

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 68 of 1994

Arising Out of PS.Case No. -67 Year- 1991 Thana -KAWAKOLE District- NAWADA

1. Sita Ram Singh
2. Hare Ram Singh, Both sons of Ramautar Singh (Deceased), resident of village Chhanon, P.S. Rupo, District Nawadah

.... Appellants

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 105 of 1994

Arising Out of PS.Case No. -67 Year- 1991 Thana -KAWAKOLE District- NAWADA

1. Ratan Singh
2. Chotelal Singh, Both sons of Sadhu Singh, residents of village- Chanon, P.S. Rupo, District-Nawadah

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 146 of 1994

Arising Out of PS.Case No. -67 Year- 1991 Thana -KAWAKOLE District- NAWADA

Ranjeet Yadav, son of Sadhu Yadav, resident of Village-Chhanaun, P.S. Rupau, District Nawada.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 131 of 1994

Arising Out of PS.Case No. -67 Year- 1991 Thana -KAWAKOLE District- NAWADA

1. Sadhu Singh (**Deceased**), son of late Bipan Singh
2. Satyendra Singh, son of late Vaiju Singh
3. Upendra Singh, son of late Vaiju Singh
All residents of village-Chanaun, P.S. Rupo, District Nawadah.

.... Appellants

Versus

The State of Bihar



.... Respondent

=====

Appearance :

(In CR. APP (DB) No.68 of 1994)

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

For the State : Mr. Dilip Kumar Sinha, A.P.P.

(In CR. APP (DB) No.105 of 1994)

For the Appellant/s : Mr. Ram Suhawan Singh, Adv.

Mr. Ramesh Chandra Srivastava, Adv.

For the State : Mr. Shivesh Chandra Mishra, A.P.P.

(In CR. APP (DB) No.146 of 1994)

For the Appellant/s : Mr. Vikram Deo Singh, Adv.

Mr. Ansul, Adv.

Mr. Rabindra Prasad Singh, Adv.

For the State : Mr. A.P.P.

(In CR. APP (DB) No.131 of 1994)

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

For the State : Mr. Dilip Kumar Sinha, A.P.P.

=====

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 15-01-2018

1. All the above stated appeals have arisen out of judgment of conviction dated 08.02.1994 and sentence order dated 09.02.1994 passed by 1st Additional Sessions Judge, Nawada in Sessions Trial No. 29 of 1992/ 28 of 1992 arising out of Kawakole P.S. Case No. 67 of 1991, by which and whereunder, the appellant, Ranjeet Yadav in Cr. Appeal (D.B.) No. 146 of 1994 has been convicted for the offence punishable under Section 302 of the Indian Penal Code and 27 of the Arms Act and has been sentenced to undergo life imprisonment for the offence under Section 302 of the Indian Penal Code and to undergo rigorous imprisonment for five years for the offence under



Section 27 of the Arms Act and furthermore, the appellants, Chhotelal Singh, Ratan Singh, Hare Ram Singh, Sita Ram Singh, Upendra Singh, Satyendra Singh and Sadhu Singh (since deceased) have been convicted under Section 302 read with Section 149 of the I.P.C. and accordingly, they have been sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code. Furthermore, appellant, Chhotelal Singh, Ratan Singh, Hare Ram Singh and Sita Ram Singh have been convicted under Section 27 of the Arms Act and accordingly, they have been sentenced to undergo rigorous imprisonment for five years for the offence punishable under Section 27 of the Arms Act. The appellant Sadhu Singh (since deceased) was convicted for the offence punishable under Section 307 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 307 of the Indian Penal Code. All the sentences were ordered to run concurrently. Since all the above appeals have arisen out of a common judgment, the above appeals are being disposed of by this common judgment.

2. It is emerged out from the materials available on the record that PW-3, Shaila Devi gave her ferdbeyan to PW-11, Suresh Pd. Paswan, the then S.I. of Kawakole (Rupo) police station on 08.07.1991 at 07:00 A.M. to this effect that on the same day at about



06:00 A.M. she was sweeping near her door and her husband was washing his mouth in front of the door whereas her daughter, namely, Rebi Kumari (PW-2) was arranging cow dung cake there. In the meantime, the wife of her dewar, namely, Bijiya Devi started abusing her and her family members sitting at her door. She further stated that she noticed that the appellant, Chhotelal Singh was moving in suspicious condition whereas appellant Ranjeet Yadav went towards the house of Brajesh Singh covering his hand with a towel and after some time appellant, Ranjeet Yadav armed with revolver, accused Brajesh Singh armed with bomb, appellant Chhotelal Singh armed with gun, appellant Ratan Singh armed with gun, appellant Hare Ram Singh and Sita Ram Singh both armed with pistol, appellant Upendra Singh and Satyendra Singh both armed with bomb came there and accused Brajesh Singh hurled bomb on her husband but the said bomb hit on the wall whereas remaining appellants started making indiscriminate firing. Her husband ran towards his house but appellant, Ranjeet Yadav, Chhotelal Singh, Ratan Singh, Sadhu Singh (since deceased), Hare Ram Singh and Sita Ram Singh made firing of their respective weapons and the fire of Ranjeet Yadav hit the informant's husband on his back. Her husband, anyhow, entered into courtyard of the house and fell down there and died instantaneously. She, further, stated that she along with her daughter (PW-2) came near



the dead body and started weeping. However, in the meantime, the deceased-appellant Sadhu Singh (since deceased) having climbed on the roof of accused Brajesh Singh threw bomb which exploded on the wall of the courtyard. FIR named accused, Bijiya Devi was standing at his door having bomb in her hand and she was exhorting the other accused. In the meantime, neighbours came having heard the sound of firing and bomb and witnessed the occurrence. Reasons behind the alleged occurrence is said to be old enmity and dispute of partition with Brajesh Singh and furthermore, some days prior to the alleged occurrence, Brajesh Singh had stolen punj as a result whereof, an altercation had taken place between Brajesh Singh and family members of the informant and Brajesh Singh had given threatening to kill the head of informant's family.

3. On the basis of aforesaid ferdbeyan (Exhibit-3), Kawakole (Rupo) P.S. Case No. 67 of 1991 was registered under Section 302 and other minor sections of the Indian Penal Code, Section 3/5 of Explosive Substance Act and 27 of the Arms Act and on the same day, formal FIR was drawn up at 05:00 P.M. against the ten FIR named accused. The formal FIR and ferdbeyan were put up before the concerned Magistrate on 09.07.1991. PW-11 took charge of investigation. He visited the place of occurrence, recorded the statements of witnesses, seized the soil and particles of the bomb, sent



the dead body for post mortem examination, received the post mortem report and after completion of the investigation, submitted charge sheet against the appellant, Ranjeet Yadav, Chhotelal Singh, Ratan Singh, Hare Ram Singh, Sita Ram Singh, Upendra Singh, Satyendra Singh, Brajesh Singh and Sadhu Singh for the offences under Section 302 and other minor sections of the Indian Penal Code, 3/5 of Explosive Substance Act, 27 of the Arms Act. Charge-sheeted accused, Brajesh Singh and Sadhu Singh were shown absconder and FIR named accused, Bijiya Devi was not sent up for trial.

4. The cognizance of the offence was taken and the case was committed to the court of sessions. However, the appearance of deceased-appellant, Sadhu Singh was procured and accordingly, he was also put on trial along with other appellants. The appellant, Ranjeet Yadav stood charged separately for the offence punishable under Section 302 of the Indian Penal Code whereas appellant Ranjeet Yadav and remaining appellants including deceased-appellant Sadhu Singh were charged for the offences punishable under Section 302/149 of the Indian Penal Code. Furthermore, appellants Ranjeet Yadav, Chhotelal Singh, Ratan Singh, Hare Ram Singh and Sita Ram Singh were charged for the offence under Section 27 of the Arms Act and furthermore, the appellant Upendra Singh, Satyendra Singh and Sadhu Singh (since deceased) were charged for the offences



punishable under Section 3/5 of Explosive Substance Act and Sadhu Singh (since deceased) was separately charged for the offence under Section 307 of the Indian Penal Code.

5. In order to prove the charges, the prosecution got examined altogether 12 witnesses and also got exhibited documentary as well as material evidences. The statements of appellants were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution story and claimed their false implication.

6. The learned court below having relied upon the evidences of PW-1, PW-2, PW-3 as well as documentary and material evidences adduced on behalf of the prosecution convicted and sentenced the appellants in the manner as stated above.

7. Learned counsel Mr. Vikram Deo Singh assisted by learned counsel Mr. Ansul assailed the impugned judgment of conviction and sentence order on behalf of the appellant Ranjeet Yadav arguing that prosecution failed to prove its case beyond all shadow of reasonable doubts as the prosecution could not succeed to prove the manner of occurrence, time of occurrence as well as place of occurrence. Learned counsels further submit that the prosecution also failed to bring the first information report regarding the alleged occurrence said to be given by PW-1 to PW-11 and non production of the aforesaid information creates doubt about the genuineness of the



prosecution case. Learned counsels also submit that there are so many contradictions in the depositions of prosecution witnesses which go to the root of the prosecution case and make the prosecution case unbelievable and doubtful. Continuing their submission, learned counsels submit that the alleged occurrence is said to have taken place at 06:00 A.M. and the ferdbeyan of PW-3 is said to have been recorded at 07:00 A.M. whereas the PW-11 admitted that he reached at the place of occurrence at 08:00 A.M. and moreover, the post mortem report of deceased also creates doubt about the timing of the alleged occurrence because the doctor (PW-10), who did post mortem examination, found rigor mortis present on all the four limbs of the deceased and the aforesaid finding of the doctor creates doubt about the timing of the present occurrence. Learned counsels further submit that moreover, the appellant Ranjeet Yadav has no concern with the family of other accused as well as informant and as a matter of fact, he has been implicated in this case because he used to help the co-accused, Brajesh Singh, who happens to be full brother of the deceased of present case.

8. On the other hand, learned A.P.P. appearing for the State supported the impugned judgment of conviction and sentence order arguing that all the eye witnesses are in consistence in respect of their claim and they very clearly stated that it were appellants, who



committed the alleged occurrence and, therefore, there is nothing on the basis of which this Court could interfere into the findings of learned court below.

9. Having heard the contentions of both the parties, we went through the record and after perusal of the record we find that prosecution examined, altogether, 12 witnesses. Out of them, PW-4 to PW-9 have not supported the prosecution case and they have been declared hostile. PW-1, PW-2 and PW-3 are claimed themselves to be eye witness of the alleged occurrence.

10. PW-10 is Dr. Rama Nand Pd. Singh, who did post mortem examination over the corpus of the deceased and proved the post mortem report as Exhibit-2. This witness stated that on 08.07.1991, he was posted at Sadar Hospital, Nawada and on the same day at 04:15 P.M., he did post mortem examination of deceased, Naresh Singh, whose dead body was identified by Constable no. 327, Ram Ishwar Singh. This witness stated that he found rigor mortis present in all the four limbs of dead body. He also stated that he found following external injuries:-

- (i) *Superficial burn right arm and right posterior lateral surface of chest wall.*
- (ii) *Deep to superficial burn over left hand and forearm.*
- (iii) *Lacerated wound 1/2" x 1/3" with inverted and charred margin over middle part of chest wall oval in shape on interior surface front.*
- (iv) *Lacerated wound 2 1/2" x 1 1/2" over posterior surface of left chest wall situated*



laterally. Blood clot around it.

On dissection, this witness found injury no. (iii) which goes posterially and laterally towards the left piercing the skin sternum, left ventral of heart, left lung and communicates with injury no. (iv). The whole left thoratic cavity was full of blood and blood clots. Stomach intact contains two ounce liquids. Small and large gut intact, contains fickle matter and gas. Urinary bladder intact, contains 3 ounce of urine. In the opinion of this witness cause of death was shock and haemorrhage due to above stated injuries specially injury to heart and left lung. This witness also opined that injury no. 1 and 2 were caused by explosive substance such as bomb, and injury no. 3 and 4 were caused by firearms substance may be by revolver. In the opinion of this witness, the time of death was in between 6 to 36 hours from time of post mortem examination. The testimony of this witness, at least, establishes this fact that deceased Naresh Singh had sustained firearm injury as well as other injuries and he died of those injuries.

11. Now, the question arises who committed the murder of the deceased, Naresh Singh and on which place he was killed. The learned court below has come to the conclusion that it were appellants, who committed the murder of the deceased inside the courtyard of house of the deceased.

12. PW-1, Gopal Saran is son of deceased Naresh Singh.



This witness stated that on the alleged date of occurrence at about 06:00 A.M. he was returning to his home from the field and when he reached near his house, he heard the sound of crying and having heard the sound of crying, he ran towards his house. He further stated that he saw the accused Brajesh Singh carrying bomb in his hand whereas appellant, Ranjeet Yadav was armed with pistol, appellants, Chhotelal Singh, and Ratan Singh were armed with gun and Sita Ram Singh as well as Hare Ram Singh were armed with gun. This witness further stated that accused Brajesh Singh threw bomb on his father which hit to him and having sustained injury his father ran towards his house. The appellant Ranjeet Yadav opened fire causing firearm injury on the back of his father. The aforesaid firing was made while the deceased, Naresh Singh was trying to enter into his house. He further stated that Ranjeet Yadav again fired on his pistol which hit at the lumber of deceased and having sustained the aforesaid firearm injury his father fell down in the courtyard. The villagers assembled there and having seen the villagers, the appellants fled away from there. This witness further stated that he went to police station and gave his statement. This witness identified the appellants before the court. This witness has, nowhere, stated in his examination in chief that his mother had lodged any case before the police in his presence. This witness has been cross examined at length by the defence. At para 5 of his cross



examination, he admitted that he had gone to his field at about 05:00 A.M. He disclosed that the distance of his field from his house is about half km. He also admitted at para 7 of his cross examination that he heard the sound of bomb from the distance of 10-20 *bans* and when he was at the distance of 2-3 *bans*, he saw his father in injured condition and in the same condition, his father was running towards his house. He further stated that he also went in the courtyard of his house where he found his father lying in pool of blood whereas his mother and sister were weeping. He noticed injury on chest and panjra of the deceased. This witness frankly stated in his cross examination that no conversation had taken place between him as well as his father after the alleged occurrence. He further stated that he proceeded to police station to lodge the F.I.R. at 06:30 A.M. and reached there at 07:30 A.M. He disclosed that the distance between his house and the concerned police station was about 2-3 km. He also admitted that he met the *daroga* but he did not make any statement before the police. However, in the same paragraph, he stated that information regarding the murder was recorded by the *daroga* and on which he put his signature. At para 14 of his cross examination, this witness stated that dead body of deceased Naresh Singh was brought to hospital for post mortem examination at 01:00 P.M. and in para 15 of cross examination, this witness stated that he got the dead body of his father



after post mortem examination at about 04:00 P.M. and subsequently, the dead body was disposed of and he returned to his home at 08:00 P.M. The attention of this witness was drawn towards this fact that his statement was taken by the D.S.P. and in that statement he had stated that he had not seen the alleged occurrence. He also admitted at para 18 of the cross examination that his father and accused Brajesh Singh are full brother and they reside in two separate houses.

13. PW-2, namely, Rebi Kumari is daughter of deceased. She also claimed herself to be eye witness of the alleged occurrence. This witness states that at the time of alleged occurrence, she was spreading cow dung cake in front of her door whereas her aunt, namely, Bijiya Devi was abusing her. She further states that appellant Chhotelal Singh came there several times and left the place whereas the appellant Ranjeet Yadav having concealed something beneath a towel went towards the house of accused, Brajesh Singh. She further states that all the appellants along with accused Brajesh Singh came there and at that time appellant Ranjeet Yadav was carrying revolver, appellant Sita Ram Singh and Hare Ram Singh were carrying pistol whereas accused Brajesh Singh was carrying bomb and appellant Satyendra Singh and Upendra Singh, too, were carrying bomb in their hands and similarly, appellant Chhotelal Singh and Ratan Singh were carrying gun in their hands whereas deceased appellant Sadhu Singh



was carrying bomb in his hand and all the above stated persons started throwing bomb on deceased Naresh Singh. She further states that accused Brajesh Singh threw bomb on deceased Naresh Singh as a result whereof, deceased sustained injury and ran towards his house. The aforesaid fact is evident from perusal of para-2 and 3 of examination in chief of PW-2. She further states that appellant Ranjeet Yadav caused firearm injury on the back of her father (dada) namely, deceased Naresh Singh and having sustained the aforesaid injury her father fell down in the courtyard. She further states at para 4 of her examination in chief that accused Brajesh Singh opened fire causing firearm injury on the panjra of her father. She at the same paragraph states that the deceased had disclosed the name of the assailants and after disclosing the name of the assailants deceased died then and there. She further states that deceased-appellant Sadhu Singh had thrown bomb from the roof of accused, Brajesh Singh causing damage to mud-wall of her house.

14. Again when she was cross examined by the defence, she disclosed that the deceased had disclosed the name of his assailants to her. She further states that after one hour of the alleged occurrence, police came there and recorded the statement of her mother (PW-3) and at the time of recording the statement of her mother (PW-3), her brother, Gopal Saran (PW-1) was also present



there. She also admitted that her brother had gone to the police station to lodge the report and when he informed about death of his father to police, the police reached to her village. She further states that other witnesses had come at the place of occurrence after 10-15 minutes of the alleged occurrence. She also states at para 16 of her cross examination that due to explosion of bomb, there was heavy smoke. The attention of this witness was drawn by the defence towards her statement recorded by the D.S.P. and she admitted that she had made statement before the D.S.P. She also states that her father had sustained two firearm injuries and at the time of alleged occurrence, she as well as PW-3 were present in the house and except her father, her mother (PW-3) and herself, there was no any other person present in her house. She also states that police had come at about 07:00 A.M. and the dead body of her father was sent to Nawada at about 12:00 noon. She states that police had seized blood stained soil but she did not see as to whether the splinters of bomb were collected by the police or not. She also admitted that when her father sustained firearm injury, he was outside the house.

15. PW-3, Shaila Devi is wife of the deceased. She states in her examination in chief that on the alleged date of occurrence at about 06:00 A.M., she was sweeping her door and her husband was washing his mouth in front of the door whereas her daughter (PW-2)



was arranging cow dung cake in front of the door. She further states that Bijiya Devi was abusing her as well as her family members but neither she nor her other family members gave any attention towards the activity of Bijiya Devi. She further states that appellant Chhotelal Singh came and went through the road 5-6 times and appellant Ranjeet Yadav went in the house of accused, Brajesh Singh concealing something beneath the towel. She further states that appellant Ranjeet Yadav having armed with revolver, Bijiya Devi having armed with bomb and Brajesh Singh having armed with bomb, Ratan Singh and Chhotelal Singh having armed with gun, Sita Ram Singh and Hare Ram Singh having armed with pistol, Satyendra Singh and Upendra Singh having armed with bomb were present there and accused, Brajesh Singh hurled bomb whereas appellant Ranjeet Yadav shot fire upon her husband as a result of which, her husband sustained injury on his left panjra. The accused, Brajesh Singh opened fire causing firearm injury on the back of her husband whereas deceased-appellant Sadhu Singh threw bomb from the roof which hit on the western wall of her house. She states that having received the aforesaid injuries her husband entered into house and fell down in the courtyard and died immediately. She further states that his son went to inform the police and thereafter, police came and recorded her statement as well as statement of her daughter (PW-2). She further



states that dead body, splinters of bomb, blood etc. were shown to *daroga* (PW-11). On being cross examined by the defence, this witness states that police came at about 07:00 A.M. and after that Mukhiya, Sarpanch etc. came there. She states that she could not say the reason behind the alleged occurrence. She also states that after the occurrence, her son (PW-1) gave information to chowkidar regarding the alleged occurrence. At para 8 of her cross examination, she states that her husband and her daughter were outside the house at the relevant time whereas her son (PW-1) was not present in the house and her son (PW-1) came on the place of occurrence after death of her husband Naresh Singh. She further admits in her cross examination that when the appellants and other accused being armed with lethal weapons came there, her husband having seen them started running towards her door whereas she remained present outside the door. She further admits that her husband entered into the house and while he was entering into the house, appellant Ranjeet Yadav shot fire on him. She further admits that firing was made from the distance of 1- ½ *bans* and the said firing hit on the panjra of her husband. She admits that second firing was not made by the appellant Ranjeet Yadav. She further admits that distance between her door and aangan is about one *bans*. She also admits that blood was fallen in the courtyard. She also admits at para 13 of her cross examination that she noticed one hole



on the panjra of her husband which had come towards the heart of her husband. She also states that she had noticed one hole on the back of her husband. At para 15 of her cross examination, she admits that there was no quarrel or enmity between her husband as well as appellants and other accused. She also admits at the same paragraph that police came on the place of occurrence after one hour of the alleged occurrence. She further states that Daroga had seized blood stained soil and the dead body of her husband was sent to Nawada at about 01:30 P.M. She further admits at para 17 of her cross examination that police had recorded her statement only once in the present case. She denies this fact that she had made statement before the D.S.P. that it was accused, Brajesh Singh who had committed the murder of her husband. She also denies this fact that she had made statement before the police that there was enmity between her husband and Brajesh Singh due to partition. She also states that police had found splinters of bomb but whether the aforesaid splinters of bomb were seized or not, it was not known to her. The attention of this witness was drawn towards her statement recorded under Section 161 of the Cr.P.C. and she states that she had made statement before the police that appellant Ranjeet Yadav had opened fire causing firearm injury on left panjra of her husband. She also states that she had made statement that accused Brajesh had fired causing firearm



injury on the back of her husband. She admits at para 24 of her cross examination that her husband had no inimical term with appellant Ranjeet Yadav. She also admits at para 25 of her cross examination that due to smoke it was difficult to see the face of a person and that smoke remained near about 10 to 15 minutes. She further states that when she saw her husband first time at the time of alleged occurrence her husband was lying in pool of blood and was uttering that Brajesh Singh and others had committed his murder. She further admits at para 26 of her cross examination that her husband asked her son and daughter to remain inside the house otherwise they would be also killed. She further denies this fact that she had made statement before the police that she had asked her daughter, Rebi Kumari not to come outside the house.

16. PW-11, Suresh Prasad Paswan is investigating officer of this case. This witness states that he having got rumor on 08.07.1991 proceeded towards village Chanaun where he recorded the statement of PW-3. This witness proved the ferdbeyan of PW-3 as Exhibit-3 and also proved the formal F.I.R. as Exhibit-5. He further states that he took the charge of investigation and inspected the place of occurrence which is situated in front of main door of house of the PW-3. He further states that he found mark of explosion of two bombs on the wall of house of PW-3. He further states that when he entered



into the courtyard of PW-3, he found mark of explosion of bomb on a wall of a room and near the aforesaid wall the dead body of deceased was lying. He further states that he found splinters of bomb spread over the courtyard. He also noticed blood spread over near the dead body. He prepared the inquest report, which has been marked as Exhibit-6. He also seized the blood stained soil, splinters of bomb, some portion of damaged wall and prepared seizure list which has been marked as Exhibit-7 and after taking the statement of witnesses, he submitted charge sheet. On being cross examined, this witness states that he had made sanha entry of the rumor which had been received by him but had not mentioned the sanha number in the case diary. This witness admits that he had got rumor of commission of cognizable offence but the person who had given information had not met him. He further states that PW-1 met him on the way prior to reaching of place of occurrence but the aforesaid fact has not been mentioned by him in the case diary. He admits that mark of explosion of bomb on wall was noted down by him on the basis of statement of witnesses but he had not mentioned the colour of aforesaid mark. He also admits that seized items were not sent by him for chemical examination. He also admits that he had not mentioned in the case diary regarding the presence of blood around the dead body. He also admits that he did not find any sign of blood on the wall. He also



admits that he had not mentioned regarding the trail of blood from main door to courtyard of PW-3. He also admits that he did not find any trail of blood on the place of occurrence. He further admits at para 9 that he did not find blood on the clothes of family members of deceased. He also admits at para 9 of his cross examination that PW-3 had not disclosed the name of witnesses either in her ferdbeyan or in her further statement. He also admits that he did not find any burn mark on the dhoti and ganji of the deceased. He also states that he did not seize dhoti and ganji of the deceased nor had sent any material exhibits to court maalkhana rather the material exhibits were sent by him to maalkhana of police station but the said fact was not mentioned by him in the case diary. At para 13 of her cross examination, this witness states that PW-1 met him on the way and disclosed regarding murder of his father and he also disclosed the name of assailants as well as manner in which his father was killed. This witness states that he had not recorded the statement of PW-1 as he thought to reach on the place of occurrence first and due to law and order problem he did not record the statement of PW-1. He states that he reached on the place of occurrence at 07:00 A.M. He further admits that prior to reaching on the place of occurrence, some villagers had met him and he had talked with the aforesaid villagers but did not record the statements of said villagers. This witness admits that



concerned D.S.P. had recorded the statement of PW-1 in his presence. He also admits that he had not mentioned in his diary about seizure of plaster of the wall. The attention of this witness was drawn towards the statement of PW-3 and this witness admits that PW-3 had not stated before him that accused, Brajesh Singh had fired causing firearm injury on the back of her husband.

17. PW-12, Rameshwar Ram produced the seized plaster of wall and bundle of sutli as material exhibits before the court below which was marked as material exhibit I. This witness admits at para 4 that seized plaster, dust, etc. did not contain any mark nor the sutli contained sign of burn. He also admits that aforesaid articles had not been seized in his presence.

18. On careful examination of depositions of PW-1, 2 and 3, it is obvious that PW-1 is not an eye witness of the alleged occurrence because PW-3 at para 8 of her cross examination fairly admitted that PW-1 came on the place of occurrence after the alleged occurrence as well as after death of deceased. PW-2 and 3 are said to be eye witnesses of the alleged occurrence and both the witnesses stated that deceased sustained two firearm injury. PW-2 stated that appellant Ranjeet Yadav shot fire on the deceased causing firearm injury on the back side and when he fell down in the courtyard, it was accused, Brajesh Singh, who shot fire causing injury on the panjra of



the deceased. However, PW-3 stated that appellant Ranjeet Yadav opened fire of revolver causing injury on the left panjra of the deceased whereas accused Brajesh Singh opened fire causing injury on the back of the deceased. However, the doctor PW-10 found two firearm injuries on the person of the deceased but both the aforesaid firearm injuries were communicating to each other meaning thereby there was only one firearm injury on the person of the deceased. It is also evident from perusal of statement of PW-10 as well as from perusal of post mortem report that PW-10 left to mention regarding wound of entry and wound of exit of the aforesaid injury. Therefore, the post mortem report as well as deposition of PW-10 contradicts the statements of PW-2 and 3 and the benefit of doubt shall go to the appellants.

19. Furthermore, we find that PW-1 as well as PW-11 admitted this fact that prior to recording of statement of PW-3, PW-1 had given his statement and disclosed the name of assailants. Although, the PW-11 stated that statement of PW-1 was not recorded by him but PW-1 admitted that he had signed his statement. Therefore, it would appear that F.I.R. in respect of the present occurrence was given by the PW-1 but the aforesaid statement of PW-1 has not been brought on record by the prosecution and it has been concealed which creates doubt about the genuineness of the



prosecution case.

20. No doubt, there is only minor variance in respect of the place of occurrence but the totality of the prosecution case go to show that alleged occurrence took place outside the house of the PW-3 and at that time, PW-2 and 3 were inside the house whereas PW-1 was not present at his home and it would appear that neither PW-1, PW-2 nor PW-3 had seen the actual killing of the deceased. PW-3 has admitted in her evidence that appellants had no inimical terms with the deceased. Although, she had stated in her ferdbeyan that the alleged occurrence took place due to previous enmity and litigation but in course of trial, she changed her above stated statement. Furthermore, we find that presence of PW-1 on the place of occurrence even at the time of recording of ferdbeyan of PW-3 appears to be doubtful because the ferdbeyan of the informant was not signed by the PW-1. Therefore, in the aforesaid circumstances, in our view, the impugned judgment of conviction and sentence order cannot sustain in the eye of law.

21. The claim of the prosecution is that alleged occurrence took place at 06:00 A.M. and the post mortem was done at 04:15 P.M. on the same day. The doctor noticed that rigor mortis were present on all the four limbs of the deceased. It is well known fact that rigor mortis starts after 3-4 hours of the death and completely takes place



after minimum 18-36 hours but in the present case, the post mortem was done after 10 hours of death of the deceased and surprisingly, the rigor mortis on four limbs of the dead body was found present which creates doubt even about timing of the alleged occurrence. Therefore, we are of the view that prosecution could not succeed to prove its case beyond all shadow of reasonable doubts.

22. On the basis of aforesaid discussions, the impugned judgment of conviction dated 08.02.1994 and sentence order dated 09.02.1994 are, hereby, set aside and accordingly, the appellants are acquitted of the charges. All the appellants are on bail. They are discharged from the liabilities of their bail bonds.

23. In the aforesaid manner, all the above stated criminal appeals stand disposed of.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

SHAHZAD/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	31.01.2018
Transmission Date	31.01.2018

