

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.524 of 2013

Arising Out of PS. Case No.-87 Year-2009 Thana- SALAKHUA District- Saharsa

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1. Nattu Yadav, Son Of Gareeb Lal Yadav
 2. Rajaram Yadav, Son Of Late Saryug Yadav, both residents of Village- Kajri, Police Station- Beldaur, District- Khagaria
- Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 411 of 2013

Arising Out of PS. Case No.-87 Year-2009 Thana- SALAKHUA District- Saharsa

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1. Wakil Yadav, son of Gareeb Lal Yadav
 2. Lalo Yadav , son of Pileshwar Yadav
 3. Rajesh Yadav, son of late Ramotar Yadav, all residents of Village- Kangri, Police Station - Beldaur, District -Khagaria.
- Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 524 of 2013)

For the Appellant/s	:	Sri Vivekanand Singh, Advocate Sri Chandra Mohan Jha
For the Respondent/s	:	Sri Ajay Mishra, A.P.P. Sri Satya Narain Prasad, A.P.P.

(In Criminal Appeal (DB) No. 411 of 2013)

For the Appellant/s	:	Sri Vivekanand Singh, Advocate Sri Chandra Mohan Jha, Advocate
For the Respondent/s	:	Sri Ajay Mishra , A.P.P. Sri Satya Narain Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 09-10-2018

1. All the appellants in both the Appeals were tried together and convicted and sentenced by the same judgment , and as such, both the Appeals were taken up together for hearing and are being disposed of by this common judgment.



2. All the five appellants in two Appeals by judgment dated: 17.04.2013 were convicted for the offence under Sections 302/34 of the Indian Penal Code , 1860 (hereinafter referred to as the “I.P.C.”) and by order dated – 20.04.2013 under Section 302/34 of the I.P.C. all the appellants were sentenced to undergo imprisonment for life and to pay a fine of Rs. 5000/- each. In case of default in payment of fine, they were directed to further undergo imprisonment for six months each. The judgment of conviction and sentence was passed by Sri Ram Prakash, learned Adhoc Additional District and Sessions Judge No. 2, Saharsa (hereinafter referred to as the “trial judge”) in Sessions Trial No. 223 of 2010 (arising out of Salakhua P.S. Case No. 87 of 2009).

3. Short fact of the case is that on 06.05.2009 Sub Inspector of Police -cum- S.H.O. Banma Ethari Out Post, Sri Lallu Tiwari (P.W. 10) recorded fardbyan of Rampari Devi (P.W. 2), W/o Late Laddu Yadav (deceased). The fardbyan was recorded in village- Sugma Lakhanwa Bahiyar in the field of one Chakko Singh near Lala Innar which was a maize field. The informant disclosed that on the same day i.e. on 06.05.2009 at about 8.30 in the morning she along with her husband- Laddu Yadav (deceased) was going to Sonbarsha Raj from her village- Kanjari for her treatment. Her husband as usual was going to Sonbarsha Raj Bazar



for the purposes of sale of milk. While her husband reached the place of occurrence the informant was at some distance behind him and saw that (1) Rajaram Yadav, S/o Late Saryug Yadav, (2) Ranveer Yadav, S/o Dinesh Yadav, (3) Wakil Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 411 of 2013], (4) Nattu Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 524 of 2013] both Sons of - Gareeb Lal Yadav, (5) Ramotar Yadav (6) Lalo Yadav [appellant no. 2 in Cr. Appeal (D.B.) No. 411 of 2013], both Sons of Pileshwar Yadav (7) Rajesh Yadav, S/o - Ramotar Yadav all residents of village : Kanjari , P.S. -Beldor, (8) Rajo Sadda, S/o Sukan Sadda, (9) Jagdish Sadda, both residents of village: Ram Pokhar, P.S. - Salakhaua O.P. Banma Ethari and (10) Jai Prakash Yadav, S/o Lakhan Yadav who was son-in-law of Dinesh Yadav came out from the maize field where they had kept concealed themselves. While her husband -Laddu Yadav arrived there then Rajaram Yadav [appellant no. 2 in Cr. Appeal (D.B.) No. 524 of 2013], Ranveer Yadav and Nattu Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 524 of 2013] all carrying country made pistol in their hands called their men and surrounded the deceased and started firing. In the said occurrence her husband received gun shot injury in his mouth, below the ear, left side of chest and right side of the body. Other accused persons who had concealed inside



the field all after coming out had surrounded her husband. After getting gun shot injury her husband fell down on the Earth and died. The reason for the occurrence was alleged that Dinesh Yadav, S/o- Late Kullo Yadav who was own elder brother of the deceased had earlier occupied about 50 karri of land from the Southern side. Due to this reason Dinesh Yadav conspiring with others had got her husband- Laddu Yadav killed by giving fire arm injury. She claimed that the occurrence was seen besides her by her *devar* [younger brother of her husband] - Binod Yadav (P.W. 9) and her villager- Ram Bilash Yadav (not examined) regarding whom she disclosed that they were also going with the informant to Sonbarsha Raj Bazar and they had seen the occurrence. She claimed that Dinesh Yadav conspiring with each other got her husband murdered. The said fardbyan was read over to her and finding it correct she put her signature. It is made clear that on the fardbyan except informant no other witness had put signature. On the basis of the fardbyan of the informant/ P.W. 2 on 06.05.2009 at 8.00 P.M. a formal F.I.R. vide Salakhua P.S. Case No. 87 of 2009 was registered for the offence under Section 302/ 120B/34 of the I.P.C. and Section 27 of the Arms Act against eleven accused persons, namely:- (1) Rajaram Yadav [appellant no. 2 in Cr. Appeal (D.B.) 524 of 2013] , (2) Ranveer Yadav (exonerated by



Police), (3) Wakil Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 411 of 2013], (4) Nattu Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 524 of 2013], (5) Ramotar Yadav (died during the trial), (6) Lalo Yadav [appellant no. 2 in Cr. Appeal (D.B.) No. 411 of 2013], (7) Rajesh Yadav [appellant no. 3 in Cr. Appeal (D.B.) No. 411 of 2013], (8) Rajo Sadda [he was shown absconder by the Police and he never appeared], (9) Jagdish Yadav { died during the trial}, (10) Jai Prakash Yadav; and (11) Dinesh Yadav [acquitted after trial].

4. After registering F.I.R. Police investigated the case and on 09.08.2009 finding the case true against six accused persons, charge -sheet was submitted against: (1) Rajaram Yadav, (2) Wakil Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 411 of 2013] , (3) Nattu Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 524 of 2013], (4) Ramotar Yadav (died during trial), (5) Rajesh Yadav [appellant no. 3 in Cr. Appeal (D.B.) No. 411 of 2013] ; and (6) Jagdish Yadav (died during the trial) keeping investigation pending against others and in the case on 18.10.2009 supplementary charge-sheet was submitted against: Lalo Yadav [appellant no. 2 in Cr. Appeal (D.B.) No. 411 of 2013], Dinesh Yadav and Rajo Sadda, showing him as absconder. At the same time Police did not find any plausible material against F.I.R.



named accused- Ranveer Yadav and Jai Prakash Yadav. Meaning thereby, that the two accused persons were not sent up for trial. Thereafter, on 01.02.2010 learned Chief Judicial Magistrate, Saharsa took cognizance of the offences and after completion of formalities under Section 207 of the Code of Criminal Procedure, 1973 [hereinafter referred to as the “Cr.P.C.”] on 18.09.2010 the case was committed to the court of Sessions and as such it was numbered as Sessions Trial No. 223 of 2010. In the case on 30.09.2010 charge under Sections 302/34 & 120B of the I.P.C. was jointly framed against all the accused persons whereas separate charge on the same day against Nattu Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 524 of 2013] and Rajaram Yadav [appellant no. 2 in Cr. Appeal (D.B.) No. 524 of 2013] was framed under Section 27 of the Arms Act, 1959 .

5. During the trial to establish its case from the prosecution side altogether ten witnesses were examined. Out of ten witnesses, P.W. 2 /Rampari Devi (wife of deceased and informant) and P.W. 9 / Binod Yadav (brother of the deceased) were examined as eye witnesses to the occurrence. P.W. 6 – Ganesh Yadav {another brother of the deceased} and P.W. 7 / Lalo Devi (who is wife of P.W. 6 and *bhabhi* of the deceased) were examined as hearsay witness. P.W. 1 (Sudhir Singh) who is an



independent witness immediately after hearing sound of firing had arrived at the place of occurrence however he did not name any of the accused persons in the occurrence. P.W. 8 (Shambhoo Sah) is an independent witness and during his evidence he has claimed that he had seen the accused persons fleeing away after the occurrence. P.W. 5 (Dr. Md. Ummar Faruq) on 06.05.2009 was posted in Sadar Hospital, Saharsa and he conducted post –mortem examination on the dead body of the deceased and P.W. 10 / Lallu Tiwari, Sub Inspector of Police who recorded fardbyan of the informant, is the Investigating Officer of the case.

6. After examination of the prosecution witnesses on 28.06.2012 evidences and circumstances brought on record during the trial were explained to the accused persons and their statement under Section 313 of the Cr.P.C. was recorded in which they denied the charges and claimed to be innocent.

7. From the defence side also altogether seven witnesses were examined, who are: Mahsus Alam (D.W. 1), Suresh Ram (D.W. 2), Sami Rizwan (D.W. 3), Parmanand Yadav (D.W. 4), Madho Sah (D.W. 5), Surat Choudhary (D.W. 6) and Kanik Lal Choudhary (D.W. 7). The defence witnesses have primarily deposed on the point that at the time of occurrence so-called two eye witnesses namely: Rampari Devi (P.W. 2) and



Binod Yadav (P.W. 9) were at their house, not at the place of occurrence.

8. Learned counsel for the appellants after placing entire evidence have argued that the prosecution has not established its case beyond all reasonable doubt rather it was a case of false implication since the informant's side were having eye on the joint landed property. It has been argued that all the appellants are close relatives of the informant's side. It has been argued that the informant herself has stated that own elder brother of her husband, namely: Dinesh Yadav had hatched up a conspiracy for eliminating her husband since he had forcibly occupied additional 50 *karri* of land of the joint property. By way of referring to the evidence of P.W. 2 (Rampari Devi), who is informant, it has been argued that on examination of her evidence vis-a-vis her *fardbyan* it is established that she is not truthful witness nor she was present at the time of occurrence. It has been argued that the wife of the deceased -Rampari Devi (P.W. 2) in the *fardbyan* has stated that while her husband was moving and she was following him, she saw that about 10 accused persons who had concealed themselves in the maize field came out. Out of ten accused persons she specifically stated that Rajaram Yadav, Ranveer Yadav and Nattu Yadav were carrying country made pistol in their hands



and they called other accused persons and thereafter three accused persons fired on her husband however subsequently it appears that after noticing the fact that on the date of occurrence Ranveer Yadav was already inside jail, this witness changed her version and in place of Ranveer Yadav she disclosed as if Ranjeet Yadav was there. It was argued that in the fardbyan naming Ranveer Yadav as one of the main assailants who is none else but son of own elder brother of the husband of the informant and the fact that Ranveer Yadav was inside jail elaborately makes it clear that the informant was not present at the place of occurrence and subsequently after noticing such blunder the informant tried to correct her stand and named Ranjeet Yadav in place of Ranveer Yadav. It has also been argued that on going through the evidence of P.W. 1, who is an independent witness, namely: Sudhir Singh it is established that immediately after the occurrence while Sudhir Singh (P.W. 1) arrived, there were none, nor anyone was in a position to identify the dead body. This witness has stated that he could identify that it was dead body of Laddu Yadav (deceased). According to learned counsel for the appellants the evidence of P.W. 1 itself demolishes the presence of either of the so-called eye witnesses, namely: P.W. 2 and P.W. 9. Even P.W. 3 (Naresh Yadav) though he was declared hostile, his examination-in-chief



suggests that none had seen the occurrence. Learned counsel for the appellants has emphasized that the deceased was himself a veteran criminal and in the evidence his wife as well as his own brothers - P.W. 9 (Binod Yadav) and P.W. 6 /Ganesh Yadav have accepted that deceased was accused in a murder case and along with the deceased P.W. 6 /Ganesh Yadav and P.W. 9 (Binod Yadav) were also accused. It has also come in evidence that during the trial of earlier murder case deceased along with P.W. 6 and P.W. 9 were convicted and sentenced to undergo imprisonment for life. It has also come that after their conviction Appeal was filed which is still pending. Learned counsel for the appellants have argued that it appears that deceased was done to death by some unknown enemy and after noticing his death which was caused by gun shot injury it appears that informant with a view to grab the land of other family members which was the joint property, a false case was fabricated in which all the appellants were arrayed as accused and they succeeded in getting order of conviction and sentence, which is required to be interfered with.

9. Sri Satya Narain Prasad, learned Additional Public Prosecutor has opposed the Appeal. Sri Prasad has heavily placed reliance on the evidence of P.W. 2 /Rampari Devi (wife of deceased) and P.W. 9/ Binod Yadav and submits that both the



witnesses are witness to the occurrence. He has also placed reliance on the evidence of independent witnesses, namely: Shambhoo Sah (P.W. 8) who has claimed that immediately after the occurrence he had seen accused persons fleeing away. According to learned A.P.P. oral evidence has been supported by medical evidence. He submits that in the post -mortem examination report also on the body of deceased three injury caused by fire arm was noticed and as such the learned trial judge has rightly passed the judgment of conviction and sentence which requires no interference.

10. Besides hearing we have minutely examined entire evidence available on record. Before proceeding at this juncture we would like to refer to the evidence of P.W. 1 / Sudhir Singh who is an independent witness. In his evidence he stated that on the date and time of occurrence he was near the *bandh* and from some distance he heard sound of firing. Thereafter, he ran towards the place of occurrence and saw that Laddu Yadav had fallen and on his person there were 2-3 marks of fire arm injuries and from all the injuries blood was oozing out. He stated that dead body was lying beside a village *pagdandi* in the maize field of one Chakko Babu. He stated that the said passage was being used for going from Kanjari village to Sonbarsha. He claimed that he had put



signature on the inquest report. In paragraph – 3 of his cross-examination he stated that after hearing the sound of firing he went to the place of occurrence however he did not see anyone who had fired. He claimed that near the place of occurrence there was his own field. In paragraph - 5 of the cross -examination he stated that after being asked he identified the dead body and he stated that he was knowing the deceased and then he put his signature. On examination of his evidence it appears that immediately after the occurrence while he reached the place of occurrence there were none and also the dead body was not identified and he was the person who firstly identified the dead body, whereas P.W. 2 / Rampari Devi wife of the deceased in her fardbyan itself stated as if she was following her husband from her village to Sonbarsha and a plea was taken that she was going for her treatment due to her ailment. In the fardbyan she specifically disclosed that while her husband reached near the place of occurrence firstly three accused persons namely: - Rajaram Yadav [appellant no. 2 in Cr. Appeal (D.B.) No. 524 of 2013], Ranveer Yadav [who was exonerated during investigation itself by the Police] and Nattu Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 524 of 2013] carrying country made pistol calling other accused persons surrounded the husband of the



informant and all aforesaid three persons fired. Subsequently it appears that prosecution party noticed that blunder was committed by naming Ranveer Yadav as one of the main assailants since on the date and time of occurrence he along with his father Dinesh Yadav was already inside jail and this is the reason that during trial while deposing she substituted Ranveer Yadav with the name of Ranjeet Yadav. We are of the opinion that it was not simply error in the fardbyan rather it appears that without noticing the occurrence a story was built up as if the husband of the informant was surrounded by ten accused persons and he was done to death by inflicting fire arm injury. In any event change of version of the informant in such situation creates serious doubt on her evidence. Besides this, the evidence of P.W. 1 also creates doubt on the presence of informant at the time of occurrence. Had it been a case that the occurrence had taken place in presence of the informant there was no reason for asking P.W. 1 to identify the dead body.

11. P.W. 2 / Rampari Devi in her evidence has stated that she was moving behind her husband and husband was moving carrying bicycle and near Lala Innar on both sides there were maize plants. While they arrived there Rajaram Yadav, **Ranjeet Yadav** , Nattu Yadav, Wakil Yadav, Ramotar Yadav, Lalo Yadav, Rajesh Yadav, Jai Prakash Yadav, Jagdish Sadda, Rajo Sadda all



came from the maize field. Rajaram, **Ranjeet** and Nattu were carrying country made pistol in their hands. All the three called their friends. Rajaram, **Ranjeet** and Nattu put pistol on temporal region of her husband. Other accused surrounded him. Nattu Yadav thereafter fired on *Pokhura* (shoulder). Thereafter her husband fell down and started squirming. Rajaram fired which hit in the temporal region and **Ranjeet** through his country made pistol fired on *panjara* (ribs of her husband). Due to the said injuries her husband died. She further deposed that Dinesh Yadav was elder brother of her husband with whom her husband was having dispute regarding land. She further deposed that Dinesh Yadav and his son - **Ranveer Yadav** both had hatched conspiracy and one day prior to the occurrence Ranveer Yadav landed in the jail as ticket-less traveller. At this juncture it would be necessary to notice as to what this witness has stated in her fardbyan. In her fardbyan she has categorically stated that along with two accused **Ranveer Yadav** was present with country made pistol and he too had fired but during the trial it appears that after noticing the fact that **Ranveer Yadav** one day prior to the occurrence was already taken into custody and he was already inside jail, in place of **Ranveer Yadav** she gave the name of **Ranjeet Yadav** and now **Ranveer Yadav** was arrayed as one of the conspirators with his father-



Dinesh Yadav. This witness during evidence has proved her signature on the fardbyan which was marked as Ext. 2. In paragraph- 6 of her cross - examination she has given description of her family. She stated that her father -in-law was five brothers, namely: Saryug Yadav, Kullo Yadav, Pileshwar Yadav, Gareeb Lal Yadav and Darbari Yadav. Rajaram Yadav [appellant no. 2 in Cr. Appeal (D.B.) No. 524 of 2013] is the son of Saryug Yadav. Kullo Yadav was having five sons namely: Dinesh Yadav (F.I.R. named accused) , Ganesh Yadav (P.W. 6), Laddu Yadav (deceased) , Binod Yadav (P.W. 9) and Mukesh Yadav. Pileshwar Yadav was having two sons, namely: Ramotar Yadav (died during the trial) and Lalo Yadav [appellant no. 2 in Cr. Appeal (D.B.) No. 411 of 2013]. Gareeb Lal Yadav was having two sons namely : Wakil Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 411 of 2013] and Nattu Yadav [appellant no. 1 in Cr. Appeal (D.B.) No. 524 of 2013] . Further in paragraph – 7 of her cross- examination she stated that her father -in-law and brothers were residing separately and there was already partition in between them and in between them there was no dispute. In paragraph – 10 of her cross- examination she accepted that her husband was accused in the case of murder of wife of one Jagdish Sadda, however she denied the suggestion that she was knowing that against her



husband Lalo Yadav [appellant no. 2 in Cr. Appeal (D.B.) No. 411 of 2013] had filed a case relating to setting fire. Again in para – 12 of her cross -examination she accepted that once her husband had gone to jail in a murder case and remained in custody for about nine months. He had gone to jail in case of Saharsa. She further stated that in the said case Ganesh Yadav / P.W. 6 [brother of her husband] and Shambhoo Sah (P.W. 8) were also accused and the case was still going on. In paragraph - 18 of her cross -examination she stated that at the time of occurrence accused persons came out from the maize field from both sides of the field where they had kept concealed and on both sides maize plants were broken. In paragraph - 19 of her cross examination she denied that in the fardbyan she had stated that **Ranveer Yadav** had fired but she stated that **Ranjeet** had fired. In paragraph- 20 of her cross -examination she further denied the suggestion that she had falsely deposed and when she came to know that **Ranveer Yadav** had gone to jail then she changed her version from fardbyan. In para – 23 of her cross examination she further stated that after the occurrence her husband fell in the Western side of the maize field. The maize plants were broken. She denied the suggestion that since her husband was accused and on number of occasions he had gone to jail, he was done to death by some other accused



persons and she was also not going with the deceased at the time of occurrence nor she had seen the occurrence. She further denied the suggestion that due to animosity with Dinesh false case was instituted. In paragraph – 25 of her cross examination she reiterated that she had stated that when husband - Laddu reached near the place of occurrence , Rajaram Yadav, **Ranveer Yadav** and Nattu Yadav carrying country made pistol in their hands called other accused persons, surrounded and fired. Though in examination- in- chief in place of **Ranveer Yadav** she named **Ranjeet Yadav** but in cross- examination in paragraph -25 she reiterated that at the time of occurrence **Ranveer Yadav** was also one of the accused who fired whereas it is not in dispute that on date and time of occurrence **Ranveer Yadav** was already inside jail and as such it would not be safe to place reliance on such evidence. This witness in para- 35 of her cross examination further deposed that after the occurrence Binod Yadav / P.W. 9 went to Police Station and gave entire information from where he came at the place of occurrence with Daroga Ji whereas the Investigating Officer / P.W. 10 in his evidence itself has stated that he was telephonically informed that one unknown person was gunned down and dead body was lying near the field and then Police rushed to the place of occurrence.



12. P.W. 3 / Naresh Yadav, who is an independent witness, has stated that after about 15 minutes from the time of occurrence he reached to the place of occurrence. P.W. 3 who is also one of the cousin of the deceased has deposed that after about 15 minutes of the occurrence he reached to the place of occurrence and saw the dead body of Laddu Yadav. In paragraph-3 of his examination -in -chief he stated that Laddu Yadav was going to Sonbarsha for sale of milk however he could not gather information as to who had killed the deceased. Meaning thereby that even after fifteen minutes of the occurrence while this witness reached the place of occurrence he was not informed about the name of any of the culprits whereas the informant in her evidence has stated as if she was with the deceased and in her presence occurrence had taken place. Had it been a case that occurrence had taken place in presence of P.W. 2 / informant or P.W. 9 there was every possibility that after arrival of P.W. 3 he would have been told as to who had killed the deceased. In para – 5 of his cross-examination he categorically stated that while he reached the place of occurrence he did not find either accused persons or informant and *devar* of the informant [younger brother of the husband of the informant]. The evidence of this witness has got much relevance to establish the absence of the informant or her



devar at the place of occurrence and as such there is no difficulty in coming to the conclusion that occurrence was not witnessed either by P.W. 2 or P.W. 9, who is *devar* of P.W. 2.

13. P.W. 4 / Anil Yadav though was declared hostile, in his examination -in- chief has stated that at the time of occurrence near the place of occurrence in the field he was ploughing the field with the help of Ox. At 9-10 A.M. he heard the sound of firing and then leaving his Ox he rushed to the place of occurrence i.e. maize field of Chakko Singh where he found Laddu Yadav lying dead with gun shot injury. He clarified that he had not seen any of the accused persons while fleeing away. Though this witness was declared hostile his first part of the evidence may not be ignored particularly on the point that immediately after hearing sound of firing he reached to the place of occurrence but he did not see any of the accused persons while fleeing away.

14. P.W. 6 / Ganesh Yadav is one of the younger brothers of the deceased. In his evidence he stated that deceased was his own brother. He stated that in between deceased/ Laddu Yadav and his brother -Dinesh Yadav land dispute was going on. The deceased / Laddu Yadav was always insisting Dinesh Yadav to partition the land but Dinesh was not ready for partition. He deposed that Dinesh Yadav by hatching conspiracy had got Laddu



Yadav murdered with the help of other accused persons. This witness has not disclosed the name of either of the appellants but in cross-examination in paragraph – 5 he stated that amongst brothers partition had not taken place. Altogether 8-10 Bigha of land of their father was there which was self acquired property of his father and all the family members were not cultivating the field jointly but it was Dinesh Yadav who was doing the same. In para – 6 of his cross-examination this witness stated that before the murder of Laddu Yadav, Laddu Yadav was facing trial in a murder case and along with Laddu this witness was also one of the accused. The case was in relation to murder of one Sita Devi. In paragraph -9 of his cross-examination he further deposed that in the case of murder of Sita Devi he was sent to jail and he was held guilty and against the said judgment Appeal was filed in which bail was granted.

15. P.W. 7 / Lalo Devi (wife of P.W. 6) in her evidence has stated that Laddu (deceased) insisting on distributing land amongst brothers. In paragraph – 3 she deposed that on the date of occurrence at 8.00 in the morning Laddu Yadav had gone to Sonbarsha carrying milk. With him his wife was also going. After about 45 minutes Binod (P.W. 9) had also gone and thereafter in between 8-9 A.M. Laddu Yadav was killed by Rajaram Yadav,



Nattu Yadav, Wakil Yadav and Ranjeet Yadav, however, she has not disclosed as to how she got information that those accused persons had killed the deceased. Her attention was drawn in para – 9 of her cross- examination that before the Police she had not stated that while deceased was going, his wife was also going and thereafter he was followed by Binod / P.W. 9. In para – 10 of her cross- examination she denied the suggestion that they all jointly had falsely instituted the case against Dinesh, his son and other accused persons to take possession of the land in which they were claiming share. She also denied that Laddu was having criminal antecedent and he was done to death by some one else. She also denied that at the time of occurrence wife of Laddu was in the house not at the place of occurrence.

16. P.W. 8/ Shambhoo Sah was examined as chance witness and he stated that while he was going to Sonbarsha he heard sound of firing and then he went to the field of Chakko Singh and saw that Laddu Yadav due to fire arm injury was lying dead and he claimed that he saw Rajaram, Wakil Yadav, Nattu Yadav and Ramotar Yadav fleeing away. In paragraph – 3 of his cross- examination he stated that he was accused in murder case with deceased/ Laddu Yadav. He further stated that along with Laddu Yadav and him Ganesh Yadav / P.W. 6 was also one of the



accused and in the said case all the three persons i.e. P.W. 8/ Shambhoo Sah , deceased (Laddu) and Ganesh Yadav (P.W. 6) were convicted and sentenced. Such fact is sufficient for not placing much reliance on his evidence claiming to be chance witness. He has claimed that he had seen some of the accused persons fleeing away whereas in the case P.W. 1 categorically has stated that he was the first person who after hearing sound of firing reached the place of occurrence. None of the witnesses have said regarding presence of this witness. Moreover this witness was tried together with deceased and his brother / Ganesh Yadav.

17. P.W. 9 / Binod Yadav is one another brother of the deceased and he too has claimed to be eye witness to the occurrence. In his evidence he stated that Laddu Yadav was his own brother who carrying milk was going to Sonbarsha for selling. With him his wife -Rampari Devi / P.W. 2 was also going for her treatment and thereafter he stated that when they reached near the place of occurrence all the aforesaid accused persons surrounded him and killed him by giving shot of firing. This witness cleverly has not shown the presence of **Ranveer Yadav** and instead he stated that **Ranjeet Yadav** with Ramotar and Wakil Yadav had surrounded the deceased. In his cross -examination in para – 5 he stated that one day prior to the date of occurrence Dinesh Yadav



and Ranveer Yadav were lodged in Khagaria jail. Voluntarily thereafter he stated that they had gone to jail by hatching conspiracy. Before the occurrence one case of murder was lodged against LadduYadav (deceased) in which he was sentenced to undergo imprisonment for life. In the said case Dinesh and Rajaram / appellant no. 2 in Cr. Appeal (D.B.) No. 524 of 2013 had favoured the informant. He further accepted in para – 7 of the cross- examination that in between Rajaram [appellant] and Laddu (deceased) since earlier case was going on. Earlier wife of Rajaram by hatching conspiracy had lodged a case of rape against Laddu Yadav. In paragraph - 9 of his cross- examination he stated that Laddu (deceased) at about 8.00 in the morning left his house. 10 minutes thereafter this witness also proceeded and he was 15-20 steps behind the deceased. He further stated that in between the passage on both side there were maize crops. After hearing sound of firing immediately he rushed to the place of occurrence and found that his brother was lying dead. However, he accepted that no firing was made on him. In para- 14 of his cross examination he stated that he did not carry his brother to hospital rather he went to Banma Ethari O.P which took about 1 ½ hours in reaching there on bicycle. There he gave information to Bara Babu. He further stated that initially he was going on foot but



subsequently he picked up bicycle of the deceased and went to Police Station. He further stated that he left the bicycle in the Police Station and thereafter on Police jeep he came to the place of occurrence whereas in paragraph- 15 of his cross examination he stated that in his presence Daroga Ji recorded fardbyan of Rampari Devi. After recording fardbyan it was read over to her and finding it correct she put her signature. Surprisingly in his presence fardbyan was recorded but he did not prefer to be witness to the fardbyan and this is the reason that on the fardbyan save and except signature of informant none had put their signature. On examination of the statement of this witness it is evident that whatever was stated by the informant that was read over to over and thereafter she put her signature. In the fardbyan she had specifically named **Ranveer Yadav** as one of the assailants but during evidence she took U- turn and in place of **Ranveer Yadav** she named **Ranjeet Yadav**. The reason for changing the version is very much evident that subsequently it was noticed that Ranveer Yadav one day prior to the occurrence was sent to jail. This creates serious doubt regarding the presence of informant at the place of occurrence and time of occurrence. In paragraph – 18 of the cross- examination he further reiterated that the father's land was never partitioned and this gives an



impression that entire family member was divided in two parts. One part was trying to take possession over the land and it appears that this was reason that one side of the family members had implicated other side family members and as such we are in agreement with the submission of learned counsel for the appellants that only with a view to grab land of the father of deceased as well as appellants in a case in which deceased was done to death by some unknown persons all family members were implicated as accused in the present case.

18. The doctor who conducted post -mortem examination on the dead body of the deceased is Dr. Md. Ummar Faruq (P.W. 5). On 06.05.2009 he was posted in Sadar Hospital Saharasa and at 5.30 P.M. he conducted post -mortem examination on the dead body of the deceased and found following anti-mortem injuries:-

"On external examination - Body was cool, pale , both eyes closed, mouth partially closed. Pupil by laterally dilated and fixed.

Wound of entry no. 1 - There is lacerated wound 1/2" x 1/3" oval in shape margin inverted blacking around it situated in Vth

Lacerated wound 1/2"x1" circular in shape inverted with oozing of blood situated in posterial part of chest in lower part of right acatular.

Wound of entry no. 2- wound of entry in intra oral with lacerated wound in oral cavity.

wound of exit no. 2 - lacerated wound 2 ½ " x1" margin in everted circular



irregular with oozing of blood in preauricular area of left side face .

On internal examination - skull-pale and N.A.D. on opening of oral cavity there are blow of fracture of both side maxilla, hard palate, laceration of part of larynx and oesophagus with fracture of zygote. There is torn of muscle of oral cavity and rupture of vessels. Lacerated masseter muscle of left side lacerated and communicated through wound of exit no. 2 as mentioned above. On opening of thorax both side of thorax full of blood. There is severally laceration of upper part of left lower lobe communicating through right side of chest and laceration of upper part of lower lobe of right lungs. Fracture of eighth rib of right side. On entire prob lacerated wound communicates through part of right scapula. Both side of heart was empty. All viscera of abdomen was pale. N.A.D. genital was intact and N.A.D.

Cause of death - In our opinion cause of death was hemorrhage and shock due to above mentioned injury as a result of fire arm.

Time elapsed since death - within 6 hours.”

This witness further stated that post-mortem report was in his writing and signature and it was marked as Ext. 3. On examination of evidence of P.W. 5 as well as post-mortem report (Ext. 3) it is evident that doctor had noticed the time of death within six hours from the time of post-mortem examination. If the upper limit of time as opined by the doctor is noticed the occurrence would have taken after 11.30 A.M. on the same day whereas prosecution has come out with a case that occurrence had taken place in between 8 – 9 A.M. The Investigating Officer in his evidence has stated that at about 10.30 A.M. on the same day he



was telephonically informed regarding the occurrence. If we take 6 hours to even 7 hours there is some possibility that occurrence might had taken place at 10-10.30 A.M. but P.W. 2 (informant) has come out with a case that occurrence had taken place at about 8.30 A.M. and her fardbyan was recorded at 11.45 A.M. on 6.5.2009 . This also creates some doubt regarding the presence of either of the so-called eyewitnesses at the time of occurrence.

19. P.W. 10 / Lallu Tiwary is the Investigating Officer of the case. On 6.5.2009 he was posted as Officer -in-charge of Banma Ethari Out Post and on the same day i.e. on 6.5.2009 at 10.30 A.M. he telephonically got information that near village -Sugma Lakhunwa Bahiyar one unknown person was gunned down by unknown accused persons whose dead body was lying in maize field. Thereafter he recorded *Sanha* entry and he reached the place of occurrence at 11.30 A.M. where he was informed by persons who were present there regarding the occurrence. He saw that dead body of Laddu Yadav was lying there. The inquest report was got prepared which was marked as Ext. 4. At the place of occurrence dead body *challan* was prepared which was marked as Ext. 5 and dead body was sent for post- mortem examination and thereafter fardbyan was recorded and fardbyan was proved as Ext. 2/1 . This witness also proved formal F.I.R. which was



marked as Ext. 6. In paragraph -4 of his evidence he has given description of the place of occurrence. Despite the fact that immediately after the occurrence he reached the place of occurrence he did not notice any empty cartridge at the place of occurrence nor any seizure list was prepared regarding finding of blood at the place of occurrence. He further stated that after investigation, finding the case true, with the approval of the senior officials, he submitted 1st charge -sheet on 9.8.2009 against six accused persons continuing with the investigation and supplementary charge- sheet vide charge- sheet no. 153 of 2009 was submitted on 18.10.2009 in which he exonerated accused- Ranveer Yadav and Jai Prakash Yadav and charge -sheet was submitted against three more accused persons who were already arrayed as accused in the F.I.R. In paragraph -12 of his cross -examination this witness stated that the informant in her fardbyan had not stated that with her at the time of occurrence Binod / P.W. 9 and Ram Bilash (not examined) were also moving however in her re-statement she disclosed regarding presence of those witnesses. In paragraph -13 of his cross examination he categorically stated that at the place of occurrence he did not notice any broken plant of maize. At this juncture it would be necessary to notice that if it was a case of the informant that ten



accused persons had concealed themselves in the maize field and after noticing the deceased they came out from the field and gunned down the husband of the informant who after receiving injury fell in the maize field, there was every possibility of noticing trampling of the maize crop or plants. However on examination of the evidence of the Investigating Officer it is evident that no such short of fact was noticed by him. Learned counsel for the appellants has rightly argued that it appears that some unknown persons had gunned down the deceased and he fell down. Learned counsel for the appellants has rightly argued that there was no possibility of such number of accused persons concealing themselves in the field otherwise there was every possibility of trampling of the maize field. In paragraph -16 of cross -examination he further stated that there was already instruction of the senior police officials for examining criminal antecedent of the deceased but he did not do the same. In paragraph -17 of cross -examination he specified that on the date of occurrence F.I.R. named accused -Dinesh Yadav and Ranveer Yadav were inside jail. In para – 20 of his cross- examination the Investigating Officer has further stated that informant had not stated in her re-statement also that her husband was moving keeping bicycle in his hand neither the said bicycle was seized.



He further stated that he has not mentioned regarding finding of bicycle at the place of occurrence in the case diary.

20. On examination of aforesaid entire evidence there is no difficulty in coming to the conclusion that prosecution has not established its case beyond all reasonable doubt rather the case of prosecution itself appears to be doubtful . The very presence of informant as well as the so-called another eye witness - P.W. 9 appears to be doubtful. Had it been a case that informant was present at the place of occurrence there was no reason for her to state in her fardbyan that **Ranveer Yadav** was one of the main accused who was carrying pistol. The doubt on her evidence is further corroborated from the fact that while she was examined as a witness during the trial she in a calculated manner substituted the name of **Ranveer Yadav** with the name of **Ranjeet Yadav**. The reason behind this was that Ranveer Yadav one day prior to the occurrence was lodged in Khagaria jail. This fact has been stated in para - 17 of the cross -examination of the Investigating Officer. It is also evident that deceased was a convict in a case of murder and he was sentenced to undergo imprisonment for life and along with deceased, P.W. 6 / Ganesh Yadav and P.W. 8 /Shambhoo Sah both were also convicted and sentenced so there was every possibility to fix the appellants one way or the other due to the



reason that in between own brother and deceased and Dinesh Yadav dispute was going on relating to landed property. P.W. 2 / informant in her evidence deposed that partition had already taken place whereas other witnesses are very much categorical that no partition had taken place and it was Dinesh Yadav who was using the land of his father solely. The presence of P.W. 2 and P.W. 9 at the place of occurrence also appears to be doubtful considering the evidence of P.W. 1/ Sudhir Singh and P.W. 3 / Naresh Yadav. Moreover in defence altogether seven witnesses were examined and all of them have consistently deposed as if at the time of occurrence the informant was present in her village. Of course in criminal trial no much reliance is required to be place on defence evidence but considering the fact that in the present case on the basis of prosecution evidence itself the presence of both eye witnesses i.e. P.W. 2 and P.W. 9 has come into the cloud of doubt, there is no reason to out-rightly reject the defence version.

21. In view of the facts and circumstances we are of the opinion that prosecution has not been able to establish its case beyond all reasonable doubt and as such it is necessary to interfere with the judgment of conviction and sentence. Accordingly the judgment of conviction dated : 17.04.2013 and sentence dated 20.04.2013 passed by Shri Ram Prakash, learned Adhoc



Additional District and Sessions Judge No. 2, Saharsa in Sessions Trial No. 223 of 2010 (arising out of Salakhua P.S. Case No. 87 of 2009 , G.R. No. 758 of 2009) is hereby set aside and both Appeals are allowed. Both the appellants in Cr. Appeal (D.B.) No. 524 of 2013 are inside jail and since judgment of conviction and sentence has been set aside it is hereby directed to release both the appellant namely: Nattu Yadav / appellant no. 1 and Rajaram Yadav / appellant no. 2 forthwith if not wanted in any other case . So far three appellants in Cr. Appeal (D.B.) No. 411 of 2013 are concerned who are already on bail they are hereby discharged from liability of their bail bond.

22. Both Appeals are allowed.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

praful/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	30-10-2018
Transmission Date	30-10-2018

