

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.329 of 2011

[Against the judgment of conviction and order of sentence dated 16.03.2011 passed by the 1st Additional Sessions Judge, Samastipur, in Sessions Trial No.255 of 2009 arising out of Mohiuddin Nagar P.S. Case No.162 of 2008]

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Deokant Mishra, son of late Paltu Mishra, resident of village-Bhadaiya, Tola-Madhusudanpur, P.S.- Mohiuddin Nagar, District- Samastipur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Vivekanand Vivek, Advocate
Mr. Debesh Kumar Poddar, Advocate
For the State : Mr. A. K. Sinha, APP
For the Informant : Mr. Aditya Prakash Sahay, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 19-05-2016

By the judgment of conviction and order of sentence dated 16.03.2011 passed by the 1st Additional Sessions Judge, Samastipur, in Sessions Trial No.255 of 2009 arising out of Mohiuddin Nagar P.S. Case No.162 of 2008, the sole Appellant has been convicted under Section(s) 324, 307, 302 Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment life under Section 302 Indian Penal Code, rigorous imprisonment for ten years under Section 307 Indian Penal Code,

rigorous imprisonment for three years under Section 324 Indian Penal Code, and rigorous imprisonment for seven years under Section 27 of the Arms Act. All the sentenced were ordered to run concurrently.

2. Case of the prosecution according to the Informant, Shiv Kumari Devi (PW 5) is that there was some dispute between her family and that of the Appellant, Deokant Mishra, who happens to be the younger brother of her husband. Earlier, the Appellant, Deokant Mishra, had installed a Pillar after getting the land measured. On the date of occurrence, her husband deceased, Harikant Mishra, had called an Ameen, who said that the map was not correct and, therefore, the land could not be measured and he left. At about 4.00 PM, she along with his son (Murlidhar Mishra), daughter (Rita Devi), deceased Husband (Harikant Mishra) and grandson (Navin Kumar) went to the Appellant, who was sitting at his door. Her son, Murlidhar Mishra (PW 4), and grandson (PW 3) after offering initial pleasantries asked him as to why he had fixed Pillar on the land without getting proper measurement. The Appellant reacted and told her son to leave or else he would shot him dead. Her son reiterated that he could do whatever he like. The Appellant ran inside and came out with his licensed double barrel gun which his wife deceased, Laxmi Devi, caught hold of and told



him not to fire. However, the gun fired which hit the deceased, Laxmi Devi, on her head and she fell down dead. The Appellant thereafter shot at her husband, Harikant Mishra, who was standing near the Pillar fixed by the Appellant in the back of his house. Her husband also fell down dead. When her son wanted to lift him up, Appellant once again fired on account of which he was injured. Thereafter, the Appellant started firing indiscriminately due to which Rita Devi (PW 2), grandson, Navin Kumar (PW 3), and a passerby Kaliya Devi (not examined) sustained injuries. They were taken to the hospital for treatment. According to her, several villagers witnessed the occurrence. She alleged that the Appellant also sustained injuries when he fell down while fleeing.

3. During trial, the prosecution examined twelve witnesses, whereas, the defence examined two witnesses including the Appellant himself as DW 2.

4. On going through the evidence of the witnesses, we find that two stories have emerged; One is that which has been stated in the *fard-e-bayan* that after the wife of the Appellant sustained injury on account of accidental firing, the Appellant aimed at the deceased, Harikant Mishra, and targeted Murlidhar Mishra (PW 4) as also Rita Devi (PW 2), and Navin Kumar (PW 3) and the second version which has emerged is that, in fact, on the date of occurrence,

the Appellant was sought to be assaulted by the Informant and her family members and to save himself he took out his gun and in course of grappling his wife deceased Laxmi Devi and Harikant Mishra died and others were injured.

Therefore, it is for consideration of this Court as to what extent the Appellant will benefit from the two contradictory stories and it will have to test prosecution case on the anvil of objective evidence which would assume greater importance in such circumstances.

5. We are, thus, discussing the evidence accordingly for a better understanding of the conclusion that we reach.

6. PW 1 (Ram Suresh Chaudhary @ Suresh Chaudhary) is a co-villager, who stated that on the date of occurrence when he was going to his field, Appellant was sitting outside his door on a chair where Murlidhar Mishra (PW 4), Rita Devi (PW 2), Navin Kumar Jha (PW 3) reached. Murlidhar Mishra (PW 4) paid his respect to the deceased and asked him as to why he had constructed a Pillar on their land. The Appellant replied that he should leave or else he would be shot dead. On this, Laxmi Devi, deceased wife of the Appellant, also came there and then the Appellant went inside the house and brought out his double barrel gun. He then aimed at Murlidhar Mishra (PW 4) but his wife



deceased, Laxmi Devi, caught hold of the barrel of the gun and asked him as to what he was doing. However, the Appellant fired the gun which hit his wife Laxmi Devi on her forehead and she fell down dead. The Appellant fired the second shot which hit the next deceased, Harikant Mishra, who was standing near the Pillar in his field. When PW 4, Murlidhar Mishra, went to pick up his father, he was also shot at by the Appellant which hit him on the knee and thigh. The Appellant fired yet another time which hit one Kaliya Devi (not examined), Rita Devi (PW 2), Navin Kumar (PW 3), who were standing there. All the injured were taken to the hospital. The police thereafter arrived and recorded the *fard-e-bayan* of the Informant on which he also put his signature. He proved the *fard-e-bayan* as Ext. and his signature on the *fard-e-bayan* as Ext.1/A. He also proved the Inquest Report of Harikant Mishra as Ext.2

His attention was drawn to the entire statement given in examination-in-chief and that he had not stated this fact earlier but he denied the same. He also denied having seen any injury on the person of the Appellant or that he had also instituted a case in regard to the same occurrence.

It was specifically suggested to him that, in fact, he had stated earlier that when the Appellant, Deokant Mishra, came out of the house with his double barrel gun, his wife, Laxmi Devi, caught

hold of the barrel so that he would not fire and in course of snatching it accidentally went off.

He stated that the house of the Appellant was bounded by 10 feet high boundary wall and there was an iron grill at the door. He further stated that the Appellant, Deokant Mishra, was sitting outside the door and talk between him and PW 4 was taking place outside the gate, but there was no other witness present there. He stated that the deceased, Harikant Mishra, was about 5 laggas (about 30 feet) away from the Appellant in the field where the Pillar had been constructed. He further stated that the deceased, Laxmi Devi, had fallen inside the campus and once again repeated that the deceased Harikant Mishra was about 50 feet away from him as also that Murlidhar Mishra(PW 4), Kaliya Devi (not examined), Sangita Devi, Pallavi Devi were standing about 1-1½ Lagga (7-10 feet) away. Also that cartridge was recovered from the place near the Pillar but no blood was found there. He confirmed that empty pellets were recovered from the door of the Appellant. It was suggested to him, in fact, on the date of occurrence, Murlidhar Mishra and Navin Kumar (PW 3) and other relatives had started to dig out the Pillar which was attempted to be stopped by the Appellant and he was assaulted by them on account of which the Appellant took out his licensee gun which Murlidhar Mishra (PW 4) attempted to snatch

and in course of snatching the gun accidentally fired on account of which two persons lost their lives and others were injured.

7. PW 2 (Reeta Devi) is the daughter of the Harikant Mishra and niece of the Appellant. She stated that she was in her maternal home on the date of occurrence and had gone to the house of the Appellant, Deokant Mishra, along with Murlidhar Mishra, Navin Kumar, her nephew PW 3, and mother where Murlidhar Mishra asked of the Appellant as to why he had got the Pillar constructed without final measurement. At this, the Appellant told him to go away or else he would fire, but her brother instead told that he could do whatever he wanted. Just then, the wife of the Appellant i.e. Laxmi Devi came and he came back with a gun and aimed at her brother, Murlidhar Mishra, PW 4, which was attempted to be stopped by his wife deceased Laxmi Devi, but he nevertheless fired which hit his wife on the temple and she fell down dead. The Appellant thereafter fired aiming at Harikant Mishra, her father, due to which he also died. He fired third time which hit PW 4 on the thigh. When she went to her father, Appellant's firing hit her on the thigh and on the head of her nephew, Navin Kumar, PW 3, as also on the Kaliya Devi, who was crossing the street. They were taken to the hospital and treated at Patna.

She stated that the Appellant used to work in Uttar



Pradesh and had come back after retirement and his house was bounded with boundary wall and there was an iron gate. There was no dispute from before in regard to the land on which the Pillar was standing which was given to her father Harikant Mishra. She did not know the exact details of the land but had remembered the area of the land and they had been hit outside the house. She then elaborated that when the Appellant had fired at the deceased, Harikant Mishra, he had come outside his gate but was standing about 5 Laggas (30 feet) away from him and her father had sustained gun shot near the Pillar itself but no blood had fallen there.

Her attention was drawn to the earlier statement that she had not stated about her going with her brother and others and him having exchanged pleasantries with the Appellant, who thereafter threatened them. It was suggested to her that, in fact, occurrence had not taken place in the manner which she had stated but in another manner.

8. PW 3 (Navin Kumar Jha), maternal grandson of the deceased, stated that on the date of occurrence he along with Murlidhar Mishra (PW 4), Rita Devi (PW 2) went to meet the Appellant because the Appellant had got constructed the Pillar on the land of Murlidhar Mishra, his Mama. However, the Appellant threatened them just when his wife deceased-Laxmi Devi came out



and he himself brought out a double barrel gun and aimed at Murlidhar Mishra. In the meantime, Laxmi Devi, the deceased, caught hold of the barrel of the gun asking as to why he was doing such a thing but the Appellant fired which hit the deceased, Laxmi Devi, on her temple and she died instantaneously. The Appellant then fired at Harikant Mishra on his chest on account of which he also died. The Appellant fired third time on Murlidhar Mishra which hit him on his thigh and yet another time which hit him on his head and that thigh of Rita Devi (PW 2), and Kaliya Devi, who was crossing by the street, also sustained injury on her stomach after which all of them were removed to the hospital where they were treated.

In cross-examination, his attention was drawn to the earlier statement about the manner in which Murlidhar Mishra (PW 4) had asked the Appellant's explanation for constructing the Pillar. He denied knowledge about any earlier dispute between the deceased, Harikant Mishra, and the Appellant. He stated that the Appellant was sitting outside his gate and the deceased, Laxmi Devi, had fallen outside the gate and they themselves had moved 4-5 feet away when Laxmi Devi had sustained injury. He also confirmed that the distance of the Pillar between the place where Laxmi Devi had died was about 50 feet away where the deceased Harikant Mishra

was standing near the Pillar. Even they had sustained injury when they reached near the Pillar. She denied about any case instituted by the Appellant in regard to the same occurrence as also that the occurrence had taken place in another manner and that, in fact, the Appellant in order to defend himself had brought out his gun which accidentally fired on account of which two deceased died and the injured received injuries.

9. PW 4 (Murlidhar Mishra), son of the Informant, stated that on the date of occurrence at 2.30 PM he along the nephew Navin Kumar (PW 3), Rita Devi (PW 2) went to village Bhadaiya where his father informed him that his uncle, Deokant Mishra, the Appellant had forcibly constructed a Pillar on their land. When his father went to stop him, he ran to hit, so, his father left. At about 3.45 PM, when three of them went to the house of the Appellant, Deokant Mishra, who was sitting outside his door on a chair, and asked him as to why he had constructed the Pillar without getting proper measurement he got angry and told him to go from there or he would shoot him. Saying this, he went inside the house and took out a double barreled licencee gun and aimed at him. His aunt deceased-Laxmi Devi, came out of the house and caught hold of the barrel and tried to stop him but the gun fired which hit his aunt, Laxmi Devi, on the temple on account of which she fell down dead. Seeing this, they



all retreated but the Appellant aimed at his father-Harikant Mishra which hit him on the chest and he also died. When he went to lift his father, the Appellant aimed at him and fired which hit him on his thigh and subsequent firing hit his nephew Navin Kumar (PW 3), Rita Devi (PW 2) and one Kaliya Devi, who was crossing by the street. Several persons came on hearing gun shots and, so, the Appellant went inside dashing against the gate. The injured persons were removed to the hospital where they were treated. He explained that his deceased father and the present Appellant were two brothers and there was oral partition between them.

10. It appears that PW 2 and PW 3 had arrived on the same day and met at Hajipur Station and returned home where the deceased Harikant Mishra used to normally stay where they were told about the dispute. He stated that when the Appellant came out with gun, they retreated at a little distance but made no attempt to snatch the gun. He stated the deceased Laxmi Devi had fallen down outside the gate and that his father was at a distance of 45 feet from the place where firing was resorted to and it was near the Pillar itself that he had fallen down but no blood had fallen there. It was suggested to him that, in fact, occurrence had taken place in another manner when they had attempted to dig out the Pillar to which the Appellant had protested and was assaulted and it was in order to

defend himself that he had brought out his licensee gun which was attempted to be snatched by him and it accidentally went off and killed two deceased and caused injuries to witnesses and, in fact, they had instituted the present case to screen themselves from the case filed by the Appellant.

11. PW 5 (Shiv Kumari Devi) is the Informant, who stated that at about 4.00 PM she along with her son, Murlidhar Mishra (PW 4), daughter, Rita Devi (PW 2), and grand son, Navin Kumar (PW 3), had gone to the door of the Appellant, who was sitting at his Darwaja on a chair. PW 4 asked him as to why he had constructed a Pillar on their land at which the Appellant resorted that he should leave or else would be shot dead. Just then, wife of the Appellant came out, whereas, he himself went inside and brought his double barrel gun and aimed at her son. However, deceased Laxmi Devi caught hold of the barrel but the Appellant nevertheless fired which hit him on the temple and she fell down. The Appellant then aimed at her husband who was standing near the Pillar and fired which hit him on the chest and he fell down dead. When her son (PW 4) went to pick him up the Appellant once again fired which hit him as well as her daughter, Rita Devi (PW 2) and Navin Kumar (PW 3) and one Kaliya Devi (not examined). When several persons started to gather, the Appellant started to go inside and dashed

against his door and fell down. Thereafter, the injured were treated at the hospital. She proved her signature on the *fard-e-bayan* as Ext.3.

In cross-examination, she explained about the dispute on which Pillar had been constructed and, in fact, all the lands were partitioned by common consensus. She stated that on the date the Appellant had got the Pillar constructed the deceased Harikant Mishra was at home but she was in Patna, but on returning no complaint was lodged before the Mukhiya. She also stated that the house of the Appellant was bounded with boundary wall and 10-15 feet away was the actual house inside the gate but the Appellant was sitting outside the gate on the Sahan. She denied that she had gone inside the house and stated that she was standing outside. She stated that the deceased Laxmi Devi had also sustained injury outside the house. She stated that her husband was standing at about 15 feet away when he sustained fire arm injury and rest of the witnesses were also standing around the iron gate. She stated that the dead boy of Laxmi Devi was seized from outside of the gate of the Appellant, whereas, dead body of her husband was near the Pillar. It was suggested to her that the occurrence took place in another manner which she denied.

12. PW 6 (Ram Dayal Sharma) did not support the case of the prosecution and was declared hostile, whereas, PW 7

(Ramesh Jha) is on the point of seizure of double barrel gun and five live cartridge etc. and the same is marked as Ext.4.

13. PW 8 (Dr. Ashok Vardhan Sahay) was part of the team in whose presence Post Mortem Examination of Harikant Mishra and Laxmi Devi was done by Dr. R. C. S. Verma. He proved the Post Mortem Examination Report of Harikant Mishra as Ext.5. He also proved the Post Mortem Examination Report of Laxmi Devi as Ext.6.

14. PW 9 (Dr. Rakesh Chanda Sahay Verma) was the Medical Officer at Civil Hospital, Samastipur, who had conducted Post Mortem Examination of deceased Harikant Mishra and Laxmi Devi and found following injuries on their person.

Regarding deceased Harikant Mishra:

Externally:

- (i) Rigor mortis present
- (ii) Evidence of bleeding from oral (mouth) cavity
- (iii) Lacerated wound (3/4 cm in diameter) with surrounding blackening over lower part of chest about 3½” from middle line near right coastal margin.
- (iv) Lacerated wound (3/4 cm in a diameter) with surrounding blackening 4” below and lateral to right clavicle about 3” above and lateral to right nipple with surrounding blackening.

[One Pellet recovered is being handed over to the Constable in a sealed bottle and signed by us.]

Internally:

- (i) All viscera pale including liver,

stomach, intestine, brain.

- (ii) Profuse Infra thoracic (Infra pleural) Bleeding.
- (iii) Profuse Infra peritoneal bleeding.
- (iv) Laceration of right lobe of liver (anterior surface).

Time since death within 36 hours.

Medical Board is of the opinion that death of the concerned deceased has been caused due to haemorrhage and shock caused by fire arm.

Regarding deceased Laxmi Devi:

- (i) Rigor mortis present.
- (ii) Big lacerated wound over face and lower jaw (6" x 6½") deep to oral cavity and root of neck.
- (iii) Rupture of right sterno mastoide and right side facial muscles with evidence of profuse bleeding.
- (iv) Fracture of right maxilla and right side of mandible (all communicated fracture)
- (v) Evidence of blackening around the wound.

Internally :

- (i) All viscera pale.
- (ii) Both chambers of (verticals) right and left of heart empty
[One Pellet recovered is being handed over to the Constable in a sealed bottle signed by us.]
- (iii) Uterus was not found in sita (absent)

Time since death is 36 hours.

Medical Board is of the opinion that death of the concerned deceased has been caused due to severe haemorrhage and shock due to fire arm weapons.

15. PW 10 (Dr. Raman Kumar) had examined one

Kala Devi (not examined), Murlidhar Mishra (PW 4) and had found following injuries on his person:



- (i) Circular ulcer on chest right sided margin of which is inverted and there is collar abrasion present. Size of wound circular diameter $\frac{1}{4}$ " and depth is more than 1".
- (ii) Circular ulcer on the front of thigh margin of which is inverted and there is collar of abrasion also present size of which is circular diameter $\frac{1}{4}$ " and depth is more than 1".

Age of the wound was within two hours.

He also examined Rita Devi (PW 2) and found following injuries:

- (i) Circular ulcer on neck right sided margin of which is inverted and there is abrasion collar also present size circular diameter $\frac{1}{4}$ " and depth is more than 1" deep.
- (ii) Circular ulcer on thigh above knee right side margin inverted & color abrasion present size of which is circular diameter $\frac{1}{4}$ " depth more than 1".

Age of wound was within two hours.

He also examined Navin Kumar Jha (PW 3) and found following injuries on his person:

- (i) Oblique shaped ulcer at vertex on the scalp of head margin of which is inverted. Size $\frac{1}{4}$ " x $\frac{1}{4}$ " and depth is in a tract form.

Age of the wound was within two hours.

He proved Injury Report of all the injured as Ext. 8 series. He stated that the injuries could have been caused by

double barrel gun and there was no charring or blackening.

16. PW 11 (Upendra Kumar Mishra) was posted at Mohaddinagar P.S. on the relevant date and recorded the *fard-e-bayan* of Sheo Kuamri Devi. He proved the *fard-e-bayan* as Ext.9 and the formal First Information Report as Ext.10. He further stated that he had prepared the Inquest Report of Harikant Mishra and Laxami Devi as Ext.2. He stated that he further recorded the statement of the Informant, rest of the witnesses and examined the place of occurrence. The same was situated in village Bhadaiya and towards north of the house of the Informant was wheat field where Pillar had been constructed. The second place of occurrence was in front of the residential premises of the Appellant where he found the dead body of Laxmi Devi. The distance between the first and second place of occurrence was 50 feet. He proved the seizure list as Ext.11. He had sent the gun for ballistic testing. He proved the Ballistic Report as Ext.13. He proved the double barrel gun as Material Ext. I, cartridges as Material Ext. II series and the sealed pellets which had been recovered from the person of the deceased as Ext. III series. He also procured the Injury Report of PW 4 (Murlidhar Mishra), Navin Kumar (PW 3) which he proved as Ext.14 series.

He stated that for the same occurrence the Appellant had instituted a case and he had been arrested from his house itself

but he did not record his separate statement. He did not find any mark of violence in the house of Shiv Kumari Devi and found the dead body of Harikant Mishra in his house.

He corroborates that PW 1 had stated before him that it was in course of snatching of the gun it had fired accidentally which hit the two deceased and rest of the injured.

PW 2 was also materially contradicted on the manner of occurrence. PW 3 (Navin Kumar Jha) had also not stated that Harikant Mishra had been aimed.

He stated that the prosecution did not produce any document to show possession of the land in question nor did he find any trampling mark etc. at the place of occurrence where allegedly Harikant Mishra had been shot dead. However, he had found blood where the dead body of Laxmi Devi was found. It was at a distance of five steps from the main house. The Appellant was arrested along with the gun inside the grill gate. He corroborated that for the same occurrence Appellant Deokant Mishra had instituted a case wherein he stated that it was in course of grappling that the gun had accidentally fired.

17. PW 12 (Vinay Kumar Sinha) was the Sergeant Major, who tested the gun and confirmed that it had been recently fired and matched with pellet and 30 cartridges were found out of

which 29 cartridges were alive and only one was fired.

18. DW 1 (Kamal Choudhay) is on the point of institution of counter case and DW 2 (Deokant Mishra), as mentioned earlier, has stated about the occurrence having taken place in another manner which was suggested to the prosecution witnesses.

19. On going through the evidence of the witnesses, we need to discuss certain circumstances emerging in the prosecution case:

- (i) That there was a dispute between the families of the two brothers over construction of the Pillar on a piece of land which was disputed.
- (ii) The construction had taken place some time earlier.
- (iii) The deceased, Harikant Mishra, used to live in the village, whereas, PW 2, PW 3, PW 4 did not normally live in the village.
- (iv) PW 3 and PW 4 arrived on the same day and went to question the Appellant along with deceased Harikant Mishra.
- (v) Later, the prosecution changed the story that deceased, Harikant Mishra, did not go to the house of the Appellant.

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- (vi) The circumstance that the family of the deceased, Harikant Mishra, especially gathered and went to the house of the Appellant to protest suggests that they had not gone there to hold peace talks.
- (vii) In this background, it does not appear probable that the Appellant without any provocation would have taken out his licencee gun and simply fired in the manner in which the prosecution has alleged.
- (viii) The development in the prosecution case that the deceased, Harikant Mishra, and rest of the injured were especially aimed at belies their own intent to make out a story of murder.
- (ix) PW 4 and PW 5 have tried to explain the injury on the Appellant having been caused by his own negligence.
- (x) We also find that even though the Informant, Shiv Kumari Devi, has given eye witness account in the fard-e-bayan and also her evidence in Court, she has not been supported by her own son, Murlidhar Mishra (PW 4),

daughter, Rita Devi (PW 2) and grandson, Navin Kumar Jha (PW 3). Had she been present there along with rest of the three family members there was no reason for her not to be injured like the rest. This makes her presence highly doubtful.

20. The injuries on the person of the two deceased reveal that both of them had sustained injury from close shots which is totally contradictory to the prosecution case according to which Harikant Mishra was shot at from a fairly long distance.

21. The injuries on the two deceased i.e. Harikant Mishra on the chest and the deceased Laxmi Devi on the face and chest and one pellet each was recovered from the person of the deceased-Laxmi Devi and Harikant Mishra suggests that both of them were killed in same transaction which the Expert, who had examined the gun, i.e. PW 12 further corroborates since it reveals that there was only one fired cartridge, whereas, 29 cartridges were live meaning thereby that the gun had fired only once.

22. The three injured, namely, PW 2 (Rita Devi), PW 3 (Navin Kumar Jha) and PW 4 (Murlidhar Jha) had sustained single fire arm injuries from a distance. Whereas PW 2 (Rita Devi) sustained two injuries; one on the neck and the other on the thigh,

PW 4 (Murlidhar Mishra) sustained one injury on the chest and thigh and PW 3 (Navin Kumar) sustained one injury on his forearm.

23. The location of the injuries of both the deceased and the other injured could possibly have been caused by a single firing which fits with the initial story of PW 1 (Ram Suresh Choudhary) and Appellant's own case as also the suggestion given to the witnesses.

24. Further, from the Inquest Report (Ext.2), we find that the dead body of Harikant Mishra was found at his door on a cot. Evidently, the dead body had been brought from some place and put there which according to the prosecution was in the fields near the Pillar. But we have already noticed that there was no blood near the Pillar where he is said to have been shot dead and there was no occasion for the prosecution to have removed the dead body from there since it would have confirmed their story, unless it had something to hide.

25. In such circumstances, we suspect the dead body of Harikant Mishra was brought from the door of the Appellant where blood and the dead body of Laxmi Devi was found. It suggests the same was removed by the prosecution party in order to make out a case of intentional murder of the deceased Harikant Mishra after having been deliberately aimed at by the Appellant. Thus, the cues

give away the veracity of the prosecution case and create a reasonable doubt in its regard.

26. In the circumstances of the case, we are inclined to convert the conviction of the Appellant to one under Section 304 Part I of the Indian Penal Code for having exceeded his right to private defence of person from the charge under Section 302 Indian Penal Code and his sentence, under all counts, are reduced to the period already undergone by him in custody.

27. With the aforesaid modification in the conviction and sentence of the Appellant, the appeal is dismissed.

(Anjana Prakash, J)

J.Alam/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	
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