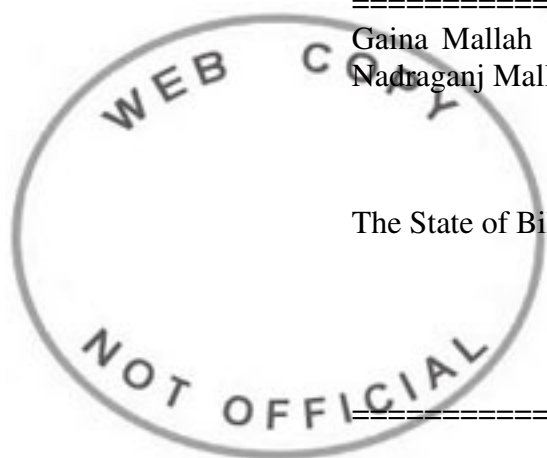




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.387 of 2010

=====

Gaina Mallah @ Indu Mallah Son of Late Jethan Mallah, Resident of Mohalla-Nadraganj Mallah Toli, P.S.- Civil Lines, District- Gaya.

The State of Bihar

Versus

.... Appellant/s

with

.... Respondent/s

=====

Criminal Appeal (DB) No. 255 of 2010

=====

Dipu Khatik, S/o Rajendra Khatik, R/o Moh. Nadraganj, Mallah Toli, P.S. Civil Lines, District – Gaya.

The State of Bihar

Versus

.... Appellant/s

with

.... Respondent/s

=====

Criminal Appeal (DB) No. 313 of 2010

- =====
1. Mohan Mallah, S/o Late Jethan Mallah, R/o Vill.-Moh.-Nadraganj Mallahtoli,P.S.-Civil Lines, Dist.-Gaya.
 2. Binod Mallah S/o Late Jethan Mallah R/o Vill.-Moh.-Nadraganj Mallahtoli,P.S.- Civil Lines, Dist.-Gaya.

The State of Bihar

Versus

.... Appellant/s

with

.... Respondent/s

=====

Criminal Appeal (DB) No. 278 of 2010

- =====
1. Pintu Kumar S/o Sekaldeo Prasad R/o Moh.- Nadraganj Mallahtoli, P.S.- Civil Lines, Distt.- Gaya
 2. Dilip Nisad @ Dilip Mallah, S/o Shyam Babu R/o Moh.- Nadraganj Mallahtoli, P.S.- Civil Lines, Distt.- Gaya

The State of Bihar

Versus

.... Appellant/s

.... Respondent/s

with

Criminal Appeal (DB) No. 427 of 2010

Bindu Mallah, S/o Late Jethan Mallah, R/o Moh.-Nadraganj Mallah Toli, P.S.-
Civil Lines, Dist.-Gaya

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellants	:	Mr. K.P. Singh, Sr. Advocate Mr. Ram Parvesh Kumar.
For the Informant	:	Mr. Shiva Shankar Sharma
For the State		
In Cr. Appeal No. 387 of 2010	:	Mr. A.K. Sinha, A.P.P.
In Cr. Appeal No. 255 of 2010	:	Mr. S.N. Prasad, A.P.P.
In Cr. Appeal No. 313 of 2010	:	Mr. S.C. Mishra, A.P.P.
In Cr. Appeal No. 278 of 2010	:	Mr. Ajay Mishra, A.P.P.
In Cr. Appeal No. 427 of 2010	:	Mr. A. Sharma, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)
Date: 05-01-2016

Heard learned counsel for the Appellants, learned
counsel for the Additional Public Prosecutor and learned counsel
for the informant.

All the Appellants have been convicted by the
Judgment and Order of sentence dated 10/16.02.2010 passed by
the 1st Additional Sessions Judge, Gaya, in connection with



Sessions Trial No. 63 of 2008/545 of 2006 arising out of Civil Lines P.S. Case No. 269 of 2005 corresponding to G.R. Case No. 2760 of 2005 to undergo rigorous imprisonment for the offence punishable under sections 148 I.P.C. and 27 of the Arms Act for the period of 3 years, as also for the period of 10 years for the offence under section 307 I.P.C. with fine of Rs. 5,000/- each, in default of which, they will have to undergo rigorous imprisonment for a period of one year. Appellant Bindu Mallah has been sentenced to undergo life imprisonment for the offence under section 302 of the I.P.C. with fine of Rs. 10,000/-, in default of which, he will have to further undergo rigorous imprisonment for 2 years, whereas the rest of the Appellants have been convicted to undergo rigorous imprisonment for life for the offence punishable under sections 302/149 of I.P.C. with a fine of Rs. 10,000/- each and in default of which, undergo rigorous imprisonment for 2 years.

The case of the prosecution, according to the informant, Rajendra Prasad (P.W.4) is that on 23.11.2005, when his nephew, the deceased Ajay Kumar had gone to get himself shaved at local saloon, accused Bindu Mallah, Mohan Mallah, Binod Mallah, Gaina @ Indu Mallah and Vikki Kumar started to assault him. On hearing this, he along with some others went to

the saloon and tried to extricate his nephew with the help of his other nephew Rajesh Kumar (P.W.3). However, the accused persons who were joined in by Soni, Dilip, Bhima and Pintu and Dharmendra Munshi further assaulted him as well, in course of which, he was seriously injured. Somehow or the other, they could save Rajesh Kumar and others and bring them home. They then locked the door from inside. About half an hour later, at around 2:00 O'clock, the aforesaid accused persons armed with pistols came to the house and started brick batting. When they did not come out from the house, Appellants Bindu Mallah, Gaina @ Indu Mallah, Mohan Mallah, Binod Mallah and Vikki Kumar climbed on to the terrace and on the orders of Mohan Mallah, Gaina @ Indu Mallah fired with his pistol, which hit his daughter Kusum Kumari (P.W.6) due to which she fell down and started struggling. When the family went to save the girl, Binod Mallah ordered to kill the entire family, at which Bindu Mallah fired at his nephew, Ajay Kumar, which hit on the back of his head, due to which he died. They then picked up Kusum Kumari, but on the way they were intercepted by the accused persons, who started firing on them so they took another route and reached the Police Station and gave the written statement. The reason for occurrence was earlier dispute over business of fishing rights. The first

information report was attested by Umesh Kumar Kewat (P.W.2), Sanjay Kumar Sahni (P.W.1), Pale Sahni, not examined, and Rajesh Kumar (P.W.3), on the basis of which the first information report was instituted on the very same day at 2.15 pm.

During trial, the prosecution examined 12 witnesses. P.W. 1, Sanjay Kumar Sahni, P.W. 2, Umesh Kumar Kewat, P.W. 3, Rajesh Kumar, P.W. 4, Rajendra Prasad, P.W. 5 Santosh Kumar and P.W. 6 Kusum Kumari are eye witnesses. P.W. 10 Triloki Mandal and P.W. 11 Bidhan Chandra Lal are the formal witnesses on material exhibit and the inquest report whereas P.W. 12, Arun Kumar Dubey, is the Investigating Officer. Dr. Rajendra Singh (P.W.7) examined injured Kusum Kumari (P.W.6), whereas Dr. Chandeshwar Prasad Srivastava (P.W.8) examined the injured Rajesh Kumar (P.W.3) and Dr. Rajiv Ranjan Das (P.W.9), held the postmortem of the deceased Ajay Kumar.

In Court, P.W.1, Sanjay Kumar Sahni, who happened to be cousin of the deceased Ajay Kumar stated that on 23.11.2005 at about 12.30 pm. while he was at home, he heard some *hulla* in the saloon of Sanjay Thakur where his deceased cousin had gone to get himself shaved, so he went there and saw Ajay Kumar being assaulted by Appellants Bindu Mallah, Mohan



Mallah and Vikki Kumar. When he tried to save him, the rest of the family members of Bindu Mallah namely Dilip, Pintu, Deepu Khatik, Dharmendra Munshi and Ashwani Bhim came there and also assaulted Ajay Kumar and Rajesh Kumar. They were somehow saved and brought home. About one hour later, 11 accused persons armed with pistols came there and started firing but no one was injured. The occupants of the house went to the terrace but 5 accused namely Bindu Mallah, Gaina @ Indu Mallah, Mohan Mallah, Binod and Vikki came to the terrace and on the orders of Mohan Mallah, Gaina @ Indu Mallah fired, which hit P.W.6, Kusum Kumari, who fell down struggling. Binod Mallah further gave orders to kill the entire family, at which Bindu Mallah fired killing Ajay Kumar. The reason for the occurrence was dispute over the business of fishing. His cousin Rajesh tried to catch Vikki but he was assaulted on the mouth with the *butt* of the pistol by him, on account of which he was injured. The rest of the accused persons were firing from the ground. When they tried to go to the Police Station, the accused persons once again intercepted them, so they took another route and gave a written statement at the Police Station. The written statement was penned by Sanjay Kumar Sahni (P.W.5) on the dictation of his uncle Rajendra Prasad (P.W.4). He proves his



signature Exhibit-1. He also proves the signature on the Inquest Report. In cross examination, he explains that his father had three brothers and how he was related to the deceased being his first cousin. He stated that the saloon was about 80 feet away from his house and further alleged that the 5 accused persons jointly assaulted his brother at the saloon. He stated that the height of the terrace was 25 feet. There was stair case leading to the terrace and also they had locked themselves inside the house so as to thwart further attempt of assault. He concedes that no efforts were taken by them to inform the Police Station or the outpost which was located nearby. He explained that the accused persons had reached at the terrace through the stair case of Pintu Kahar and *Mohalla* people reached at the place of occurrence after the accused persons had fled away. He further stated that the two injured Kusum Kumari and Rajesh got medical aid at the Hospital. His attention was drawn to the earlier statement but they are on very unimportant points, which do not require mentioning.

P.W. 2, Umesh Kumar Kewat, is the brother of the deceased, who stated that he was in the house of Rajendra Prasad (P.W.4) where the deceased Ajay had gone to the Saloon of Sanjay Thakur, on hulla, he went there and saw Bindu Mallah, Gaina @ Indu Mallah, Binod Mallah, Mohan Mallah and Vikki



Kumar assaulted Ajay Kumar. Thereafter, they were also joined by the staff of Bindu Mallah and relatives Soni, Bhima, Dilip, Dharmendra Munshi, Deepu Khatik and Pintu, who also assaulted Ajay Kumar and Rajesh Kumar (P.W.3). Somehow they saved and brought them to the house of Rajendra Prasad. About one hour later, all the accused persons came to the house of Rajendra Prasad (P.W.4) and started firing at which they went to the terrace where the Appellants Bindu Mallah, Gaina @ Indu Mallah, Mohan Mallah, Binod Mallah and Vikki Kumar came and on the order of Mohan Mallah, Appellant Indu @ Gaina fired at which his cousin's daughter Kusum Kumari, was injured and thereafter, once again at the order of Binod Mallah, Appellant Bindu Mallah fired which hit Ajay Kumar, who fell down and died. When Rajesh Kumar (P.W.3) tried to catch the accused, he was assaulted with *butt* of pistol. The injured Kusum Kumari (P.W.6) was taken to the Hospital where Rajendra Prasad (P.W.4) gave statement, which was written by Santosh Kumar (P.W.5), he proves his signature as Exhibit-1/1 on the First Information Report as also on the Inquest Report as Exhibit 2/1. In cross-examination, he stated that the accused started firing on the house which had left marks on the wall. He describes the exact location where the injured and the deceased were standing when the



occurrence took place. His attention was drawn to the earlier statement recorded under section 161 Cr. P.C. that he had not stated about the deceased having gone to the saloon to get himself shaved and that he screamed from there. He had also not stated that all the accused persons had come and fired at the house of P.W.4, Rajendra Prasad and the 5 accused persons had climbed on to the terrace and on the orders of Mohan Mallah, Indu @ Gaina had fired, which had injured Kusum and on further orders, Ajay had been shot at by Bindu Mallah. He had also not stated that Rajesh had tried to catch Vikki on account of which he was assaulted by him with the *butt* of the pistol.

P.W. 3, Rajesh Kumar, is also an eye witness, who also stated that on 23.11.2005, at about 2.30 pm. while he was in the house of Rajendra Prasad (P.W.4), Ajay had gone at the saloon from where he shouted at which they went there. When they reached at the shop, Bindu Mallah, Mohan Mallah, Binod Mallah, Indu Mallah @ Gaina Mallah and Vikky Mallah assaulted Ajay. They tried to save him, but the rest of the staff of Bindu Mallah and his family members, Soni, Bhim, Pintu, Dilip, Dharmendra Monchi and Deepu Khatik came there and started to assault him. He himself was also assaulted. They were, however, saved and brought to the house of Rajendra Prasad where they



themselves locked inside. One hour later, the accused persons came with pistols and started firing. They, having been scared, went to the terrace but Appellants Bindu Mallah, Mohan Mallah, Binor Mallah, Indu @ Gaina Malla and Vikky Mallah reached the terrace from the back of the house and on the orders of Mohan Mallah, Indu Mallah fired which hit Kusum Kumari injuring her. Further, on the orders of Binod Mallah, accused Bindu Mallah also fired on the deceased, on account of which he fell down. When he tried to catch Vikki, he was also assaulted by him with *butt* of the pistol. Thereafter, they took Kusum Kumari to the Police Station where the Officer-in-Charge told them to give a written statement. P.W.4, Rajendra Prasad then got recorded the statement through P.W.5, Santosh Kumar and submitted the same. He proves the signature as Exhibit 1/2 and 1/3. He then went to Pilgrim Hospital where Kusum Kumari was sent for medical attention. He stated in his cross-examination that she was released from Hospital and asserted that the accused persons had fired at the house which had left marks on the wall and all of them had continued to fire even while 5 persons had climbed up to the terrace. In cross-examination, his attention was drawn to the earlier statement that he had not stated that when attempt was made to save them, the staff of Bindu Mallah had come and

assaulted them and when he attempted to catch hold of Vikky, he was assaulted with the *butt* of the pistol by him.

P.W.4, Rajendra Prasad, is the informant and the next eye witness, who stated that on 23.11.2005 when the deceased had gone to get himself shaved at the saloon of Santosh Thakur where he heard some hulla, at which he went there. He found Binod Mallah, Indu Mallah, Mohan Mallah and Vikky Kumar fighting with Ajay Kumar. When he tried to intervene, they did not stop and instead, all accused persons joined by Deepu Khatik, Pintu Kahar, Bhim Kahar, Soni, Dilip Mallah and Dharmendrar Munshi assaulted Rajesh and Ajay. Thereafter, they came back home but one hour later, the aforesaid persons came to the house and started firing. In order to save themselves, they climbed on the terrace but 5 accused persons namely Bindu Mallah, Indu Mallah, Mohan, Binod and Vikky climbed on the terrace through the house of Pintu Kahar and on the orders of Mohan Mallah, Gaina @ Indu Mallah fired at which Kusum Kumari sustained injury. Thereafter, Binod Mallah further ordered at which Bindu Mallah fired at Ajay Kumar, as a result of which he died. When Rajesh Kumar tried to catch him, he was also assaulted on account of which he was injured. After the occurrence, when they were going to the Police Station with P.W.



6, Kusum Kumari, the accused persons intercepted them but they took a different route and reached the Police Station. He then got recorded the written statement through P.W.5, Santosh Kumar, on which the rest of the witnesses signed, which was marked previously as Exhibit-3. He stated that the occurrence had taken place on account of dispute over business of fishing. In cross-examination, he stated that the fight in the saloon had taken place for about 10-15 minutes and they had not reported the matter to the Police Station out post which was situated nearby nor did any Police Officer come to the saloon in the intervening period. In his cross-examination, he stated that none of the accused persons had tried to forcibly enter his house. He further stated that as soon as the accused persons came on the terrace, they fired at Kusum Kumari (P.W.6). He gave the exact time at which he reached at the Police Station and as to when he returned. He stated that even while some of the accused persons climbed up the terrace, those who remained down stairs had continued to fire.

P.W.5, Santosh Kumar, is the next eye witness, who stated that he was at his home whereas the deceased had gone to shave himself at the saloon from where some *hulla* was heard. So they went to the saloon and found the deceased being assaulted by Bindu Mallah, Indu @ Gaina Mallah, Mohan Mallah, Binod



Mallah, Vikky Kumar, Pintu Kahar, Bhim Kahar, Deepu Khattic, Dharmender Monchi and Soni Kumar, about 11 persons. They tried to extract the deceased from their clutches, in course of which even Rajesh Kumar was assaulted. However, they came home and about one hour later, 5 accused persons namely, Bindu Mallah, Indu @ Gaina Mallah, Mohan Mallah, Binod Mallah and Vikky Kumar came to the house and climbed on to the terrace from the house of Pintu Kahar whereas some accused persons remained down stairs. All the accused persons were armed with weapons and on the orders of Mohan Mallah, Indu @ Gaina Mallah fired at his cousin sister Kusum Kumari and thereafter, on the orders of Binod Mallah, Bindu Mallah fired, which hit his brother Ajay Kumar from the back, on account of which he died. Kusum Kumari was attempted to be taken to the Doctor but on the way, they were intercepted by all 11 accused persons, due to which they took another route and reached the Police Station. At the Police Station, a written report was given upon which he also signed which he proves as Exhibit-1/3. He further stated that Kusum Kumari was sent for medical attention and Rajesh was sent to Pilgrim Hospital. In cross-examination, he conceded that he had come from the jail and that as against him, there was an allegation of murder of mother of Soni. He further stated in his

cross-examination that he had written whatever was dictated by Rajendra Prasad (P.W.4) and also whatever he had seen. In cross-examination, it was elicited from him that the firing was made from a distance of about 5-6 feet from the back and firing had been done from the ground for about 5-7 minutes.

P.W.6, Kusum Kumari, is an injured witness, who stated that on the date of occurrence when her cousin brother had gone to the saloon, the earlier mentioned accused persons had assaulted him at which her father and others had gone to save him where Rajesh was also assaulted by the accused persons. They were then brought home but about one hour later, accused persons numbering 11 came and started firing. They then went to the terrace where 5 accused persons namely, Bindu, Indu, Binod, Mohan and Vikky came and on the orders of Mohan Mallah, Indu Mallah fired at her and on the orders of Binod Mallah, Bindu Mallah fired at her brother Ajay Kumar, on account of which he died. When Rajesh tried to catch Vikky Mallah, he was also assaulted with the butt of his pistol on account of which he fell down and the accused persons ran away from the same route they had taken while climbing on to the terrace. She was then taken to the A.N. Medical where she was treated. In cross-examination, she stated that the bullet marks was still there behind her ear and

she was the first person to have been injured in this occurrence. She could not state exactly how many firings had been made. She asserted that she had been examined by the Police at the Hospital. She also stated that when her father was going to the Hospital, on the way, they were intercepted by the accused persons so they took another route.

P.W.7, Dr. Rajender Singh, who examined the injured, Kusum Kumari (P.W.6) found following injuries on her person :

i) *Penetrating wound extending up to left oracle and to the sub-mendable region.*

Age of injury within six hour.

ii) *Nature of injury grievous and may be caused by the firearm injury.*

P.W.8, Dr. Chandeshwar Prasad Srivastava, examined the injured, Rajesh Kumar and found the following injuries on the person :

I) *Sharp cutting injury right side of the upper and lower lid upper lid was cut $\frac{1}{2}$ " x $\frac{1}{4}$ " skin deep, lower lid $\frac{1}{2}$ " x $\frac{1}{4}$ " skin deep.*

II) *Swelling in right side of the occipital area 2"x $\frac{1}{2}$ " on skin. It may be danger to life.*

Type of weapon – 1st injury caused by sharp cutting and 2nd injury caused by hard and blunt substance.

Nature of injuries were simple.

Whereas P.W.9, Dr. Rajiv Ranjan Das, performed the postmortem of Ajay Kumar and found the following injuries on his person :

- I)
 - i) *Abrasion ½" x ½" on right knee.*
 - ii) *1" x ¼" about 6" below right knee.*
 - iii) *½" x ½" below left knee.*
- II) *Wound of entrée – ½" x ½" x cutting deep with inverted margin on left occipital region of back of scalp with fracture of the underlined occipital bone. Laceration of brain matters and presence of blood and blood clots in cranial cavity. The track of wound extended upto right parietal skull about 2" lateral to mid-line and there was radial fracture of 2" x 2" on parietal bone with two mettie pieces embedded in the fracture.*
- III) *The abrasion were caused by hard and blunt substance and the wound of entrée was*

caused by fire-arm. Death was due to shock and hemorrhage as a result of fire arm wound on head.

Time since death within six hour from the time of post mortem examination.

In cross-examination, he stated that there was no mark of tattooing of burning on the surface of the injuries.

P.W. 10, Triloki Mandal, is a Police Constable, who brought the Malkhana Register and P.W. 11, Bidhan Chandra Lal, is also an Inspector of Police, who proved the Inquest Report as Exhibit-6, both of whom are formal witnesses.

P.12, Arun Kumar Dubey, the then Officer-in-charge of Civil Lines, Police Station, who stated that on the date of occurrence, he had instituted a first information report in regard to the present occurrence and thereafter, started investigation. He proved the First Information Report and the Inquest Report. About the place of occurrence, he stated that it was a house, on the main door, of which there was a grill gate and there was stair case which lead to the terrace. On the stair case, the dead body was found and blood was scattered there as also on railing. Some brickbats were also found on the terrace. On the east, there was the house of Rajendra Prasad and on the west of Laxmi Babu and



adjacent was the house of Pintu from where the accused persons are said to have climbed on to the terrace. His attention was drawn to the statements of the witnesses Umesh Kumar Kewat (P.W.2) and Rajesh Kumar (P.W.3). He stated that P.W.2 had not stated that it was on the orders of Mohan Prasad that Indu @ Gaina had fired or that Binod Mallah, Gaina Mallah and Vikky had climbed on to the terrace and that on the orders of Binod Mallah, Bindu Mallah had fired at Ajay Kumar and Rajesh Kumar was also assaulted by Vikky Kumar when he tried to catch him. P.W.3, Rajesh Kumar, also reportedly did not say that at the saloon of Santosh Thakur, the deceased had been assaulted by staff of Binod Mandal and that the accused persons had climbed on to the terrace from the back. Surprisingly, he did not examine P.W.6, Kusum Kumari and Sanjay Thakur, the saloon owner or independent witnesses.

On behalf of the defence, four witnesses were examined. Ravi Ranjan (D.W.1) and Birendra Singh (D.W.2) have proved some first information reports, which have been instituted between the parties and D.W. 3, Shiv Thakur, has stated that the deceased had not come to get himself shaved at saloon and Basukinath Mishra (D.W.4) had stated that no fight had taken place in the morning and on the date of occurrence, he had gone

out after 1.30 pm. and when he returned in the evening, he learnt that the Ajay Kumar had been killed.

D.W.5, Amit Kumar @ Tannu, stated that some disputes had been taken place with the family of Rajendra Mallah (P.W.4) at round 12.00 noon where after he had gone home at 7.30 when he returned, he learnt that the deceased had been murdered.

On an analysis of the evidence, which we have discussed above on a fair consideration, we find that there is consistent evidence of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W. 6 on the point of the earlier occurrence where the deceased had been assaulted. No doubt, P.W.6, Kusum Kumari, is hearsay witness on the earlier point, but she corroborates the same. Whereas the later occurrence is concerned, the aforesaid six witnesses have consistently supported the fact that 5 accused persons armed with weapons had climbed on to the terrace and thereafter, committed a series of facts, on account of which two persons were injured and one lost his life. We also find that P.W.7 Dr. Rajeondra Singh, P.W.8, Dr. Chandeshwar Prasad Srivastava and P.W. 9, Dr. Rajiv Ranjan Das, had found corroborative injuries on the person of the two injured and the deceased. Further, the Investigating Officer, P.W.12, Arun Kumar Dubey,

found objective evidence in support of the prosecution case, which leaves no doubt as regards the place of occurrence or the manner of the same.

In such circumstances, we are not inclined to interfere with the conviction of four Appellants namely, Gaina Mallah @ Indu Mallah, Mohan Mallah, Binod Mallah, and Bindu Mallah. Accordingly, the Cr. Appeal No. 387 of 2010, Cr. Appeal No. 313 of 2010 and Cr. Appeal No. 427 of 2010 are dismissed.

As regards Cr. Appeal Nos. 255 of 2010 and Cr. Appeal No. 278 of 2010, we find that there is no evidence in regard to the complicity of the three appellants in the occurrence. Their implication also appears doubtful since even though it is said that they remained on the ground and consistently fired, no objective evidence of firing was found at the place of occurrence. Also once the witnesses were inside the house, it would not be possible to see as to who was firing from inside. Hence, we are inclined to acquit the appellants namely, Dipu Khatik, Pintu Kumar and Dilip Nisad @ Dilip Mallah. In the result, Cr. Appeal Nos. 255 of 2010 and Cr. Appeal No. 278 of 2010 are allowed.

In the result, the Judgment of conviction and Order of sentence dated 10/16.02.2010 passed by the 1st Additional Sessions Judge, Gaya in connection with Sessions Trial No. 63 of

2008/545 of 2006 arising out of Civil Lines P.S. Case No. 269 of 2005 corresponding to G.R. Case No. 2760 of 2005 is hereby set aside in regard to Appellants in Cr. Appeal. No. 255 of 2010 and Cr. Appeal No. 278 of 2010.

Since the Appellants, namely, Mohan Mallah and Binod Mallah in Cr. Appeal No. 313 of 2010 are on bail, they are directed to surrender before the Court below for serving the remaining period of sentence.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

Shailendra/-

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