

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.123 of 2015

Arising Out of PS.Case No. -122 Year- 2001 Thana -BELHAR District- BANKA

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1. Umesh Pandit, son of Sukhdeo Pandit

2. Dinesh Pandit, son of Sukhdeo Pandit

3. Kapildeo Pandit, son of Sukhdeo Pandit

4. Kamlesh Pandit, son of Sukhdeo Pandit

5. Sukhdeo Pandit son of Late Basudeo Pandit

6. Govind Pandit, son of Late Basudeo Pandit

7. Dular Pandit, son of Late Basudeo Pandit

8. Digambar Pandit son of Govind Pandit

9. Raj Kumar Pandit, son of Prasadi Pandit, All resident of village- Chandan Nagar, P.S. Belhar, District- Banka

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 162 of 2015

Arising Out of PS.Case No. -122 Year- 2001 Thana -BELHAR District- BANKA

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1. Kanhaiya Pandit S/o Guna Pandit

2. Bharat Pandit S/o Guna Pandit

3. Bechan Pandit S/o Sahdeo Pandit

4. Janki Pandit S/o Late Bhado Pandit

5. Kailash Pandit S/o Late Jagdish Pandit All resident of village - Chandan Nagar, P.S. Belhar, District - Banka

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.123 of 2015)

For the Appellant/s : Mr. Brijnandan Prasad, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

(In CR. APP (SJ) No.162 of 2015)

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

For the Respondent/s : Mr. S.B. Verma, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 03-10-2017

Cr. Appeal (SJ) No. 123/2015 wherein Umesh Pandit,

Dinesh Pandit, Kapildeo Pandit, Kamlesh Pandit, Sukhdeo Pandit

Govind Pandit, Dular Pandit, Digambar Pandit and Raj Kumar Pandit are the appellants while in Criminal Appeal (SJ) No. 162 of 2015, Kanhaiya Pandit, Bharat Pandit, Bechan Pandit, Janki Pandit and Kailash Pandit are the appellants commonly originate against the judgment of conviction dated 21.01.2015 and order of sentence dated 27.01.2015 passed by 6th Additional Sessions Judge, Banka in Sessions Trial No. 466/2003/108/2015, on account thereof, have been heard together and are being disposed of by a common judgment.

2. All the appellants named above have been found guilty for an offence punishable under Section 147 IPC having no separate sentence inflicted therefor, 307/149 IPC and each one has been sentenced to undergo RI for 7 years, 324 IPC whereunder each one has been sentenced to undergo RI for 2 years, 323 IPC whereunder each one has been sentenced to undergo RI for 6 months, 148 IPC whereunder each one has been sentenced to undergo RI for 1 year and 341 IPC whereunder each one has been sentenced to undergo RI for 1 month with a further direction to run the sentences concurrently.

3. Chandeshwari Yadav (since deceased) gave his Fard-e-beyan on 22.11.2001 at about 11:00 AM while he was admitted at Primary Health Centra, Belhar, disclosing therein that on the same day at about 8:00 AM, his co-villager, Bhola Pandit came to



his place and disclosed that accused persons' cow, she-buffalo are grazing his paddy crop. He began to weep, whereupon he accompanied Bhola Pandit to the place of Dinesh Pandit and scolded Dinesh and Kanhaiya why they are destroying the standing paddy crop of Bhola Pandit. During midst thereof, Umesh Pandit, Kapildeo Pandit, Kamlesh Pandit, Sukhdeo Pandit, Govind Pandit, Dular Pandit, Digambar Pandit, Bechan Pandit, Bharat Pandit, Janki Pandit, Raj Kumar Pandit and Kailash Pandit armed with deadly weapon came and encircled him. Dinesh and Kanhaiya also went to their house and returned back with Farsa and sword. They provoked. Then thereafter, Dinesh gave Farsa blow over his head while Kanhaiya assaulted with sword over his left hand. He fell down whereupon accused began to throttle. His father and brother Ugendra and Sahdeo (PWs-9 and 1) respectively came in rescue. Raj Kumar Pandit assaulted his father, Bajo Yadav with sword and Umesh with rod. Ugendra was assaulted by Bechan Pandit with rod while Sahdeo Pandit was assaulted by Dular with Khanti over his head. Rest assaulted with fists and slaps. Co-villagers intervened and got the matter pacified.

4. On the basis of the aforesaid Fard-e-beyan, Belhar PS Case No. 122/2001 was registered followed with investigation as well as submission of charge-sheet paving way for trial which



ultimately concluded in a manner, subject matter of instant appeals.

5. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the CrPC is that of complete denial as well as false implication in order to save their skin from the counter case bearing Belhar PS Case No. 123/2001 having been recorded on the Fard-e-beyan of Kanhaiya Pandit on account of commission of murder as well as assault. To substantiate the same, though ocular evidence has not been adduced, documentary evidence had been produced, an exhibit of the record.

6. In order to substantiate its case, prosecution had examined altogether 13 PWs out of whom PW-1, Sahdeo Yadav (injured), PW-2, Atma Nand Jha, PW-3 Randhir Singh, PW-4, Sada Nand Singh, PW-5, Prem Lata Devi (wife of informant), PW-6, Pradeep Kumar Singh, PW-7, Manju Devi (niece of informant, PW-8, Sudama Devi (mother of informant), PW-9, Ugendra Yadav (injured), PW-10, Urmila Devi (wife of Ugendra who was also not examined), PW-11, Dr. Ashish Kamal Dedel, PW-12, Dr. Ram Prasad Pandit and PW-13, Prem Chandra Yadav. On the other hand had also exhibited Ext-1 series, Injury report relating to respective injured, Ext-2, signature of informant over Fard-e-beyan. Side by side, defence had exhibited Ext-A series, certified copy of order dated 02.03.2002 as well as 01.05.2012 relating to Sessions Trial No. 795/2002, Ext-B,



Formal FIR of Sessions Trial No. 795/2012 arising out of Belhar PS Case No. 123/2001, Ext-C, Charge-sheet of Belhar PS Case No. 123/2001, Ext-D, Charge.

7. While assailing the judgment of conviction and sentence, it has been submitted on behalf of learned counsel for the appellants that prosecution has failed to substantiate its case, on account thereof, the finding recorded by the learned lower court is not at all found to be justified. In order to buttress such plea, it has been submitted that on account of non examination of Bhola as well as his wife Fakarni and further having no explanation at the end of the prosecution on that very score should be considered adverse to the prosecution case in the background of the fact that motive, whatsoever been shown at an initial stage is found completely vanished. That means to say, coming to the place of informant (since deceased) by Bhola and asking for his presence in order to forbid the accused persons from getting his crop grazed by their cattle and on account thereof, having presence of informant at the place where he allegedly sustained injury at the hands of the appellants and further with regard to presence of Bajo, Sahdeo, Ugendra and sustaining injuries at their end in a manner as pleaded could not be accepted. Contrary to it, the illegal activity of the prosecution party whereunder they brandished their weapons, assaulted appellants out of whom,



Jagdish died and for that, the prosecution party admittedly, were being prosecuted for murder as well as causing murderous attack when the appellants protested over teasing the daughter of Sumitra Devi while they were returning from Chhath Ghat and non explanation at the end of the prosecution party with regard to murder of Jagdish as well as injuries having over persons of respective appellants did not justify the finding recorded by the learned lower court in the background of the fact that by such activity, the prosecution suppressed the true version of manner as well as genesis of occurrence.

8. It has also been submitted that even after going through the evidence having been adduced on behalf of prosecution witnesses, it is evident that they had gone to the place of occurrence, they attacked upon the appellants and probability of assault to save themselves could not be ruled out, however, would not exonerate the prosecution to explain once there happens to be an admission that during same course, appellants also sustained injury. Furthermore, from nature of injury sustained by the prosecution party coupled with plea of occurrence conclusively points out the prosecution party to be aggressor, and that being so, the prosecution is found intermingled with falsehood. In its continued, it has also been submitted that non examination of Investigating Officer caused serious prejudice to the appellants as, had there been examination of the Investigating Officer,



then in that event, the actual place of occurrence would have been exposed and in likewise manner, the contradiction which is visualizing from the evidence of the respective witnesses could have been properly brought up on record.

9. Apart from this, the evidence of the witnesses did not speak as well as corroborate the narration of the prosecution case inconsonance with the Fard-e-beyan, whereupon, considering the entire case in its right perspective did not justify the judgment of conviction and sentence recorded by the learned lower court.

10. On the other hand, while supporting the finding recorded by the learned lower court, it has been submitted by the learned APP that after meticulous examination of the evidences available on the record, the learned lower court had recorded its finding and on account thereof, is fit to be confirmed.

It is evident that respective injured were examined by Dr. Ajit Kumar who died on account thereof, injury report issued by him has been exhibited by PW-12, Dr. Ram Prasad. As per injury report, the respective injured had found the following injuries:-

Chandeshwari Yadav

Injury No.(i) Incised wound of 2" x ½" x 1/6" on head caused by sharp substance. Nature of this injury— Simple.

Injury No. (ii) Defused swelling on left palm with



fracture dislocation of the base of the 1st Metacarpal. Caused by hard and blunt substance. Nature of injury— Grievous.

Injury No. (iii) One bruise of 2" x 1" on left arm caused by hard and blunt substance. Nature of injury— Simple.

Injury No. (iv) Swelling of 1" in diameter on the front of neck caused by hard and blunt substance. Nature of injury— Simple.

Age of injury— within 24 hours.

Bajo Yadav

(i) One incised wound of 3 ¼" x 1" x ¾" on its palm caused by sharp substance. Nature of injury— Simple.

(ii) One incised wound of ¾" x 1/6" x 1/8" on right side of head caused by sharp substance. Nature of injury— Simple.

(iii) defused swelling on right shoulder joint with dislocation of head of humerus. Caused by hard and blunt substance. Nature of injury— Grievous.

(iv) One abrasion of ¾" x 1/8" on right scapula caused by hard and blunt substance. Nature of injury— Simple .

(v) One bruise of 1 ½" x 1" on right thigh caused by hard and blunt substance. Nature of injury— Simple.

The patient was dangerous to life due to haemorrhage, so the doctor referred the patient to JLMCH, Bhagalpur. The injury report of this patient was marked as Ext.1/B.



Ugendra Yadav

(i) Lacerated wound of 2" x ¼" x 1/8" on left side of head caused by hard and blunt substance. Nature of injury— Simple.

(ii) One lacerated wound of ½" x 1/6" x 1/8" on the proximal part of left ring finger caused by hard and blunt substance. Nature of injury— Simple.

(iii) One bruise of 1 ½" x ½" x ½" on right arm caused by hard and blunt substance. Nature of injury— Simple.

Age of injury- Within 24 hours.

Sahdeo Yadav.

(i) Lacerated wound of ¾" x 1/6" x 1/8" on the side of head caused by hard and blunt substance. Nature of injury— Simple.

(ii) Defused swell on right toe caused by hard and blunt substance. Nature of injury— Simple.

Age of injury- Within 24 hours.

11. Taking into account the precarious condition of Bajo Yadav, he was shifted to JNLMCH, Bhagalpur where he was examined by PW-11, Dr. Ashish Kamal who found the following injuries over the person of Bajo Yadav.

1. Stitched wound 1" long on right side of vertex of scalp
2. Stitched wound 5" long on left palm.



Age of Injury- within 24 hours.

12. From their respective cross-examination, it is evident that PW-11 was unable to say with regard to nature of injury which could have been obtained from treating doctor while PW-12 had said that neither he examined any of the injured nor respective injury report was prepared in his presence.

13. Be that as it may, no cross-examination has been made on behalf of defence to challenge the finding and in likewise manner, happens to be activity of the prosecution who got him examined as a formal witness.

14. Evidence of PW-13, son of Chandeshwari, happens to be formal who had simply exhibited signature of Chandeshwari over Fard-e-beyan, as Chandeshwari was dead. In likewise manner, another injured, Bajju Yadav has also not been examined on account of this death.

15. PW-1 is brother of informant. He had deposed that on the alleged date and time of occurrence, he was at his house. Bhola and Fakarni Devi came to Chandeshawari Yadav and said that accused persons' buffalo is grazing his crop and so, same be prevented whereupon, Chandeshwari had gone to the place of Dinesh Pandit. Afte some time, he heard uproar whereupon he along with his brother, father rushed to the place of occurrence where he saw



Dinesh, Kanhai, Umesh, Kapildeo, Ramesh, Sukhdeo, Dular, Govind, Digambar, Bechan, Bharak, Rajkumar, Janki, Kailash were assaulting Chandeshwari. Dinesh was assaulting with Farsa on his head. Kanhai gave sword blow over left hand of Chandeshwari and then Kanhai and Dinesh began to throttle. He rushed in his rescue whereupon, Dular gave Khanti blow over his head. Ugendra came in rescue who was assaulted by Bechan with rod. His father rushed in rescue and he was also assaulted by Umesh by rod over his head. Rajkumar had inflicted sword blow over his father. Villagers came whereupon they were lifted to Belhar hospital. Police came and recorded his statement. During cross-examination, he had admitted that two cases are being fought amongst them. He had further stated that he was at his house. Fakarni Devi and her family members had met with him. He had not gone to Bahiyar. In para-6, he had shown boundary of place of occurrence, north- house of Dinesh Pandit, south- house of Basant Mandal, East- land of Fakarni Devi, West- house of Guna Pandit. In para-7, he had stated that he had not gone to the house of Dinesh Pandit. He had gone to the house of Basant Mandal. He had seen Chandeshwari as well as Bajo Yadav injured. He had gone to rescue. Then thereafter, they had gone to hospital. They have not seen Dular, Dinesh, Sukhdeo and Digambar in injured condition. He had admitted that Kanhai had instituted murder case against him and



others. He had further denied allegation that they have caused murder of Jagdish as well as having assaulted Dular, Dinesh, Sukhdeo and Digambar and this case has been filed in retaliation of that very case.

16. PW-2 had deposed that on the alleged date and time of occurrence, he was eating “Chhath Prasad” at the house of Randhir Singh. They heard sound of uproar coming towards school. He had gone there and found both parties indulged in fighting. He had seen Bajo, Chandeshawar, Sahdeo, Ugendra in an injured condition out of whom Bajo was unconscious. He also stated that Maar-peat took place in between family of Dinesh as well as Bajo Yadav. During cross-examination, he had stated that no occurrence took place in his presence.

17. PW-3 in likewise manner had claimed not to be an eyewitness of the occurrence. He had simply stated that when he rushed at the place of occurrence, he found Jugal Kishore, Atma Nand, Pravin Singh and Sadanand Singh. He had seen Bajo, Chandeshawar, Sahdeo, Ugendra in an injured condition. He also came to know that there was scuffle in between family of Dinesh and Bajo.

18. PW-4 also did not claim to be an eyewitness to the occurrence. He had stated that after hearing sound of uproar, he rushed towards east to his village. Smoke was coming out. He found



Bajo, Chandeshawar, Sahdeo, Ugendra in an injured condition. He also came to know that Jagdish had been murdered.

19. PW-5 is Prem Lata Devi, wife of informant. She had stated that on the alleged date and time of occurrence she was distributing Chhath Prasad amongst her family members. Her husband, son and other family members were present. At that very time, Fakarni and Bhola came to her husband and disclosed that Dinesh, Bechan, Kanhai, Dular are grazing his paddy crops by their cattle. Kindly, forbid them, whereupon, her husband accompanied them. At about half an hour, she heard an uproar and there was a rumour that the accused persons are throttling her husband as well as are assaulting whereupon, she along with her Bhainsur and other family members rushed at culvert near house of Dinesh where she saw Dinesh Pandit armed with Farsa, Kanhai with sword, Umesh with rod, Bechan with rod, Dular with Khanti, Rajkumar with Katari and Kapildeo, Kamlesh, Govind, Digambar, Bharat, Janki, Kailash with Lathi and were assaulting her husband. Dinesh and Kanhai gave blow over head of her husband. Her father-in-law was assaulted by Rajkumar Pandit. Her Bhainsur, Ugendra as well as Sahdeo were also assaulted. When she rushed, she was also assaulted. They were taken to Belhar hospital. About 100-200 people assembled at the spot. They had put the house of Fakarni on fire. They had also caused murder of



Jagdish. During cross-examination at para-9, she had stated that her husband died of ailment. He was President of RJD at block level. At para-15 she had stated that there was Chhath festival on the alleged date. After praying they returned back from canal. In para-16 she had stated that at the time of occurrence Savitri Devi was a ward member. She had not seen Savitri Devi at Ghat. Then had denied the suggestion that while Savitri was returning with her daughter, her son teased her whereupon, Hari Kishore and Prem Chand indulged in altercation as a result of which , they have committed this occurrence. At para-17, there happens to be contradiction. In para-19, she had shown boundary of the place of occurrence North- Houses of Dinesh Pandit, Bharat Pandit, Kanhai Pandit, South-Field of Palo Mandal, East-Road, West-Road. After some distance shop of her Gotni lies in west to that place. In para-20, she had further stated that Jagdish Pandit was not murdered in her presence. In para-22, she had stated that she reached at the spot while Maar-peet was going on. She had seen only 14 persons. Then had stated that she had seen about 200 persons out of whom she had identified only 14 persons. Apart from this, she had also identified, Saryu Pandit, Fakarni Devi, Bhola Pandit. In para-23 she had stated that her husband, father-in-law regained sense at the hospital. In para-24 she had denied with regard to pendency of counter case but had admitted that her son was under



custody relating to the aforesaid case. In para-27, she had stated that when she reached at the scene, the house of Fakarni Devi was under flame. In para-28, she had stated that she is not knowing whether Fakarni had instituted any case or not. In para-29, she had stated that she had got sale-deed in her favour from Fakarni Devi. Subsequently thereof, Fakarni Devi was murdered. Then had denied the suggestion that they have assaulted the members of the accused persons and during course thereof, they had committed murder of Jagdish and subsequently thereof, got this case filed in order to save their skin.

20. PW-6 had deposed that on the alleged date and time of occurrence, he was at his house. After hearing uproar, he rushed to the place near Chandan Nagar where Maar-peet was over. Bajo, Chandeshawar, Sahdeo, Ugendra were in an injured condition. He was not knowing how they were assaulted. Then injured were sent to the hospital. Then thereafter, he came to know that there was free fight amongst Yadav as well as Pandit group.

21. PW-7 had stated that her Naihar lies at village-Chandan Nagar. She had come to her Naihar on the occasion of Chhath. After Chhath, while she was distributing Chhath Prasad, Fakarni and her husband Bhola came and disclosed to her uncle, Chandeshwari that Dinesh and Kanhai are destroying their paddy crops by allowing grazing by their cattle whereupon her uncle



accompanied them. After half an hour, there was rumour that members of the Pandit community are assaulting her uncle. Dinesh, Kanhai, Dular, Bechan were assaulting her uncle. She rushed there and saw, Rajkumar giving sword blow over her grand-father Bajo. Umesh and Dular gave rod blow over her uncle Ugendra. Bechan gave Khanti blow over Sahdeo. Villagers came and got the quarrel pacified and then sent the injured to the hospital. She had also seen Dinesh, Kanhai, Fakarni Devi. The house of Fakarni Devi was set ablazed. While they were at police station, they came to know that Dinesh and Kanhai and others caused murder to their cousin grandfather, Jagdish. She claimed to identify all the accused. During cross-examination at para-14, she had seen roof of house of Fakarni under flame. She was unable to disclosed how many persons were at one side of house of Fakarni and in likewise manner, other side of house of Fakarni Devi. Then had disclosed that villagers had assembled at the P.O. In para-15, she had disclosed boundary of place of occurrence, North- house of Dinesh Pandit, South-Field of Nemo Mandal, Shambhu Mandal, East- Road and Karbala, West- House of Nemo Mandal as well as Shambhu Mandal. In para-16, she had stated that first of all her uncle had gone. In para-18, she had stated that she had seen Bhola Pandit in good condition. He was not assaulted. In para-19, she had stated that her uncle Chandeshwari was leader of the



village. In para-22, she had stated that she had gone to the hospital. In para-23, she had stated that she talked with the police with regard to the occurrence but her statement was taken after few days. Then had denied the suggestion given under paras 27, 28. In para-30, she had also denied the suggestion that her Naiharwala had murdered Fakarni Devi after getting the land transferred in their favour. In para-31, she had stated that Yadavtola and Pandittola lies at a distance of $\frac{1}{2}$ - $\frac{3}{4}$ Kilometres. She had further shown presence of Pandittola, Mandaltola. She had further stated that before her arrival at the place of occurrence only her uncle had gone. She had seen Chandeshwari in an injured condition.

22. PW-8 is Sudama Devi wife of Bajo Yadav. She had deposed that on the alleged date and time of occurrence while she was distributing “Prasad of Chhath” amongst family members, Bhola and Fakarni Devi came to Chandeshawari Yadav and said that accused persons are engaged in grazing his crop but their cattle and so, same be prevented whereupon, Chandeshwari had accompanied them. After some time, there was rumour that Chandeshwari had been murdered whereupon she along with her husband rushed to the place of Fakarni where she saw Dinesh, Umesh, Dular, Bechan, Kanhai, Kameshwar, Sukhdeo, Skandeo, Rajkumar Pandit were assaulting Chandrawari. Umesh Pandit gave rod blow over head of



her husband. Rajkumar gave sword blow. Ugendra was assaulted by Bechan. Sahdeo was assaulted with Khanti. Then thereafter, accused persons set fire in the house of Fakarni. Injured were taken to hospital. While she was at hospital, she heard that accused persons caused murder of Jagdish. During cross-examination at para-11, she had stated that when she reached at the place of occurrence, she had found house of Fakarni under flame. She had stayed at the hospital along with her husband, son for two days. None other was present. She had seen Bhola Pandit was not assaulted. In para-18, 19 and 20, she had denied the suggestion relating to counter case as well as teasing of daughter of Pandit by her grandson. She had further stated at para-28, that she had seen Jagdish near school. School lies 4-5 hands away from the house of Fakarni. In para-30, she had stated that she had seen her husband, son. She had denied the presence of Dular, Digambar, in injured condition admitted at Belhar Hospital.

23. PW-9 had deposed that on the alleged date and time of occurrence, he was at his house. Bhola and Fakarni Devi came to Chandeshwari Yadav and disclosed that Dinesh, Kanhai, Bechan, Dular are engaged in grazing his crop by their cattle whereupon, Chandeshwari had accompanied them towards house of Fakarni Devi. After some time, there was rumour that Chandeshwari was being assaulted by Pandit whereupon he along with his father, Bajo Yadav,



brother, Sahdeo and mother rushed and had seen Dinesh, Umesh, Dular, Bechan, Kanhai, Kameshwar, Sukhdeo, Rajkumar Pandit were assaulting Chandeshwari. Dinesh and Kanhai throttled Chandeshwari. He rushed in rescue whereupon Bechan gave rod blow over his head. His father was assaulted with rod. Rajkumar Pandit gave sword blow. Sahdeo was assaulted by Dular Pandit with Khanti. His father became unconscious and fell down. Then thereafter, accused persons set ablazed the house of Bhola and Fakarni, as a result of which, house of Fakarni turned into ashes. At about 12.30 PM, there was uproar that the accused persons murdered Jagdish. During cross-examination at para-19, he had stated that he had seen 8-10 buffaloes grazing paddy crops of Fakarni. At that very time, he had not seen his brother, Bhabhi or mother. He is unable to disclose the boundary of the place of occurrence. In para-13, he had stated that Bhola and Fakarni were not injured. In para-15, he had stated that he reached at the spot 10 minutes after departure of Chandeshwari. In para-16, he had stated that when he reached at the place of occurrence, there was 14-15 persons. 100 of people were present since before. He had seen the house of Fakarni completely burnt. He had stated in para-17, that he had seen his brother in injured condition. In para-22 he had admitted that Kanhaiya had instituted murder case against them which is going on. He had further admitted presence of Savitri Devi. In para-25 he



had also admitted Premchand to be his nephew. Then had denied the suggestion relating to counter case at para-27.

24. PW-10 had stated that on the alleged date and time of occurrence, he was at his house. At that very time, Bhola and Fakarni came and called Chandeshwari. Fakarni had stated that “*Bhaiya Chalo, Dhaan Char Raha Hai*”. Chandheshwari accompanied them. Subsequently thereof, she heard rumour whereupon she also had gone to the place of occurrence and seen Dinesh, Umesh, Digambar, Govind, Bharat, Dular, Bechan, Kanhai, Kameshwar, Sukhdeo, Rajkumar Pandit were assaulting Chandeshwari. Her father-in-law, Bajo Yadav had gone in rescue. He was assaulted by Rajkumar Pandit by sword. Her husband was assaulted by Bechan, Kanhai with iron rod. Her Bhainsur was assaulted by Dular with rod. After assault, Randhir took all the injured to hospital. Then had disclosed that Dinesh caused murder of Jagdish. Then had stated that Dinesh, Dular and others lit fire in the house of Fakarni Devi. During cross-examination at para-6, she had stated that she had not met with police till the day of evidence. In para-7, she had stated that when she reached at the place of occurrence, house of Fakarni Devi was completely burnt. In para-8, she had stated that when she was at place of occurrence, she had seen Sudama Devi. She had seen Sadanand Singh and Randhir Singh. She had seen her



husband and Bhainsur in injured condition. She had seen the dead body of Jagdish at that very place. She had not seen who was standing in midst of the persons having sword as well as rod. She had further stated in para-9 that she had seen the field which was grazed. She had seen cattle in the field. She had gone to the field, her husband, father-in-law had also gone to the field. Bajo Yadav had not gone to the field rather he pacified. In para-11, she had disclosed place of occurrence, North-Field of Fakarni Devi, South-her house and shop, East-house of Chandeshwari Yadav, West- Field of Nemo Mandal. In para-12, she had stated that Chandeshwari happens to be her Devar. He was President of RJD (Block level). In para-13, she had stated that she had seen Fakarni and Bhola in injured condition. They were admitted at hospital for two days. Her father-in-law remained at Belhar for three days where her Bhainsur was also admitted. Fakarni and Bhola had gone to the hospital after the occurrence. They both sustained injuries after the occurrence. In para-18, she had stated that she knew Savitri Devi and her daughter but they were not along with them during Chhath. Then had admitted presence of murder case.

25. As stated above the Investigating Officer has not been examined. From the evidence of the respective witnesses, it is apparent that there happens to be inconsistency amongst them over the place of occurrence much less, the boundary having shown by



them did not properly identify the alleged place of occurrence. Though, the prosecution party had denied that they ever indulged in Maar-peet with the accused persons and at initial stage of the trial they kept mum but subsequently, they developed that Jagdish Pandit was murdered by the appellants themselves. However, by the evidence of PW-10 the whole occurrence is found completely changed as, the dead body of Jagdish was seen by her along with members of the prosecution party. Although, injuries over the persons of the appellants have not been exhibited, on account of which, neither any of the injury could be known nor the status whether they were also taken to Belhar Hospital for treatment and whether they were also examined by the Dr. Ajit Kumar but the fact remains so far murder of Jagdish is concerned, and considering the evidence of PW-1, Sahdeo, one of the injured along with evidence of PW-10, it is apparent that although the prosecution had tried to explain by other witnesses that while they were at hospital they came to know that Jagdish was murdered by Dinesh and others is found non acceptable. On the other hand, murder of Jagdish is also found to have occurred in same sequence and that being so, the prosecution was under obligation to explain the same in the facts and circumstances of the case. Non examination of Bhola and his wife Fakarni is another circumstance to dent over prosecution case, as from the evidence it is evident that they



were the persons who accompanied Chandeshwari to their place, they were the persons aggrieved, they were the persons whose house was set ablaze, and though conflicting but some of the witnesses have stated that they had also sustained injuries. Furthermore, from the evidence of independent witnesses, it is apparent that they consistently deposed regarding group involved, at one side, Yadav and the other side, Pandit as well as free fight then in that circumstance, even being some of the injured examined as PWs could be seen with suspicious eye, more particularly, in the background of murder case having against them.

26. In *Mano Dutt & Anr v. State of Uttar Pradesh* reported in (2012) 4 SCC 79, it has been held by the Apex Court as follows:-

39. Before the non-explanation of the injuries on the person of the accused, by the prosecution witnesses, may be held to affect the prosecution case, the Court has to be satisfied of the existence of two conditions:

(i) that the injuries on the person of the accused were also of a serious nature; and

(ii) that such injuries must have been caused at the time of the occurrence in question.

40. Where the evidence is clear, cogent and creditworthy; and where the court can distinguish the truth from falsehood, the mere fact that the injuries on the person of the accused are not explained by the prosecution cannot, by itself, be the sole basis to reject the testimony of the prosecution witnesses and consequently, the whole case of the prosecution. Reference in this regard can be made to *Rajender Singh v. State of Bihar*, (2000) 4 SCC 298, *Ram Sunder Yadav v. State of Bihar*, (1998) 7 SCC 365 and *Vijayee Singh v. State of U.P.*, (1990) 3 SCC 190:



(AIR 1990 SC 1459).”

In view of the above, we are of the opinion that the High Court has not considered the issue of non-explanation of injuries on the person of accused in correct perspective.

27. Taking into account the over-all scenario visualizing from the record, it is evident that prosecution had suppressed the real genesis as well as manner of occurrence. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is set aside. Both the appeals are allowed.

28. Appellants are on bail, hence they are discharged from the liability of the bail bonds.

(Aditya Kumar Trivedi, J)

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