rai, Rambabu, Awadh Rai, Dilip Mahto, Upendra

Mahto. He had also not stated that when he reached there, he had seen the accused persons coming out from the house of the Informant and thereafter, Junarbi Rai had stood in the fields.

23. P.W. 11 Kaushaliya Devi had stated that the accused started digging the earth on the date of occurrence for which a Panchayati was to be held and that there was some deal in favour of Amarnath and she had not stated the accused had climbed the terrace or that the Appellant Junarbi Rai had threatened the deceased there.

The Informant had stated that the accused were abusing from the fields of Siya Ram Mahto where after Junarbi Rai fired and since the last two years, he was in possession of the land of Siya Ram.

24. D.W. 1 Hari Mohan Yadav is merely on the relationship of the Informant with another woman and D.W. 2 Shivjee Singh has proved the complaint filed by Siya Ram as Exhibit-D. D.W. 3 Ashok Sah had also proved an application of Siya Ram Mahto as Exhibit-e.

25. Counsel for the Appellants submits that the prosecution case appears to be highly improbable, the witnesses are interested and should not be relied upon. He also points out that the Postmortem Examination Report does not support the

prosecution case, thus, further denting the story.

26. On the other hand, learned counsel appearing on behalf of the Informant submits that all the witnesses have consistently stated that it was the Appellant Junarbi Rai, who had fired at the deceased on account of which she had fallen dead on the terrace and therefore, the conviction be maintained.

Further the conduct of the Appellant Junarbi Rai has been such that the Supreme Court had also taken note of it and set up an inquiry after which a case under section 340 I.P.C. was instituted against him. He submits that since the Appellant Junarbi Rai was a veteran criminal having high contacts, he must have got manipulated the Postmortem Examination Report, which should not be relied upon for disbelieving the eye witnesses. He further relies upon Modi's Medical Jurisprudence on the point that there should have been a definite finding by the Doctor as to the distance of firing and there could be circumstances in which a rifle can cause charring injuries even if it was shot from a distance. He further submits that witnesses do not belong to the same family and hence, there is no reason to disbelieve them.

27. On going through the evidence of the witnesses, we find certain notable points rendering the prosecution case suspicious, which we enumerate below :

i) Undisputedly the time of occurrence is 7:30 am.

The Investigating Officer stated that he heard about an occurrence of firing going on in the village at 7:30 am. and by 8:50 am., he was already there since the Police Station was merely three kilometres away from the place of occurrence. Yet the *fardbeyan* has been recorded at 2:00 pm. i.e. 5 hours late. There was no reason not to record the *fardbeyan* within the 5 hours of arrival of the Police unless the prosecution was biding time to set up a story with a view to rope in as many as possible in order to feed a grudge. We also find neither the Informant nor the Investigating Officer has offered an explanation on this very important aspect. The delay of five hours in reporting the matter may not always be a point of discussion, but in the facts of the instant case seen cumulatively with other factors, which we discuss below, we are inclined to view it adversely.

ii) In the First Information Report, the Informant has stated that all the accused persons numbering about 16 came inside the house and started to chase him after which he locked himself up in a room. Evidently, in such circumstances, it means that it was he who was being targeted on account of some immediate provocation.

In Court, this witness stated likewise and specified

that the reason was a dispute with Siya Ram Mahto (father of Dilip Mahto, cousin of Appellant Upendra Mahto) and Ramesh Mahto over a piece of land of which he conceded there was no document but fails to mention as to what was the immediate reason for the accused to attack him.

To test the evidence of the Informant in regard to the reason of dispute, we have taken note of the evidence of other witnesses. We find P.W. 1, who is the cousin brother of the Informant, says that there was no previous enmity between the accused persons and the Informant over any issue.

Similarly P.W. 2 Laxmi Yadav also supports the fact that none of the accused persons, who were residents of the same village, had any dispute with the Informant and in fact, they were on good terms.

P.W. 4 Phool Kumari Devi, who is the inmate of the house mentions only about the accused persons having entered the house and committed loot but omits to mention about them looking for the Informant.

P.W. 5 Suresh Kumar Rai also stated that there was no dispute between the parties from before.

P.W. 8 Amarnath Rai, father of the Informant, who is a hearsay witness, stated that he could not find out as to why the

dispute had arisen and in fact, it had arisen without any reason.

P.W. 10 Shanti Devi, mother of the Informant, supported the fact that there was no dispute with anyone, except Siya Ram Mahto, who was the brother of Ramesh and father of Appellant Dilip Mahto and the cousin brother of Appellant Upendra.

In the aforesaid circumstances, when there was no active enmity between the parties, nor any immediate cause of provocation for the accused persons to have forcefully entered the house of the Informant in full public view, we conclude that the prosecution is not bringing the true and full facts before the Court.

iii) Also, on going through the evidence of the witnesses, we find that there are two parts to the occurrence; i.e. house trespass and Murder.

(a) House Trespass :- The occurrence is said to have taken place at 7:00 am. in the morning. Apart from it appearing highly improbable that co-villagers in full public view would commit trespass in the house of a neighbour, the Investigating Officer (P.W. 15) Sayyed Wasiullah stated that in one of the rooms of the house, some articles were found scattered and a broken box recovered, but in cross-examination, he conceded that he had inspected the place of occurrence at 2.15



pm. i.e. after a delay of 5 hours but found no sign of any forceful entry on any of the doors, including the main door. Further, he did not make a note as to what articles were found scattered nor did he prepare the seizure list of such articles. The battered empty tin box allegedly recovered from the passage had no broken latch nor was there any sign of any force upon the same. He also did not recover any broken lock.

In such circumstances, the prosecution, in our opinion, has failed to satisfactorily prove the factum of trespass or loot in the house, which is a major part of the prosecution case.

(b) Murder :- The intriguing point is not explained by the Prosecution as to why the Informant even though available, was not harmed by the accused persons; and why his wife was targeted only because she was abusing forcefully as the counsel for the Informant submits. It is the case of the prosecution that the accused had entered the house variously armed, but none of the inmates including the Informant was assaulted in the transaction, which appears highly suspicious.

Under these circumstances, we are inclined to suspect that in fact, the Informant was not present at the place of occurrence since had he been present, he would surely have

sustained injuries when the accused were in such a large number or at least there would be some objective sign of force upon the doors. The prosecution appears to have later on developed the story of chase to show his presence as an eye witness.

iv) The consistent story of the witnesses is that the accused persons were standing in the fields of Siya Ram Mahto with whom the Informant had land dispute so there appears some connection between the occurrence and the dispute but the witnesses have not revealed what it is exactly. The women witnesses appear to be more forthcoming about it by saying that there was some dispute between the parties over digging of the earth.

In such circumstances, we are firmly of the opinion that the prosecution has tried to conceal the genesis of the occurrence, which appears to be shrouded in mystery.

v) The next clinching evidence is the Postmortem Examination Report, which suggests that the deceased had sustained fire arm injuries from a close range, which is in complete contradiction to the prosecution story, according to which the firing had taken place from a distance. Some witnesses say it was from a distance of 4 Laggies (24 feet) ; some say it was 75 meters away. The Investigating Officer was of the

opinion that the distance was 10 to 20 yards.

The argument of the counsel for the Informant is that the Appellant Junarbi may have managed the Doctor's Report is too speculative for acceptance in a Court of law. This Court is not sitting in Judgment over the Appellants subsequent conduct to test the earlier incident and hence, such argument has to be rejected.

(vi) Moreover, as per the evidence of the Investigating Officer there are serious contradictions in the evidence of the witnesses where the participation of individual accused is concerned or whether at all they were eye-witnesses, which evidence we have discussed earlier at length.

28. For the aforesaid reasons and discussions, we are inclined to give benefit of doubt to the Appellants. Hence, the above Appeals are allowed. The Judgment of conviction and Order of sentence dated 16/24.07.2014 passed against the Appellants by the Adhoc Additional Sessions Judge-V, Saran at Chapra in Sessions Trial No. 603 of 2006 arising out of Sonapur P.S. Case No. 190 of 2005 is hereby set aside. They are acquitted of the charges. The Appellants Kismatia Devi and Nathuni Rai are on bail. Hence, they are discharged from the liabilities of their bail bonds and rest of the Appellants are in jail custody, therefore, they

are directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	
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