

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 357 of 2016

Arising Out of PS. Case No.-34 Year-2009 Thana- Jhajha District- Jamui

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Bhikhari Yadav, Son of Late Bulak Yadav, Resident of Village- Dhamna, P.S.
Jhajha, District- Jamui.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

with
Criminal Appeal (DB) No. 594 of 2016

Arising Out of PS. Case No.-34 Year-2009 Thana- Jhajha District- Jamui

=====

Nandlal Yadav, Son of Late Jairam Yadav, resident of village- Baijla, P.S.
Jhajha, District- Jamui.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

(In Criminal Appeal (DB) No. 357 of 2016)

with

(In Criminal Appeal (DB) No. 594 of 2016)

For the Appellant/s : Mr. Kanhaiya Pd. Singh, Sr.Adv.

Mr. Satya Prakash Parasar, Adv.

Mr. Pratik Mishra, Adv.

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 23-07-2018

Appellants in both the appeals were tried together and
convicted & sentenced on 01-04-2016 by learned 1st Additional
District & Sessions Judge, Jamui (hereinafter referred to as



‘Trial Judge) in Sessions Trial No. 58 of 2010 and as such, both appeals were taken-up together and are being disposed of by this common judgment.

2. Both the appellants were put on trial in Sessions Trial No. 58 of 2010 (arising out of Jhajha P.S. Case No. 34 of 2009) on an accusation of killing one Kesho Yadav, brother of the informant, and finally, both the appellants were tried together with one Geeta Devi, wife of the appellant Bhikhari Yadav (in Cr.Appeal DB No. 357/16). However, after conclusion of the trial, the learned Trial Judge acquitted Geeta Devi, wife of appellant Bhikhari Yadav and both the appellants i.e. Bhikhari Yadav (in Cr.Appeal DB No. 357/16) and Nandlal Yadav (in Cr.Appeal DB No. 594/16) were held guilty and convicted for commission of offence under Sections 341/149 & 302/149 of the Indian Penal Code (for short “I.P.C.”). They were sentenced to undergo rigorous imprisonment for life under Section 302/149 of the I.P.C. alongwith fine of Rs. 10,000/- each and in default of payment of fine, they were further directed to undergo imprisonment for six months. Both appellants were also convicted under Section 341/149 of the I.P.C. and were sentenced to undergo imprisonment for one month. All the sentences were directed to run concurrently.



3. Short fact of the case is that on 07-03-2009 at 9.00 hrs. (9:00 AM), Sub-Inspector of Police Mukeshwar Prasad (P.W.12) recorded *fardbeyan* of Longi Yadav (P.W.8). The *fardbeyan* was recorded in the village Dhamana. In the *fardbeyan*, informant disclosed that in the preceding night i.e. 06-03-2009 in Kali Mandir of the village, nine days भागवत कथा (*Bhagwat Katha*) was going on and on 06-03-2009, it was date of conclusion of the *katha*. The informant with his brother Kesho Yadav (deceased), Tipani Yadav, wife of his elder brother Kesho Yadav (P.W.7), his wife Markha Devi (P.W.6), niece Hema Kumari (P.W.1), nephew Sanjay Yadav (P.W.2), Pawan Kumar (P.W.3), cousin nephew Balram Yadav (not examined), Ramswarup Yadav (not examined), Kaleshwar Yadav (not examined), daughter-in-law of his brother Karuna Devi (P.W.10) who was wife of Sanjay Yadav (P.W.2) were listening *Bhagwat Katha* in Kali Mandir. In the said *katha*, there were altogether 300 persons. At about 10:30 in the night, after conclusion of *Bhagwat Katha*, his brother and others came out from Kali Mandir and started to move to their house. The informant further stated that his elder brother Kesho Yadav (deceased) was moving ahead and the informant, his nephew, niece, *bhabhi* and others were following him from behind. While his brother



reached near the field of his brother Teko Yadav (not examined), Kesho Yadav (deceased) was surrounded by his cousin nephew Dinesh Yadav, Chatanki Yadav and Pappu Yadav, all sons of appellant Bhikhari Yadav (appellant in Cr.Appeal DB No. 357/16), Nandlal Yadav (appellant in Cr.Appeal DB No. 594/16), Dampha Yadav and two other unknown persons. Thereafter, Dinesh Yadav gave one shot of fire from his pistol and Bhikhari Yadav (appellant in Cr.Appeal DB No. 357/16) and Chatanki Yadav carrying sword and कुल्हाड़ी (axe) respectively in their hand injured his brother Kesho Yadav (deceased). Nandlal Yadav (appellant in Cr.Appeal DB No. 594/16) and Dampha Yadav also fired from their pistol on his brother Kesho Yadav (deceased). The injured fell down. The informant disclosed that it was moonlight night. After alarm was raised the accused persons fled to their own houses. Thereafter, the informant and his other family members raising alarm returned back to Kali Mandap, where loudspeaker was on, which was stopped. The people were given information regarding the occurrence. Thereafter, many person ran to the place of occurrence and saw the injured Kesho Yadav, who had already died. The informant further stated in his *fardbeyan* that his mother Phulia Devi (P.W.13) had said that Geeta Devi, wife



of appellant Bhikhari Yadav, taking out a pistol from her house had handed over to her husband and son Dinesh Yadav and told that Kesho Yadav (deceased) had gone to listen *katha* in Kali Mandir and he must be done to death while returning. The informant claimed that the occurrence was seen by his niece, wife, wife of his elder brother and nephew and they identified the accused in the moonlight. The reason for the occurrence was explained regarding land dispute and partition with informant and Bhikhari Yadav, which was going on since long. The *fardbeyan* was signed by the informant and as a witness, Shivendra Yadav, brother of the deceased (P.W.11) and Pramod Yadav (not examined) put their signature as witness to the *fardbeyan*.

4. On the basis of said *fardbeyan*, on the same date i.e. on 07-03-2009 at 1:15 P.M., a formal F.I.R., vide Jhajha P.S. Case No. 34 of 2009, was registered under Sections 147, 148, 149, 341, 302, 120(B) of the I.P.C. and Section 27 of the Arms Act, 1959 (for short “Arms Act”). In the column of accused in the F.I.R., six persons were arrayed as accused namely;

1. Dinesh Yadav (juvenile)
2. Chatanki Yadav (juvenile)
3. Pappu Yadav (absconder)
4. Gita Devi (acquitted)
5. Nandlal Yadav (appellant in Cr.App.DB No. 594/16)
6. Dampha Yadav (died before the trial).



In the contents of the *fardbeyan*, two unknown persons were arrayed as accused. After investigation, 1st chargesheet was submitted on 30-06-2009 against Gita Devi, wife of appellant Bhikhari Yadav. Thereafter, on 08-07-2009, the learned Chief Judicial Magistrate, Jamui took cognizance of the offence. On 13-10-2009, 1st supplementary chargesheet was submitted against 1. Dinesh Yadav, 2. Chatanki Yadav and 3. Bhikhari Yadav (appellant in Cr.App.DB No. 357/16) and on 07-02-2011, 2nd & final supplementary chargesheet was submitted against Nandlal Yadav (appellant in Cr.App.DB No. 594/16) declaring F.I.R. named accused Dampha Yadav as dead.

5. It is relevant to notice that after submission of 1st supplementary chargesheet, the case was committed to the court of sessions in respect of four accused persons and it was numbered as Sessions Trial No. 58 of 2010 and thereafter, in Sessions Trial No. 58 of 2010, on 07-08-2010 charge under Sections 148 & 302 of the I.P.C. and Section 27 of the Arms Act was framed against Dinesh Yadav. Against remaining charge-sheeted accused up-to 2nd supplementary chargesheet, charges were framed under Sections 302/149, 341/149 & 120(B) of the I.P.C. After submission of 2nd supplementary chargesheet, the case in respect of Nandlal Yadav (appellant in Cr.App.DB No.



594/16) was committed to the court of sessions on 28-02-2011 and it was numbered as Sessions Trial No. 77 of 2011 and against Nandlal Yadav in Sessions Trial No. 77 of 2011, charge under Sections 302/149, 341/149 & 120(B) of the I.P.C. and Section 27 of the Arms Act was framed on 20-05-2011. After framing of charge, on 07-08-2010 in Sessions Trial No. 58 of 2010 against all accused, except Nandlal Yadav (appellant in Cr.App.DB No. 594/16), evidence commenced and during evidence, P.W.1 Hema Kumari and P.W.2 Sanjay Yadav were examined as eye-witnesses to the occurrence. Subsequently, after framing of charge on 20-05-2011 in Sessions Trial No. 77 of 2011 also, both witnesses i.e. Hema Kumari and Sanjay Yadav were examined as P.W.1 and P.W.2 respectively. Subsequently, both the trials were merged together and proceeded.

6. The prosecution, to establish its case, examined altogether 13 witnesses, who are:

P.W.1 Hema Kumari
P.W.2 Sanjay Yadav
P.W.3 Pawan Kumar
P.W.4 Ganesh Yadav
P.W.5 Bhanu Yadav
P.W.6 Markha Devi
P.W.7 Tipani Devi
P.W.8 Longi Yadav
P.W.9 Dr. Syed Naushad Ahmad
P.W.10 Karuna Devi
P.W.11 Shivendra Yadav
P.W.12 Mukeshwar Prasad, and
P.W.13 Phuliya Devi



7. Out of aforesaid prosecution witnesses, P.W.1 Hema Kumari (daughter of deceased), P.W.2 Sanjay Yadav (son of deceased), P.W.3 Pawan Yadav (another son of deceased), P.W.6 Markha Devi (wife of informant), P.W.7 Tipani Devi (wife of deceased), P.W.8 Longi Yadav (brother of deceased and informant) and P.W.10 Karuna Devi (daughter-in-law of deceased) were examined as eye-witnesses to the occurrence, whereas, P.W.11 Shivendra Yadav (brother of deceased) was examined as formal witness and he has proved *fardbeyan*, which was marked as **Ext.2** and seizure list, which was marked as **Ext.3**. He has also proved photocopy of inquest report, which was marked as 'X' for identification. P.W.13 Phulia Devi (mother of deceased) was examined as witness showing involvement of Geeta Devi. Dr. Sayyad Naushad Ahmad was examined as P.W.9. He had conducted *post-mortem* examination on the dead-body of the deceased and he proved P.M.R., which was marked as **Ext.1**. P.W.4 Ganesh Yadav and P.W.5 Bhanu Yadav, who were co-villagers and independent witnesses, did not support the prosecution case and they were declared, as hostile witness. P.W.12 Sri Mukeshwar Yadav is the Sub-Inspector of Police and investigated the case. He has proved his



endorsement on the *fardbeyan*, which was marked as **Ext.5** and he has also proved formal F.I.R., which was marked as **Ext.6**.

8. After completion of the prosecution evidence, statement of accused under Section 313 of the Code of Criminal Procedure, 1973 was recorded on 29-04-2013, in which, they claimed to be innocent. However, from the defence side, neither oral evidence nor documentary evidence was brought on record. Finally, the learned Trial Judge by the impugned judgment, while acquitting one of the accused namely Geeta Devi, has convicted aforesaid appellants, which is under challenge in the aforesaid appeals.

9. Sri Kanhaiya Prasad Singh, learned senior counsel for the appellants, after referring to entire evidence, has argued that it was a case of out-and-out false implication. He submits that due to land dispute and the fact that one of the brother of Bhikhari Yadav (appellant in Cr.App.DB No. 357/16) was done to death by the informant and the deceased, in which, the appellant (Bhikhari Yadav) was one of the witness, the appellant alongwith his entire family members were framed as accused in the present case. It has been argued that even son-in-law of appellant (Bhikhari Yadav) namely Nandlal Yadav (appellant in Cr.App.DB No. 594/16) was made accused in the case, however;



fact remains that none had seen the occurrence. According to Sri Singh, it appears that after noticing the dead body in the morning, a false story was cooked-up and subsequently, in the morning after the date of occurrence, *fardbeyan* was shown to be recorded, in which, both the appellants alongwith minor sons of the appellant (Bhikhari Yadav) were arrayed as accused. The wife of the appellant (Bhikhari Yadav) namely Geeta Devi was also arrayed as accused in the present case, as if, the wife was one of the conspirator for commission of the offence. He submits that falsity of the case has been noticed by the trial court itself and this was the reason that learned Trial Judge has passed the judgment of acquittal in respect of wife of the appellant (Bhikhari Yadav) namely Geeta Devi by the same impugned judgment.

10. Sri Singh, learned senior counsel to substantiate his argument that none had seen the occurrence has taken the Court firstly to the evidence of P.W.6 Markha Devi, wife of informant, who has claimed to be eye-witness to the occurrence. According to Sri Singh, P.W.6 in paragraph - 14 of her evidence has stated that her husband Longi Yadav (P.W.8) after the occurrence had gone to inform the police and gave detail regarding the occurrence to the police. However, in the present



case, *fardbeyan* was shown to be recorded at the place of occurrence. It was argued that once the informant Longi Yadav himself, according to P.W.6, had gone to police station and narrated the story, there was no reason not to record *fardbeyan* in the police station, however; in the present case, on next date at 9:00 AM, *fardbeyan* was recorded at the place of occurrence. Sri Singh has also drawn our attention to evidence of P.W.8 Longi Yadav in paragraph 12. He submits that this witness i.e. P.W.8 Longi Yadav/informant in his evidence has stated that after the occurrence, he asked his nephew Sanjay Yadav (P.W.2) to inform the police. According to Sri Singh, it is itself self-contradictory stand of P.W.6 and P.W.8. He submits that this contradiction suggests that neither P.W.6 nor P.W.8 had seen the occurrence nor police was informed in the night of date of occurrence, rather the information was received in the police station on the next date in the morning at 6:30 AM i.e. on 07-03-2009. He further submits that if it was a case that occurrence was witnessed by number of witnesses, there was no reason for not informing the police, even on the next date at 6:30 AM as to who was participant in the occurrence, however; the investigating officer has stated that he received information only regarding murder, not any information regarding any of the



culprits. According to Sri Singh, learned senior counsel, had it been a case that occurrence was witnessed by number of eye-witnesses, which took place at about 10:30 AM on 06-03-2009, there was every possibility that police would have been informed as to who was culprit, but in the present case, even on the next date in the morning while police was informed regarding the occurrence, there was no whisper as to who was participant in the occurrence.

11. Sri Singh has further taken the Court to the evidence of P.W.2 Sanjay Yadav regarding whom informant/P.W.8 had stated that he had asked Sanjay Yadav to inform the police, but Sanjay Yadav (P.W.2) has denied regarding giving any information to the police. This witness i.e. P.W.2 in paragraph 16 of his evidence has stated that he had not informed police, rather he had informed Mukhiya, Sarpanch and Choukidar of the village. Sri Singh has strenuously argued that even if it was case of P.W.2 that he without informing the police had informed Mukhiya, Sarpanch and Choukidar, there was no reason for the prosecution not to examine them as witnesses. However; during the trial without any plausible explanation, the prosecution has not examined said Mukhiya, Sarpanch and Choukidar. In sum and substance, it has been argued that in the



case, there is no independent witness, save & except the witnesses, who were close relative of the deceased. Sri Singh has also argued that it was a case of false implication of the appellants. In the case, appellant (Bhikhari Yadav) and all his family members were implicated due to land dispute. By way of referring to evidence, he submits that there is admitted old land dispute in between the appellant (Bhikhari Yadav) and informant side. Besides this, P.W.2 Sanjay Yadav, son of deceased has stated that the informant and the deceased were accused in murder of brother of Bhikhari Yadav (appellant), which has been stated in paragraph – 9 of the evidence of P.W.2. Regarding land dispute, learned senior counsel for the appellants has drawn our attention to evidence of P.W.2 at paragraph 10 and it was argued that old land dispute was admitted in between the parties. On this very point, learned senior counsel for the appellants has also referred to evidence of P.W.8 Markha Devi and in paragraph 5 of her evidence, Markha Devi had admitted that there was old land dispute and land dispute was the reason of the occurrence. He submits that regarding land dispute, informant in the *fardbeyan* itself had indicated that there was land dispute and occurrence had taken place due to old land dispute. By way of referring to evidence of eye-witnesses as well as evidence of



Phulia Devi (P.W.13), it was submitted that those witnesses, who had claimed to be eye-witness, have stated during the trial, as if, Phulia Devi informed them that Geeta Devi, wife of appellant (Bhikhari Yadav) before the occurrence had given pistol to Bhikhari Yadav and his son Dinesh and Chatanki with instruction to kill the deceased while returning from attending *Bhagwat Katha*. However, Phulia Devi, who was examined as P.W.13, in her evidence has not whispered regarding involvement of the Geeta Devi and this was the reason that Geeta Devi wife of the appellant (Bhikhari Yadav) was given clean-chit by the learned Trial Judge. It has also been argued that informant of the present case as well as deceased was accused in one another case of murder of one Nanhu Yadav. By way of referring to evidence of P.W.6 at paragraph 7, it has been argued that this witness has stated that her husband was accused in murder of Nanhu Yadav, which was initiated before institution of the present case. In sum and substance, by way of referring to entire evidence, it has been argued that it appears that deceased was done to death by someone else and after noticing the dead body in the morning on the next date, a case was fabricated with a view to wreck vengeance against the appellant (Bhikhari Yadav) by the informant side and a story was built up, as if, all



the family members of the deceased while returning from attending *Bhagwat Katha* had seen that appellant (Bhikhari Yadav) with all his family members had surrounded the deceased near the field of Teko Yadav and he was done to death by giving shot of firing as well as injury by sword and axe. It has been argued that in the evidence of P.W.7 Tipani Devi, wife of deceased in paragraph 12, it has come that it was almost dark night and in such situation, it was difficult for the witnesses to categorically see regarding active participation by each of the accused persons, whereas in the evidence, witnesses have categorically stated as to who had given what blow by which arm. Accordingly, it has been argued that the prosecution has not been able to establish its case beyond all reasonable doubt, rather it was a case of false implication due to old animosity. Accordingly, it has been argued that judgment of conviction and sentence is liable to be set-aside.

12. Sri Ajay Mishra, learned Addl. Public Prosecutor opposing the aforesaid appeals has argued that it was a case, in which, at least seven witnesses had seen the occurrence and consistently, they had deposed regarding overt act, as committed by the accused persons. So far as appellant (Bhikhari Yadav in Cr.App.DB No. 357/16) is concerned, it has been argued that he



had given blow by sharp cutting weapon. He submits that oral evidence has been corroborated by the medical evidence. In the *post-mortem* examination report also, the injuries, which were said to be inflicted by the accused persons during the occurrence, were found corroborated. Accordingly, it has been argued that both the appeals are liable to be rejected.

13. Besides hearing learned counsel for the parties, we have examined entire evidence i.e. oral and documentary evidence. Before proceeding, it would be necessary to examine as to what informant had deposed during the evidence.

14. The informant P.W.8 Longi Yadav in his evidence has stated that on the date of occurrence i.e. 06-03-2009 in his village in Kali Mandap, there was nine day *Bhagwat Katha*. Kesho Yadav (deceased), Tipani Devi wife of deceased P.W.7, his wife Markha Devi P.W.6, niece Hema Kumari P.W.1, nephew Sanjay Yadav P.W.2, Pawan Yadav P.W.3 & Kaleshwar (not examined), Balram (not examined) and Ramswaroop Yadav (not examined) all had gone to listen *Bhagwat Katha*. At 10.30 hrs. in the night after completion of the *katha* and also completion of *aarti*, all of them proceeded to their house. Kesho Yadav (deceased) was moving ahead and behind him, his wife, Tipani Devi (P.W.7), he (P.W.8) and all other were proceeding to



their house. He stated that on the passage (पगडंडी) near the field of his brother Teko Yadav (not examined) while they reached, Dinesh Yadav intercepted Kesho Yadav and gave shot of firing on the right hand of Kesho Yadav. Bhikhari Yadav (appellant) and Chatanki Yadav both gave blow by axe (कुल्हाड़ी). After receiving fire-arm injury Kesho Yadav fell down. He stated that it was moonlight night. He further stated that he raised alarm and thereafter, number of persons arrived there. In his cross-examination, he stated that on the date of occurrence at about 7:30 PM he had gone to listen *Bhagwat Katha* and on the said date about 300 other persons had assembled to listen the *katha*. He stated that after distribution of प्रसाद (*prasad*), villagers also left the place. He disclosed the name of other villagers, such as; Dharmdeo Yadav (not examined), Damodar Yadav (not examined), Mahendra Yadav (not examined) and others. In paragraph – 8 of his cross-examination, he stated that he could not identify due to crowd as to who were behind them. In paragraph 10, he further stated that after his brother received fire-arm injury and he fell down, he (P.W.8) ran towards the place where *katha* was going on and again he returned back to the place of occurrence and noticed that his brother was lying in the pool of blood and thereafter, he picked up his brother in his



lap and in that event, his clothes were also soaked with the blood and he stated that he handed over those clothes to the police during investigation. The cloth of deceased was also taken by the police officer. In paragraph 11 of his cross-examination, he accepted that in case of murder of Nango Yadav, he and his deceased brother Kesho Yadav were accused. In paragraph 12 of his cross-examination, he stated that for giving information to the police, he sent his own nephew Sanjay Yadav (P.W.2) and Sanjay Yadav had given statement to the police regarding the occurrence, then police arrived. At this juncture, it is relevant to notice that in the entire evidence, it has not been established as to who informed the police. Even the investigating officer has deposed that he had received telephonic information in the police station, that too on the next morning i.e. 07-03-2009 at 6:30 AM. In the evidence of investigating officer, it has also come that even on 07-03-2009 at 6:30 AM, nothing was informed as to who was the assailant/accused in the occurrence, only information regarding murder was received in the police station. However, the informant in paragraph – 12 has stated that he had asked Sanjay Yadav (P.W.2) to inform the police and thereafter, this witness i.e. P.W.8 had reiterated that Sanjay Yadav (P.W.2) had given statement to the police and only



thereafter, police arrived. This witness in paragraph 14 of his cross-examination had stated that both the parties are गोतिया (*gotiya*) and he stated that in between the parties, there was no land dispute. He has specifically stated that between him and appellant (Bhikhari Yadav), there was no dispute regarding partition of land, however; in the *fardbeyan* itself, the informant stated that the reason for the occurrence was dispute regarding partition of land in between informant and appellant (Bhikhari Yadav) and the dispute was going on since long. In such situation, it is difficult to place any reliance on the evidence of P.W.8 itself, which appears to be not truthful.

15. Almost in similar manner, P.W.1 Hema Kumari (daughter of deceased), P.W.2 Sanjay Yadav (son of deceased), P.W.3 Pawan Kumar (another son of deceased), P.W.6 Markha Devi (wife of informant), P.W.7 Tipani Devi (wife of deceased) and P.W.10 Karuna Devi (daughter-in-law of the informant) have claimed, as if, they had seen the occurrence. On examination of paragraph 12 of evidence of P.W.7 Tipani Devi (wife of deceased), it appears that it was dark night, whereas, other witnesses have claimed that it was moonlight night.

16. In the evidence of other witnesses, there are several contradictions, particularly on the point of giving blow



by the appellant (Bhikhari Yadav) and others, because in the *fardbeyan*, the informant had stated that appellant (Bhikhari Yadav) had given blow from sword, whereas injuries, which were examined by P.W.9 Dr. S.N.Ahmad, were not exactly corroborated. The informant in his evidence had stated that the son of the appellant Bhikhari Yadav namely Dinesh Yadav had given shot of firing on the right hand of the deceased, whereas, during *post-mortem* examination, fire-arm injury was found near the left eye of the deceased. In the case, almost all the witnesses were close relative of the deceased and they have claimed, as if, entire occurrence had taken place in their presence. Once, it was case of the prosecution that after conclusion of the 9 days *Bhagwat Katha* they were returning to their house, obviously other villagers, who had also assembled in the Kali Mandap, were returning back to their houses. In the evidence of the informant, it has come that about 300 villagers had assembled there, whereas, other witnesses had stated the number of villagers much more than the number given by informant. In such situation, it is difficult to perceive as to why none of the co-villagers had come forward either to support that they heard sound of firing or they arrived at the place of occurrence immediately after the occurrence.



17. In this case, two persons were examined as independent witness i.e. P.W.4 Ganesh Yadav and P.W.5 Bhanu Yadav, however; they have not at all supported the prosecution case and this was the reason that they were declared hostile by the prosecution itself.

18. Surprisingly, P.W.11 Shivendra Yadav, who was brother of the deceased, in his evidence has stated that on the date of occurrence i.e. 06.03.2009, he was at Kolkata and he telephonically received information at 10:30 PM on the date of occurrence regarding the murder of his brother and thereafter, he rushed to Jamui (Bihar) and this witness stood as witness to the inquest report, which was shown to be prepared and he also stood as witness to the *fardbeyan* also, which was recorded at 9:00 AM on 07-03-2009. Once P.W.11 brother of the deceased, who was at Kolkata, was telephonically informed after the occurrence at 10:30 PM, there was no reason about non-informing the police by the informant, had it been a case of witnessing occurrence by the informant and other relatives of the deceased. This fact was belied by the evidence of P.W.12 Mukeshwar Prasad, who is the investigating officer of the case and in his evidence, he had stated that in the police station, information regarding murder was received on 07-03-2009 at



6:30 AM, that too without any information as to who was the culprit. Therefore, in view of aforesaid evidences as well as non-support by at least two co-villagers, there is reason to believe that the prosecution has not established its case beyond all reasonable doubt.

19. In view of aforesaid evidence, it appears that prosecution has not been able to prove its case beyond all reasonable doubt and as such, there is no reason to approve the conviction and sentence. Accordingly, the judgment of conviction and sentence dated 01-04-2016 passed in Sessions Trial No. 58 of 2010 (arising out of Jhajha P.S. Case No. 34 of 2009) by the learned Additional District & Sessions Judge 1st, Jamui is hereby set aside.

20. The appellant Nandlal Yadav (in Cr. Appeal (DB) No. 594 of 2016) was directed to be released on bail by order dated 19-07-2016 and since judgment of conviction & sentence has been set aside, he is discharged from the liability of his bail-bond.

21. The appellant Bhikhari Yadav (in Cr. Appeal (DB) No. 357 of 2016) is inside jail and after setting aside of the judgment of conviction, it is necessary to direct for forthwith release of the appellant Bhikhari Yadav, if not wanted in any



other case. Accordingly, it is directed to release appellant Bhikhari Yadav (in Cr. Appeal (DB) No. 357 of 2016) forthwith, if not wanted in any other case.

22. Both appeals are allowed.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	N/A
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