

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.322 of 2014

Arising Out of PS.Case No. -76 Year- 2006 Thana -MANJHI District- SARAN

[Against the judgment of conviction dated 03.03.2014 and order of sentence dated 12.03.2014 passed by the *Ad hoc* Additional Sessions Judge, 5th, Saran at Chpara, in Sessions Trial No.658 of 2008 arising out of Manjhi P.S. Case No.76 of 2006]

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1. Amir Yadav, son of Ramdeo Yadav,
 2. Brahma Yadav, son of Ramdeo Yadav, both resident of village-Cheful, P.S.- Manjhi, District-Saran

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bindhyachal Singh, Advocate
Mr. Harsh Singh, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP
Mr. Yogesh Chandra Verma, Sr. Advocate with
Mr. Chandra Mohan Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

&

HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SANJAY PRIYA)

Date: 10-05-2017

1. This Criminal Appeal is directed against the judgment of conviction and order of sentence dated 03.03.2014 and 12.03.2014 respectively passed by Sri S. C. Roy, 5th *Ad hoc* Additional Sessions Judge, Saran at Chapra, in Sessions Trial No.658 of 2008 arising out of Manjhi P.S. Case No.76 of 2006, by which he has convicted the appellants for the offence under Section(s) 302/34 Indian Penal Code and Section 27 of the Arms Act and sentenced them to undergo rigorous imprisonment for life along



with fine of Rs.15,000/- each for the offence under Section(s) 302/34 Indian Penal Code and further sentenced the appellants to undergo rigorous imprisonment for five years along with fine of Rs.5,000/- each for the offence under Section 27 of the Arms Act. In default of payment of fine, the appellants were directed to undergo simple imprisonment for a period of three months. All the sentences were ordered to run concurrently.

2. In brief, the case of the prosecution as given in the First Information Report on the basis of the *fard-e-bayan* of Akshya Lal Nishad @ Acche Lal Nishad (PW 6), who is the Informant of the case, recorded on 17.08.2006 at 15.30 hrs. by the Station House Officer of Manjhi P.S. at Manjhi-Tajpur road at a distance of 100 yards from the house of Sakaldeep Yadav situated in village near the dead body of the Informant's brother (Nand Kumar Nishad, Mukhiya) and Suman Singh, is that at about 10.30 in the morning, the Informant, his deceased brother Nand Kumar Nishad (Mukhiya), Informant's nephew Agnideo Nishad (PW 4), Suman Singh started from their home on two motorcycles for Manjhi Block Office. The informant and nephew Agnideo Nishad were on Rajdoot motorcycle while Suman Singh and Informant's brother were on Honda Unicorn motorcycle, which belonged to Suman Singh, who was driving the same. Both the motorcycles reached Tajpur Bazar at 11.00 AM



where Suman Singh took betel. After sometime, all the four persons again started on the two motorcycles. Suman Singh's motorcycle was going ahead on which the brother of the Informant i.e. Mukhiya jee was sitting at the back. The motorcycle of the Informant broke down in village Atkatha Pokhra and the Informant stopped there for repairing of the same. Suman Singh and Mukhiye Jee (deceased) continued on the motorcycle for Manjhi Block. At the said place two motorcycles; one of which was occupied by Brahma Yadav, Ex Mukihya and Chotelal and another was occupied by Amir Yadav and two unknown persons, were following from Atkatha Pokhra. The Informant on seeing this proceeded ahead with his nephew after getting his motorcycle repaired. The Informant's motorcycle was about 150 yards behind that of those persons. The Informant at about 12.20 PM heard 3-4 gun shots being fired from near south western main metal road. The Informant went ahead and saw appellants Brahma Yadav, Amir Yadav and one Chote Lal Prasad along with two unknown persons, who were firing indiscriminately with pistol on the Informant's brother and Suman Singh.

The Informant and his nephew started raising *halla*. On hearing gun shots and *halla*, people from nearby came and all the five assailants fled towards east on the motorcycles. Thereafter, the Informant and his nephew went there and saw that Suman Singh and



Nand Kumar Nishad (Mukhiya Jee) were injured on account of gun shot injures and were lying in the pool of blood on the southern side of the road in east west direction. Suman Singh's Hero Unicorn motorcycle was lying on the east of the dead bodies in a north south direction.

The reason for the occurrence is that Ex-Mukhiya Brahma Yadav had been elected member of the Panchayat Samiti in the Panchayat Election. In the meeting of the Panchayat Samiti held recently in the Block Office, the Informant's deceased brother had protested against the malpractices of dealers of Public Distribution System and Antyodya schemes which had been protested by Brahma Yadav as there is dealership in his family as well as Brahma Yadav had given threat on this count. In connection with the complain of malpractices of the PDS Dealers, Mukhiya Jee was going to Block Office with his friend Sumant Singh when Brahma Yadav along with his accomplices surrounded and murdered Mukhiya Jee and Suman Singh.

3. The police submitted charge-sheet under Section(s) 302/34 Indian Penal Code and Section 27 of the Arms Act. Accordingly, cognizance of the offence was taken and after trial both the Appellants have been convicted and sentenced as mentioned above.



4. During trial, total eleven witnesses have been examined on behalf of the prosecution.

5. The accused persons have totally denied the occurrence and stated that the deceased died on 17.08.2006 prior to 11.00 AM. The Informant and his nephew were not present at the time of occurrence. There was no one to identify the accused. The accused have been falsely implicated on account of enmity after filing the First Information Report with much delay. The defence has examined five witnesses in its defence.

6. Besides oral evidence, the prosecution has filed the documents, which have been marked Ext.1 to 21 respectively as mentioned in detail in the impugned judgment. The defence has also filed documents, which have been marked as Ext. A to G as mentioned in the impugned judgment.

7. The appellants during the course of argument of this appeal have assailed the impugned judgment mainly on the ground that the First Information Report has been instituted after undue and unexplained delay and is anti-timed. The prosecution has failed to establish the time of occurrence. The First Information Report has been instituted after preparation of the Inquest Report and, therefore, it losses its veracity. The prosecution case and the evidence of the eye witnesses are contradictory to each other and not



consistent with the medical evidence. The prosecution has failed to establish the motive of occurrence. PW 1 and 3, who claim to be the chance witnesses, are not reliable and their presence at the place of occurrence is doubtful. Similarly, PW 4 and 6 examined as eye witnesses are not reliable and their presence at the place of occurrence is also doubtful. The witnesses examined on behalf of the defence have clearly disproved the entire prosecution case.

8. On the other hand, it has been submitted on behalf of the prosecution as well as the Informant that all the witnesses of the prosecution are reliable. There is no contradiction between the eye witnesses and the medical evidence. The prosecution has been able to prove the case beyond all reasonable doubts. There is no illegality in the impugned judgment.

9. The point for consideration in this appeal is whether the judgment of the learned Court below is in accordance with law.

10. As mentioned above, total eleven witnesses have been examined in this case. Agnideo Prasad Nishad, (son of deceased Nand Kumar Nishad) and Acche Lal Nishad (Informant), (brother of deceased Nand Kumar Nishad) are the eye witnesses of this case. Chandan Kumar Singh (PW 1) and Santosh Singh (PW 3) have been examined by the prosecution, who have stated that they have seen the occurrence while passing. The defence has described



them as chance witnesses. Vinda Prasad (PW 2), (own brother of the deceased Nand Kumar Nishad) and Md. Shakur (PW 5), are the witnesses of Inquest Reports. PW 7 (Dr. Rajballabh Singh) is the doctor, who conducted the Post Mortem Examinations. PW 8 (Sarvesh Kumar) is the second Investigating Officer, who took over the investigation on 13.06.2010, and submitted charge-sheet on 18.11.2006, PW 9 (Laxman Prasad) is the first Investigating Officer. PW 10 (Sampat Kumar) and PW 11(Sarju Ram) are the Judicial Magistrates, who recorded the statement under Section 164 Cr. P.C. of the witnesses.

11. In this case, it is relevant to mention that the Informant (PW 6) has specifically stated in his evidence at para 10 that first Investigating Officer was not properly investigating the case. Therefore, he filed Protest Petition before the learned Chief Judicial Magistrate. This witness has proved the Protest Petition filed by him before the Chief Judicial Magistrate, which has been marked as Ext.8. The second Investigating Officer came and he got recorded statement of all the witnesses under Section 164 Cr. P. C. He has proved his signature on the statement recorded under Section 164 Cr. P.C., which has been marked as Ext.7.

This witness has further stated in his evidence that the occurrence took place at 12.20 PM on 17.08.2006. He along with



Suman Singh, his brother Nand Kumar Nishad, nephew Agnideo Nishad was going on two motorcycles to Manjhi Block Office. Suman Singh along with Nand Kumar Nishad was on one motorcycle and this Informant along with nephew Agnideo Nishad was on another motorcycle. The motorcycle of this Informant got broke down near Katkatha Pokhra, but Suman Singh and his brother proceeded ahead. At that time, Brahma Yadav along with Chote Lal Prasad on one motorcycle and Amir Yadav and two unknown persons on another motorcycle also proceeded. In the meantime, the Informant's motorcycle got repaired and he also proceeded. He saw that two unknown persons along with Brahma Yadav, Chote Lal Prasad and Amir Yadav, all fired indiscriminately on his brother and Suman Singh on account of which both died at the spot. The persons arrived on *halla* saw the occurrence. The police arrived on the spot and recorded his *fard-e-bayan* on which he put his signature. His nephew Agnideo Nishad also put his signature over the *fard-e-bayan*. He has proved his signature and the signature of the nephew on the *fard-e-bayan*. The police also got the signature of the Informant and his nephew on 3-4 blank papers. Amir Yadav is the dealer of Public Distribution System. In the meeting held in Block Office, Mukhiya Jee (deceased brother of the Informant) had levelled allegation against Amir Yadav for committing black



marketing on account of which Brahma Yadav had given threat that he will kill his brother. This witness has stated in para 12 of his evidence that Suman Singh and Sumant Singh are the same person.

12. Another eye witness is Agnideo Prasad Nishad (PW 4), who is the son of the deceased. This witness has stated in his evidence that his father Nand Kumar Nishad was Mukhiya of Cheful Panchayat. This witness, his uncle, his father and Sumant Singh, all proceeded on motorcycles together for Manjhi Block Office. All of them reached Tajpur Bazar in way to Manjhi Block. There, they stopped for about 45 minutes-1 hour. Thereafter, Sumant Singh and his father, Nand Kumar Nishad, proceeded on one motorcycle and on another motorcycle this witness along with his uncle Acche Lal Nishad proceeded. The motorcycle of this witness got broke down near Aakatha Pokhar in Salempur village which was being driven by his uncle Acche Lal Nishad. Motorcycle of his father and Suman Singh proceeded ahead. In the meantime, he saw two motorcycles crossed before him. Chote Lal Prasad and Brahma Yadav were sitting on one motorcycle and Amir Yadav with two unknown persons were sitting on another motorcycle. As soon as the motorcycle of these persons moved ahead, motorcycle of this witness also got repaired and they also proceeded. They were just behind the motorcycle of Parma Yadav and Amir Yadav and reached



west of Dumri village. The accused persons started indiscriminate firing on his father and Suman Singh on account of which his father and Suman Singh fell down and died on the spot. This witness was raising *halla* from behind. This witness has stated in para 4 of his evidence that he had given statement before the police about the occurrence. The first Investigating Officer was in connivance with the accused persons. Thereafter, second Investigating Officer got his statement recorded before the Magistrate.

An altercation had taken place between his father and Parma Yadav in the BDC meeting and in that meeting Parma Yadav had given threat to his father to kill him. The police had arrived at the place of occurrence and recorded *fard-e-bayan* of his uncle. The uncle of this witness had put his signature over the *fard-e-bayan* after reading and understanding the contents. Thereafter, this witness had also put his signature over the *fard-e-bayan*. This witness has proved his signature on the statement recorded before the learned Magistrate under Section 164 Cr. P. C. by the second Investigating Officer, which has been marked as Ext.5. This witness has also proved the *fard-e-bayan*, which bears his signature and the signature of his uncle and the signature of this witness has been marked as Ext.6. In para 9 of his evidence, he has stated that the name of accused is Brahma Yadav and not Parma Yadav.



13. Now, at the same time, it is also relevant to discuss the evidence of Chandan Kumar Singh (PW 1) and Santosh Singh (PW 3), own brother of deceased Suman Singh, who are said to be chance witnesses. Chandan Kumar Singh (PW 1) has stated in his evidence that on 17.08.2006 at about 12.30 PM, he was returning from Manjhi Block Office after taking form for appointment of teachers and when he reached towards south west of house of Sakaldeo Yadav in village Dumari on the road, he saw Brahma Yadav and Chote Lal Nishad on one motorcycle and Amir Yadav, Pawan Yadav and Khilari Yadav on another motorcycle. They were firing on Suman Singh and Nand Kumar Nishad. Both sustained gun shot injuries and died on the spot. This witness has stated in his evidence in para 2 that he had given statement before the police as well as the Magistrate. In para 3, he has stated that he had given statement before the Magistrate on 23.09.2006. He has proved his aforesaid statement in the Court.

14. Santosh Singh (PW 3), who is the brother of deceased Suman Singh, has stated in his evidence that the occurrence took place on 17.08.2006 at 12.30 PM. He was returning from Manjhi Block Office by motorcycle after obtaining teachers' appointment form. He heard sound of firing when he was about 500 yards behind the Dumri village. He raised the speed of his



motorcycle. Two motorcycles crossed from his side. Brahma Yadav and Chote Lal Prasad were sitting on one motorcycle. Both were carrying pistols. Amir Yadav, Pawan Yadav and Khilari Rai were sitting on the second motorcycle. He was going towards west from Manjhi village, whereas, the accused persons were going towards east. Within 1-2 minutes, this witness reached towards west of house of Sakaldeo Yadav and found Sumant Singh and Nand Kumar Nishad lying dead towards south of the road. He started crying. Acche Lal Nishad (PW 6), Agnideo Nishad (PW 4) and Chandan Kumar Singh (PW 1) were present there from before. There were 2-4 other persons whom he could not identify. He saw gun shot injuries on the person of the injured. People told him that Brahma Yadav etc. had killed them. They had earlier also given threat to kill him. In para 4 of his evidence, he has stated that he gave statement to the police as well as Magistrate. In para 5 of his evidence, he has proved the statement recorded under Section 164 Cr. P.C., which has been marked as Ext.4.

15. Vinda Prasad (PW 2), own brother of Nand Kumar Nishad is the witness of Inquest Reports. This witness has stated in his evidence that Inquest Reports of deceased Nand Kumar Nishad and Suman Singh were prepared by *Daroga* in two copies in his presence. He had put his signature on the Inquest Report of Nand



Kumar Nishad and Suman Singh. He has proved his signature on the carbon copy of Inquest Report of Nand Kumar Nishad as Ext.1 and on the Inquest Report of Suman Singh as Ext.2.

In para 3 of his cross-examination, he has stated that the police had prepared the Inquest Reports after looking both the dead bodies. The police further told him to check the injuries sustained by the deceased on different parts of the body. The police had taken his signature after preparing both the Inquest Reports. This witness has stated that he was not having wrist watch and, therefore, he cannot say the time of preparation of Inquest Reports but sun set had taken place.

16. Md. Shakur (PW 5) has stated that the Inquest Reports of the deceased Nand Kumar Nishad and Suman Singh of Manjhi P.S. Case No.76 of 2009 were prepared by the police in his presence. He had put his signature on both Inquest Reports, which have been proved by him and marked as Ext. 7 and 7/1 respectively.

In cross-examination, this witness has stated that he cannot say the time of preparation of the Inquest Report because he was not having watch.

17. Dr. Raj Ballabh Singh (PW 7) had performed Post Mortem Examination on the dead body of Nand Kumar Nishad aged about 60 years on 17.08.2006 and found total six injuries on his



person caused by fire arm as described in the Post Mortem Examination Report. He has proved the Post Mortem Examination Report of Nand Kumar Nishad as Ext.9. He has further stated that on the same day at 8.25 PM, he had performed Post Mortem Examination on the dead body of Suman Singh aged about 40 years and found total three injures on his person caused by fire arm as described in the Post Mortem Examination Report. He has proved the Post Mortem Examination Report of Suman Singh as Ext.10.

18. Sarvesh Kumar (PW 8) is the second Investigating Officer, who took up the investigation from the first Investigating Officer, Laxman Prasad. In para 2 of his evidence, this witness has stated that after taking over investigation he perused the Case Dairy. He got recorded the statement of the witnesses, namely, Agnideo Prasad Nishad, Acche Lal Nishad, Santosh Kumar Singh and Chandan Kumar Singh under Section 164 Cr. P. C. on the basis of the office order of the Superintendent of Police dated 02.09.2006. After investigation, he submitted charge-sheet against the accused persons. This witness has proved the *fard-e-bayan* of Acche Lal Nishad, formal First Information Report recorded in the writing of the first Investigating Officer Laxman Prasad, which have been marked as Ext. 6/2 and Ext.13 respectively. This witness has stated in para 8 of the evidence that para 1 to 163 of the Case Diary is in



the handwriting of Laxman Prasad, which have been marked during trial as Ext.14. In para 11 of the cross-examination, he has stated that he had not recorded statement of any witness.

19. Laxman Prasad (PW 9) is the first Investigating Officer, who recorded statement of the witnesses. He has stated in his evidence that he was posted as Officer-in-Charge, Manjhi P.S. in 2006. He received information by telephone at 12.25 PM on 17.08.2006 that two persons have been murdered in Dumari village. He entered Sanha in the Case Diary and proceeded for the place of occurrence in Dumri village for further action along with the police party. He recorded the *fard-e-bayan* of Acche Lal Nishad, brother of the deceased by reaching village Dumari, which is in his handwriting and bears his signature. He read over the *fard-e-bayan* to Acche Lal Nishad and after understanding the contents he put his signature over the same. He recorded the *fard-e-bayan* in presence of Agnideo Prasad Nishad, who also put his signature on the *fard-e-bayan*, which has already been marked as Ext.6/2.

In para 2 of his evidence, he has stated that he after returning to the Police Station registered formal First Information Report on the basis of the aforesaid *fard-e-bayan* and took up the investigation of the case. This witness has proved the Inquest Report of Nand Kumar Nishad and Suman Singh, which have been marked



as Ext.15 and 16. He inspected the place of occurrence on 17.08.2006 after 16.30 hrs. He also described the place of occurrence, in detail, in para 4 of his evidence. In para 6 of his evidence, he has stated that he had recorded the statement of Agnideo Nishad, Santosh Singh, Nag Narayan Singh and other witnesses as mentioned in the said paragraph. Hero Honda motorcycle recovered from the place of occurrence was handed over to Santosh Singh, brother of the deceased Suman Singh. He obtained the Post Mortem Examination Reports of both the deceased, which is mentioned in para 144 and 145 of the Case Diary. In para 9 of his evidence, he has stated that he received the representation of 123 villagers addressed to the SDO, Chapra, through letter of Superintendent of Police dated 23.08.2006, which is mentioned in para 154 of the Case Diary. The representation along with the letter of the Superintendent of Police has already been marked as Ext.12. He has proved the aforesaid representation which has been marked as X, X/1, X/2 for identification. In para 10, he has stated that after his transfer he handed over the investigation to Sarvesh Kumar on 07.09.2006.

In para 11 of the cross-examination, he has stated that at 3.00 PM, DM/SP had reached the place of occurrence. He had recorded the *fard-e-bayan* at 3.30 PM. He prepared the Inquest



Reports after recording the *fard-e-bayan*. He found only one motorcycle at the place of occurrence. He had handed over the said motorcycle to the brother of the deceased after verification and its search. He had not written in the Diary as to what papers he found in the motorcycle. He did not get any verification with respect to the ownership and registration of the vehicle. The DM and SP had proceeded from the place of occurrence at 7.00 PM.

He had recorded the statement of Raj Kumar Yadav, Rajesh Kumar Sah and Kedar Prasad on the date of occurrence, who were residents of Dumari village in presence of the Superintendent of Police at the place of occurrence but they have not been made charge-sheet witnesses. In para 15 of his evidence, he has stated that he found enough blood near the dead body of the deceased. As per the sketch map prepared by him in the Case Diary, he found blood at three places. He did not seize any blood stained earth or sent the same for examination. He had not seized any cloth of deceased. In para 18, he has stated that he did not record the statement of Chandan Kumar Singh. He recorded the statement of Santosh Kumar Singh on 17.08.2006, which is mentioned in para 13 of the Case Diary. Santosh Singh had not told him in his statement that he was returning from Manjhi Block Office at that time after obtaining form for teachers' appointment. Santosh Singh had also not told before



him that two motorcycles passed from his side. Brahma Yadav and Chote Lal Prasad were sitting on one motorcycle and both were having pistol and on another motorcycle, Amir Yadav, Pawan Yadav and Khilari Rai were sitting.

This witness has stated in para 21 of the evidence that Santosh Singh (PW 3) has stated before him that at about 12.30 PM he received information on telephone from some source that at Manjhi-Tajpur road his brother Suman Singh and Mukhiya of Cheful Panchayat have been murdered by gun shots by the miscreants.

20. Sampat Kumar (PW 10) and Sarju Ram (PW 11) are Judicial Magistrates.

Sampat Kumar has proved the statement of Chandan Kumar Singh and Santosh Singh recorded by him under Section 164 Cr. P. C. and marked as Ext.18 and 19 respectively. In cross-examination in para 3, he has stated that both the witnesses were produced before him by the police for recording statement.

21. Sarju Ram (PW 11) has stated in his evidence that he had recorded statement of Agnideo Prasad Nishad and Acche Lal Nishad under Section 164 Cr. P. C. on 23.09.2006, which have been marked as Ext. 20 and 21. The witnesses were produced before him by the Inspector of Manjhi P.S.

22. This Court feels it necessary to deal, in brief, the



evidence given by the defence witnesses.

23. As stated above, defence has produced five witnesses. Rajdeo Yadav (DW 1) has stated that on 17.08.2006, he got information that Nand Kumar Nishad (Mukhiya Jee) and his friend Suman Singh have been murdered in village Dumari. He reached at the place of occurrence at 12-12.30 PM. No member of the family of the deceased was present at the place of occurrence when he reached there, but 3-4 persons from neighbouring area were present. None of the people present there told the name of the miscreants. The dead body was taken for Post Mortem Examination by government vehicle. Chote Lal Prasad had given petition before the DM to bring the dead body on government vehicle after Post Mortem Examination. The DM/SP had arrived on the call of the people. A demand was made through the DM to give compensation and service to the dependent of the deceased. He had signed on the said representation. The Mukhiya and other persons have also signed over the same, which was written on the letter pad of Mukhiya of Dumari Panchayat, Ramawati Devi. Both the letters have been marked as Ext. A and B respectively. In cross-examination, in para 14, this witness has stated that there is no date mentioned in the body of the aforesaid letter.

24. Munna Yadav (DW 2) has stated that at 12.00



noon, he heard sound of firing. Three persons were assailants and two persons died. He could not identify the assailants. He stated that his house is at the distance of 50 feet from the place of occurrence. People had assembled at the place of occurrence. DM/SP had also arrived. The police took the dead body at 3.00 PM after arrival of the DM/SP. Name of any assailant was not disclosed when the DM/SP were present at the place of occurrence.

25. Girija Yadav (DW 3) has stated that on the date of occurrence at 12.30 PM, when he was sitting at the door, he saw two persons fell down and three persons fled away on motorcycle after committing the crime. He could not identify any of the assailants. People had assembled. In para 3, he has stated that his house is adjacent to the place of occurrence. The police arrived at 3.00 PM and thereafter the dead body was taken for Post Mortem Examination. In cross-examination, he has stated that he reached at the place of occurrence at 12.30 PM and he had not given any statement before the Superintendent of Police or any police Officer. In para 6 of cross-examination, he has stated that statement of 2-3 persons were recorded by the police along with Raj Kumar Yadav and Munna Yadav. His statement was also recorded. In para 7 of his cross-examination, he has stated that he knew the accused persons for the last ten years.



26. Raj Kumar Yadav (DW 4) has stated that on 17.08.2006 at about 12.00 noon, he was at his Darwaja. On hearing sound of firing, he came out and saw three assailants fleeing away on a motorcycle who fired on two persons. This witness has stated in para 2 of the evidence that his house is at a distance of 20 yards from the place of occurrence. There is no house in between the place of occurrence and his house. Several persons had assembled. The SP etc. arrived there. Dead bodies were taken for Post Mortem Examination. No body knew the name of the assailants till that time. In cross-examination, this witness has stated that he has not given any statement earlier before anybody, as he has given today in Court. He did not receive any summons from the Court. Parma Yadav had called him for his evidence.

27. Lagandeo Yadav (DW 5) has stated in his evidence that on the date of occurrence between 12.00-1.00 PM, he was cutting grass in his field at a distance of about 10 steps from the place of occurrence. He arrived at the place of occurrence on hearing sound of firing. He found the dead bodies had fallen on the road. Ramvati Devi, Mukhiya and others had blocked the road. The SP/DM had arrived. The road was blocked till 3.00PM. None has disclosed the name of the assailants till that time. In para 3 of his cross-examination, he has stated that he did not give any statement to



any police Officer. He arrived at the place of occurrence 2-4 minutes after the occurrence. Till then 100-200 persons had assembled. He did not talk to any body. He has further stated in cross-examination that at present he has poor eye sight but at that time his eye sight was okay.

28. In this manner, from the evidence of eye witnesses Agnideo Prasad Nishad (PW 4) and Acche Lal Nishad (PW 6), it appears that they have seen the occurrence, identified the appellants and taken the name of the assailants. Chandan Kumar Singh (PW 1) and Santosh Singh (PW 3) have also seen the occurrence and identified the assailants and taken the name of the accused persons. All these witnesses have stated that the occurrence took place at 12.30 PM. The first Investigating Officer Laxman Prasad (PW 9) has stated that he received information on telephone at 12.25 PM that two persons have been murdered in Dumari village and thereafter arrived at the place of occurrence at village Duamri along with the police party. He recorded the *fard-e-bayan* of Acche Lal Nishad, brother of the deceased Nand Kumar Nishad. *Fard-e-bayan* was recorded in presence of Agnideo Prasad Nishad, who also put his signature on the same. As such, the time of occurrence as given by the witnesses, namely, PW 1, 3, 4, and 6, get corroboration from the evidence of the first Investigating Officer (PW 9).



29. The witnesses of the Inquest Reports, namely, Vinda Prasad (PW 2) and Md. Shakoor (PW 5) have stated in their evidence that the police had prepared the Inquest Reports of both the dead body in their presence and they had put the signature over the Inquest Reports. They have proved their respective signature during the course of evidence in Court.

30. Vinda Prasad (PW 2) has stated in para 5 of his cross-examination that he cannot say the time when he put his signature on the Inquest Report, but sunset had already taken place. The first Investigating Officer, Laxman Prasad, has mentioned specifically in para 11 of his cross-examination that he had prepared the Inquest Reports of the dead bodies after recording the *fard-e-bayan*. He has further stated in his evidence in para 1 and 2 that after recording *fard-e-bayan*, he returned to the Police Station and registered formal First Information Report on the basis of the *fard-e-bayan* and took up the investigation of the case. He prepared the Inquest Reports of both the dead bodies of Nand Kumar Nishad and Suman Singh in two copies with the process of carbon, which is in his handwriting and bear his signature. He inspected the place of occurrence on 17.08.2006 at 16.30 hrs. He has described the place of occurrence in para 41 of his evidence in detail. He also prepared the sketch map of the place of occurrence, which has been marked as



Ext.17.

31. From the *fard-e-bayan*, it appears that it has been recorded by the police on 17.08.2006 at 15.30 hrs. The Inquest Report of deceased Nand Kumar Nishad was prepared on 17.08.2006 at 16.00 hrs. and Inquest Report of the deceased Suman Singh was prepared at 16.30 hrs. as appear from Ext.15 and 16. The first Investigating Officer (PW 9) has stated in para 9 of the evidence that he had inspected the place of occurrence after 16.30 hrs. He has also stated that he received information on telephone at 12.25 PM and thereafter reached the place of occurrence along with the police party. He has clearly stated in his evidence in para 10 that he has reached the place of occurrence at 12.40 PM. He has also stated in para 15 and 16 that he found sufficient blood at the place of occurrence near the dead bodies. In para 11 of the evidence, he has stated that he recorded *fard-e-bayan* at 15.30 hrs and thereafter he prepared the Inquest Reports. He has specifically denied the suggestion of the defence in para 11 that he had prepared the Inquest Report first on his arrival. He has stated that he had prepared Inquest Reports after recording of *fard-e-bayan*. This witness has clearly stated in para 2 of his evidence that after returning to the Police Station, he registered formal First Information Report on the basis of the *fard-e-bayan* and took up the investigation of the case. The time



of receipt of the information has been mentioned in the First Information Report as 17.08.2006 at 20.00 hrs. In this manner, the evidence of the first Investigating Officer fully corroborates the evidence of PW 1, 3, 4 and 6 about the time and manner of occurrence and completely demolishes the submissions made on behalf of appellants that First Information Report has been instituted with undue and unexplained delay and the same is anti timed and the prosecution has failed to establish the time of occurrence.

32. Similarly, submission made on behalf of appellants that the First Information Report has been instituted after preparation of Inquest Reports, which losses its veracity, also does not have force because the first Investigating Officer has stated that after receiving information on telephone at 12.25 PM about the incident, he rushed to the place of occurrence and thereafter recorded the *fard-e-bayan* of the Informant at the spot. Thereafter, he prepared the Inquest Reports of the dead bodies and after returning to the Police Station he registered formal First Information Report and took up the investigation of the case. As such, this Court does not find any illegality committed by the Police Officer and does not find any merit in the submission made on behalf of appellants that the First Information Report has been instituted after preparation of the Inquest Reports.



33. It is to be noted that had it been the case of the prosecution that the police proceeded for the place of occurrence after getting the written report in Police Station or if the Inquest Reports would have been prepared prior to the recording of the *fard-e-bayan*, then the story would have been different, but in the instant case, First Information Report has been registered on the basis of the *fard-e-bayan*, which was recorded by the police after reaching at the place of occurrence on getting confidential information and thereafter police prepared the Inquest Reports and after returning to the Police Station, registered the First Information Report and took up the investigation.

34. Similarly, after perusal of Inquest Reports (Ext. 15 and 16) as well as the Post Mortem Examination Reports proved by the doctor (Ext.9 and 10), it appears that injuries as described by the witnesses, namely, PW 1, 3, 4 and 6, get full corroboration. The doctor has mentioned in Ext.9 that he held Post Mortem Examination of the dead body of Nand Kumar Nishad aged about 60 years on 17.08.2006 at 7.55 PM and that of the dead body of Suman Singh aged about 40 years on 17.08.2006 at 8.25 PM.

35. The representation in the name of the SDO, Chapra, filed by the general public against Brahma Yadav, Amir Yadav, which has been marked as X/1 for identification clearly



proves the motive as stated by the witnesses that the accused persons had killed the brother of the Informant, who was also Mukhiya, because he had made complain against Amir Yadav, a PDS Dealer, who was the brother of Brahma Yadav. The aforesaid representation was given to Investigating Officer by the Superintendent of Police, Saran, by his letter dated 23.08.2006, which has been marked as Ext.12.

36. It has been submitted on behalf of the appellants that Nand Kumar Nishad was allegedly murdered on 17.08.2006, but letter dated 19.08.2006, said to be under signature of Nand Kishore Prasad was sent to the SDO, Chapra. The aforesaid letter has been marked as X for identification.

37. But from perusal of aforesaid letter, it will be apparent that the signature of Nand Kumar Nishad is dated 17.08.2006 in Hindi. The letter is also written in Hindi, but at the top of the letter, dated 19.08.2006 has been written in English letter, which is *prima facie* manipulation and creates serious doubt. Therefore, this Court does not find any merit in such submission made on behalf of the appellants.

38. It has also been submitted on behalf the appellants that the Superintendent of Police, Saran, had no authority to give any such letter to the Investigating Officer during investigation. In this



respect, it is important to mention the provision of Section 154(3) of the Code of Criminal Procedure, which is quoted here-in-below.

“(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

39. In the instant case, both the Informant (PW 6) and Agnideo Prasad Nishad (PW 4) have stated in their evidence that first Investigating Officer was not investigating the case properly under the connivance of the accused persons and for that they had filed a Protest Petition in the Court. The Protest Petition filed by the Informant has been brought on record during trial and the same has been marked as Ext.8 on 18.02.2010. With respect to the letter of the Superintendent of Police, Saran, dated 23.08.2006, by which he had sent the representation of the general public filed against accused Brahma Yadav, the first Investigating Officer has stated in his evidence that on his transfer he handed over the investigation to the second Investigating Officer (Sarvesh Kumar, PW 8) on 07.09.2006.



Therefore, no illegality has been committed by the Superintendent of Police, Saran, in handing over the aforesaid letter to the Investigating Officer.

40. Sarvesh Kumar (PW 8) has stated in his evidence that after transfer of the first Investigating Officer, he took up the investigation of the case. He stated in para 2 of his evidence that he got recorded the statement of the witnesses Agnideo Prasad Nishad (PW 4), Acche Lal Nishad (PW 6), Santosh Kumar Singh (PW 3) and Chandan Kumar Singh (PW 1) under Section 164 Cr. P.C. on the direction of Superintendent of Police, Saran, dated 02.09.2006, which have been marked as Ext. 18 to 21 as proved by the learned Judicial Magistrates (PW 10 and 11). From the perusal of statement of these witnesses recorded under Section 164 Cr. P.C, it appears that they have fully described the occurrence as eye witnesses, which have been fully corroborated by their evidence in Court as PW 1, 3, 4 and 6.

41. The defence has pointed out some contradictions about the statement of Chandan Kumar Singh (PW 1) and Santosh Singh (PW 3) in para 18 to 21 of the cross-examination, but after perusal of the statements recorded under Section 164 Cr. P. C. recorded by the learned Magistrate, it appears that these witnesses have fully corroborated the statement recorded under Section 164 Cr. P. C. and their evidence in the Court. The minor contradictions as pointed out by



the defence with regard to these witnesses as mentioned in para 18 to 21 of the cross-examination does not bear much value since allegation has been levelled by PW 4 and 6 in their evidence that first Investigating Officer was not conducting the investigation properly for which a Protest Petition was also filed by the Informant in the Court of the Chief Judicial Magistrate. From the evidence of first Investigating Officer (PW 9), the time of occurrence gets full support. He has further stated that he obtained the Post Mortem Examination Reports (Ext. 9 and 10), which also fully supports the injuries of fire arm as mentioned by the witnesses in their evidence. The first Investigating Officer has stated in his evidence that he found sufficient blood at the place of occurrence near both the dead bodies and he has mentioned about the recovery of blood from three places in the sketch map which has been enclosed with the Case Diary.

42. Similarly, Ext.12, which is the letter of the Superintendent of Police, Saran, by which he had sent the representation of the general public against the accused persons and have been marked as X to X/2 for identification proves the motive for committing the offence by the accused persons, which has been stated by the Informant in the First Information Report and in his evidence.

43. The last limb of the argument on behalf of the appellants is that PW 1 and 3 are chance witnesses. They are not



reliable and their presence at the place of occurrence is doubtful and the eye witnesses PW 4 and 6 are also not reliable. The defence witnesses have disproved the entire prosecution case.

44. In this respect, it is important to place the judgment of the Hon'ble Supreme Court in the case of ***Bhagwan Jagannath Markad and others Vs. State of Maharashtra*** reported in (2016) 10 ***Supreme Court Cases*** 537, wherein the Hon'ble Supreme Court has held as follows:

"While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and trustworthiness of a witness. There may at times be



exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted. Want of independent witnesses or unusual behavior of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinized to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a 'partisan' or 'interested' witness may lead to failure of justice. It is well known that principle "*falsus in uno, falsus in omnibus*" has no general acceptability. On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness."

45. It is one of the points taken on behalf of appellants that both the eye witnesses are close relation of the deceased and the other two witnesses are chance witnesses, who claimed to have seen the occurrence, are not reliable. In this respect, statutory provision in Section 134 of the Evidence Act clearly lays down that no particular number of witnesses shall in any case be



required for the proof of any fact.

46. It is well settled that it is the quality of evidence and not quantity, which is material. In the leading case of *Shivaji Sahebrao Bobade Vs. State of Maharashtra* reported in (1973) 2 SCC 793, the Hon'ble Supreme Court has held that even where a case hangs on the evidence of a single eye witness, it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration. "It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs."

47. Similarly, in the case of *Anil Phukan Vs. State of Assam* reported in (1993) 3 SCC 282, the Supreme Court observed: "Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability.

48. In another leading case *Vadivelu Thevar Vs. State of Madras* reported in AIR 1957 SC 614, the Supreme Court on consideration of the relevant authorities and provisions of the Indian Evidence Act, observed that the following propositions may be safely stated as firmly established:



"On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following propositions may be safely stated as firmly established :

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

14. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated."

49. From close perusal of the evidence of Chandan Kumar Singh (PW 1) and Santosh Singh (PW 3), it appears that they are not the chance witnesses, rather, they are the eye witnesses.

50. The defining attributes of a 'chance witness'



were explained by Mahjan, J., in the case of *Puran Vs. The State of Punjab, AIR 1953 SC 459*. It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.

51. Chandan Kumar Singh (PW 1) has stated that he saw the occurrence while he was returning on his motorcycle after obtaining form for teachers' appointment from Manjhi Block. He has further stated that he had given statement before the police as well as before the Magistrate. The statement of this witness recorded under Section 164 Cr. P. C. has been marked as Ext.18, wherein, he has given vivid description of the occurrence before the learned Magistrate Mr. Sampat Kumar, which has been proved by the learned Magistrate, who has been examined as PW 10.

52. Similarly, Santosh Singh (PW 3), brother of deceased Suman Singh, has also stated that while he was returning from motorcycle after obtaining form of teachers' appointment at 12.30 PM from Manjhi Block and was about 500 yards behind Dumari village, he heard sound of firing. Two motorcycles crossed by his side. Brahma Yadav and Chote Lal Prasad were sitting on one motorcycle having pistol in their hands and Amir Yadav, Pawan Yadav and Khilari Rai were on another motorcycle. He reached on



road west of the house of Sakaldeo Yadav and saw the dead body of Nand Kumar Nishad and Suman Singh. Acche Lal Nishad (PW 6) and Agnideo Prasad Nishad (PW 4), Chandan Kumar Singh (PW 1) were present at the place of occurrence from before along with 2-4 unknown persons. He found gun shot injuries on their persons. People told him that Brahma Yadav etc. have murdered them. Earlier, they had also given threat. The statement of this witness was also recorded under Section 164 Cr. P. C. before the learned Magistrate, which has been marked as Ext.19 and the aforesaid statement has been proved by Mr. Sampat Kumar, learned Magistrate (PW 10). This witness has given vivid description of the incident with full corroboration in the Court.

53. Therefore, I find the evidence of both these witnesses fully reliable and corroborative with the evidence of other two eye witnesses, namely, Agnideo Prasad Nishad (PW 4) and Acche Lal Nishad (PW 6). The evidence of both these witnesses gets full corroboration from the Inquest Reports (Ext. 15 and 16) as well as Post Mortem Examination Reports (Ext.9 and 10).

54. The defence has produced five witnesses and on the basis of such evidence it has been argued on behalf of appellants that the defence witnesses have disproved the prosecution version. From the close scrutiny of the defence witnesses, it will appear that



DW 1 has stated in his evidence in para 4 that a representation was sent on the letter pad of Ramawati Devi, Mukhiya, which was signed by other villagers for compensation and service to the dependants of the deceased. This representation as well as representation of Chote Lal Prasad were marked as Ext. A & B on behalf of the defence, but to a Court question, this witness has stated that he has no Xerox copy of both these documents. He does not know where is the original. Both the documents were not given to the DM after entering letter no. in the register of the office of Mukhiya. This witness has further stated that he had not given any statement before the police. He has also stated that no date is mentioned in Xerox copy of the aforesaid document.

55. Munna Yadav (DW 2) has stated in his evidence that his house is at the distance of 50 feet from the place of occurrence. He heard the sound of firing on the pitch road and saw three assailants and two persons dead. He could not identify the assailants.

56. Girija Yadav (DW 3) has stated that he was sitting at the Darwaja on the date of occurrence and at 12.30 PM, he saw two persons dead and three persons fled away on the motorcycle after firing. He could not identify any of the assailants. His house is adjacent to the place of occurrence. He has stated in his



cross-examination that he knew the accused persons for the last ten years.

57. Raj Kumar Yadav (DW 4) has stated that on the date of occurrence he was at his Darwaja. He heard shots of gun firing. He came out and saw three unknown persons fleeing away from the motorcycle after causing gun shot injuries to two persons. His house is at a distance of 20 yards from the place of occurrence. He has stated in his cross-examination that he did not receive any summons from the Court. Parma Yadav has brought him to give evidence in the Court.

58. Lagandeo Yadav (DW 5) has stated in his evidence that on hearing sound of firing he rushed towards the place of occurrence and saw the dead bodies on the road. He has stated that he has poor eye sight at present but at that time his eye sight was okay.

59. As such, it appears that all defence witnesses are interested witnesses and had been produced by the defence to give evidence in their favour. As such, no reliability can be placed on such defence witnesses.

60. Therefore, this Court is not satisfied with the argument made on behalf of the appellants that the defence witnesses have clearly disproved the entire prosecution case.



61. Thus, on the basis of the evidence of the prosecution witnesses as well as the discussion made above, in detail, this Court finds no illegality in the impugned judgment of conviction and order of sentence passed by the learned Court below.

62. Accordingly, the judgment of conviction and order of sentence dated 03.03.2014 and 12.03.2014 respectively passed by Sri S. C. Roy, 5th *Ad hoc* Additional Sessions Judge, Saran at Chapra, in Sessions Trial No.658 of 2008 arising out of Manjhi P.S. Case No.76 of 2006, is hereby affirmed.

63. In the result, the appeal is dismissed having no merit.

(Sanjay Priya, J)

Rajendra Menon, CJ: I agree.

(Rajendra Menon, CJ)

J.Alam/-

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