

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.369 of 2015

Arising Out of PS.Case No. -60 Year- 1993 Thana -PARAIYA District- GAYA

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1. Dinesh Yadav Son of Late Bodhan Yadav
2. Ishwar Yadav Son of Late Bodhan Yadav Both resident of village - Iguni, Tola
Maharajganj, P.S. Paraiya, District - Gaya

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Durgesh Nandan,
Mr. Umesh Kumar,
Mr. Abhishek Anand,
Manisha Prakash, Advocates.
For the State : Mr. S.A. Ahmad, APP
For the Informant : Mr. Sunil Kumar Yadav, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 01-08-2018

Appellants, Dinesh Yadav, Ishwar Yadav along with Jayanti Devi (Not appellant) have been found guilty for an offence punishable under Section 323 IPC and for that, Jayanti Devi was let off in accordance with Section 4 of the Probation of Offenders Act while no separate sentence has been prescribed against appellants, Dinesh Yadav and Ishwar Yadav. Appellants, Dinesh Yadav and Ishwar Yadav have been found guilty for an offence punishable under Section 304 Part-II of the IPC and each one has been sentenced to undergo RI for 7 years vide judgment of conviction and order of sentence dated 29.05.2015 passed by Additional Sessions Judge-1st, Gaya in Sessions Trial No. 284/95/44/98.

2. Ram Bilas Yadav (PW 6) gave his Fard-e-beyan on



03.09.1993 at about 11.30 AM while he was admitted at Government Hospital, Paraiya alleging inter alia that while he was uprooting paddy seedlings, he heard uproar coming towards his house and at the same moment, his daughter, Barti Devi came and disclosed with regard to the occurrence whereupon he rushed to his house where he found his brother Ramjee Yadav (since deceased) lying near drain (Naali) in an injured condition having injuries over his chest, thigh and head. During midst thereof, accused, Ishwar and Dinesh came having spear in their hands and further gave blows causing injury over his leg, shoulder, head, fingers of right hand. His younger brother, Ram Binay came in rescue, was assaulted by Bodhan Yadav with *lathi* as a result of which, he fell down as, he was suffering from fever since before. His father Kuer Yadav came in rescue who was assaulted by accused persons by *lathi* and spear. His wife and wife of his brother also came in rescue, were also assaulted and during course thereof, the daughter of Bodhan Yadav, namely, Jayanti Devi and wife of Bodhan, namely, Bodhi Devi also associated themselves.

3. It has further been disclosed that aforesaid occurrence has been committed by the accused persons in the background of flowing of drain as well as forcibly occupying the land belonging to them (prosecution party) which was being resisted at their end. He had shown one Rajeshwar Yadav to be the eyewitness of the



occurrence.

4. It is further evident that after registration of Paraiya PS Case No. 60/1993, the investigation commenced, on the other hand, perceiving the condition of Ramjee Yadav to be critical was shifted to Medical College, Gaya where during course of treatment, he died after eight days of the alleged occurrence. Furthermore, other injured got themselves treated at PHC, Paraiya itself and the injury report, postmortem report were procured during course of investigation as well as statement of witnesses including the injured were recorded, place of occurrence was visited and then, after concluding investigation, charge-sheet was submitted whereupon, trial commenced and concluded in a manner, subject matter of instant appeal.

5. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has also been pleaded that no such type of occurrence as alleged by the prosecution had taken place rather prosecution party brutally assaulted Bodhan, his wife and daughter whereupon, counter case has been instituted. To save their skin, the prosecution party got this case filed. However, nothing has been adduced on behalf of defence.

6. In order to substantiate its case, prosecution had



examined altogether 8 PWs who are PW-1. Gopal Yadav, PW-2. Ram Vinay Yadav, PW-3. Kuer Yadav, PW-4. Uma Devi, PW-5, Deopati Devi, PW-6. Rambilash Yadav, PW-7. Dr. Arvind Kumar, PW-8, Mr. Muslim as well as had also exhibited Formal FIR as Ext-1, Fard-e-beyan, Ext-2, endorsement over Fard-e-beyan, Ext-3, postmortem report, Ext-4, injury report relating to injured Ram Bilash, Ram Vinay, Ramjee, Kuer Yadav, Deopati Devi under Ext-5 series, supplementary injury report relating thereto, Ext-6 series, X-ray report, Ext-6E, inquest report, Ext-7, Statement of deceased, Ramjee Yadav as Ext-8. On the other hand, as stated hereinabove, defence had not produced any material either oral or documentary.

7. In order to assail the judgment impugned, manifold arguments have been raised on behalf of learned counsel for the appellants. The first and foremost argument is with regard to non appreciation of the fact by the learned lower court that in spite of admission at the end of PW-2, one of the injured that he had seen Bodhan, his wife and daughter in an injured condition though controverted subsequently, the fact remains that on the alleged date and time of occurrence defence side also sustained injury coupled with the fact that there happens to be admission at the end of the prosecution party with regard to presence of counter case, then in that circumstance, the learned lower court should have considered that it



was a case of free fight and as the prosecution failed to identify the accused persons to be aggressors and further, having the prosecution party at fault in not explaining the injuries having over the persons of the accused persons, then in that event, would have acquitted the appellants by way of observing that prosecution had suppressed the real version. Furthermore, It has also been submitted that none of the independent witness has been examined in this case. From the evidence of the witnesses, it is crystal clear that houses of so many persons are lying in the vicinity and so, the non examination of the independent witness is bound to affect upon the credibility of the prosecution version. It has also been submitted that doctor who had allegedly examined so called injured witnesses has not been examined. The non examination of the doctor is a fact which could have been properly considered by the learned lower court in the background of the fact that presence of counter case and assault over the person of accused was the theme in the background of which, there might have been collusive injury report and in the aforesaid background, the doctor did not opt to malign himself on that very score.

8. In likewise manner, It has also been submitted that the Investigating Officer has not been examined and for that, no explanation has been at the end of the prosecution. In its continuity, It



has also been submitted that on account of non examination of the Investigating Officer, interest of the accused is found sweverely prejudiced in the background of the fact that the contradiction, which is found material one, could not be brought on record in its legal way, could not be able to sack the testimony of the relevant witness with regard to place of occurrence, the objective finding of the Investigating Officer relating to the place of occurrence could not be brought on record and further by such activity the prosecution has forced the appellants to remain under cell on account of non examination of Investigating Officer through which the defence could have been able to flash his counter case so, in sum and substance, due to non examination of the Investigating Officer, interest of appellant is found adversely affected upon and that being so, appears to be sole ground to discredit the whole prosecution case. Consequent thereupon, judgment of conviction and sentence appears to be unsustainable in the eye of law, whereupon, is fit to be set aside. It has also been submitted that conviction of appellants under Section 304 Part II is not at all legally maintainable in light of finding recorded by the doctor, which, the learned lower court failed to consider.

9. On the other hand, learned APP assisted by learned counsel for the informant has submitted that whatever argument has been raised on behalf of appellants are not at all entertainable in the



eye of law and to justify the same, it has been submitted that though there happens to be admission at the end of the prosecution witnesses regarding presence of counter case but, from the cross-examination of informant, PW-6, it is evident that the case was instituted after death of Ramjee who died after eight days of the alleged occurrence and that happens to be reason behind that apart from cross-examining the witnesses on that very score failed to exhibit the FIR of the counter case, injury report. It has also been submitted that it has been settled at rest by catena of decisions that minor injuries, if any, having over persons of accused and not explained at the end of the prosecution would not affect the prosecution version. So, it was incumbent upon the appellants to have adduced at least the injury report in order to justify that they have sustained grievous injuries or any kind of injury at the end of prosecution witnesses. Furthermore, It has also been submitted that when the evidence of all the witnesses are gone through, it is apparent that they are consistent over manner of occurrence as well as place of occurrence. It has further been submitted that the accused persons have blocked the flow of drain coming out from the house of the prosecution party and Ramjee was going to open the same and during course thereof, he was brutally assaulted. Then thereafter, informant who came at the place of occurrence was assaulted and then the PW-2 and then his father PW-3



and then thereafter, PWs-4 and 5, Uma Devi and Deopati Devi. They all have sustained injuries at their Darwaza near the place where drain was blocked. So, non examination of Investigating Officer has not caused prejudice to the appellant, more particularly, over place of occurrence. Furthermore, It has also been submitted that there happens to be no embellishment or material contradiction in the evidence of the witnesses rather whatever inconsistency happens to be mere minor omissions on account of lapse of time, as the occurrence is of the year 1993 and their evidences have been recorded after so many years whereupon, the same happens to be natural one and so, on that very score also, the right of the appellants are not at all found to be adversely affected, due to non examination of the Investigating Officer. It has also been submitted that the learned lower court had minutely gone through the materials available on the record while coming to the conclusion which appears to be just, legal and proper and so, this appeal sans merit and is fit to be rejected.

10. Investigating Officer appears to be an important witness at the end of prosecution but, he does not happen to be the material witness. Considering his status coupled with his conduct as perceived in majority of the cases, normally the prosecution case is not at all found eclipsed on account of non examination of the Investigating Officer. In series of judicial pronouncement the same



has been affirmed. Very recently in *Baldev Singh v. State of Haryana* as reported in **2016 Cri. L.J. 154**, it has been held as follows:-

“16. Contention at the hands of the learned Senior Counsel for the appellant is that non-examination of Chander Singh-SI who prepared rukka and who investigated the case raises serious doubts about the prosecution case. Material on record would show that Chander Singh-SI who investigated the case was not examined by the prosecution in spite of several opportunities. No doubt, it is always desirable that prosecution has to examine the investigating officer/police officer who prepared the rukka. Mere non-examination of investigating officer does not in every case cause prejudice to the accused or affects the credibility of the prosecution case. Whether or not any prejudice has been caused to the accused is a question of fact to be determined in each case.”

11. So the non-examination of the Investigating Officer is to be seen in the background of overall evaluation of the materials and, if the same is found adversely affecting upon the interest of an accused, then in that circumstance, the non examination of the Investigating Officer would play an additional role in discrediting the prosecution version. Therefore, non examination of the Investigating Officer is to be considered after overall evaluation of the evidence having been adduced on behalf of prosecution. In likewise manner, there also happens to be non examination of doctor who had examined all the injured including Ramjee Yadav (since deceased) at an initial stage.

12. In the aforesaid background, though by way of formal



evidence the injury reports with regard to respective injured, though exhibited, have rightly been ignored.

13. Be that as it may, one of the injured, Ramjee Yadav died while he was undergoing treatment at Gaya Medical College and on account thereof, there happens to be inquest report (Ext-7). Doctor (PW 7) had conducted postmortem report over the dead body of Ramjee Yadav on 10.09.1993 at 1230 hours and found the following ante-mortem injuries:-

- (I) Stitched wound liner 5" x ½" x abdominal cavities deep extending from epigastrium to unipithicies over the anterior abdominal wall. On dissection, the injuries were found stitched at two places.
- (II) Stitched wound ½" x ¼" x peritonous deep was found in the right relicfossa.
- (III) Stitched wound ¾" x ¼" x skull bone deep was found over right posterior aspect of the head.
- (IV) Stitched wound 1 ½" x ¼" x ¼" deep was found over the right side of interior chest wall at the level of 3rd intercostals space.

According to the doctor, deceased died due to shock as well



as septicemia caused by above mentioned ante-mortem injuries, However, he failed to opine with regard to nature of injuries due to surgical interference. Even during course of cross-examination, it is apparent that his testimony has not been challenged on any score.

14. Now coming to the oral evidence, it is apparent that PWs-1, 3, 4, 5 and 6, all are injured witnesses. True it is that none of the independent witness has come forward including that of Rajeshwar Yadav whose name figured in the Fard-e-beyan but, it is also evident that whosoever has been examined, are the own family members and so, neither they could be said to be interested witnesses nor partisan one. Apart from this, it is also apparent from the evidence that accused, Bodhan Yadav (since deceased) and PW-3, Kuer Yadav are the full brothers. That means to say, the fight happens to be amongst the full brothers and nephew and in the aforesaid background, it might be possible that the independent witnesses have left their option not to side any of the party, apart from the fact that the informant PW-6 had stated that all the injured were taken to the hospital by the villagers as is evident from his cross-examination (para 12). Moreover, the evidence of the injured witnesses lies on upper pedestal and unless and until there happens to be cogent reason to discard their testimony, in normal circumstance, the same has to be accepted.



15. In *Chandrasekar and another vs. State of Tamil*

Nadu reported in 2017(4) P.L.J.R. 220 (SC), it has been held:-

“10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to **Brahm Swaroop v. State of U.P., (2011) 6 SCC 288** observing as follows: “28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.”

16. PW-6 is the informant who during examination-in-chief had stated that on the alleged date and time of occurrence while he was uprooting paddy seedlings at his field, his daughter Barti Devi came and disclosed that uncle Ramjee was being assaulted by Bodhan Yadav, Ishwar Yadav, Dinesh Yadav, Kishori Yadav, Bodhi Devi and Jayanti Devi whereupon he rushed. After coming to his house, he had seen Ramjee lying over the ground in an injured condition near the drain. All the accused persons were standing there. When he had gone near Ramjee, he was assaulted by Ishwar Yadav with Bhala, Dinesh Yadav with Garasa, Bodhan Yadav, Kishori Yadav, Bodhi Devi and Jayanti Devi with Lathi. As a result of which, he sustained injury over



his head, left hand, near shoulder, chest, right finger. Deopati Devi, Uma Devi, Vinay Yadav, Kuer Yadav were also assaulted by them. On hue and cry, villagers arrived whereupon, they were taken to hospital. He had gone to Paraiya PS and then to hospital where his Fard-e-beyan was recorded. Ramjee was sent to Medical College, Gaya where he died after eight days. Exhibited Fard-e-beyan, identified the accused. During cross-examination, para-5 happens to be with regard to inter se relationship and further story about partition having been effected amongst both the families. He had further stated that he was uprooting paddy seedlings from plot nos. 174 and 175 wherein, the half portion from south side was allotted to the accused persons while from north side has been allotted to him. In para-6, he had stated that he had not inquired from Barti Devi who has been injured. In para-7, he had stated that when he reached at the house, he had seen Ramjee lying on the ground. He was unconscious. Since thereafter, he had not met with Ramjee. He was not taken to house as all the family members were injured. In para-8, he had stated that when he reached, he had seen the accused persons only. None of the villagers were present. In para-9, there happens to be cross-examination with regard to physical feature of the place of occurrence. In para-10, he had stated that when he reached he had seen his brother in an injured condition and was lying on the ground.



Blood had spread over the ground. In para-10, again there happens to be cross-examination relating to location of houses of both the parties. In para-11, he had stated that when he reached, the accused persons have not conjointly attacked upon him rather after 3-4 minutes, he was assaulted. First of all, he was given Bhala blow whereupon, he fell down. Then thereafter, he was assaulted by Lathi. Garasa blow was given while he was standing. He had not become unconscious after sustaining injuries. In para-12, he had disclosed as to how he was taken by the villagers, to the hospital. In para-15, he had admitted that female folk of the family of accused fetched water from a well going through his Darwaza. He had denied the suggestion that they tried to interfere therewith. In para-16, he had stated that he had not seen any of the accused including female members at the hospital. He had further stated that counter case has been instituted after death of Ramjee whereunder he happens to be one of the accused. Then had denied the suggestion that in order to save themselves from counter case, this case has been instituted. In para-17, he had stated that during course of further statement before the police he had stated that when he reached, accused, Dinesh assaulted him with Garasa, Ishwar Yadav with Bhala, Bodhan Yadav, Kishori Yadav, Bodhi Devi and Jayanti Devi with Lathi. He had further stated that Bodhan is now dead. Then had denied the suggestion that he has deposed falsely.



17. PW-2 is Ram Vinay Yadav, (brother of PW 6) another injured who had deposed that on the alleged date and time of occurrence he was at his house as he was suffering from ailment since before. At that very time, his brother Ramjee came. After some time, he heard *hulla* whereupon he came out from his house and had seen Ishwar armed with Bhala and Dinesh with Lathi. His brother Ramjee was lying. Then Ishwar pierced Bhala while Dinesh gave Lathi blow. Till then, his another brother, Ram Bilash arrived from a field where he had gone to uproot paddy seedlings. He was assaulted by Ishwar with Bhala and Dinesh with Lathi. His Bhaujai, Deopati Devi came out. None other was at his house. Then had stated that altogether five persons namely, Ramjee, Ram Bilash, Ram Vinay (he himself), Deopati Devi and Kuer Yadav had sustained injuries. His father Kuer Yadav was assaulted by Bodhan Yadav with Lathi. His Bhaujai was assaulted with Lathi by Dinesh. He was assaulted by Kishori Yadav with Lathi. Altogether six accused persons were there, namely, Ishwar, Dinesh, Kishori, Bodhi Devi and Jayanti Devi. Then thereafter, all the injured were taken to hospital. Ramjee died after eight days. Identified the accused. During cross-examination at para- 7, 8, 9 there happens to be cross-examination relating to location of houses of both the parties. In para-10, he had stated that about 20 years ago, both the parties got separated amongst themselves by metes



and bounds. In para-11, he had stated that accused persons have got thatched house. He had further shown presence of house of Yogeshwar Yadav, his agnate behind his house. Then had shown presence of *gali* which goes up to river. In para-12, 13 and 14, he had shown presence of houses of other co-villagers. In para-15, he had stated that the house of accused lies 2 feet away from western wall of his house. Then had stated that water is not accumulated in the intervening passage. In para-16, he had stated that the land having in front of house of accused belongs to him which has been in the name of his mother but he is unable to disclose Khata and Khesra number. His house lies east to that plot. Then had stated that the aforesaid land was purchased from Lakhan Singh and Daroga Singh. Then again corrected that the land was purchased from Daroga Singh in the name of his mother while from Lakhan Singh in the name of his brothers and he himself. Again in paras-17 and 18, there happen to be cross-examination relating thereto. In para-20, he had disclosed that there happens to be one well near the house of Bindeshawar. Water is being taken out therefrom by his family members as well as that of accused and other co-villagers. In para-24, he had stated that when he came out from his house, at that very time, he had not seen blood over the ground but, he had seen Ramjee lying over the ground and blood was oozing out from his injuries. He had seen injury over his chest, naval,



testicle, head. In para-25, he had stated that he had not gone near him. Then had stated that apart from Ramjee, he had seen Ram Bilash, Deopati Devi, in an injured condition. He had also sustained injury. He had also seen Bodhi Devi, Devanti and Bodhan in an injured condition. Again corrected that he had not seen Bodhi Devi and Bodhan in an injured condition. He had further stated that blood was oozing out from the injuries of other injured. In para-27, he had stated that Maar-peet took place for about 10-15 minutes. During midst thereof, 5 to 7 neighbours had come. Again said that only female members were there and as male members were engaged in planting paddy. In para-28, he had stated that his land lies at Bandh in which Bodhan had planted paddy crop forcibly one day prior to the occurrence and for that, they have not fought. Then had said that the dispute arose on account of plantation of paddy in his land as well as on account of drain. In para-32, he had stated that all the injured were not assaulted conjointly but they were assaulted one by one, who were severely injured, fell down, at that very place, while the injured having lightly been assaulted escaped. He also escaped therefrom. Ramjee, Ram Vinay, Kuer Yadav, Deopati Devi became unconscious. In para-31, he had stated that he was assaulted at the last. He had sustained injury over his head, as a result of which, blood had oozed out. Blood had spread over the ground in considerable area. Then



there happens to be contradiction under para-32, 33. In para-34, he had admitted being an accused in counter case. Then had denied the suggestion that this case has been purposely filed as counter blast to the counter case.

18. PW-3, Kuer Yadav is another injured who had deposed that on the alleged date and time of occurrence when he returned from Guraru, he found Ishwar Yadav, Bodhan Yadav, Dinesh Yadav, Kishori Yadav, Bodhi Devi, Rajanti Devi at western corner of his Darwaza. Ram Bilash, Ramjee and Ram Vinay who are his sons were lying in an injured condition. They were assaulted by accused persons. Dinesh was armed with Garasa, Ishwar with Bhala and Kishori with Lathi. Both female members were armed with Lathi. Bodhan had provoked whereupon, Kishori had assaulted with Lathi, Bodhan assaulted with Garasa over his head. He fell down. Then thereafter, Ishwar pierced Bhala in his chest. Villagers came, took them to hospital. Accused also assaulted Deopati Devi and wife of Vinay. Ramjee died at the hospital. Identified the accused. At para-2, he had shown inter se relationship. In para-3, he had stated that accused persons had blocked his drain. They have not opened the drain but dispute was relating thereto. In para-4, 5 and 7 there happens to be cross-examination relating to location of houses of both the parties, presence of well, fetching water therefrom by both the parties



along with other co-villagers. In para-8, he had deposed that he had seen blood coming out from injury of Ramjee, Ram Bilash, Ram Vinay, Deopati Devi, wife of Vinay. Ramjee died on account of piercing of Bhala by Ishwar. In para-9, he had stated that no male member had come at the place occurrence rather only females were there. He had not gone to call co-villagers rather he had sent his daughter-in-law, wife of Vinay. In para-10, he had stated that Ramjee was assaulted with Bhala. He was also assaulted with Garasa. All the injured fell down in a knee deep water. In para-11, localize the place where injured including he himself fell down happens to be near drain. In para-14, he had stated that he was given only one Garasa blow over his head. In para-19, 20, there happens to be cross-examination relating to Survey Plot No. 812. In para-21, he denied the suggestion that they have assaulted the accused persons at their Darwaza. In para-23, 24, there happens to be contradiction. In para-25, he had admitted that accused persons were arrested from a field outside hospital.

19. PW-4 is Uma Devi who had deposed that on the alleged date and time of occurrence, she was at her house. At that very time, Ishwar was armed with Bhala, Bodhan Yadav with Bhala, Dinesh with Lathi came and assaulted Ramjee Yadav, as a result of which, he sustained injury over his head, chest and thigh. Barti Devi



called Bilash Yadav who was also assaulted by Ishwar with Bhala, Bodhan with Bhala and Dinesh with lathi causing injury over his head, stomach, back and hands. Kuer Yadav, her father-in-law came who was assaulted by Bodhan with Bhala, Jayanti Devi, Kishori Yadav and Bodhi Devi with Lathi as a result of which, he sustained fracture of hand and leg. Also sustained injuries over his back. Her husband was also assaulted by Dinesh with Lathi. Her Gotni Deopati Devi was also assaulted by Dinesh with Lathi. Maar-peet took place over drainage. Villagers have also witnessed the occurrence. Injured were lifted to hospital where Ramjee died after eight days. Identified the accused. During cross-examination at para-4, 5 there happens to be cross-examination relating to their status, relationship with the accused, location of the house of both the parties. In para-6, she had stated that she had also sustained injury. She was also examined by the doctor. There was no dispute since before. At the time of Maar-peet, none of the co-villagers came. The injured were assaulted one by one. Lastly, her husband was assaulted. In para-7, she had further stated that Maar-peet took place at her Darwaza. The first person who was assaulted, fell down after sustaining injury whereupon, her family members pounced upon the assailants. In para-8, she had stated that Barti Devi returned back after half an hour of Maar-peet. Till then injured were there. They were on cot one by one. Injured were taken



to hospital on the same cot. In para-9, she had stated that place of occurrence has been shown to the Investigating Officer. Cot was also shown to the Investigating Officer. She had also gone to the hospital where she had not seen any family members of the accused. At para-10, she had stated that other injured became unconscious. Blood had spread over ground which was shown to the Investigating Officer. Then had denied the suggestion that she was not at the place of occurrence rather she was at her Naiher. Then had denied the suggestion that her family members brutally assaulted the accused persons, on account thereof, they sustained injury and only to counter meet with the allegation, this case has been instituted.

20. PW-5 is Deopati Devi, another injured who had deposed that on the alleged date and time of occurrence she was at her house. Bodhan, Ishwar, Kishori, Dinesh, Bodhi Devi, Jayanti Devi came, out of whom Bodhan was armed with Lathi, Dinesh and Kishori with Garasa and Jayanti Devi and Bodhi Devi with Lathi. They all came and began to assault Ramjee as well as her husband. Ramjee, at that very time, had returned back from his duty and was opening blockade of the drain and for that, he was assaulted. Identified the accused. During cross-examination at para-3, she had stated that she was at her Darwaza. When she came out from her house, then had seen the occurrence. She had seen Ramjee in pool of



blood and was lying on the ground. She had seen Ramjee who was engaged in cleaning the drain. Her husband came after an hour. When she came out from house, he was assaulted. In para-4, she had stated that about 50 co-villagers came who had witnessed the occurrence. Then at para-6 had stated that where Ramjee had fallen, at that very place, blood had spread over ground. In para-8, there happens to be cross-examination relating to her house. She had further denied that in order to save themselves from the counter case, deposed falsely. At para-9, there happens to be contradiction.

21. From the evidences available on the record, it is crystal clear that there happens to be positive suggestion given to the prosecution witnesses that they had assaulted the members of the accused persons and in counter blast this case has been instituted. There also happens to be suggestion at their end that members of the accused persons were assaulted at their Darwaza. Though counter case has not been exhibited, Injury report has not been exhibited. So, the nature of the injury, the allegations whatsoever have been alleged in the counter case, are not on the record. Though admitted at the end of the prosecution party and further PW-6 had categorically stated that after death of Ramjee counter case has been instituted and the same has not been controverted at the end of the appellants. That being so, occurrence having taken place at the darwaza is found admitted. Had



there been exhibit of relevant documents it could have been properly assessed over its impact upon prosecution case. Apart from this, unchallenged disclosure at the end of PW 6 regarding institution of counter case after death of deceased, is bound to cast imbuement in the defense version. From the evidence as discussed hereinabove, it is crystal clear that all the witnesses have substantiated the occurrence. Doctor who had examined the injured had not been examined on account thereof, finding of learned lower court relating to Section 323 IPC is found appropriated.

22. So far finding relating to death of Ramjee is concerned, from the evidence of PW-7, Dr. Arvind Prasad, it is apparent that ante-mortem stitched wounds were found and further, the death has been not exclusively on account of septicemia rather shock sustained by deceased on account of ante-mortem injury was there and for that, appellants have properly been identified.

23. A plea at the present moment has been made at the appellants that some of the appellants have not been properly identified by all the witnesses rather there happens to be conflicting version as one of the witnesses says that Dinesh Yadav was armed with Garasa while other says with Lathi, is not at all found prejudicial to the interest of the prosecution, more particularly, in the background of framing of charge with the aid of Section 149 IPC. Though as is



evident, other accused persons died during course of trial but that did not adversely affect upon the application of Section 149 of the IPC. Consequent thereupon, instant appeal is bereft of merit and is, accordingly, dismissed.

24. Since appellants are on bail, their bail bonds are hereby, cancelled with a further direction to surrender before the learned lower court within a fortnight in order to serve out remaining part of sentence, failing which the learned lower court will be at liberty to proceed against them in accordance with law.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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