

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 933 of 2012

Arising Out of PS. Case No.-152 Year-2007 Thana- Baunsi District- Banka

Santosh Yadav son of Sri Sukdeo Yadav, resident of village Mahguri, P.S. Bounsi, District Banka.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 843 of 2012

Arising Out of PS. Case No.-152 Year-2007 Thana- Baunsi District- Banka

1. Hoob Lal Yadav son of Sri Baijnath Yadav, resident of village - Malsumia, P.S. Bausi, District - Banka
2. Prakash Yadav son of Sri Lakshman Yadav, resident of village - Malguri, P.S. Bausi, District - Banka

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 933 of 2012)

(In Criminal Appeal (DB) No. 843 of 2012)

For the Appellants : Mr. Ajay Kumar Thakur, Advocate
Mr. Md. Nurul Hoda, Advocate
Mr. Balram Kapri, Advocate
Mr. Ritwaj Rahman, Advocate

For the State : Mr. Ajay Mishra (A.P.P.)
Mr. Mayanand Jha (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 19-01-2018

Since appellants in both appeals were convicted and



sentenced by Sri Prem Ranjan Mishra, learned Adhoc Additional Sessions Judge – Ist, Banka (hereinafter referred to as the ‘Trial Judge’) in Sessions Trial No. 208 of 2008/Supplementary Sessions Trial No. 141 of 2012 (arising out of Baunsi P.S. Case No. 152 of 2007), both the appeals were heard together and are being disposed of by this common judgment.

2. The appellant Santosh Yadav (in Cr. Appeal DB No. 933 of 2012) was convicted by judgment of conviction dated 2nd of August, 2012 for commission of offence under Sections 148, 302, 379 of the Indian Penal Code and Section 27 of the Arms Act, 1959 and two appellants in Cr. Appeal (DB) No. 843 of 2012 were convicted for commission of offence under Sections 147, 302/149 and Section 379/149 of the Indian Penal Code. By order dated 04-08-2012, Santosh Yadav (appellant in Cr. Appeal DB No. 933/12) was sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code and imposed a fine of Rs. 10,000/- (ten thousand) and in default, he was directed to undergo simple imprisonment for six months. He was further sentenced to undergo rigorous imprisonment for one year for commission



of offence under Section 379 of the Indian Penal Code. He has further been sentenced to undergo rigorous imprisonment for two years under Section 148 and rigorous imprisonment for three years & fine of Rs, 2,000/- (two thousand) under Section 27 of the Arms Act, 1959, whereas, both appellants i.e. Hoob Lal Yadav & Prakash Yadav in Cr. Appeal (DB) No. 843/12 were sentenced to undergo rigorous imprisonment for life under Section 302/149 of the Indian Penal Code and each of them were imposed a fine of Rs. 10,000/- (ten thousand) and in default of payment of fine, they were directed to undergo simple imprisonment for six months. Both appellants i.e. Hoob Lal Yadav and Prakash Yadav were further sentenced to undergo rigorous imprisonment for one year under Section 147 of the Indian Penal Code. All the sentences were directed to run concurrently.

3. Short fact of the prosecution case is that on 25-10-2007 at about 9:45 PM, Sub-Inspector of Police R.K.Sharma (P.W.15), officer incharge of Baunsi Police Station recorded *fardbeyan* of one Prayag Yadav (P.W.14), resident of village Jhallar, Police Station – Baunsi, District – Banka. The *fardbeyan* was shown to be recorded at Referral



Hospital, Baunsi. In the *fardbeyan*, the informant stated that he on his Marshal Jeep, bearing registration no. WB-38N/5212, was returning from Shyam Bazar to his house at Jhallar. In the said vehicle, alongwith him, one Shambhu Yadav (P.W.4), resident of Village Jhallar, was also there. While his vehicle reached near Leelavaran more, in the moonlight and light of the vehicle, he noticed Santosh Yadav (appellant in Cr.Appeal DB No. 933/12), Vijoy Yadav, Ajoy Yadav, Arun Yadav, all sons of Sukhdeo Yadav, Sukhdeo Yadav S/o Ganesh Yadav, Prakash Yadav (appellant no. 2 in Cr.Appeal DB No. 843/12), Sandeep Yadav, all resident of Village - Mahguri, Police Station – Baunsi on motorcycles on the road side. The informant further stated that immediately after noticing his vehicle, all accused persons started their motorcycles. The informant in fear accelerated his vehicle and all the accused persons, by way of abusing, started chasing the informant. While fleeing away in speed with his vehicle, when the informant reached near Chuapani Panchayat Bhawan more, he noticed that Hoob Lal Yadav (appellant no. 1 in Cr. Appeal DB No. 843/12) of village Malsumia, Rajesh Yadav, resident of village Haldiya Purab,



Suman Yadav and Akhileshwar Yadav @ Phui of village Malguri with *lathi*, *farsa* and gun started giving blow on his vehicle. The informant, leaving his vehicle, fled towards village and he concealed himself in a house of someone. The informant further stated that the accused persons, who were chasing, thereafter, damaged his vehicle by *lathi*, *danda*, *farsa* etc. In the meanwhile, his brother Samundar Yadav (CW-1) and son Pappu Kumar (P.W.13) arrived on a motorcycle with licensee rifle. After noticing those two persons, the accused persons, with intent to kill, attacked them. On alarm, villagers arrived there and tried to save brother and son of the informant. The informant too came out from the house in search of his son. In the meanwhile, Santosh Yadav (appellant in Cr. Appeal DB No. 933/12) and other accused persons jointly started assaulting his son and snatched rifle from him. When villagers raised objection, Santosh Yadav (appellant in Cr. Appeal DB No. 933/12) opened fire, which hit Tarkeshwar Pandit (deceased), son of Anil Kumar Pandit (P.W.9) of village Chuapani, who was standing there and thereafter, he fell down. After seeing Tarkeshwar Pandit (deceased) falling down, the accused



persons said that '*sentence either for one murder or ten murders would be the same*' and thereafter, Prakash Yadav (appellant no. 2 in Cr. Appeal DB No. 843/12) opened fire on his brother Samundar Yadav (CW-1) with a view to kill him, however; the said shot did not hit him and his brother fled away. Due to fear of the accused persons, all the villagers concealed themselves. The informant further stated that earlier also, prior to the year 2004, due to animosity, the aforesaid accused persons had lobbed bomb on him and his brother with intent to kill them and in the said case, he had deposed as a witness and this was the reason that accused persons in animosity had committed the said occurrence. The said occurrence had taken place between 7:00 PM to 8:00 PM. The informant claimed that Santosh Yadav (appellant in Cr. Appeal DB No. 933/12) alongwith aforesaid named accused persons and 4-5 unknown accused persons jointly with intent to kill, due to old animosity, had opened fire on him and his brother and badly damaged his vehicle and on raising objection, Tarkeshwar Pandit was given fire-arm injury, who died on way to Referral Hospital. The accused persons had also snatched the licensee gun from his son. The



informant, after reading the *fardbeyan*, put his signature on the *fardbeyan*. The *fardbeyan* was also got signed by about seven persons as witness to the *fardbeyan*.

4. On the basis of said *fardbeyan*, on the same date i.e. on 25-10-2007 at 22.20 hours (10:20 P.M.), a formal F.I.R., vide Baunsi P.S. Case No. 152 of 2007, was registered for offence under Sections 147, 148, 149, 341, 323, 307, 379, 427, 302, 440 of the Indian Penal Code and Section 27 of the Arms Act, 1959 against 11 (eleven) named accused persons and some unknown persons. Following are the named accused persons:-

1. Santosh Yadav (appellant in Cr.Appeal DB No. 933/12)
2. Vijay Yadav
3. Ajay Yadav
4. Arun Yadav
5. Sukhdeo Yadav
6. Prakash Yadav (app. no. 2 in Cr.Appeal DB No. 843/12)
7. Sandeep Yadav
8. Hoob Lal Yadav (app. no. 1 in Cr.Appeal DB No. 843/12)
9. Rajesh Yadav
10. Suman Yadav, and
11. Akhileshwar Yadav @ Phui.

5. During investigation, since according to investigating officer the case was found true, police submitted chargesheet against four accused persons i.e. all the appellants



and one another accused namely Sandeep Kumar, vide Chargesheet No. 4 of 2008. Subsequently, since accused Sandeep Kumar claimed juvenility, his case was separated. After submission of chargesheet, the learned Chief Judicial Magistrate took cognizance of the offences and on 04-02-2008, the case was committed to the court of sessions. On 11-06-2008, charge under Section 27 of the Arms Act, 1959 and Section 148 of the Indian Penal Code was framed against appellant i.e. Santosh Yadav (in Cr.Appeal DB No. 933/12) and Prakash Yadav (appellant no. 2 in Cr.Appeal DB No. 843/12). Further, against all the appellants and one Sandeep Yadav, charge under Sections 302/149, 307/149, 379/149 of the Indian Penal Code was framed and further against appellant no. 1 i.e. Hoob Lal Yadav (in Cr. Appeal DB No. 843/12) and Sandeep Yadav, separate charge under Section 147 of the Indian Penal Code was framed, however; after framing of charge, the case of Sandeep Yadav was separated since he had claimed juvenility and vide order dated 9.1.2012, he was declared juvenile.

6. During trial, the prosecution, to establish its case, examined altogether 17 witnesses. Out of 17 prosecution



witnesses, P.W.4 Shambhu Yadav, P.W.13 Pappu Kumar S/o Prayag Yadav (informant & PW.14) and P.W.14 Prayag Yadav (informant) were examined as eye-witnesses. P.W.1 Shyam Yadav, resident of village Jhallar and P.W.2 Ram Dular Yadav, resident of village Jhallar were examined as if they arrived at the place of occurrence subsequent to the occurrence and in their presence, the informant described regarding the occurrence and involvement of the accused persons. P.W.3 Manjhi Murmu, resident of Mahguri, P.W.5 Pradhan Kisku, resident of village Leelavaran, P.W.6 Patwari Kisku, resident of village Leelavaran and P.W.7 Md. Latif Ansari, resident of village Chuapani had turned hostile. P.W.8 Sachchida Nand Pandit (uncle of the deceased) had claimed that after hearing sound of firing he came out of his house and seen his nephew lying in injured condition and there were none present. P.W.9 Anil Kumar Pandit, father of deceased, P.W.10 Ajay Kumar Pandit, brother of the deceased, P.W.11 Tara Devi, wife of deceased and P.W.12 Bachi Devi, mother of deceased were examined as if they had followed the deceased while being carried to Baunsi Hospital. P.W.16 Dr. Ashok Kumar had examined injuries of Samundar Yadav (C.W.1) and Shambhu



Yadav (P.W.4) and he proved injury report of Samundar Yadav, which was marked as Ext. 6 and injury report of Shambhu Yadav as Ext. 6/a. P.W.17 Dr. Md. Suhail Anjum had conducted *post-mortem* examination on the dead body of the deceased and he proved the *post-mortem* examination report, as Ext. 7. The investigating officer Raj Kishore Sharma was examined as P.W.15.

7. After conclusion of the evidence in the case, firstly evidences and circumstances collected during the trial against the accused persons were explained on 13-11-2008 and statement of accused under Section 313 of the Cr.P.C. was recorded. However, subsequently after recording of statement of accused under Section 313 of the Cr.P.C., one witness namely Samundar Yadav was summoned as Court Witness and his evidence was recorded on 10-12-2009, as C.W.1. After his evidence, again statement of accused persons was recorded under Section 313 of the Cr.P.C. on 22-12-2009 and the defence, with a view to disapprove the prosecution case and their false implication, adduced one witness namely Girdhar Gopal Yadav, who was examined as D.W.1. He proved a certificate of doctor with regard to injury of Sandeep



Kumar @ Sandeep Yadav from the side of the defence, which is marked as Ext. D.

8. Sri Ajay Kumar Thakur, learned counsel for the appellants, after placing entire evidences, has firstly argued that it was a clear-cut case of false implication of the appellants and the investigating officer had connived with informant only with a view to save informant of the present case namely Prayag Yadav (P.W.14) from being prosecuted in Baunsi P.S. Case No. 151 of 2007 also to save him from the charge of murder of Tarkeshwar Pandit (deceased of the present case). It has been argued that in the actual occurrence, one of the accused of the present case namely Sandeep Kumar @ Sandeep Yadav was given fire-arm injury by use of licensee rifle of Prayag Yadav (informant), which hit him and thereafter, from defence side, first F.I.R. was lodged against Prayag Yadav (P.W.14), Samundar Yadav (C.W.1), Shambhu Yadav (P.W.4) and others. While referring to the evidence of investigating officer of the present case i.e. P.W.15, Sri Thakur has argued that despite direction of the supervisory officer to conduct appropriate investigation in Baunsi P.S. Case No. 151 of 2007, this investigating officer, ignoring



those directions, had not conducted any such investigation, rather in connivance with the informant of the present case, all the appellants were framed as accused in the present case. It has primarily been argued by Sri Thakur that it is a fit case, in which, this Court, beside setting-aside the judgment of conviction and sentence of the appellants, may direct the Director General of Police, Bihar to take strict departmental action against the investigating officer of the present case. Sri Thakur has argued that the prosecution in the present case has purposely withheld the earliest version of the case. By way of referring to evidence of P.W.8, who was none else but uncle of the deceased, he has argued that this witness has stated that he alongwith others, had carried the injured Tarkeshwar Pandit from the place of occurrence to Baunsi Hospital for his treatment, but on way, he died and thereafter, he rushed to the police station. Once the uncle of the deceased himself had visited police station alongwith the dead body, in normal course, the officer incharge of the Baunsi Police Station was required to record *fardbeyan* from the mouth of the uncle of the informant, who had firstly visited the police station, but with a view to save main culprits, the investigating officer by



anti-dating shown recording of *fardbeyan*, as if, said *fardbeyan* was recorded on 25-10-2007 at 9:45 PM, whereas, witnesses or even informant (P.W.14) of the present case, in his evidence, has stated that in the police station, while he went, he was arrested by the Baunsi police. To substantiate his submission, creating doubt regarding anti-dating *fardbeyan* and F.I.R., learned counsel for the appellants has drawn our attention to *post-mortem* examination report i.e. Ext. 7 as well as dead-body challan i.e. Ext. 4. He submits that in the *post-mortem* examination report, no case number was mentioned, whereas, dead body of deceased was received in the hospital for *post-mortem* examination on 26-10-2007 at 11:45 AM. It has been argued that had the investigating officer drawn formal F.I.R. on 25-10-2007 at 10:20 PM, as mentioned in Ext. 5 i.e. formal F.I.R., there was no reason not to mention case number on the dead-body challan, whereas, the dead body challan (Ext.4) makes it clear that it was sent on 26-10-2007 and in the dead-body challan, there is no mention of case number. To elaborate this submission, Sri Thakur has also argued that this is the reason that though a formal F.I.R. was shown to be recorded on 25-10-2007 at



10:20 PM, the F.I.R. was received in the court of learned Chief Judicial Magistrate after two days i.e. on 27-10-2007. It is not a case of the prosecution that police station was far away and interior place.

9. Sri Thakur has further argued that the prosecution had suppressed material fact regarding injury caused on the person of Sandeep Kumar @ Sandip Yadav, whereas, fact remains that from the defence side, case was instituted against informant and others, which was registered, vide Baunsi P.S. Case No. 151 of 2007 i.e. earlier F.I.R. to the present F.I.R. Learned counsel for the appellants has further submitted that entire prosecution is liable to be set aside on the ground that the prosecution with oblique motive withheld natural witnesses i.e. witnesses, who were resident of Chuapani and persons, who were residing near the place of occurrence, despite the fact that during investigation, the investigating officer had recorded their statement under Section 161 of the Cr.P.C. only on 25-10-2007, however; in the present case, the prosecution chose to examine those witnesses, whose statement was recorded after 2 or 3 days from the date of occurrence. It has also been argued that the manner of



occurrence, as alleged in the present case, does not inspire confidence, since it has not at all been established in correct manner. On aforesaid ground, it has been argued that the impugned judgment of conviction and sentence is liable to be set aside.

10. Sri Ajay Mishra, learned Addl. Public Prosecutor, though has opposed the appeals and tried to support the impugned judgment, he was not in a position to seriously defend the prosecution case.

11. Besides hearing learned counsel for the parties, we have minutely examined both oral and documentary evidences and after going through the same, *prima facie*, we are satisfied that the investigating officer in the present case with oblique motive had not investigated the case in its right perspective. In normal course, in such cases we would have directed for further investigation to trace main culprit as well as to examine the conduct of the investigating officer in the present case, however; we are refraining from passing such order, particularly; in view of the fact that in the present case, appellant Santosh Yadav (in Cr. Appeal DB No. 933/12) is



already languishing in jail since long. Before proceeding, we propose to discuss the evidence of uncle of the deceased.

12. The uncle of the deceased namely Sachidanand Pandit was examined as P.W.8. The evidence of P.W.8 categorically depicts how informant of the present case i.e. P.W.14 was instrumental to falsely implicate appellants in the present case. P.W.8 is the resident of Chuapani village, in which, occurrence had taken place. In his evidence, he has stated that occurrence had taken place in between 7:50 and 8:00 PM on 25-10-2007 in the night. At that very time, he was in his house and taking meal. Suddenly, he noticed the sound of stopping of a vehicle and some “हो हल्ला”, even then, he continued to take his meal. In the meanwhile, he heard the sound of firing. Thereafter, he washed his hand and came to the road side and went towards the Panchayat Bhawan. He stated that there was none on the road. Tarkeshwar Pandit (deceased) was lying there and blood was oozing out. He categorically stated that at that very time, except him, there was none. Thereafter, he called Binod Pandit (not examined) and Binod Pandit arrived, then he lifted Tarkeshwar (deceased) and carried him to his house. Thereafter, Satya



Narayan Pandit (not examined) and Babloo @ Braj Kishore Pandey (not examined) also arrived. They laid Tarkeshwar (deceased) on a cot near his door. Tarkeshwar was unconscious. Thereafter, he hired a vehicle and the injured was carried to Baunsi Hospital. This witness stated that he was not knowing as to who had given fire-arm injury on Tarkeshwar. He further stated that on way to hospital, Tarkeshwar died. He further clarified that Tarkeshwar never regained consciousness. Thereafter, they carried dead body to police station and from police station, the dead body was sent to hospital. He further clarified that Darogaji had inquired from him. After the *post-mortem* was conducted, the dead body was brought back. In paragraph 2 of his evidence, he has stated that Tarkeshwar was his nephew and his father is Anil Kumar Pandit (P.W.9). He clarified that there was no dispute with father of Tarkeshwar and also clarified that there was no dispute with Prayag Yadav (informant and P.W.14). In paragraph 3 of his cross-examination, he has stated a disturbing fact. In paragraph – 3, he had categorically stated that prior to his evidence, the informant of the present case i.e. Prayag Yadav had sent message through one Indradeo



Mandal threatening him to give evidence as stated by the informant. It would be necessary to incorporate exactly what this witness has stated in paragraph – 3, which is as follows:-

“अनिल पंडित (P.W.9) घर पर नहीं था। वह बाँसी में था। तारकेश्वर का छोटा भाई अजय (P.W.10) भी बाँसी में था। तारकेश्वर की माँ बच्ची देवी (P.W.12) हमलोगों के साथ बाँसी अस्पताल में साथ नहीं गई थी। प्रयाग यादव ने आज से 8 दिन पूर्व इन्द्रदेव मंडल के मारफत से संदेश भेजा था कि मेरे केस के अनुसार गवाही नहीं देने पर हाथ पैर तोड़वा देंगे। परन्तु मैंने सच सच जैसा देखा वैसा गवाही दिया है। यही सब बात दरोगा जी को भी बोला था।”

On examination of the evidence of P.W.8, one thing is clear that while he reached near the place of occurrence, there was none, save and except injured Tarkeshwar Pandit and only thereafter, one another witness namely Binod Pandit arrived and both carried the injured to the door of Sachidanand Pandit where the injured was kept on cot. Subsequently, Satya Narayan Pandit and Babloo @ Braj Kishore Pandey arrived and all four persons carried the injured to Baunsi for his treatment and on way, the injured died. Accordingly, there is specific case of prosecution that P.W.8 was the person who first reached the place of occurrence and save and except those persons, whose name was stated by him none had visited Police Station with the dead body, however; the



investigating officer chose not to cite those persons as witness in the present case, whereas, the investigating officer on 25/26 October, 2007 in the night itself had recorded statement under Section 161 of the Cr.P.C. of Rudra Narain Pandit and Satya Naraian Pandit, but those witnesses were withheld by the prosecution and witnesses, who were examined during investigation after 2 or 3 days from the date of occurrence, they were chosen to be examined as prosecution witness.

13. P.W.9, P.W.10, P.W.11 and P.W.12 were examined much after the date of occurrence, but they were examined as the prosecution witnesses, whereas, most of the important witnesses, who were examined in the night of 25/26 Oct. 2007, were not examined as prosecution witnesses.

14. P.W.9 Anil Kumar Pandit, father of the deceased, in his evidence himself has accepted that on the date of occurrence, he was not in his village, rather he was posted in Banka and he had come to Baunsi and in Baunsi, he got information regarding the occurrence and while the injured was being carried to hospital from Chuapani to Baunsi, on way, he met P.W.8. He had stated that he was going on a motorcycle. He had not indicated that he was accompanied



while he was going on a motorcycle, however; during evidence of Ajay Kumar Pandit (P.W.10), brother of the deceased and son of the P.W.9, he has stated as if he was going with P.W.9, but he too accepted that he was not present in Chuapani and he is a hearsay witness. He stated that his family members had told regarding the occurrence and participation by the accused persons.

15. Similarly, P.W.11 Tara Devi, wife of deceased and P.W.12 Bachi Devi, mother of deceased in their evidence, tried to develop a case, as if, before death, the deceased had disclosed the name of accused persons, however; the evidence of P.W.11 and P.W.12 appears to be doubtful, in view of the categorical evidence of P.W.8 Sachidanand Pandit, uncle of the deceased. In his evidence, P.W.8 had made specific statement that after hearing the sound of firing when he came out of his house and reached near the road, he saw that deceased was lying in injured condition and at that very time, there were none, thereafter, he called one person, with his help, the injured was carried to the door of P.W.8 and thereafter, with the help of others, he was carried to Baunsi and on way, he died. This witness and other witnesses had



also stated that while the injured was seen, he was unconscious and he never gained consciousness and on way, he died and as such, the story introduced by the prosecution from the mouth of P.W.11 and P.W.12 regarding disclosure of the injured in respect of participation by the accused persons may not be accepted.

16. P.W.13 Pappu Kumar, son of informant, has also deposed as if he was one of the eye-witness to the occurrence. On going through his evidence, it appears that he was not making true disclosure. In his evidence, he stated that after being informed by Prayag Yadav (informant, P.W.14) on mobile that he was being chased by accused persons, this witness alongwith Samundar Yadav reached to the place of occurrence alongwith the licensee rifle. However, it was alleged that accused persons snatched licensee rifle from them and said rifle was used and from firing made by the said rifle, Tarkeshwar Pandit (deceased) received fire-arm injury, however; this witness kept mum on the point as to whether Sandeep Kumar @ Sandip Yadav had received any injury or not, whereas, it is the case of the defence that in the firing made by informant side, Sandeep had received fire-arm injury



and on such allegation, an F.I.R., prior to lodging of present F.I.R., was lodged, vide Baunsi P.S. Case No. 151 of 2007. It is necessary to observe that from the evidence of investigating officer, this fact has come that superior officers had directed the investigating officer to look into the allegation made in the F.I.R., lodged from the side of defence, but the investigating officer had frankly said that he had not done anything, as per the direction of superior officer. The injury received on the person of deceased Tarkeshwar as well as injury caused on the person of Sandeep was found to be caused due to fire-arm and apparently on examination of Ext. D i.e. certificate of the doctor regarding injury sustained by Sandeep Kumar as well as *post-mortem* examination report in respect of Tarkeshwar Pandit, it appears that both injuries were caused by fire-arm, from which, 315 cartridge was used and this is the reason that investigating officer had indicated that at the place of occurrence, he had found three खोखा of 315. The prosecution case appears to be doubtful further on the ground that the investigating officer, in his evidence, had stated that three खोखा of 315 cartridges were found just near the vehicle of the informant Prayag Yadav (P.W.14). The



prosecution case further appears to be doubtful, in view of the fact that it is the case of the prosecution that while informant was coming alongwith P.W.4 Shambhu Yadav on a Marshal vehicle, he was allegedly chased by some of the accused persons through motorcycles and near Chuapani Panchayat Bhawan, the informant alleged that he was intercepted by another set of accused persons, who were carrying *lathi*, *farsa* and other weapons. Meaning thereby that the informant tried to develop a case that he was target of the accused persons, but to the reasons best known to the informant, he was allowed to flee from the place of occurrence and informant himself stated that after leaving his vehicle, he fled towards the village and in house of one person, he concealed himself. Ofcourse, he has not indicated as to in which house, he concealed himself, whereas, fact remains that this witness (P.W.14) Prayag Yadav was admittedly earlier Mukhiya of the said Panchayat, and as such in normal course, he would have disclosed the name of such house-owner. The prosecution story appears to be further doubtful on perusal of the *fardbeyan* itself, in which, he has stated that after leaving his vehicle, he concealed himself in a house and subsequently, in



the same *fardbeyan*, he stated, as if, he had seen his son Pappu Kumar (P.W.13) and his brother Samundar Yadav (C.W.1) and the informant specifically described the role played by the accused persons. Once in the *fardbeyan* itself, he had disclosed that to save his life, he had concealed himself in a house, it is difficult to infer as to how from inside the house, he had noticed entire occurrence. The fact disclosed in the *fardbeyan* also appears to be doubtful, in which, the informant had alleged that the accused persons snatched rifle from Samundar Yadav and thereafter, same rifle was used by them and caused injury to Tarkeshwar Pandit (deceased), whereas, in the *fardbeyan* itself, this informant had stated that the accused persons, who had chased him through motorcycles, all were carrying fire-arm, but nothing was indicated by the informant that any other fire-arm was used by the accused persons, save and except rifle, which was licensee rifle of the informant side.

17. The investigating officer Raj Kishor Sharma was examined as P.W.15. At the relevant time, he was posted as officer incharge of Baunsi Police Station. In his evidence, he firstly proved the inquest report, which was marked as Ext. 2.



In the inquest report, it was specifically mentioned that the dead body of Tarkeshwar was found on a bed in Emergency Ward of Baunsi Hospital, however; the person, who had carried the deceased with others i.e. P.W.8 (uncle of the deceased) in his evidence has made specific statement that while he was carrying injured from Chuapani to Baunsi Hospital, on way, the injured died and thereafter, directly they carried the deceased to the police station. In the evidence of other witnesses also, this fact has come that injured after death on way was firstly brought to the police station and thereafter, so called *fardbeyan* of P.W.14 was recorded. If it is the evidence of the prosecution that injured, who died on way to hospital, was directly brought to the police station, then where was the occasion for finding the dead body on a bed in emergency ward of Baunsi Hospital that too without mentioning Bed Head Ticket or examining any personnel of Hospital. This creates serious doubt on the conduct of the investigating officer. Even if for the time being, the prosecution story to the extent of preparation of inquest report of deceased in Baunsi Hospital is treated, as correct, there is one another question as to why none from the Bausni



Hospital were examined as a witness to substantiate that the injured was firstly brought in Baunsi Hospital, he was admitted and allotted a bed and thereafter, he died. Had it been a case that the injured died on the bed in Baunsi Hospital, certainly, there would have been an entry in hospital register regarding admitting of injured (deceased), however; no such evidence, either documentary or oral, has been brought on record by the prosecution. The investigating officer has also proved *fardbeyan*, which was marked as Ext. 3. Surprisingly, on the said *fardbeyan*, the Investigating Officer (P.W.15) had obtained signature of seven persons as witness to the *fardbeyan*, they are as follows:

1. Sachidanand Pandit (P.W.8)
2. Binod Kumar Pandit (Not examined)
3. Kumar Ramakant (Not examined)
4. Braj Kishore Pandey (Not examined)
5. Satya Narayan Pandit (Not examined)
6. Anil Kumar Pandit (P.W.9)
7. Ajay Kumar Pandit (P.W.10).

18. In the present case, to the reasons best known to the investigating officer, he has also proved a carbon copy of dead body challan, which has been marked as Ext. 4. On examination of Ext. 4, it is evident that in the said dead body



challan, date is mentioned as 26-10-2007, but in the dead body challan, the investigating officer has not indicted the number of case i.e. number of F.I.R., whereas, it is case of the prosecution that after recording fardbeyan, a formal F.I.R. was lodged on 25-10-2007 at 10:20 PM. Once in the case, case number was already assigned, while preparing dead body challan, which was shown to be prepared on 26-10-2007, in normal course, the investigating officer would have mentioned the F.I.R. number in the dead body challan also and this is the reason that in post-mortem examination report also, F.I.R. number has not been indicated.

19. Sri Thakur, learned counsel for appellants has rightly raised suspicion regarding anti-dated F.I.R., since in the present case, F.I.R. was shown to be received in the court after two days from the date of recording of the F.I.R. This circumstance suggests that the F.I.R. was not prepared in the manner, in which, it has been shown to be prepared, but it appears that the P.W.14 Prayag Yadav (informant), who was also earlier Mukhiya, in connivance with the investigating officer has got prepared anti-dated F.I.R. This fact can further be substantiated from the fact that P.W.8 (uncle of the



deceased) has stated that he had carried deceased/injured, who died on way to the hospital and thereafter, he was carried to the police station and he was also examined by the police officer, but to the reasons best known to the investigating officer, such statement was not treated as *fardbeyan*, instead the investigating officer preferred to accept the statement of Prayag Yadav (P.W.14), as *fardbeyan*, and proceeded with the investigation. The investigating officer, in his evidence particularly in paragraph -1, has stated that he had found खोखा of 315 just near the vehicle of the informant, which was allegedly damaged by the accused persons. Finding of such खोखा near the vehicle of the informant further suggests that the rifle of the informant was used by himself and not by accused, as has been alleged by the informant. In the present case, in the evidence, the investigating officer has stated that on 25-10-2007 itself he had firstly examined Sachidanand Pandit (P.W.8), Md. Latif Ansari (P.W.7), both resident of village – Chuapani, however; P.W.7 Md. Latif Ansari had not supported the prosecution case and he was declared hostile and P.W.8 Sachidanand Pandit has made same statement, which he had stated during investigation under Section 161 of



the Cr.P.C. and as such, there is no reason to raise any doubt on the evidence of P.W.8.

20. The evidence of P.W.1 and P.W.2 also appears to be not believable due to the simple reason that both witnesses are resident of village Jhallar, which was about 2-4 km away from the place of occurrence and both are resident of the same village, which is the village of informant also. So, evidence of these witnesses may not be treated as truthful. Other independent witnesses, particularly; P.W.3 Manjhi Murmu, P.W.5 Pradhan Kisku and P.W.6 Patwari Kisku had not at all supported the prosecution case and as such, on aforesaid three witnesses were declared as hostile witnesses.

21. P.W.16 Dr. Ashok Kumar of Baunsi Referral Hospital had examined injury of Samundar Yadav (C.W.1) and Shambhu Yadav (P.W.4) and he proved injury report of Samundar Yadav, which was marked as Ext.6 and injury report of Shambhu Yadav, as Ext. 6/a. Those injuries were examined on the requisition of the Baunsi Police, however; on perusal of Ext. 6 and 6/a, it is evident that injuries found on the person of those witnesses were superficial in nature. In his cross-examination, P.W.16 Dr. Ashok Kumar has stated



that injuries of injured were not less than 12 hours, whereas, this doctor had examined injury of Samundar Yadav at 11:15 PM on 25-10-2007 and he examined injury of Shambhu Yadav at 11:55 PM on 25-10-2007. Once, this doctor had made specific disclosure that injury was not less than 12 hours, this indicates that such injuries were received by those witnesses much prior to the time of occurrence, as has been alleged in the present case.

22. P.W.17 Dr. Md. Suhail Anjum on 26-10-2007 was posted on deputation in Sub-Divisional Hospital, Banka and on the same date at 11:45 AM, he conducted post-mortem examination on the dead body of Tarkeshwar Pandit and he noticed following anti-mortem injuries:-

“(i) Wound of entrance $\frac{1}{2}$ ” in diameter situated just below right costal margin at mid auxiliary line surrounded by blackening and powder tatooing margin inverted, causing fracture of 10th rib, lacerated liver, mid transverse colon, omentum stomach and spleen with haemo paritoneum.

(ii) Wound of exit $1\frac{1}{2} \times 1$ ” in diameter, irregular, omentum extrended situated at left upper abdomen 02” below left coastal margin at mid clavicular line.

Cause of death – Hemorrhage and shock.

Time since death– Within 24 hours.”

The doctor proved the *post-mortem* examination



report, which was marked as Ext.7.

23. After closure of the prosecution evidence on 13-11-2008, evidences and circumstances, which were collected against accused persons, were explained to them and thereafter, their statement under Section 313 of the Cr.P.C. was recorded. One person namely Samundar Yadav was summoned, as court witness, and on 10-12-2009, he was examined as C.W.1. In his evidence, in paragraph – 1, he stated that on the date of occurrence in between 7 and 8 PM, he was near Panchayat Bhawan, Chuapani. He reached there on motorcycle, since he had received information on phone through Shambhu Yadav and thereafter, he alongwith his nephew Pappu Kumar (P.W.13) reached there. He stated that they reached there on a motorcycle and bicycle. Meaning thereby that Samundar and Pappu had arrived at the place of occurrence separately and thereafter, he identified Santosh Yadav (appellant in Cr.Appeal DB No. 933/12), Arun Yadav, Vijay Yadav, Ajay, Sukhdeo, Prakash (appellant no. 2 in Cr.Appeal DB No. 843/12), Sandeep, Rajesh, Hoob Lal Yadav (appellant no. 1 in Cr. Appeal DB No. 843/12), Akhileshwar Yadav @ Phui & Suman Yadav and he stated



that all the aforesaid persons were giving blow by *lathi*, *kulhari*, *farsa* on the Marshal vehicle. In the case, at least, one of the witness had stated that it was dark night, but without any source of identification, this witness had claimed, as if, he identified number of accused persons, while they were damaging the vehicle. He further stated that when he reached there, Santosh (appellant in Cr.Appeal DB No. 933/12) caught him and all the accused persons started assaulting him and he received number of injuries on his person. He further stated that his rifle was snatched by Santosh (appellant in Cr.Appeal DB No. 933/12) and thereafter, while he tried to flee away, on the order of Santosh, Prakash (appellant no. 2 in Cr.Appeal DB No. 843/12) fired on him. At one stage, this witness had stated that his rifle was snatched by Santosh (appellant), but immediately thereafter, he said that firing was made by Prakash (appellant no. 2 in Cr.Appeal DB No. 843/12), but no clarification was given by him. He stated that in the said occurrence, by the fire-shot given by Santosh (appellant in Cr.Appeal DB No. 933/12), Tarkeshwar (deceased) received injury. In paragraph – 7 of his cross-examination, he accepted that Prakash (appellant no. 2 in Cr.Appeal DB No. 843/12)



had lodged a case regarding allegation of attempt of committing murder in respect of occurrence of the same date. In paragraph – 13 of his cross-examination, he stated that he can't recollect as to whether before the police, he had stated that rifle was snatched by Santosh (appellant) and while he tried to flee away on the order of Santosh, Prakash had fired on him. This suggests that earlier version of this witness to this extent was not stated before the investigating officer in his statement recorded under Section 161 of the Cr.P.C. In paragraph – 28 of his cross-examination, this witness has denied the suggestion that they had killed Tarkeshwar by the fire shot by his rifle and he also denied the suggestion that to save themselves in connivance with the police, he had lodged a false case. Moreover, evidence of this witness appears to be doubtful considering the injury report i.e. Ext. 6, which categorically indicated that injuries found on the person of this witness was not less than of 12 hours.

24. In this case, after the closure of the evidence of C.W.1 (Samundar Yadav), again statement of accused under Section 313 of the Cr.P.C. was got recorded on 22-12-2009 and it appears that this was the reason that attention of this



witness to his previous statement recorded under Section 161 of the Cr.P.C. could not be drawn, since the investigating officer i.e. P.W.15 Raj Kishor Sharma was already examined and discharged on 10-11-2008 itself, whereas, C.W.1 was examined on 10-12-2009. Thereafter, again statement of accused was recorded on 22-12-2009 under Section 313 of the Cr.P.C., thereafter, from the defence side, one witness namely Girdhar Gopal Yadav was examined as D.W.1, who proved the injury report (certificate in respect of injury of Sandeep Kumar @ Sandip Yadav) and same was marked as Ext. 'D', ofcourse with objection.

25. On perusal of entire evidence, as discussed hereinabove, it is evident that it was a glaring case of false implication of appellants, which had occurred due to connivance of informant of the present case with the investigating officer. The role of the investigating officer in the present case appears to be seriously doubtful. Accordingly, in such circumstances, we have left with no option, but to set-aside the judgment of conviction and sentence of the appellants in both the aforesaid appeals.

26. Accordingly, the judgment of conviction and



sentence dated 02.08.2012 and 04.08.2012 respectively passed by Sri Prem Ranjan Mishra, learned Adhoc Additional Sessions Judge – Ist, Banka in Sessions Trial No. 208 of 2008/Suppl. Sessions Trial No. 141 of 2012 (arising out of Baunsi P.S. Case No. 152 of 2007) is, hereby, set aside and both appeals are allowed.

27. Since the appellant Santosh Yadav (in Cr. Appeal DB No. 933 of 2012) is inside jail, it is, hereby, directed to release him forthwith, if not required in any other case. Other two appellants i.e. Hoob Lal Yadav and Prakash Yadav in Cr. Appeal DB No. 843 of 2012 are on bail and since their conviction and sentence has already been set aside, they are discharged from the liability of their bail-bond.

28. Before parting with the judgment, if we do not indicate anything in respect of conduct of the investigating officer, certainly, it will amount to letting of such officer, even after noticing such serious fault on the part of the investigating officer. Moreover, it will also amount to deviate from the guideline, issued by the Hon'ble Supreme Court in **(2014) 5 Supreme Court Cases 108 (State of Gujarat vs. Kishanbhai and others)**. In the said judgment, the Hon'ble



Supreme Court, while passing the judgment of acquittal, has observed that after noticing irresponsible act of the investigating officer/prosecutor and others, while passing judgment of acquittal, it is necessary to direct for taking appropriate departmental action against erring officials. It would be appropriate to refer to paragraph 23 of the judgment of Apex Court in **Kishanbhai's case (*supra*)**, which is as follows:-

“23. On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by



parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.”

29. Similarly, the Hon’ble Supreme Court in a case reported in **(2012) 8 Supreme Court Cases 263 (Dayal Singh and others vs. State of Uttaranchal)** has observed that in such cases, appropriate action is required to be taken against the investigating officer. Even if it is found that such investigating officer is retired, action should be taken for forfeiting his retiral dues. The Supreme Court, in **Dayal Singh’s case (supra)**, has recorded such observation in paragraph 43 and 47.4, which are quoted hereinbelow:-



“43. Similarly, the Director General of Police U.P./Uttarakhand also be issued notice to take appropriate action in accordance with the service rules against PW6, SI Kartar Singh, irrespective of the fact whether he is in service or has since retired. If retired, then authorities should take action for withdrawal or partial deduction in the pension, and in accordance with law.

47.4. The Directors General of Police U.P./Uttarakhand are hereby directed to initiate, and expeditiously complete, disciplinary proceedings against PW6, SI Kartar Singh, whether he is in service or has since retired, for the acts of omission and commission, deliberate dereliction of duty in not mentioning reasons for non-disclosure of cause of death as explained by the doctor, not sending the viscera to the FSL and for conducting the investigation of this case in a most callous and irresponsible manner. The question of limitation, if any, under the Rules, would not apply as it is by the direction of the Court that such enquiry shall be conducted.”

30. In view of facts and circumstances, while allowing both appeals, it is desirable to direct the Director General of Police, Bihar to take appropriate departmental action against



the erring investigating officer.

31. Let a copy of this order be sent to the Director General of Police for its compliance. He is directed to submit Action Taken Report (A.T.R.) within a period of six months from the date of receipt/production of a copy of this judgment. Such report is required to be addressed to the Registrar General of the Patna High Court.

31. With above observation and direction, both appeals are allowed.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	N/A
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