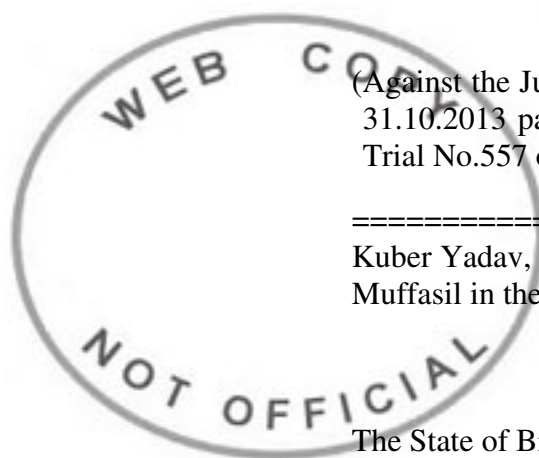




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1061 of 2013

(Against the Judgment of conviction dated 28.10.2013 and Order of sentence dated 31.10.2013 passed by the Additional Sessions Judge-I, Ara, Bhojpur, in Sessions Trial No.557 of 2006 + 837 of 2007 + 598 of 2007 + 282 of 2010).

Kuber Yadav, son of Late Bhuneshwar Yadav, resident of village- Bela, P.S.- Arrah Muffasil in the District of Bhojpur.

Appellant.
Versus
The State of Bihar
with
Respondent.

Criminal Appeal (DB) No. 1105 of 2013

Badri Yadav, son of Bhikhari Yadav, resident of village- Bela, P.S. Ara Mufasil, District- Bhojpur.

Appellant.
Versus
The State of Bihar
with
Respondent.

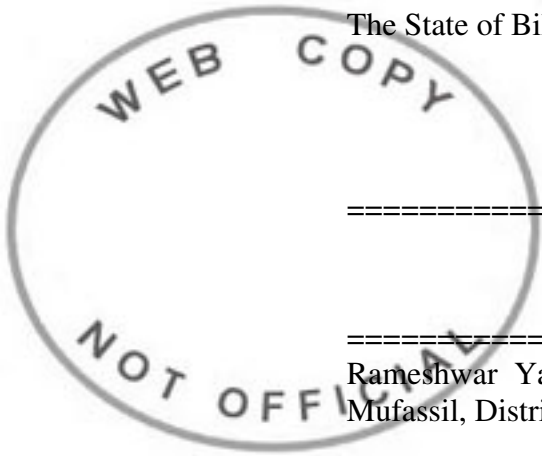
Criminal Appeal (DB) No. 1107 of 2013

Saral Yadav, son of Paras Yadav, resident of village- Bela, P.S- Ara (M), District- Bhojpur (Ara).

Appellant.
Versus
The State of Bihar
with
Respondent.

Criminal Appeal (DB) No. 12 of 2014

Jiratan Yadav @ Jivratan Yadav, son of Late Raghubir Yadav, resident of village- Bela, P.S. Ara (M), District-Bhojpur (Ara).



..... Appellant.
Versus
The State of Bihar
..... Respondent.
with

=====

Criminal Appeal (DB) No. 28 of 2014

=====

Rameshwar Yadav, son of Bhikhari Yadav, resident of village Bela, P.S. Ara
Mufassil, District-Bhojpur

..... Appellant.
Versus
The State of Bihar
..... Respondent.
with

=====

Criminal Appeal (DB) No. 29 of 2014

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- 1. Ram Nagad Yadav, son of Late Subhag Yadav.
 - 2. Ram Gahan Yadav, son of Late Ram Swaroop Yadav.
 - 3. Lavkush Yadav, son of Sugwan Yadav.
- All resident of village- Bela, P.S- Ara Muffasil, District- Bhojpur, Ara.

..... Appellants.
Versus
The State of Bihar
..... Respondent.
with

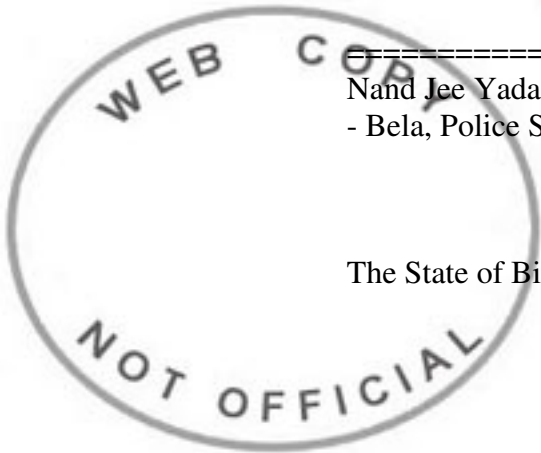
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Criminal Appeal (DB) No. 46 of 2014

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Bhikhari Yadav, son of Late Ram Rekha Yadav, residnet of village- Bela, P.S.-
Ara Mufasil, District- Bhojpur.

..... Appellant.
Versus
The State of Bihar
..... Respondent.
with



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Criminal Appeal (DB) No. 74 of 2014

=====

Nand Jee Yadav @ Nand Jee Roy, son of Late Dina Nath Yadav, resident of village
- Bela, Police Station - Arrah Muffasil, District - Bhojpur.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

with

=====

Criminal Appeal (DB) No. 1090 of 2013

=====

Santosh Yadav, son of Shobha Nath Rai, resident of Village- Bela, P.S.- Ara
Mufassil, District- Bhojpur.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

=====

Appearance :

In All the Appeals:

- For the Appellants : M/s. K.P Singh, Bindhya Keshri Singh, Buxri S.R.P. Sinha,
Senior Advocates, Suraj Bansh Roy, Ravindra Kumar, Rahul
Nath, Vivekanand Singh, Harsh Kumar, Rajiv Ranjan, Sunil
Kumar and Susant Kumar, Advocates.
- For the State : M/s. A.K. Sinha, S.C. Mishra, D.K. Singh, A. Sharma, S.N.
Prasad, A. Mishra and Miss. S.B. Verma, A.P.Ps.
- For the Informant : Mr. Y.C. Verma, Senior Advocate and Gopal Govind Mishra,
Advocates.

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 10-05-2016

All the Appellants have been convicted under Section 120-

B of the Indian Penal Code and sentenced to undergo rigorous



imprisonment for life and fine of Rs.1000/-, the Appellants Rameshwar Yadav, Badri Yadav and Santosh Yadav have further been convicted under Section 302 of the Indian Penal Code whereas rest of the Appellants have further been convicted under Sections 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.5000/-, further the Appellants Rameshwar Yadav, Badri Yadav and Santosh Yadav have been convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and fine of Rs.1000/- vide Judgment of conviction dated 28.10.2013 and Order of sentence dated 31.10.2013 passed by the Additional Sessions Judge-I, Ara, Bhojpur, in Sessions Trial No.557 of 2006 + 837 of 2007 + 598 of 2007 + 282 of 2010.

2. The case of the Informant Shankar Mishra (P.W.5), according to his Fardbeyan given on 16.09.2003 at 06.00 A.M. to Ram Babu Mandal, Officer Incharge of Arah (Mufassil) Police Station, is that on 15.09.2003 at about 04.00 P.M., his two deceased brothers Ram Narayan Mishra and Tej Narayan Mishra were sitting alongwith the rest of the family members when Appellant Santosh Yadav and one Ashok Yadav came to his door and called both of them. He also followed them being curious as to where they are going. When they reached at 'Barka Inar', he saw several accused



including the present Appellants waiting there with arms. Appellant Santosh Yadav and accused Ashok Yadav are said to have declared that they had brought the enemy at which Appellant Bhikhari Yadav ordered the rest to shoot them dead. At this, the deceased Ram Narayan Mishra was caught hold of by Vyasari Choudhary (now dead) and Appellant Lavkush Yadav and, thereafter, Appellant Badri Yadav and accused Sanjay Yadav (absconder) shot at him near his ear. Appellant Rameshwar Yadav also fired on his head at which he died then and there. His other brother Tej Narayan Mishra was caught hold of by the Appellants Ram Gahan Yadav, Nand Jee Yadav and Kuber Yadav and, thereafter, Appellant Santosh Yadav shot him on his face due to which he also died. The accused persons also fired at him but somehow he was saved. The reason for the occurrence was pendency of some criminal cases between them. The occurrence is said to have been witnessed by Vijay Shankar Mishra, Lavkush Mishra, Kesho Prasad Mishra and Satya Narayan Mishra but none of them were examined on behalf of the prosecution.

We find that the Fardbeyan does not contain the signature of any witness. In the format of F.I.R., it is written that 'Returned to P.S. and Registered Arrah (M) P.S. Case No.150 of 2003 and S.I. Surendra Lal Deo, Incharge of Dhobha O.P. is already investigating the case and he will continue". We also find in the first page of the

format that while the date and time of the occurrence is 15.09.2003 at 04.00 P.M., the information is said to have been received on 16.09.2003 at 06.00 A.M. The First Information Report is also registered at the same time, i.e., 06.00 A.M. The relevance of the aforesaid entries, we would explain as we proceed.

3. During trial, the prosecution examined altogether 9 witnesses.

4. P.W.1 Brajesh Narayan Mishra and P.W.2 Dinesh Mishra are father and brother of the deceased respectively whereas P.W.5 Shankar Mishra is brother of the deceased and the Informant. P.W.4 Umesh Narayan Mishra, who is uncle of the deceased and brother of P.Ws.1 and 2, has also appeared as an eye witness. P.W.3 Dr. Ram Raj Ravi conducted the Post-Mortem Examination of the two deceased and P.W.8 Surendra Lal Deo is the Investigating Officer, P.W.6 Ram Babu Mandal and P.W.9 Saryu Pandey are formal witnesses whereas P.W.7 Vindhyachal Prasad is a formal Police Officer.

Thus, it appears that all the eye witnesses belong to the same family.

5. On the other hand, the defence has also examined eight witnesses on the point of alibi of Appellants Rameshwar Yadav, Badri Yadav, Ram Gahan Yadav, Bhikhari Yadav and Nand Jee Yadav.

D.W.7 Pradip Kumar and D.W.8 Kedar Nath Rai had deposed on the point of plea of alibi of the accused Ashok Yadav, son of Bhikhari Yadav on the basis of which he was acquitted.

6. P.W.1 Brajesh Narayan Mishra was examined twice, once in Sessions Trial No.557 of 2006 and, thereafter, in Sessions Trial No.282 of 2010, whereafter, both the trials were amalgamated. In both the Sessions Trials, he stated that on the date of occurrence while he was sitting alongwith his two deceased sons and rest of the family members, Appellant Santosh and accused Ashok came and called away his two sons. Behind him, his other son Shankar Mishra P.W.5 also went. After some time, his wife told him to bring sugar so he went to the market and then he saw the accused persons waiting for the two deceased and, thereafter, assaulting them in the manner which has been stated in the First Information Report.

He has been put to lengthy cross examination but none of them are relevant.

The relevant part of his cross examination is that he has conceded that Appellant Santosh and accused Ashok had no enmity with his family from before and he had land dispute with Appellant Bhikhari Yadav, who happens to be the father of the Appellants Badri Yadav and Rameshwar Yadav. He stated that in conspiracy with each other, Appellant Bhikhari Yadav and Kedar Yadav had got this

occurrence committed.

It was suggested to him that, in fact, he had not stated earlier that he was an eye witness to the occurrence which he denied but the Investigating Officer confirmed this fact.

He also stated that the two deceased were accused in an earlier criminal case and specifically that he did not sign on the Fardbeyan. He stated that, in fact, the police had called him to the spot and the B.M.P. force which had been posted in the village had been removed only when the people lodged a complaint case against them. Repeated queries were made as to where the Fardbeyan was recorded and he asserted that it was at the place of occurrence.

He conceded that he had been examined two days later and it was because the village was flooded , the police force had come the next day on a boat. He attempted to deny knowledge as to when the police came on the boat. It was suggested to him that, in fact, on the date of occurrence, he was at Ara alongwith P.W.2 and he had come to the village only on receiving information. He also denied the plea of alibi of Appellant Bhikhari Yadav.

7. P.W.2 Dinesh Mishra is the son of P.W.1 and is the brother of the two deceased as also the Informant and nephew of P.W.4. He stated that on the date of occurrence he had gone to the field and when he was returning and reached 'Barka Inar', he saw the

two deceased coming with Appellant Santosh Yadav and accused Ashok Yadv who declared to Appellant Bhikhari that they had brought the enemy. Some of the accused persons then caught hold of the two deceased whereas others fired at them in the manner as stated in the Fardbeyan.

He has also been subjected to lengthy cross examination that, in fact, he had animosity with the accused persons on account of cancellation of licence of a Fair Price Shop. He stated that there were three criminal cases pending between them and the accused persons. His own brother Lal Babu Mishra was missing but he denies as to why he was missing and attempted to conceal the fact that his brother Lal Babu Mishra was an accused in Ara (Muffasil) P.S. Case No.115 of 2003 but later conceded to this fact.

When asked, he replied that they did not talk about amongst themselves as to information to the police because they were very depressed. Also that no steps were taken to call the 'Chowkidar'.

Surprisingly, he stated that only when the police came, he came to the place of occurrence to see the dead bodies of his two brothers but no questions were asked of him. Also that when he reached at the place of occurrence, he had seen Vijay Shankar, Gupteshwar, Lavkush Mishra (None- examined) giving their

statements to the police and he had remained with the police for about one and half hours and during this period, police had recorded the statement of Shankar Mishra P.W.5 alongwith others. He further stated that the dead bodies were sent for Post-Mortem at 07.30 P.M. and he had also gone to Ara alongwith the dead bodies.

It was suggested to him that, in fact, he had earlier stated that he was at Ara on the date of occurrence alongwith his father but he denied such suggestion. However, this fact is confirmed by the Investigating Officer (P.W.8). He also denied the suggestion that he learnt about the manner of occurrence when he reached home and, in fact, he was not an eye witness to the occurrence.

It was suggested to him that the Fardbeyan had been recorded after the Post-Mortem was performed but he denied the same. He further stated that the police had reached the place of occurrence on 16.09.2003 but it did not record his statement and it was in his presence that the Fardbeyan of P.W.5 was recorded on 16.09.2003. He denied the suggestion that, in fact, the police were trying to record his statement but he had refused to give any statement.

He denied having knowledge about the Appellant Nand Jee being a Constable in the Police Force but he conceded that he had been examined by the police two days later.

Repeatedly, he stated that he reached the place of occurrence only when the police came and it was in his presence, Inquest Report was prepared as also that the village was flooded with water since last 3-4 days and the police had reached on the boat and the people used to wade in the water to go from one place to another.

In cross examination, he further stated that when he was near 'Barka Inar', he had heard sounds of 5-6 firing and on hearing shots he ran way home where he met rest of his family members and he stayed inside the house till such time as the police came.

He stated that the police had recorded the Fardbeyan and his father had reached earlier to him and his father's statement was not recorded in his presence and it was only after he had reached that the police had recorded the statement of Shankar Mishra P.W.5, the Informant. However, neither of the two signed on the Fardbeyan as witnesses.

He denied the suggestion that, in fact, in his presence, the police had asked the Sub Divisional Magistrate for arranging a boat to go the village. He also denied that Appellant Bhikhari Yadav could not move in this period because of his fracture.

8. P.W.4 Umesh Narayan Mishra, the brother of P.W.1 and uncle of P.W.2 and P.W.5, the Informant, has also stated that on 15.09.2003, he was standing at the shop having 'Samosa' when he

saw the Appellant Santosh Yadav and accused Ashok Yadav addressing Appellant Bhikhari Yadav that they had brought the enemy at which some of the accused persons caught hold of the deceased whereas others shot them dead. They then ran away.

In cross examination, he stated that the Appellant Nand Jee Yadav used to work in the Police Force but he did not know where he was posted. It was suggested to him that he was posted in Jamui and he was not in the village on the date of occurrence.

He further stated that one Mahesh Yadav was the 'Chowkidar' of the village but he did not return having met the police because the entire village was surrounded with flood. He did not take any step to inform anyone because in any case the entire village was agog with such information. He further stated that there was telephone connection in his house on the date of occurrence but it was not working.

His attention was drawn to his earlier statement to the effect that at the time of occurrence, in fact, he was at his home repairing the antenna of his television and he was not an eye witness to the occurrence. His entire evidence on the eye witness account was discredited by the police. He conceded that his statement was recorded on 18.09.2003, i.e., three days after the occurrence and two days after the Fardbeyan.



From the description of topography of this witness, it appears that the area was heavily populated. He further stated that he stayed with the dead bodies whole night and it was at 06.00 A.M. that the Police Force had come but he did not go there on seeing the police. He did not remember as to who had informed him that the police had come. He denied the suggestion that the Appellant Bhikhari Yadav was not in a position to move and Appellant Badri Yadav , Rameshwar Yadav and Ram Gahan Yadav were also present at the place of occurrence. From the suggestion given to him, it appears that the case of the defence was that on the date of occurrence, the house of P.W.1 had been surrounded and the people were firing. He confirmed that he had gone to Ara for collecting the Post-Mortem Examination Reports and he denied the suggestion that, in fact, the Fardbeyan was instituted after taking note of the entries of the Post-Mortem Reports.

9. P.W.5 Shankar Mishra is the Informant and the brother of the deceased. He stated that on 15.09.2003 at 04.00 P.M. while he alongwith the rest of the family members were sitting, Appellant Santosh Yadav and accused Ashok Yadav came to his door and called his deceased brothers Tej Narayan Mishra and Ram Narayan Mishra. Due to curiosity, he also followed them. When the two brothers reached 'Barka Inar', he saw the accused persons named in the



Fardbeyan with arms. Appellant Santosh Yadav and accused Ashok Yadav were addressing Bhikhari Yadav that the enemy had come and they should be shot dead. At this, Appellant Bhikhari Yadav ordered that they be shot dead so his brother Ram Narayan Mishra was caught hold of by Vyasari Chaudhary and Appellant Lavkush Yadav whereas Appellant Badri Yadav and Sanjay Yadav (absconder) shot at him on his right ear. Then Appellant Rameshwar Yadav also fired on his head due to which he fell down dead. The deceased Tej Narayan Mishra was caught hold of by the Appellants Ram Gahan Yadav, Nand Jee Yadav and Kuber Yadav whereas he was shot at by Appellant Santosh Yadav. Thereafter, the accused persons fled away. When they departed, he came back and then his father and brother also reached home. On the next day, the police came and he gave his Fardbeyan which was read over to him. He proves the Fardbeyan as Ext.3/1. He further stated that the Inquest Report was prepared in his presence and that he had filed a Protest Petition which he proves as Ext.4.

In cross examination, he stated that Dhobaha Police Chowki was 4-5 kilometers away from his village and he did not remember as to since when the village was flooded. He had kept the boat for negotiating the flooded water but later he denied having one. He stated that he did not know as to when the police came. One



constable came and informed him at his home that Darogaji was calling him. It was on summons of Darogaji that he went to the place of occurrence. He did not remember as to whether any of his family members were present from before, however, when the police had come to meet, none of the family members were present at home except his father-in-law Shiv Kumar Ojha. He also stated that the number of villagers had gathered near the dead bodies and on arrival of the police he names including his family members. He stated that he gave Fardbeyan at the place of occurrence and the dead bodies were removed at around 10.00 A.M. However, in his presence, none of his family members were examined. The male family members of the family left alongwith the dead bodies. He stated that the Post-Mortem was held in the evening and 7-8 persons remained there including Ram Babu Mandal (P.W.6), Officer Incharge of Ara (Mufassil) Police Station and Deo Ji Darogaji (P.W.8), the Investigating Officer, who was the Incharge of Dhobaha O.P.

It was suggested to him that, in fact, he had implicated the accused persons on the basis of the Post-Mortem Examination Report in collusion with the police. It was suggested to him that, in fact, on the date of occurrence, the two deceased were firing on the villagers and while snatching the same the occurrence had taken place but he denied it. He also denied the knowledge about the location of his

brother Lal Babu Mishra who had run away on account of firing of the accused persons. It was suggested to him that, in fact, there was firing in the village on the date of occurrence.

He conceded that there was enmity between the Appellant Santosh Yadav and himself and he was almost next door neighbour. He had not apprehended any danger to his two brothers when they were leaving with the Appellant Santosh Yadav but was afraid that they may drown themselves in the flood and, therefore, he had followed them.

He denied that he had stated a few days earlier, there had been an incident of stone pelting from the side of the house of the Appellant Santosh Yadav which had led to an altercation between them. He conceded that there was no enmity between the Appellants Jivratan Yadav, Saral Yadav and Kuber Yadav. He stated that the place of occurrence was center of the village and there were many shops and temples located there.

He confirmed that the police had come on the boat but refused the suggestion that P.W.1 and P.W.2 had also come along with the Police Force. He denied the suggestion that Appellants Rameshwar Yadav and Badri Yadav had migrated with their animals because of the flood and he also denied the suggestion that Ashok Yadav (acquitted), son of Appellant Bhikhari Yadav, was in military

and was posted at Bhatinda on the date of occurrence. He asserted that Appellant Nand Jee was not at the place of his posting but was very much present in the village on the date of occurrence. It was suggested to him, lastly, that the occurrence had not taken place in the manner he depicted .

10. P.W.6 Ram Babu Mandal, the Officer Incharge of Ara (Mufassil) Police Station stated that on 16.09.2003 at about 06.00 A.M. he had recorded the Fardbeyan of Shankar Mishra (P.W.5) at his village, which was in his writing. He proves the same as Ext.3. He also proves the endorsement on the Fardbeyan as Ext.3/1 which has been taken note of by this Court earlier. He stated that on the basis of such Fardbeyan, he registered a formal First Information Report and handed over the Investigation to P.W.8 Surendra Lal Deo, the endorsement of which is Exhibited as 3/2 and 3/3. He proves the fact of sending the First Information Report to the Court on 17.09.2003 and he proves the same as Ext.3/4. He stated that he had given an application for making correction that instead of 06.00 P.M., it should be 06.00 P.M.

In cross examination, he stated that on 15.09.2003 when he was attending the meeting at the S.P. Office alongwith the other Officer Incharge , P.W.8 Surendra Lal Deo, the Officer Incharge of Dhobaha O.P. was also present there. After the meeting, while he was

at the S.P. Office, he learnt that a firing had taken place in the village- Bela and at that point in time, the area was flooded. He alongwith P.W.8 Surendra Lal Deo and two persons of Bela village left for there on the boat and reached at 05.30 P.M. He proves the part of the case diary in the writing of P.W.8 Surendra Lal Deo as Ext.8.

In cross examination, he further stated that on 15.09.2003, the S.P. had called him on hearing about the occurrence at Bela village and he made the entry in the Station Diary, however, he clarified that the Station Diary Entry was made after his return from Bela village. He stated that he had sent the Fardbeyan on 16.09.2003 to the Investigating Officer through 'Chowkidar'. It was suggested to him that, in fact, he had not recorded the Fardbeyan on the date and time. He had stated that the accused Sanjay Yadav was arrested on 16.09.2003 itself and he had gone to the village second time and was summoned through some police personnel. It was suggested to him that the Fardbeyan was ante dated document, which he denied.

11. P.W.7 Vindhyachal Prasad is a formal Police Officer who stated that on 26.12.2004, he was posted at Dhobaha O.P. under Ara (Mufassil) Police Station and he assumed the investigation of the said case on the said date from Surendra Lal Deo (P.W.8). He proves the chargesheet (Ext.5).

12. P.W.8 Surendra Lal Deo was Officer Incharge of

Dhobaha O.P. on 15.09.2003 and had reportedly gone to Ara to attend the meeting with the S.P. He heard a rumour that the two deceased Taj Narayan Mishra and Ram Narayan Mishra had been killed so he contacted the senior officers. It was flood time. He contacted P.W.1 Brajesh Narayan Mishra and P.W.2 Dinesh Mishra, the father and son, who were in Ara Town and alongwith them and Ram Babu Mandal (P.W.6), they went to village-Bela on the boat arranged by the Circle Officer. However, they reached there on the next morning at 05.30 A.M. and found the two dead bodies. The villagers were agitated but they were pacified and, thereafter, the Inquest Report was prepared which he proves as Exts.6 and 6/A. He proved the formal documents as Exts.7 and 7/1 and also seized the blood stained earth. He proves the seizure list as Ext.8. He also inspected the place of occurrence which was in the village-Bela on the footpath where two dead bodies were seen fallen together. He describes the place of occurrence and that several houses were located nearby. He proves the map as Ext.9. After this, several police officers from Dhobaha O.P. came. The dead bodies were sent for Post-Mortem Examination alongwith the 'Chowkidar' Mahesh Yadav, the Informant (P.W.5) and P.W.2. He seized 27 cartridges from the house of Kedar Nath Yadav and found one cartridge on the road near the house of Tankar Yadav. He was informed by the A.S.I. Tapeswar Singh and Constable Ashok



Singh that Sanjay Yadav had been called by the Officer Incharge of Mufassil Police Station for interrogation whereafter he was sent to jail. He stated that on 17.09.2003, he received the Fardbeyan through the 'Chowkidar' who explained that it was a day late because of the flood. Subsequently, he submitted the chargesheet against all the accused persons. He stated that he had learnt about the occurrence at 06.45 P.M at which time, P.W.1 and P.W.2 were also in Ara. C.O. had arranged the boat in their presence and P.W.1, P.W.2 came to the S.P. Office and they had left together. He assumed the investigation on the very same day.

He stated that he had stated in the case diary that he had attempted to take statement of the family members of the deceased but they had refused to give any statement. The mother of the deceased had stated that they had learnt about the death of the two deceased the next morning. His attention was drawn to the earlier statement that P.W.1 and P.W.2, according to him, were not eye witnesses and, in fact, they had gone alongwith him to the place of occurrence. P.W.4 also had not stated about being an eye witness and he had learnt about the occurrence later. He identified P.W.1 in court as one of the persons who had met alongwith his son (P.W.2) at the S.P. Office and confirms that both of them were present at Ara on the date of occurrence. He stated that he did not find any signs of firing at the

place of occurrence such as empty wards etc. He also stated that the court was one kilometer away from the police station. His attention was drawn to the statement of P.W.4 also from which it appears that he was not an eye witness.

13. P.W.9 Saryu Pandey is also a formal witness to the Protest Petition having been filed by the Informant on 02.12.2003, i.e., about three months later. This is marked for identification.

14. P.W.3 is Dr. Ram Raj Ravi, who conducted the Post-Mortem Examination of the dead body of the two deceased, namely, Ram Narayan Mishra and Tej Narayan Mishra.

He found the following injuries on the person of the deceased Ram Narayan Mishra:

External:

- (i). Lacerated injury right ear lobule. Hole of 1 cm. diameter in ear lobule. Margin inverted blacken from front of lobule. It was wound of entry. Margin blacken of ear lobule everted, it was wound of exit.
- (ii). Lacerated oblique injury below right ear lobule margin upper part of wound was inverted and blacken wound of entry, lower part everted, skin deep 2/3" X 1/2" X skin to muscle deep, wound of

exit.

- (iii). Over parietal region 2" X 1/2" brain cavity deep margin inverted, wound of entry.
- (iv). Diffuse swelling below chin.
- (v). Mark of gun powder in front of both upper arm.

On dissection:

Skull:

- (I). Brain matter lacerated fractured of left parietal and fracture of bones of base of skull. Foreign body resembling. Bullet recovered below chin under muscle. Sealed and handed over to the Police.

(II). Thorax:

Heart-right chamber full left empty. Both lungs pale.

Abdomen-All Viscera pale.

Stomach contains about 300 ml. of semi digest food.

Urinary bladder-contains 200 ml. of urine.

Time elapsed since death- 6 to 36 hours.

In the opinion of the doctor, the cause of death was due to damage of vital organ like brain, leading to comma and death caused by firearm. It may be country made pistol.

He proves the Post-Mortem Report of the deceased Ram Narayan Mishra as Ext.1.

He found the following injuries on the person of Tej Narayan Mishra:

External:

- (i). Lacerated injury right side of nose 1/3” of diameter, margin inverted irregular blacken brain cavity deep, wound of entry.
- (ii). Lacerated injury below occipital 1” of diameter. Margin irregular everted, wound of exit. This injury was communicating with injury no.(i).

On dissection:

Skull-fracture of nasal bone, right maxillae on occipital bone.

Thorax- Both lungs pale. Heart (Refer of P.M. referral is torn).

Abdomen-All viscera pale.

Stomach contains 350 ml of semi digest food.

Urinary bladder-Contains 250 ml. of urine.

Time elapsed since death-6 to 36 hours.

In the opinion of the Doctor, the cause of death was due to damage of vital organ like brain leading to comma and death caused by firearm. It may be country made pistol.

He proves the Post-Mortem Report of the deceased Tej

Narayan Mishra as Ext.2.

15. As stated earlier, the defence has also examined eight witnesses on the point of alibi but they were not examined earlier, therefore, their evidence is of no value.

16. The main point raised by the counsel for the Informant is when eye witnesses are consistent no reliance be placed on the evidence of P.W.8 who ruled out the presence of P.W.1 and P.W.2 since a Protest Petition was filed against him. The further submission is that since it is a case of cold blooded murder at the place of occurrence which is well proved, therefore, the conviction be maintained.

17. On going through the evidence of the witnesses, we find that as for eye witness account of P.W.1 Brajesh Narayan Mishra, P.W.2 Dinesh Mishra their evidence is unreliable because their statements are contradictory to that of P.W.8 Surendra Lal Deo, the Investigating Officer, who stated that P.W.1 and P.W.2 had left alongwith them for the P.O. village from Ara. P.W.6 Ram Babu Mandal, Officer-in-Charge of Ara (Muffasil) P.S. has also mentioned about presence of two persons of village Bela who had accompanied them on the boat. Of course, he does not name them but it is a circumstance which suggests that he was talking about P.W.1 and P.W.2.



We are inclined to reject their evidence also because P.W.1 Brajesh Narayan Mishra, P.W.2 Dinesh Mishra, P.W.4 Umesh Narayan Mishra and P.W. 5 Shankar Mishra who have deposed as eye witness belong to the same family and hence as a rule of caution their evidence will have to be doubly verified. They had given their statements two days later. If the Police Officer had come to the place of occurrence reportedly on 16.06.2003 in the morning there was no reason as to why they were not examined at the first instance especially since they were family members and claimed to be eye witnesses.

The eye witness account of P.W.4 Umesh Narayan Mishra is not trustworthy since he had not given such account earlier as per the Investigating Officer. His conduct after the occurrence is also very intriguing. He said he hid himself in the house and did not come out till such time as he was summoned by the police. This suggests that in all probability the occurrence took place in another manner where the prosecution party apprehended danger to their lives. The suggestion to the witnesses is that on the fateful day villagers had surrounded their house when the two deceased had resorted to firing.

We are now, therefore, left with the sole evidence of P.W.5, the informant we have to thus keep in mind the principle that conviction can be based on the evidence of sole eye witness that only



if he is completely unimpeachable has to be kept in mind and hence his evidence has to be tested in the light of such evidence. We find it a little suspicious that even though the Informant has stated that he had given his Fardbeyan at the place of occurrence but there is no witness to the recording of Fardbeyan of P.W.5 at that place and time. The informant names three persons in the Fardbeyan as eye witnesses but none of them signed on the Fardbeyan nor have they been examined. His own family members, i.e., P.W.1, P.W.2 and P.W.4 who were reportedly present in the village even they do not lend authenticity to the document. Coupled with this, the F.I.R. has reached Court on 17.09.2003 even though P.W.6, Officer-in-Charge, Arrah Muffasil Police Station, who had recorded the Fardbeyan had instituted the F.I.R. on 16.09.2003 itself. There is evidence to the effect that the Court was closeby to the Police Station. P.W.8 had tried to explain that the Fardbeyan was given to him a day later but this does not match with the entries on the F.I.R. Nor was there any occasion for the Fardbeyan to be given to him when P.W.6 had taken it to the Police Station on the same day and instituted the formal F.I.R.

We also find the motive of the occurrence iscompletely untrustworthy inasmuch as it is the admission of the Prosecution that there was no enmity between Santosh and the deceased so there was no reason for him to have taken the two deceased to Appellant

Bhikhari and proclaim that the enemy had come. The Title Suit between the Appellant Bhikhari Yadav and P.W.1 is numbered as T.S. Case No.279 of 2006, meaning thereby it was instituted after the present occurrence. In such a situation, we would hold that the Prosecution has failed to prove the motive of the occurrence.

It is also noteworthy that the two deceased had criminal antecedents as conceded by, their father, who himself alongwith other members of his family were accused in some criminal cases.

18. Under the aforesaid facts and circumstances, discussed all along the judgment, these Appeals are allowed. The Judgment of conviction and Order of sentence passed against the Appellants, above named, are set aside. They are acquitted of the charges. It appears that Appellant Bhikhari Yadav {in Criminal Appeal (DB) No.46 of 2014} is on bail, therefore, he is discharged from the liabilities of his bail bonds whereas rest of the Appellants of the other Appeals are in jail custody, therefore, they are directed to be released forthwith, if not wanted in any other cases.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava.

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