

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.320 of 2013**

Arising Out of PS. Case No.-39 Year-2010 Thana- UDAKISHUNGANJ District- Madhepura

---

1. Guddu Yadav, son of Ram Prasad Yadav
  2. Sukh Sagar Yadav, son of Jawahar Yadav
- Both resident of Village- Bhaluahi Goath, Police Station-  
Udakishunganj (Gwalpura), District - Madhepura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

---

with

**Criminal Appeal (DB) No. 319 of 2013**

Arising Out of PS. Case No.-39 Year-2010 Thana- UDAKISHUNGANJ District- Madhepura

---

1. Shiv Pujan Jha, son of Bijendra Jha @ Baso Jha
  2. Tuddu Yadav, son of Ram Prasad Yadav
- Both residents of Village- Bhaluahi Goath, Police Station - (Uda  
Kishunganj) , Gwalpara, District - Madhepura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

---

**Appearance :**

(In Criminal Appeal (DB) No. 320 of 2013)

|                        |                                                                        |
|------------------------|------------------------------------------------------------------------|
| For the Appellant/s :  | Shri Suraj Narain Yadav, Advocate<br>Shri Kumar Vishoka Nand, Advocate |
| For the informant :    | Shri Bishweshwar Ram, Advocate                                         |
| For the Respondent/s : | Shri Ajay Mishra , APP                                                 |

(In Criminal Appeal (DB) No. 319 of 2013)

|                        |                                                                        |
|------------------------|------------------------------------------------------------------------|
| For the Appellant/s :  | Shri Suraj Narain Yadav, Advocate<br>Shri Kumar Vishoka Nand, Advocate |
| For the informant :    | Shri Bishweshwar Ram, Advocate                                         |
| For the Respondent/s : | Shri Ajay Mishra, APP                                                  |

---

**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

**and**

**HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)**

**Date : 07-03-2018**

1. Since in both the Appeals the appellants were convicted in

Sessions Trial No. 80 of 2011 by Shri Manoj Shankar, learned



Additional Sessions Judge, Adhoc Court No. III, Madhepura (hereinafter referred to as the “trial judge”), both the Appeals were heard together and are being disposed of by this common judgment.

2. All the appellants were convicted by the judgment dated 01.02.2013 for commission of offence under Sections 302/120B of the Indian Penal Code, 1860 ( hereinafter referred to as the “I.P.C.”) read with Section 34 of the I.P.C., however, both appellants namely Guddu Yadav and Sukh Sagar Yadav in CR. APP (DB) No. 320 of 2013 were further convicted for commission of offence under Section 27 of the Arms Act, 1959 ( hereinafter referred to as the “Arms Act”). All the four appellants by order dated 13.02.2013 were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each for offence under Section 302/ 120B of the I.P.C. read with Section 34 of the I.P.C. and in default of payment of fine, they were directed to undergo further imprisonment for six months. Both appellants in CR. APP (DB) No. 320 of 2013 were further sentenced to undergo rigorous imprisonment for three years for commission of offence under Section 27 of the Arms Act. All the sentences were directed to run concurrently.



3. Short fact of the case is that on 21.04.2010 at about 11.15 P.M. (night) Sub Inspector of Police P.W. 12 namely Shri Sanjay Kumar, In-charge Gwalpara O.P. recorded *fardbeyan* of Rinku Kumar Mehara ( P.W. 8- brother of the deceased). The *fardbeyan* was recorded on the brick soling road near the house of one Kiriti Narayan Thakur ( not examined) in the village:- Bhaluahi Goath, Police Station:- Udakishunganj, District:- Madhepura. In the *fardbeyan* the informant disclosed that his elder brother Uttim Kumar Ram [deceased] who was *Shiksha Mitra* in the Primary School, Bhaluahi and also doing the work of B.L.O. on 21.04.2010 after doing marketing in the night at about 9.00 P.M. was returning to his home from Gwalpara market on his Hero Honda Glamour Motorcycle having blue colour. The informant was also returning while driving a tractor. His brother Uttim Kumar Ram was moving on motorcycle ahead of the informant and at about 10.00 and quarter to 10.00 while his brother reached near the house of Kiriti Narayan Thakur in the village: Bhaluahi Goath on the brick soling road, in the light of tractor, the informant saw (1) Guddu Yadav [ appellant no. 1 in CR APP (DB) No. 320 of 2013 ] (2) Sukh Sagar Yadav [ appellant no. 2 in CR. APP (DB) No. 320 of 2013] carrying pistol in their hands and (3) Shiv Pujan Jha [ appellant no. 1 in CR. APP (DB) No. 319 of 2013 ] carrying



knife and *lathi* in his hand suddenly surrounded his brother and shouted that “ज्यादे गरीबों का मशीहा बनते हो ” on which his brother Uttim Kumar Ram tried to stop them from talking rubbish, then Subhash Yadav and Pravash Yadav, both sons of Rabindra Prasad Singh Yadav who were carrying weapons in their hand and Tuddu Yadav [appellant no. 2 in CR. APP (DB) No. 319 of 2013] on the order given by Subhash Yadav and Pravash Yadav to kill, started assaulting. In the meanwhile, Guddu Yadav [ appellant no. 1 in CR. APP ( DB) No. 320 of 2013 ] and Sukh Sagar Yadav [ appellant no. 2 in CR. APP ( DB) No. 320 of 2013 ] who were carrying pistol in their hands put pistol on temporal region as well as on eye of his brother and fired whereby informant's brother fell down on brick soling road. Thereafter, Shiv Pujan Jha [ appellant no. 1 in CR. APP (DB) No. 319 of 2013 ] and Tuddu Yadav [appellant no. 2 in CR. APP (DB) No. 319 of 2013] who were carrying knife in their hands started giving blow on neck, face and other parts of the informant's brother. The informant further stated that thereafter he leaving his tractor with light on, hurriedly rushed to his brother and raised alarm, till then accused- Guddu Yadav, Sukh Sagar Yadav and Shiv Pujan Jha on the motorcycle of brother of the informant (deceased) fled away and others fled on other motorcycle which they had brought. On



reaching near his brother he noticed that due to fire arm injury and knife injuries profuse blood had come out and his brother was lying dead. The reason for the occurrence was explained by the informant that his brother was helping poor people which was not liked by many people and to show supremacy earlier also some dispute and fight had taken place on number of occasions. The informant said that due to such reason conspiring with each other the accused persons had killed his brother and thereafter had taken his motorcycle as well as mobile. After reading the *fardbeyan* the informant put his signature and the said *fardbeyan* was also got signed by one Dular Chand Ram (P.W. 1).

4. After recording *fardbeyan* Police started investigation. During investigation in the same night inquest report was prepared and dead body was sent for post- mortem examination through dead body *challan* and thereafter in the next morning i.e. on 22.04.2010 at 7.30 A.M. a formal F.I.R. vide Udakishunganj (Gwalpara) P.S. Case No. 39 of 2010 was registered for the offence under Section 302/120(B), 379/34 of the I.P.C. and Section 27 of the Arms Act against six accused persons namely four appellants and other two namely: Subhash Yadav and Pravash Yadav. During investigation after finding accusation true against the aforesaid four appellants, on 30.07.2010 charge- sheet



was submitted, however, investigation in respect of role of other two accused was kept pending. After submission of charge – sheet, on 31.07.2010 cognizance order was passed and the case was committed to the Court of Sessions on 30.03.2011 and accordingly, the case was numbered after commitment as Sessions Trial No. 80 of 2011. In the case on 18.04.2011 charge under Sections 302/34, 379, 120B of the I.P.C. was jointly framed against all the four appellants whereas, on the same date charge under Section 27 of the Arms Act was framed against two appellants i.e. Guddu Yadav and Sukh Sagar Yadav of CR. APP (DB) No. 320 of 2013.

5. To prove its case from the prosecution side altogether twelve witnesses were examined. Out of twelve witnesses, P.W. 1 (Dular Chand Ram), P.W. 6 ( Raj Kumar Ram- brother of the deceased) and P.W. 8 ( Rinku Kumar Mehra - informant and brother of the deceased) were examined as eye witness, whereas P.W. 2 ( Chandan Mehra) besides being examined as a hearsay witness also stood witness to the inquest report. P.W. 3 ( Sujata Kumari- wife of the deceased), P.W. 4 ( Upendra Mehra- father of the deceased) and P.W. 5 (Mukesh Mehra- neighbourer of the deceased) were examined as hearsay witness. P.W. 7 ( Bharti Kumari -sister of the deceased) has been examined as chance



witness and has claimed that she had seen the accused persons while fleeing away on motorcycle. P.W. 9 ( Dr. Bipin Kumar Gupta) on 22.04.2010 was posted as Medical Officer, Sadar Hospital, Madhepura and on the same date at 11.00 A.M. he conducted post -mortem examination on the dead body of the deceased. P.W. 12 ( Sanjay Kumar- Sub Inspector of Police and In-charge of Gwalpara O.P.) had registered the F.I.R. and major portion of the case was investigated by him. P.W. 10 ( Ravindra Nath Tiwari) was also a Police Officer and though he was made second Investigating Officer, during his short period he did not do any major work relating to investigation, whereas P.W. 11 ( Vijay Prasad Singh) is the third Investigating Officer who examined some witnesses and after conducting further investigation had submitted charge- sheet. After closure of prosecution evidence, on 27.06.2012 evidences and circumstances brought during trial against the accused persons were explained to the accused and statement under Section 313 of the Cr.P.C. was recorded in which all the appellants denied charges and claimed to be innocent and took the plea regarding false implication. Thereafter, the case was fixed for defence evidence and from defence' side three witnesses were examined who were: D.W. 1 (Vidyanand Mahto), D.W. 2 ( Amrendra Kumar Yadav) and D.W. 3 (Bimal Yadav). From the



defence side certain documents such as certified copy of F.I.R. and other documents were got exhibited to show that the deceased was having some animosity with others. In sum and substance a plea was taken that none had seen the occurrence and they were falsely implicated.

6. After placing entire evidence, Shri Suraj Narain Yadav, learned counsel, assisted by Shri Kumar Vishoka Nand, learned counsel for the appellants in both the Appeals has argued that it was a case of no evidence. It was substantiated by way of referring to the evidences that none had seen the occurrence and subsequently after the main occurrence it appears that dead body was found and since all the appellants were close neighbours of the informant's side due to some village politics they were falsely implicated. Learned counsel for the appellants by way of referring to the evidence of P.W. 8 ( informant ) submits that though the informant has claimed to identify all the accused persons in the light of his tractor, during investigation the prosecution has miserably failed to produce or give any evidence to substantiate regarding the source of identification. By way of referring to the evidence of the Investigating Officer also it has been argued that in the entire case diary there was no mentioning as to whether on the place of occurrence the so- called tractor was



noticed by the Investigating Officer or not, nor any other witnesses have said about the tractor, save and except the fact that informant has said that he was coming on tractor and in the light of tractor he had witnessed the entire occurrence. It has further been argued that though the informant has specifically deposed that from a distance of about 150 Feet from running tractor he had seen the occurrence and stated that he noticed that his brother was surrounded by all the accused persons and accused persons before giving assault had said that deceased was favouring poor people, which was restricted by the informant. However, it has been argued that from a tractor which was in running condition it was completely difficult to hear those conversations that too from a distance of 150 Feet. Besides this, by way of referring to the evidence of P.W. 6 (Raj Kumar Ram), one of the brothers of the deceased, it has been argued that the brother of the deceased Raj Kumar Ram in his evidence has stated that while he was returning after attending call of nature he had seen the occurrence and thereafter he rushed to his house and in the house he had seen the informant also i.e. P.W. 8. Meaning thereby that presence of the informant at the place of occurrence also appears to be doubtful. Besides this, it has been argued that though P.W. 1 ( Dular Chand Ram ) has claimed to be eye witness and stated that while he was



returning from his village : Teliyari which was about 5 Kilometers away from the village :- Bhaluahi he had seen firstly one tractor and thereafter he had seen one motorcycle and thereafter he concealed himself and witnessed the entire occurrence. However, at the time of examination of the investigating officer attention in respect of previous statement recorded under Section 161 of the Cr.P.C. of P.W. 1 was drawn, in which the investigating officer (P.W. 12) has categorically stated that in Section 161 Cr.P.C. statement P.W. 1 had stated that at the time of occurrence he was in his house and he heard the sound of firing, only thereafter, he rushed to the place of occurrence. Meaning thereby, that the occurrence was also not witnessed by P.W. 1. So far evidence of chance witness i.e. P.W. 7 ( Bharti Kumari ) is concerned, it has been argued that Bharti Kumari was married sister of the deceased. In normal course once in the family there were other male members there was no reason for the married lady to go out of her house in the odd hour i.e. in night at about 9-10 for purchasing medicine, whereas in the evidence of P.W. 7 a plea was taken that due to fever she had gone for purchasing medicine and while she was returning after purchasing medicine she had seen three accused persons fleeing away on a motorcycle that though without source of identification. It has been highlighted that in her



evidence specifically it was asked as to which medicine she had purchased, in reply of which she stated that it was *diclovin*. Shri Suraj Narain Yadav, learned counsel for the appellants submits that the medicine *diclovin* which was said to be purchased by Bharti Kumari (P.W. 7) was an ointment which was having no connection with fever. Besides this, by way of referring to the evidence of other witnesses it has been argued that though all other witnesses have claimed that after hearing the sound of firing they reached the place of occurrence, at the place of occurrence other witnesses have said that only Rinku Kumar Mehra ( P.W. 8) was present. None had whispered regarding the presence of P.W. 7 ( Bharti Kumari). It has been argued that had there been presence of Bharti Kumari this fact would have been referred by many of the witnesses but entire witnesses are silent on the presence of P.W. 7. Shri Suraj Narain Yadav, learned counsel for the appellants has further argued that oral evidence is in conflict with the medical evidence. It has been argued that though it was specific case of the prosecution that two accused persons i.e. both appellants in CR. APP ( DB) No. 320 of 2013 had given shot from pistol on the person of the deceased only one fire arm injury was found, of -course two injuries were noticed but one was entry wound and the second was exit. However, witnesses have said that two firings



were made and many of the witnesses have also corroborated that they had heard the sound of two firings. According to learned counsel for the appellants finding of one fire arm injury which is contrary to the prosecution evidence suggests that none had seen the occurrence and after the occurrence and noticing the injuries on the person of the deceased a story was developed as if two firings were made on the deceased, besides inflicting incised injuries. Learned counsel for the appellants has also drawn our attention to the inquest report i.e. Exhibit- 1 and submits that the investigating officer in his evidence has stated that after recording *fardbeyan* he started investigation from 12.15 and in the same night at 3.00 A.M. dead body *challan* was prepared and it was sent for post-mortem examination and thereafter in the next morning i.e. on 22.04.2010 at 7.30 formal F.I.R. was lodged. Meaning thereby, that in between recording *fardbeyan* and sending of dead body through *challan* inquest report was prepared, but to the reasons best known to the investigating officer timing was interpolated in the inquest report, which is apparent on perusal of Exhibit- 1. In Column no.- 1 on examination itself it is difficult to decipher as to what was the exact time of preparation of the inquest report. It has been argued that it appears that after finding the dead body, in a calculated manner, a story was developed as



if entire occurrence was seen by P.W. 8 and the appellants being neighbours, in village politics, were falsely implicated. It has also been argued that it was case of the prosecution that after killing brother of the informant the accused persons had taken away motorcycle of the deceased as well as mobile. The investigating officer has not conducted any investigation in the light of location of the mobile. However, the looted motorcycle was subsequently found in the campus of Murliganj Railway Station and subsequently Banmankhi Police Station had handed over the said motorcycle to the investigating officer of the present case. After referring to entire evidence it has been argued that prosecution has miserably been failed to establish its case beyond all reasonable doubt and it was a case of acquittal, but the learned trial judge has incorrectly passed the judgment of conviction and sentence.

7. Shri Ajay Mishra, learned Additional Public Prosecutor as well as Shri Bishweshwar Ram, learned counsel for the informant have vehemently opposed the Appeal. Shri Ajay Mishra, learned Additional Public Prosecutor submits that it is true that it was the case of the prosecution that both appellants of CR. APP (DB) No. 320 of 2013 were alleged to have fired, but there was possibility that one firing might had missed and this was the reason that only



one fire arm injury was found on the person of the deceased. He submits that only on the ground of certain minor inconsistency in between the oral evidence and medical evidence entire prosecution case may not be brushed aside. Similarly, Shri Bishweshwar Ram, learned counsel for the informant has stated that prosecution case may not be seen with doubt in view of the fact that without any delay immediately after the occurrence *fardbeyan* was got recorded at 11.15 in the same night and all the formalities were completed and dead body *challan* was also prepared in the same night and in the next morning on 22.04.2010 at 7.30 formal F.I.R. was drawn. According to Shri Bishweshwar Ram, learned counsel for the informant, in such a short period there was no possibility to fabricate a false case for implicating the appellants. It has further been argued by Shri Ajay Mishra, learned A.P.P. as well as Shri Bishweshwar Ram, learned counsel for the informant that in the case the evidence of the informant i.e. P.W. 8 was itself sufficient for passing judgment of conviction, and as such, it has been argued that judgment of conviction and order of sentence may not be interfered with.

8. Besides hearing, learned counsel for the parties, we have also minutely examined the entire evidence i.e. oral and documentary evidence. Before proceeding, it would be necessary



to notice the evidence of the informant (Rinku Kumar Mehara) who was examined as P.W. 8. In his evidence P.W. 8 has stated that occurrence had taken place on 21.04.2010 in the night at about 9.45. At that very time the informant was returning from Gwalpara market to his village by way of driving a *tractor*. Ahead of him his brother Uttim Kumar Ram was moving on Hero Honda motorcycle and while the informant was just behind 150 Feet in the light of tractor he noticed that near the house of one Kiriti Narayan Thakur six accused persons were there including the two appellants of CR. APP (DB) No. 320 of 2013. He identified six accused persons in the light of the tractor. He noticed that all the accused persons surrounded his brother and fired on him by country made pistol. The accused Subhash Yadav and Pravash Yadav were exhorting to kill. Guddu Yadav and Sukh Sagar Yadav ( appellants in CR. APP ( DB) No. 320 of 2013 ) from a close range fired on temporal region of his brother by their pistol. Shiv Pujan Jha and Tuddu Yadav inflicted injury on his brother by *Gupti* [ sharp pointed weapon ] which hit the neck and face of his brother and his brother immediately died. Thereafter, all the accused persons fled away on two motorcycles towards Eastern side. The accused persons had also taken away the motorcycle and mobile of his deceased brother. Thereafter, he



raised alarm , informed the Police and thereafter, in the same night Police arrived at the place of occurrence and recorded his *fardbeyan*. He also identified his signature on the *fardbeyan*, which was marked as Exhibit- 2 . The *fardbeyan* was signed as a witness by Dular Chand Ram (P.W. 1) and the informant also proved signature of P.W. 1 on the *fardbeyan*, which was marked as Exhibit - 2/1 . In paragraph no. 2 of his evidence the informant has stated that his brother was a teacher (Shiksha Mitra). He stated that accused persons were demanding *rangdari* from his brother and also threatening him. At this juncture, it is pertinent to notice that in the *fardbeyan* no such plea was taken, rather it was stated that occurrence had taken place since his brother was helping poor persons and there was dispute of supremacy with others. In paragraph no. 5 of his cross -examination he admits that the said tractor was not his tractor but was of one Anup Sah. In the Court he also disclosed the registration no. of the vehicle but he admitted during trial that he had noted down the no. of the vehicle on his palm and after seeing the same he had given the no. of the vehicle during his evidence. He has further stated that at the time of occurrence his brother's motorcycle was kept on stand and the said motorcycle was kept standing just about 3-4 hands away besides the dead body of his brother. In paragraph no. 36 of his



cross -examination P.W. 8 has stated that when he raised alarm witnesses: Dular Chand Ram ( P.W. 1), Lakhan Ram, Raj Kumar ( P.W. 6) and Chandan Mehra ( P.W. 2) reached there, whereas P.W. 1 ( Dular Chand Ram) in his evidence has stated as if at the time of occurrence he was returning from the village- Teliyari which was about 5 Kilometers away and he has claimed to be eye witness to the occurrence. The deposition of P.W. 8 that when he raised alarm others arrived including Dular Chand Ram creates serious doubt regarding the presence of P.W. 1 ( Dular Chand Ram) at the time of occurrence. It would also be necessary to notice the evidence of P.W. 6 ( Raj Kumr Ram - brother of the informant as well as deceased) and he too has claimed to be eye witness to the occurrence. He deposed as if before the occurrence he had gone outside the house for attending natural call and he saw the occurrence thereafter he went to his house where he saw other witnesses including the informant inside the house. If the evidence of P.W. 6 is taken as true, the presence of informant at the place of occurrence itself appears to be doubtful. Similarly, the evidence of P.W. 7 ( Bharti Kumari) who has claimed to identify the accused persons while fleeing away also appears to be doubtful since none of the witnesses including the family members who immediately after the occurrence had reached the place of



occurrence had given any reference of presence of P.W. 7. Moreover, the plea of P.W. 7 that she had gone to purchase medicine in the odd hour in the night also appears to be doubtful. Besides this, none other witnesses have said regarding the presence of P.W. 7. Other witnesses i.e. P.W. 2 ( Chandan Mehra ), P.W. 3 ( Sujata Kumari- wife of the deceased), P.W. 4 (Upendra Mehra- father of the deceased) and P.W. 5 ( Mukesh Mehra -neighbourer) have deposed as hearsay witness and all those witnesses have stated that after hearing the sound of firing they reached the place of occurrence where they saw the informant (P.W. 8- Rinku Kumar Mehara) who was weeping and all those witnesses have stated that they were informed by Rinku Kumar Mehara (P.W. 8) regarding the involvement of all accused persons. During entire evidence though a plea was taken that the accused persons were seen in the light of tractor, there is no reference of tractor in the case diary. This fact is evident on examination of the evidence of P.W. 12 (Sanjay Kumar- who was the first investigating officer). In paragraph no. 32 of his cross-examination he has categorically admitted that in the case diary nothing has been indicated as to whether at the place of occurrence tractor was seen or not, whereas it is case of the prosecution that immediately after the occurrence Police arrived at the place of



occurrence and in such a situation there was no reason regarding non-mentioning of the tractor, in the light of which, the informant has claimed to identify all the accused persons. Moreover, the evidence of P.W. 8 (informant) that he had seen and also heard the conversation of accused persons that too from a distance of 150 Feet on running tractor appears to be doubtful. The P.W. 9 ( Dr. Bipin Kumar Gupta ) on 22.04.2010 was posted as Medical Officer, Sadar Hospital, Madhepura and on the same date at 11.00 A.M. he conducted post-mortem examination on the dead body of the deceased and he noticed the following facts:-

“(2) Rigor mortis present on all four limbs.

(3) On external examination:-

(a) mouth closed, left eye open, pupil dilated, dark blood come out through both nostril, mouth and right ear.

Injury No. I- Sharp cutting wound on forehead in middle 3”x1/2” into deep to bone red in colour

(II) Sharp cutting wound on right cheek upto right eye 4”x1/2” deep to muscle red in colour

(III) Sharp cutting wound on upper lip 1”x 1”

(IV) Sharp cutting wound on neck deep to skin 3 ½ ” x 1/2”

(V) 1”x1” lacerated wound on right eye absent surrounding skin - blackened deep to skull cavity

(VI) 2 ½” lacerated wound on back of scalp deep to skull cavity muscle bruised and lacerated bone at the side of injury. Injury No. V & VI were broken in multiple

(VII) Multiple bruise on chest transversely of different size, present muscle under was bruised with haematoma present on left side

(4) On opening skull cavity it was full of dark and clotted blood, brain matter was lacerated and contused. chest, lung – pale, heart



– empty, abdomen, stomach - undigested food particles present

(5) Cause of death – Haemorrhage and shock and brain injury due to above injury caused by sharp cutting. Injury No. (I), (II), (III) & (IV) by fire arm. Injury No. (V) & (VI) by hard & blunt substance Injury No. (VII)

(6) Time since death within 24 hours since post mortem examination begins

(7) Sharp cutting injuries caused to deceased may be caused by Gupti, chaku”

This witness proved the post -mortem examination report, which was marked as Exhibit- 3. On examination of the evidence of P.W. 9 as well as on examination of the post -mortem examination report i.e. Exhibit- 3 it is evident that there was only one gun shot injury on the person of the deceased. Of- course there were two injuries which were entry and exit. Entry wound was found on the right eye and exit was the back scalp, however, to the reasons best known to the investigating officer in the inquest report in column no. 4 it has been mentioned that both eyes of the deceased were open. Meaning thereby, that nothing was indicated as to whether in either of the eyes there was injury or not , whereas in the post -mortem examination report there is specific case that on the right eye there was injury of fire arm. There is other reason to examine the entire case as suspicious due to the reason that in the evidence of investigating officer ( P.W. 12) this fact has come to the fore that he started investigation after recording *fardbeyan* from 12.15 on 21/22.04.2010 and inquest



report was prepared at 3.00 in the morning, on the same day dead body *challan* was prepared and dead body was sent for post-mortem examination, but in the inquest report which was prepared in between 12.00 and 3.00, in column no. 1 details of case no. has been mentioned, whereas formal F.I.R. was lodged in the next morning i.e. on 22.04.2010 at 7.30 A.M. This creates doubt regarding recording of timing of *fardbeyan* i.e. 11.15 P.M. on 21.04.2010 as has been disclosed by the investigating officer. In any event there is some doubt in respect of timing of recording of the *fardbeyan*. Considering the entire evidence particularly the submission of learned counsel for the appellants, we are of the considered opinion that prosecution has not established its case beyond all reasonable doubt .

9. Of- course during trial after the statement of the accused persons under Section 313 of the Cr.P.C. was recorded, three witnesses were examined from defence' side and certain documents were got exhibited. Amongst them, there is one document i.e. certified copy of F.I.R. of Udakishunganj P.S. Case No. 9 of 2003 registered for offence under Sections 341, 323, 329, 504 and 34 of the I.P.C. in which deceased ( Uttim Kumar Ram) was the informant. Besides this, there is one another document i.e.



Exhibit – C which suggests that in it one of the accused was deceased - Uttim Kumar Ram.

10. In view of those facts, the Court is of the opinion that there is some strength in the submission of learned counsel for the appellants that the deceased might had been killed by some of his enemy but subsequently the appellants being neighbours of the deceased were framed as accused in the present case. Moreover, the investigating officer has not also conducted investigation in its right perspective. No step was taken to trace the looted mobile of the deceased. Had it been done by the investigating officer, there was possibility to get the entire fact.

11. Considering the facts and circumstances, we are of the opinion that the appellants deserve to be extended the benefit of doubt. Accordingly, by way of extending benefit of doubt to the appellants the judgment of conviction and order of sentence dated 01.02.2013 and 13.02.2013 respectively passed by Shri Manoj Shankar, learned Additional Sessions Judge, Adhoc Court No. III, Madhepura in Sessions Trial No. 80 of 2011 ( arising out of Udakishunganj P.S. Case No. 39 of 2010 ) is required to be interfered with. Accordingly, the judgment of conviction and order of sentence dated 01.02.2013 and 13.02.2013 respectively is hereby set aside and both the Appeals are allowed. Since the



judgment of conviction and order of sentence of all the appellants has been set aside and they are inside jail, they are directed to be released forthwith, if not required in any other case. Both the Appeals are allowed.

**(Rakesh Kumar, J)**

**( Arvind Srivastava, J)**

praful/-

|                   |             |
|-------------------|-------------|
| AFR/NAFR          | AFR         |
| CAV DATE          | NA          |
| Uploading Date    | 12 -03-2018 |
| Transmission Date | 12-03-2018  |

