

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2270 of 2017

Arising Out of PS.Case No. -61 Year- 1992 Thana -AMAS District- GAYA

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1. Vijay Singh Son of Mongeshwar Singh, R/o Babhandi, P.S.- Amas, District- Gaya,

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 1993 of 2017

Arising Out of PS.Case No. -61 Year- 1992 Thana -AMAS District- GAYA

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1. Md. Ali, Son of Late Sayed Majhar Hassan, R/o Mohalla Yehyapur, P.S.- Sheikhpura, Distt. Sheikhpura, presently R/o Village- Mograin, P.S.- Amas, Dist.- Gaya.

2. Indradeo Yadav, Son of Sheonandan Yadav, R/o Vill. Babhandi, P.S.- Amas, Dist. Gata.

3. Shivanandan Yadav, Son of Dhumar Yadav, R/o Vill. Babhandi, P.S.- Amas, Dist. Gaya.

4. Keshar Yadav, S/o Dhumar Yadav, R/o Vill.- Babhandi, P.S.- Amas, Dist.- Gaya.

5. Shivanandan Yadav, Son of Mosafir Yadav, R/o Vill. Babhandi, P.S.- Amas, Dist. Gaya.

6. Md. Parwej S/o Wasi Ahamad, R/o Vill. Mongrain, P.S.- Amas, Dist.- Gaya.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 2170 of 2017

Arising Out of PS.Case No. -61 Year- 1992 Thana -AMAS District- GAYA

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1. Deo Nandan Yadav,

2. Rajeshwar Yadav,

3. Ram Rup Yadav @ Ram Roop Yadav,

4. Radhey Yadav All Sons of Deoki Yadav, R/o Bhabhandi, P.S.- Amas, District- Gaya.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 2528 of 2017



Arising Out of PS.Case No. -61 Year- 1992 Thana -AMAS District- GAYA

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1. Radhey Dusadh @ Radhey Paswan S/o late Deepak Paswan R/o Vill- Babhandi,
P.S. Amas, distt. Gaya.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 2590 of 2017

Arising Out of PS.Case No. -61 Year- 1992 Thana -AMAS District- GAYA

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1. Md. Wasi Ahmad @ Md. Wasim Ahmad Son of Late Sayed Mansoor Ahamad ,
R/o Village- Morgram, P.S.- Amas, District- Gaya.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.2270 of 2017)

For the Appellant/s : Mr. Ajay Kr Thakur, Adv.
Mr. Prince Kr. Mishra, Adv.

For the Respondent/s : Mr. Z.Hoda, APP

(In CR. APP (SJ) No.1993 of 2017)

For the Appellant/s : Mr. Ajay Kr Thakur, Adv.
Mr. Prince Kr. Mishra, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CR. APP (SJ) No.2170 of 2017)

For the Appellant/s : Mr. Surendra Kr. Sinha, Adv.

For the Respondent/s : Mr. S.A. Ahmad, APP

(In CR. APP (SJ) No.2528 of 2017)

For the Appellant/s : Mr. Ajay Kr Thakur, Adv.
Mr. Prince Kr. Mishra, Adv.
Mr. Vinay Mistry, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

(In CR. APP (SJ) No.2590 of 2017)

For the Appellant/s : Mr. Ajay Kr Thakur, Adv.
Mr. Prince Kr. Mishra, Adv.
Mr. Vinay Mistry, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C A V J U D G M E N T

Date: 22-06-2018

There has been analogous hearing of all these five
appeals and are being disposed of by a common judgment as arise out



of common judgment of conviction dated 19.06.2017 and order of sentence dated 22.06.2017 passed by Presiding Officer-Additional Sessions Judge, FTC-1, Gaya in Sessions Trial No. 116/2017/38/2003 whereby and whereunder appellants named above have been found guilty for an offence punishable under Section 307/149 of the IPC and sentenced to undergo RI for 10 years as well as to pay fine of Rs. 10,000/-, in default of payment of fine to undergo RI for six months additionally, under Section 148 IPC to undergo RI for one year.

2. Further appellants, Vijay Singh, Md. Ali, Indradeo Yadav, Shivanandan Yadav, Shivanandan Yadav, Md. Parweej, Deo Nandan Yadav, Rajeshwar Yadav, Ram Rup Yadav @ Ram Roop Yadav, Radhey Yadav, Radhey Dusadh @ Radhey Paswan, Md. Wasi Ahmad @ Md. Wasim Ahmad have been found guilty for an offence punishable under Sections 452 IPC and have been sentenced to undergo RI for 2 years as well as to pay fine of Rs. 2,000/- in default thereof, to undergo RI for 3 months. Further, appellants, Radhey Dusadh @ Radhey Paswan, Md. Wasi Ahmad @ Md. Wasim Ahmad have been directed to undergo RI for 10 years as well as to pay fine of Rs. 10,000/- and in default thereof, to undergo RI for six months under Section 3 of the Explosive Substance Act. They have also been found guilty for an offence punishable under Section 5 of the Explosive Substance Act, but no separate sentence has been



inflicted therefor. Further, appellant, Vijay Singh has been directed to undergo RI for 3 years as well as to pay fine of Rs. 3,000/- and in default thereof, to undergo RI for three months under Section 27 of the Arms Act with a further direction to run the sentences concurrently.

3. Khurshid Imam (PW-6) filed a written report on 20.08.1992 disclosing therein that on the same day at about 10.00 AM while he along with his sons, Akbar Imam, Asghar Imam, daughter, Tarannum Khatoon, wife, Manaura Khatoon were present at their house, Khairun Nisa wife of late Rashid Ahmad, Vijay Singh armed with gun, Radhey Dusad, Shivanandan Yadav son of late Dhumar Yadav, Shivnandan Yadav, son of Musafir Yadav, Radhey Yadav, all residents of Babhandih, Wasi Ahmad, Taqui Ahmad both sons of late Mansoor Ahmad, residents of Mohgrais, Md. Ali son of Mazhar Hasan of Mohalla, Yahyapur, Banglappar, PS-Sekhopur, forming an unlawful assembly arrived, armed variously and surrounded his house. On an order of Khairun Nisa, Vijay Singh fired. He fell down, as a result of which he got escaped. Meanwhile, Radhye Dusad, Wasi Ahmad, Taqui Ahmad, Md. Ali and Perwej made house trespass and on an order of Khairun Nisa and Vijay, Radhey hurled bomb as a result of which Asgar became seriously injured. Tarannum rushed in rescue over which Wasi Ahmad hurled bomb causing injury upon her.



Parwej, Taqui, Md. Ali also threw bomb indiscriminately. The remaining accused, namely, Shivanandan Yadav son of late Dhumar Yadav, Shivnandan Yadav son of Musafir Yadav who had surrounded his house had also thrown bomb. They were also shouting that whoever will come in rescue will be blown up by the bomb. After hearing sound of explosion as well as hue and cry raised by him along with his family members, villagers rushed whereupon accused persons escaped therefrom which was witnessed by Indradeo Yadav, Kesar Yadav, Deonandan Yadav, Rajeshwar Yadav, Ramrup Yadav. The motive for occurrence has been shown as the accused persons were bent upon to dispossess him from his land.

4. On the basis of the aforesaid written report, Amas PS Case No. 61/1992 was registered followed with the investigation as well as submission of charge-sheet facilitating the trial, meeting with ultimate result, subject matter of these appeals.

5. It is evident from the judgment impugned that accused, Khairun Nisa and Taqui Ahmad died during course of trial whereupon, the trial abated against them.

6. 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 on account of land dispute this case has been instituted against them with false and frivolous allegation. Also



exhibited series of documents though no oral evidence has been adduced.

7. In order to substantiate its case, prosecution had examined altogether 10 PWs out of whom PW-1, Akbar Imam, PW-2, Hamid Ahmad, PW-3 Tarannum Khatoon, PW-4, Manaura Khatoon, PW-5, Asghar Imam, PW-6, Khurshid Imam, (informant), PW-7, Hasan Yada @ Husan Yadav, PW-8, Lalji Yadav, PW-9, Vijay Kishore Prasad and PW-10 Umashankar Prasad, as well as had also exhibited Ext-1, Seizure list, Ext-2, 2/A, Signatures of witnesses over Fard-e-beyan, Ext-3 and 3/1, Discharge ticket, Ext-4, 4/3, 4/4 X-ray plates regarding respective injured, Asghar, Taranum, Ext-5, Sanctioned order. Though no oral evidence has been adduced on behalf of defence but following document, i.e. C.C of order passed in Cr. Revision No. 133/1999, Ext-A, C.C. of judgment of Cr. Appeal No. 14/1998, Ext-D, C.C of order passed in LPA No. 1325/1999, Ext-C has been made on behalf of defence.

8. While assailing the judgment of conviction and sentence, it has been submitted on behalf of appellants that from the evidences adduced on behalf of respective parties, it is apparent that prosecution party happens to be on wrong footing and that being so, they are taking tooth and nail to defeat the interest of the appellants and the present litigation happens to be linked therewith. It has also



been submitted that presence of Khairun Nisa, wife of late Rashid Ahmad has duly been acknowledged by the prosecution party and further, they have also admitted that other appellants are purchasers from the aforesaid Khairun Nisa and on account thereof, as the prosecution party wants to grab the land, with dishonest intention got this case filed putting false and frivolous allegations. Now coming to the evidence on record, it has been submitted that PWs-7, 8, 9, 10 have not supported the case of the prosecution and that being so, their evidences are worthless. The remaining witnesses, that means to say, PWs-1 to 6 are the own family members, that is to say, there happens to be absence of independent witnesses irrespective of the fact that in the written report, at least, presence of Indradeo Yadav, Kesar Yadav, Deonandan Yadav, Rajeshwar Yadav, Ramrup Yadav and others have been shown. Apart from this, it has also been submitted that doctor has not been examined, and that being so, prosecution failed to bring on record the nature of injury, if any, caused to the respective injured by explosive substance. In likewise manner, It has also been submitted that Investigating Officer has not been examined and on account of non examination of Investigating Officer, the interest of the appellants has been prejudiced, so on that very score alone, the judgment impugned is fit to be set aside.

9. Then, it has been submitted that prosecution case



suffers from improbability. From the written report, it is apparent that informant along with his sons, daughter and wife were inside their house, then in that event, there was no occasion for them to see the accused persons coming after forming an unlawful assembly, cordoned his house, threw bomb and for that, identified Shivanandan Yadav son of Dhumar Yadav and Shivnandand Yadav son of Musafir Yadav. In likewise manner, had there been presence of unlawful assembly armed variously, having been indulged in hurling bomb, then in that event, there was no question in having the house of the informant standing as it was because would have been completely damaged out of explosion and in likewise manner, having an opportunity to come outside where the allegation has been levelled against Vijay to have shot at on an order of Khairun Nisa. In likewise manner, it has also been submitted that when informant remained outside, and during intervening period, the other co-accused sneaked into his house, informant would not be an eye witness with regard to the fact whatever been committed inside the house and in likewise manner, Khairun Nisa as well as Vijay would not be in a position to command the other co-accused who were allegedly inside the house.

10. Apart from this, improbability, the prosecution version is found duly exposed as only having a single round firing, no attempt was made over the informant or his wife irrespective of the



fact that Vijay continued with his gun and the other accused persons, as alleged, were deeply involved in making explosion in order to dismantle the house of the prosecution party, without touching the informant and his wife.

11. Now coming to the event, as alleged by the prosecution relating to assault by means of explosive substance over Asghar and Tarannum, it has been submitted that in absence of doctor the same is not at all found substantiated coupled with the physical feature of the house completely demolished the prosecution version, rather it very much speaks about false implication by procuring forged and fake document. It has further been submitted that for the purpose of attracting Section 307 IPC, nature of injury is not at all material aspect but, the prosecution has to substantiate that the activity of the accused was such endangering life which in the facts and circumstances of the case, that means to say, on account of inconsistency, prevailing amongst the evidence of the witnesses, improbability over manner of occurrence coupled with non examination of doctor as well as Investigating Officer, did not justify the same. In likewise manner, due to non examination of the Investigating Officer as well as considering the evidence of the witnesses that in spite of bomb having been hurled inside the house as well as from the outside of the house without damaging interior or



exterior portion of the house, did not justify the finding recorded by the learned lower court, that too relating to Section 3, 5 of the Explosive Substance Act. Furthermore, having presence of gun and using for only once, in spite of the fact that the enemy was in front of leaving aside, looks ridiculous whereupon Section 27 of the Arms Act is also not found justifiable. So the judgment of conviction and sentence recorded by the learned lower court is fit to be set aside.

12. On the other hand, learned APP while controverting the submission made by the learned counsel for the appellants, has submitted that the evidence of a witness is to be seen in its entirety and not in piecemeal manner. When the evidence is gone through, irrespective of non examination of doctor as well as Investigating Officer, the consistent version of the witnesses including that of injured justify the finding recorded by the learned lower court whereupon the judgment impugned needs no interference.

13. In each and every case non examination of Investigating Officer is not going to hamper the case of the prosecution rather it varies case to case.

14. *In Lahu Kamlakar Patil v. State of Maharashtra* as reported in (2013) 6 SCC 417 under para-18, it has been held by the Hon'ble apex Court that non examination of the Investigating Officer is to be perceived in the background of facts of the case as well as



evidence having adduced during course of trial in order to infer whether it has caused prejudice to the interest of the accused or not.

For better appreciation the same is quoted hereinbelow:-

18. Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the F.I.R. but has given the excuse that it was taken on a blank paper. The same could have been clarified by the Investigating Officer, but for some reason, the Investigating Officer has not been examined by the prosecution. It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In *Behari Prasad v. State of Bihar* [(1996)2 SCC 317], this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In *Bahadur Naik v. State of Bihar* [(2000) 9 SCC 153], it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial judge nor the High Court has delved into the issue of non-examination of the Investigating Officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in *Arvind Singh v. State of Bihar* [(2001)6 SCC 407], *Rattanlal v. State of Jammu and Kashmir* [(2007)13 SCC 18] and *Ravishwar Manjhi and others v. State of Jharkhand* [(2008)16 SCC 561], has explained certain circumstances where the examination of Investigating Officer becomes vital. We are disposed to think that the present case is one where the Investigating Officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.



15. In *Baldev Singh v. State of Haryana* as reported in *2016 Cri. L.J. 154*, it has been 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. Since Ram Singh-PW-1 was a part of the police party and PW-1 has signed in all recovery memos, non-examination of Chander Singh-SI could not have caused any prejudice to the accused in this case nor does it affect the credibility of the prosecution version.”

16. Non examination of doctor would foreclose the prosecution from taking any kind of help on account of nature of injury so perceived unless and until there happens to be admission even by way of suggestion regarding the injury sustained by the respective injured. However, from plain reading of Section 307 IPC, it is apparent that nature of injury is not at all found relevant for the purpose of adjudication of culpability of an accused rather, it may be additional circumstance in a way to substantiate the allegation, however, relevant for infliction of sentence. The activity of the



accused is the relevant factor for consideration which would depict whether such action having discharged at the end of the accused suggests that the same has been followed with an intention or knowledge with its ultimate result would be murder of the victim and that happens to be the reason behind bifurcation of Section 307 of the IPC in three compartments. The first one, where activity was performed but without any harm, the second part, where harm is caused by way of causing hurt and the last one happens to be where an accused being convict, sentenced to life imprisonment indulged in such kind of activity. Hurt is defined under Section 319 of the IPC which denotes mere presence of some sort of activity detrimental to body. For better appreciation Section 319 is quoted below:-

“Section 319 IPC. Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt”.

Moreover, it relates to sentencing after proper adjudication of the facts and circumstances.

17. So when the requirement of law for attracting Section 307 IPC is properly considered, it is apparent that the relevant factor to be considered while adjudicating upon the same relates with proper identification of an accused while indulged into commission of an occurrence, was carrying intention or knowledge that the ultimate



resultant of the action having at his end will ultimate cost life of the victim. Although, injury is not at all relevant for consideration of the same but, it happens to be an additional factor which could be taken into consideration during course of adjudication. That does not mean that irrespective of presence of sufficient oral evidence exposing the activity of an accused, the case be brushed aside on account of deficiency at the end of the prosecution in exhibiting the injury report.

18. In *Chhanga @ Manoj* as reported in (2017) 11 SCC 115, it has been held (Para-7).

7. Neither of the points raised by Shri Garg appeal to us. First and foremost, it is not essential that bodily injury capable of causing death should have been inflicted in order that the charge under [Section 307](#) be made out. It is enough if there is an intention coupled with some common act in execution thereof. This position has been repeatedly laid down by this Court in “[State of M.P. vs. Kashiram and Others](#)” (2009) 4 SCC 26 at paragraphs 12 to 16. In addition, in a recent Judgment in ‘[Jage Ram and Others vs. State of Haryana](#)’ (2015) 11 SCC 366, the law has been laid down as follows :-

“For the purpose of conviction under [Section 307](#) IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under [Section 307](#) IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the



time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

19. In *Baleshwar Mahto v. State of Bihar* as reported in (2017) 3 SCC 152, it has been held (Para-12).

Here, PW-7 is also an injured witness. When the eye-witness is also an injured person, due credence to his version needs to be accorded. On this aspect, we may refer to the following observations in *Abdul Sayeed vs. State of Madhya Pradesh*[2]:

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. 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 a built-in 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.

"Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh v. State of Bihar* [(1973) 3 SCC 881:1973 SCC (Cri) 563:AIR 1972 SC 2593], *Malkhan Singh v. State of U.P.* [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12], *Machhi Singh v. State of Punjab* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681], *Appabhai v. State of Gujarat* [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696], *Bonkya v. State of Maharashtra* [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113], *Bhag Singh* [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163], *Mohar v. State of U.P.* [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472], *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302], *Annareddy Sambasiva Reddy v. State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] 29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , where this Court reiterated the



special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka* [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."



20. In *Sallo Singh v. State of Bihar* as reported in 2007

(1) *BBCJ 368*, it has been held (para-29, 30).

29. It is well settled that for bringing home the charge under Section 302 of the Indian Penal Code, the prosecution has to prove that the death had taken place, which is neither accidental nor suicidal or natural, but homicidal. In the absence of the post mortem report and the evidence of the doctor, it is impossible to ascertain the cause of death. Once the cause of death remains unknown, no conviction under Section 302 of the Indian Penal Code can be sustained. Reference in this connection can be made to a Division Bench judgment of this Court in the case of *Sheo Govind Bin and Another vs. The State of Bihar* [1985 PLJR 1019], in which it has been held as follows:

"Therefore, on the basis of the post mortem report (Ext. 7) it can safely be said that the cause of death could not be stated by the prosecution in support of the charge. Under the circumstances, the appellant Sheo Govind Bin cannot be said to be guilty for the offence under Section 302 of the Indian Penal Code. However, on the basis of the discussions made above, appellant Sheo Govind Bin is found guilty for the offence punishable under Section 326 of the Indian Penal Code."

30. Similar view has been taken by a Division Bench of this Court in the case of *Shiva Balak Rai and 3 Others vs. The State of Bihar* [1986 PLJR 604] in which it has been held as follows:

"True it is that the post mortem report is available on the record of the trial court. The post mortem report has not been legally brought on the record as the doctor, who performed autopsy, was not examined. It, therefore, follows that there is no evidence before the Court to hold that Sanaullah Mian died as a result of the injuries caused to him by lathi, farsa and spade. It further shows that there is no corroborative medical evidence in support of the oral allegations made against the appellants that they caused injuries to the deceased."

21. Before coming over the evidences of the PW-8, the



pertinent question that arose and is to be answered is in what manner, the evidences are to be considered. In *State of H.P. v. Raj Kumar reported in (2018) 2 SCC 69*, it has been held (Para-16)

16. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to be truthful in the given circumstances of the case. Once that impression is formed, it is necessary for the court to scrutinize the evidence more particularly keeping in view the drawbacks and infirmities pointed out in the evidence and evaluate them to find out whether it is against the general tenor of the prosecution case. Jeewan Lal (PW-1) is the son of the deceased Meena Devi residing with her and the accused in the same house, and a natural witness to speak about the occurrence. Evidence of PW-1 is cogent and natural and is consistent with the prosecution case. The High Court was not right in doubting the evidence of PW-1 on the ground of alleged improvements made by Jeewan Lal (PW-1) and rejecting his evidence on the premise that there were certain improvements.

22. In the aforesaid background, now the evidences are to be seen in order to trace out whether the finding recorded by the learned lower court is fit for concurrence.

23. PW-1 is Akbar Imam, son of the Informant. He had deposed that on the alleged date and time of occurrence, he was present at his Darwaza lying at eastern side. He had seen Vijay, Khairun Nisa along with 28 other persons from a distance 100 yards. When they came closer to him, approximately at the distance of 25 yards, he identified, Khairun Nisa, Vijay Singh, Radhey Dusad, Shivanandan Yadav son of late Dhumar Yadav, Shivnandan Yadav,



son of Musafir Yadav, Radhey Yadav, Wasi Ahmad, Taqui Ahmad, Md. Ali forming unlawful assembly. Vijay was armed with gun while rests were armed with bomb. They were abusing. They came at his house. They cordoned his house. Out of fear, he came inside his house followed by Khairun Nisa and Vijay Singh. On an order of Khairun Nisa, Vijay fired over his father which his father miraculously escaped. Then thereafter, Radhey Dusad, Wasi Ahmad, Taqui Ahmad, Bajrangi, Parwez Ahmad came inside his house. Then thereafter, Radhey hurled bomb over his brother, Asghar Imam, as a result of which, he became injured. Tarannum Khatoon was in a room, came out over whom, Wasi Ahmad hurled bomb as a result of which, she became injured. Asghar had sustained injury over his neck, mouth, shoulder and hand. Tarannum had sustained injury over her right leg, right thigh. Other accused persons were outside who were also engaged in hurling bomb over his house. Aforesaid activity was done at the instance of Khairun Nisa who happens to be her aunt. At para-3, he disclosed genealogical table as Sahsan was his great grand father. He had two sons, three daughters. Name of sons were, Wali Ahmad and Rashid Ahmad. Saleha, Sufia and Naeema were the daughters. Land was being looked after by Rashid Ahmad. Under dishonest intention, he got all the lands recorded in favour of the wife as well as one Farukh, his cousin brother-in-law (Chachera Sala). Khairun Nisa



had sold away some lands. On account thereof, his father had reported the matter to C.O. who inquired into the matter and found the document illegal whereupon reported the matter to DCLR who had annulled recording of lands and in the aforesaid background, instant occurrence has been committed. Then had deposed that so many villagers including, Hamir, Ramdhan, Bhushan and others came who lifted the injured to hospital. Asghar Imam remained under treatment for two months at Magadh Medical College and during course of treatment, his one of the fingers was amputated. Identified the accused. None turned up for cross-examination and on account thereof, the witness was discharged.

24. PW-2 had deposed that on the alleged date and time of occurrence, he was engaged in ploughing his field. At that very time, he heard sound of bomb explosion as well as firing over which, he had gone to the house of Khurshid and had seen the Khairun Nisa, Vijay Singh, Radhey Dusad, Shivanandan Yadav son of late Dhumar Yadav, Shivnandan Yadav, son of Musafir Yadav, Radhey Yadav, Wasi Ahmad, Taqui Ahmad, Md. Ali. Then thereafter, they had gone inside the house. Family members have disclosed that on account of hurling bomb by Radhey, Asghar had sustained injury while hurling of bomb by Wasi Ahmad, Tarannum had sustained injury. He had seen both of them in an injured condition. There was injury over neck,



cheek, mouth, shoulder and chest of Asghar while Tarannum had injury over palm, thigh and finger. Then thereafter, family members took them to hospital. Police had come. Inspected the place of occurrence. Seized the remnants of bomb from Angan. Live bombs were also recovered. Had seen the blood spot, sign over wall. Seizure list was accordingly, prepared over which he had put his signature. Ramdhan had put his LTI. The aforesaid seizure list was prepared by Rameshwar Pd, inspector. Identified the accused. In para-4, he had admitted that Parvej Ahmad had instituted a case against him as well as against Khurshid, Akhtar, Asghar, Kushan, Lalji and Ramdhan. That case has also been disposed of. Khairun Nisa became widow in the year 1962. Khairun Nisa is Phua of Parvej Ahmad. This Parvej had instituted a case against them. They were not intending to grab the land of Khairun Nisa. Then had admitted that there was a proceeding under Section 144 Cr.PC which was fought up to the High Court relating to the land belonging to Khairun Nisa. Then had stated that land has been demarcated by the C.O. whereupon he had got no quarrel with her but, she had got dispute with Khurshid and others. At para-5, he had stated that the house of Khurshid happens to be at eastern front. There happens to be open land around the house. There is one *Kachchi* road in front of house of Khurshid where one Banyan tree is standing at the western eastern southern side of the house.



Maize crop was planted. There happens to be six rooms inside the house of Khurshid. In the middle, there happens to be courtyard. Kitchen happens to be at the western side of the house. There happens to be one window affixed at western wall. Then had stated that the length and breadth of kitchen happens to be 8 hands x 4 hands. It is tiled roof. Wall is of mud. His sister resides in the same house and so, he frequently visit. Then had stated that Radhey Dusad had instituted one case against him along with Khurshid, Asghar, Akbar and others. Their bail has been dismissed by the High Court. Then had stated that Khairun, Wasi, Taqui, Parvej, Md. Ali are his co-villagers while remaining accused are residents of different villages. At para-6, he had stated that Nurul Hassan had two sons, Wazi Ahmad and Haji Abdul Rashid and three daughters, namely, Sufia, Saleha and Naisi. Only Naisi is alive. Wazi Ahmad had three sons, the first one, he himself, 2nd one is Rafi Ahmad and the third one is Yusuf Ahmad who had migrated to Pakistan. Then had said that Rashid Ahmad died in the year 1968. Khairun Nisa is his wife who is an accused. Then had stated that son of Sufia had migrated to Pakistan. Informant Khurshid Imam is the son of Saleha. Son and daughter of Khurshid are witness of this case. Annu Mian and Harun Mian are sons of Naisi. Taqui Ahmad is the brother of Khairun Nisa. Parvej is the son of Taqui Ahmad. Md. Ali is the resident of village-Ahiyapur of Distt-



Sheikhpura. In para-7, he had stated that Nurul Hasan had gifted land amongst his three daughters lying at village, Lakrahi, Bishanpur. Nurul Hassan had gifted land of village Mughrahi in his favour. Rashid had not been given land though he was looking after land of village- Babhandi. In para-8, he had stated that Vijay had purchased land from Khairun Nisa about 10 years ago and on the basis thereof, they were adamant to capture the land. Then had stated that Khurshid is his brother-in-law (Bahnoi). Kamrul happens to be his cousin brother (Fufera) and accordingly, disclosed relationship with Akhtar, Nurul Hasan, Md. Aziz. He had also admitted that aforesaid persons were also accused in the case instituted by Radhey Dusad whereunder they have been sentenced. Then had admitted that Khurshid had instituted Title Suit against Khairun Nisa wherein Khairun won. Appeal is pending. In para-9, he had stated that during course of occurrence he had gone inside the house of the informant. He had gone inside the kitchen and found sign. There was live bomb near door. He had seen injury over hand, thigh of Tarannum. He had found injury over left hand of Asghar. He had found maize crop trampled. He has also found blood spot in the kitchen. Then he returned back to his house. Then had stated that he had not gone to the house of Khairun Nisa. He had not gone to Chaukidar or Dafadar. He had talked with villagers. On the same day, he met with Darogaji.



25. PW-3 is Tarannum Khatoon. She had deposed that on the alleged date and time of occurrence, she was at her house. An altercation was going on outside her house. Her father, Khurshid Imam had gone outside to see followed by her. She had seen 15 persons who were abusing and then saw Vijay Singh, Md. Ali, Indradeo Yadav, Shivanandan Yadav, Shivnandan Yadav, Md. Parweej, Deo Nandan Yadav, Rajeshwar Yadav, Ram Rup Yadav @ Ram Roop Yadav, Radhey Yadav, Radhey Dusadh @ Radhey Paswan, Md. Wasi Ahmad @ Md. Wasim Ahmad. Others were also present but she failed to identify. Khairun ordered Vijay to kill whereupon Vijay fired over her father who had got miraculous escape. Then Radhey, Wasi, Taqui, Md. Ali, Perweej who were carrying bomb made house trespass and then, Radhey hurled bomb over Asghar as a result of which, he became injured. She rushed in rescue whereupon Wasi Ahmad hurled bomb upon her as a result of which, she also sustained injury. Two of her fingers got blown up. Then thereafter, they were lifted to hospital and from there to Magadh Medical College where she remained for two months. Asghar regained sense after four days. Claimed identification of the accused. During cross-examination, she had deposed that name of grand-father was Abdul Aziz. Saleha Khatoon was her grand-mother. Wazi Ahmad and Haji Abdul Rashid were brothers. They have got three sisters, namely,



Sufia, Saleha and Naisa. She is not knowing whether sons of Sufia had migrated to Pakistan or not but they are not present here. Asghar and Arshad @ Guddu are her brothers. Khairun Nisa is the wife of Haji Abdul Rashid, own brother of her grand-mother who died much earlier. Khairun Nisa is also dead. Then at para-5, there happens to be questionnaire relating to her great grand maternal father. In para-6, she had stated that accused persons are of Babhandih as well as Moghraine. Then had shown ignorance with regard to criminal case whereunder her father along with others have been convicted. At para-9, said that at the time when accused persons were abusing on that very moment, her co-villagers-Hamid Ahmad, Hushan Yadav, Lalji Yadav, Ramdhan Yadav were present. In para-10, she had stated that at the time of occurrence, maize crop was standing at three sides of her house. Then had disclosed that front of her house happens to be eastern side. There happens to be channel east to her house. Then had stated that there happens to be one Darwaza also west to her house. In para-11, she had stated that occurrence took place inside her house. She along with her father was inside her house. Choukidar and Dafadar came after departure of the accused. Then had stated that she had seen the police at Amas Hospital as well as at Magadh Medical College. She had disclosed regarding the occurrence at both place but she is unable to say whether the same was noted down or not. In para-



13, she had admitted that Vijay had purchased land from Khairun Nisa and in the aforesaid background there happens to be strained relationship in between Vijay as well as her father. In para-15, she had stated that clothe which she was wearing got burnt on account of explosion were shown to the police or not, she is not knowing. Then had denied the suggestion that no such type of occurrence had ever taken place rather she at the instance of her father had deposed against the accused persons.

26. PW-4 had deposed that on the alleged date and time of occurrence, all of them were inside the house. They heard abusive language coming from outside whereupon, she along with her husband, children came outside to her Darwaza where they have seen Vijay Singh, Md. Ali, Indradeo Yadav, Shivanandan Yadav, Shivnandan Yadav, Md. Parwej, Deo Nandan Yadav, Rajeshwar Yadav, Ram Rup Yadav @ Ram Roop Yadav, Radhey Yadav, Radhey Dusadh @ Radhey Paswan, Md. Wasi Ahmad @ Md. Wasim Ahmad. Apart from them, others were also present whom she could not identified. At that very time, Vijay was armed with gun while others were carrying Jhola in which bombs were kept. On the order of Khairun Nisa, Vijay shot at aiming her husband who had miraculous escape. Then thereafter, Khairun and Vijay ordered to kill by hurling bomb whereupon, Radhey, Wasi, Taqui, Parwej and Md. Ali made



house trespass and then, Radhey hurled bomb over Asghar who was near courtyard (Angan) as a result of which he became severely injured. Her daughter Tarannum rushed in his rescue over whom Wasi hurled bomb causing injury. She had also heard sound of explosion coming from outside. Asghar and Tarannum were taken to Amas Hospital and therefrom to Magadh Hospital where they were treated for two months. Then had stated that mother-in-law, Saleha Khatoon had gifted her land to her as well as her children. Her father Wasi Ahmad had also gifted land. Khairun Nisa had given the aforesaid land to others. Identified the accused. In para-8 of her cross-examination, she had shown ignorance with regard to partition of the land. Then had stated that Syed Mazhar Hussain was her step maternal uncle. Md. Ali is the son of aforesaid Syed Mazhar Hussain. She is not knowing whether at the time of occurrence Md. Ali was a student. Md. Ali is the sister's son of Khairun Nisa. Then at para-11, she had shown ignorance with regard to affirmation of conviction against her husband by the Supreme Court. In likewise manner, she had also shown ignorance with regard to any title suit whereunder Khairun Nisa had won. In para-12, she had stated that the occurrence took place in the courtyard. She had narrated that the occurrence took place before arrival of so many persons including Ramdhan, Lalji, Hamid and Hushan Yadav. They came after the occurrence. In para-



14, she had stated that on account of explosion, the clothe worn by Tarannum as well as Asghar got burnt. She could not say whether the clothe worn by Khurshid got burnt or not. In para-15 she had stated that she is unable to say whether her husband is at strained relationship with Vijay and Radhey Dusad. Then had stated that she has deposed falsely in order to grab the land of Khairun Nisa.

27. PW-5 had deposed that on the alleged date and time of occurrence, he along with his mother, Manaura Khatoon, father, Khurshid Imam, brother, Asghar Imam, sister, Tarannum Khatoon, Saba Parveen was inside his house. While they were inside the house, heard sound of abuse coming from outside. After hearing the same, he along with his father came out from the house whereupon he had seen Khairun Nisa, Vijay Singh, Radhey Dusad, Shivanandan Yadav son of late Dhumar Yadav, Shivnandan Yadav, son of Musafir Yadav, Radhey Yadav, Wasi Ahmad, Taqui Ahmad, Md. Ali. Out of them, Vijay was armed with gun and rest were possessing a bag having bombs. On an order of Khairun Nisa, Vijay Singh fired aiming at his father who got a miraculous escape on account of falling over ground. Then thereafter, Vijay Singh and Khairun Nisa ordered to kill all the family members by the bomb. Radhey Dusad, Wasi Ahamad, Taqui Ahmad, Parvej Ahmad, Md. Ali made house trespass. Vijay and Khairun Nisa remained near door. They also have gone inside the



house. Radhey Dusad hurled bomb over his father as a result of which, splinters of bomb caused injury over his shoulder, cheek. Eardrum became torn. Index finger and middle finger also sustained fracture. He after sustaining injury fell down. He had sustained injury near door of Kitchen in Angan. His sister Tarannum rushed to lift, during course thereof, Wasi hurled bomb over Tarannum as a result of which, she also became injured and fell down. Then thereafter, they were taken to Amas police station and therefrom to hospital. Then thereafter, they were taken to Magadh Medical where they were treated. They remained there for two minutes. O/C of Magadh Medical College police station had recorded his statement which has been exhibited as Ext-2. Then had asserted that Wasi Ahmad had also hurled bomb. Then had stated that his statement was recorded on 24.08.1992. Then had stated that police of Amas PS had also recorded his statement on 09.09.1992. Then had deposited the X-ray report, plate, discharge slip. Bed-head ticket relating to him as well as his sister. Identified the accused.

28. During cross-examination, he had stated that at the time occurrence, he was reading in the high school while his sister was reading in private school, Chandi Asthan. At para-16 had stated that on the date of occurrence, school was opened. At para-19, he had stated that on the alleged dated and time of occurrence altogether 6



persons of his family were inside the house. In para-20, he had stated that kitchen is situated at the western flank of his house in the Angan. He along with Tarannum became injured at Angan as well as near the door of kitchen. They fell down in the kitchen. Bomb was hurled inside the kitchen. He is unable to say whether by bomb explosion the articles having kept inside the kitchen was destroyed or not. In para 21, he had stated that Tarannum was engaged in preparing food in the kitchen. He had gone to take breakfast. At that very time, his father, mother, brother were in the Angan. At the time of hurling bomb, they scattered. His parents, brother have not run from inside the house during course of hurling bomb rather they remained in the house. They have not sustained injury. Then had said that his parent had got land dispute with some of the villagers. In para-23, he had stated that as Vijay is claiming to have purchased the land from Khairun Nisa, on account thereof, there happens to be land dispute with him. Then again at para-24, he had stated that Khairun Nisa happens to be Mausi of Md. Ali of Village-Ahiyapur. In para-27, he had stated that he is unable to say whether the articles kept inside the kitchen became scattered or not as he had fallen after sustaining injury. While lifting him, Tarannum had sustained bomb injury. Then at para-31 had stated that at the time of occurrence, he was wearing shirt pant while Tarannum was wearing Salwar-Sameez. Apparels of both the injured



were burnt. Then had stated that the person who hurled bomb were in front of them at a distance of 5-6 steps. In para-32, he had stated that there happens to be two doors in the kitchen. The first one opens in Angan while the second one outside. He along with Tarannum had sustained injury near the door opening in the Angan. He had not seen how the accused persons fled therefrom. In para-33, he had stated that after sustaining splinter, he became injured. He became unconscious. He regained sense after four days at Medical College. In para-34, he had stated that he had also seen his father Khurshid in the hospital. He had denied the suggestion at para-37, that they had sustained injury during course of explosion of firecrackers and then getting an opportunity got this false case filed.

29. PW-6 is Khurshid Imam, informant. He had deposed that on the alleged date and time of occurrence, he was at his house. Vijay Singh armed with gun came along with others who were carrying bags containing bomb. Vijay Singh fired from his gun. He fell down as a result of which, he saved himself. Khairun Nisa, Vijay Singh stood near the door of his Angan. Md. Ali, Wasi Ahmad, Taqui Ahmad, Radhey Dusad, Parvej Ahmad made house trespass and then thereafter, Radhey hurled bomb over his son, Asghar Imam. Asghar fell down after sustaining injury. Wasi hurled bomb over his daughter Tarannum as a result of which she also became badly injured. He took



his son to P.S. and then to PHC and then ANMCH. At police station, he had filed written report scribed by Arshad @ Guddu having his signature (Exhibited). His son and daughter remained at Medical College for two months. Identified the accused. At para-8, 9, there happens to be cross-examination relating to family affair, devolvment of property. In the same manner, as cross-examined from other witnesses. Then at para-10 had stated that Monauwar Khatoon is his wife. He has four sons and daughters, Tarannum and Monauwar are daughters. Akbar and Asghar are sons. Then had said that Kausar is also his daughter. Again at para-12, 13, there happens to be cross-examination relating to family affair. In para-14, he had stated that Vijay Sing never told him that he had purchased land from Khairun Nisa. At para-15, he had stated that he had got no land dispute with Khairun Nisa. Again clarified that he had forbidden Khairun Nisa from selling land. At para-16, he had stated that he knew, Kamru, Asghar, Hamid, Abdul Rashid, Nazrul Hasan. Hamid is son of Wasi Ahmad. Asghar is his son. Nazrul is his nephew. Abdul Aziz is the brother-in-law (Bahnoi) of Hamid. At para-17, he had stated that Radhey Dusad is not looking after the affairs of Khairun Nisa. In para-18, he had stated that Radhey Dusadh had instituted a case against him along with Hamid, Aziz, Nazrul, Akbar, Asghar and Kamrul. He had further shown his alias name as Majo Babu. Annu



Babu is son of Naima Khatoon. He is not knowing whether they have been convicted in the aforesaid case. He is not knowing whether conviction has been confirmed or not. The at para-19 had stated that he is not knowing that the order of SDO has been set aside by the High Court at the instance of Khairun Nisa. In para-21, he had stated that bomb was hurled from all sides. For about 10 minutes, bomb was hurled. During hurling of bomb, on an alarm of Asghar, Tarannum came. Then at para-22, he had stated that left palm of Asghar and right palm of Tarannum got burnt due to explosion. In para-23 stated that none other of his family members had sustained any kind of injury. In para-25, he had stated that he had got no dispute with others since before save and except Khairun Nisa and Radhey Dusad. He had further stated that the maize crop which was standing all around his house was trampled. In para-28, he had stated that after death of Khairun Nisa, properties left by her came in his possession. Then at para-29 had denied the suggestion that only to grab land belonging to Khairun Nisa and to deprive of the genuine purchasers from Khairun Nisa from possessing the land, this case has purposely been filed. It has also been suggested that as they have been convicted in a case institute by Radhey, on account thereof, accused persons have been intentionally roped in.

30. PW-7, Hasan Yada @ Husan Yadav, PW-8, Lalji



Yadav, have not supported the case of the prosecution, on account thereof, they were also declared hostile. Even thereafter, prosecution could not be able to gain substantial material.

31. PW-9 is the retired Clerk, Health Department, formal in nature who had exhibited discharge ticket of Asghar, Tarannum, X-ray report, X-ray plate. During cross-examination he had admitted that he was not at all posted at NMCH apart from having been examined on other aspect. PW-10 is an Advocate Clerk, who had exhibited sanction order.

32. As is evident, defence had adduced oral evidence, Ext-A, C.C of Cr. Revision No. 133/1999, Ext-B, C.C. of judgment of Cr. Appeal No. 14/1998, Ext-C, C.C of order passed in LPA No. 1325/1999.

33. After scrutinizing the material available on the record, as discussed hereinabove, it is apparent that no independent witness came forward to support the case of the prosecution. Whoever been are own family members. Furthermore, from their evidences, it is crystal clear that persons connected with Khairun Nisa who happens to be hostile with the family of prosecution party, and with whom the informant has indulged in different kind of cases related with her property, have been made an accused. It has also been admitted that majority of the accused persons are on litigating terms



since before the occurrence.

34. From the evidence of PWs, it has been gathered that prosecution had bifurcated the accused with respect to their activity. Firstly, Vijay Singh has been shown to fire at informant at his Darwaza, which he escaped, then regarding accused, Radhey Dusad, Wasi Ahmad, Taqui Ahmad, Md. Ali and Pervej came inside the house, out of whom, Radhey Dusad and Wasi Ahmad hurled bomb causing injury to Asghar, Tarannum. Other also hurled bomb inside and outside house.

35. Apart from contradiction visualizing in the evidence of PWs, it is evident that on account of non examination of I.O. the appellants/accused have been deprived of an opportunity to procure substantial evidence concerning objective finding relating to P.O. This happens to be an important factor, as prosecution had alleged that not only inside house, rather outside his house, bombs were hurled, and so, by non examination of the I.O., the accused/appellants could not got an opportunity to test the same.

36. True it is that doctor has not been examined and on account thereof, injury report of respective injured has not been an exhibit of the record. That does not mean that the consistent evidence of the witnesses including that of injured should be disbelieved, unless and until there happens to be some sort of deficiency on that very



score.

37. Enmity is the double edged sword. It may be a motive for commission of the occurrence simultaneously it may be a cause of false implication. As is found, admittedly, both the parties are on strained relationship. Cases are being fought amongst them. In the aforesaid background, it has been found that the informant, Khurshid Alam would have been the main target. In the aforesaid background, when the evidences have been properly scrutinized, it is apparent that the prosecution had overdone its exercise in getting the framework prepared. There happens to be conclusive evidence that after hearing abusive words coming from outside, all the family members came out, and during course thereof, Vijay Singh fired single round over the informant on the order of Khairun Nisa. All other accused armed with bombs were present. All the family members were present. None of them rushed to hide themselves. Then in that circumstance, why not second round was fired, bombs were hurled upon them. On the other hand, it is the allegation, that Vijay and Khairun ordered to kill all the family members, whereupon, the members of the prosecution party as well as some of the accused, came inside, and then hurled bomb, is a circumstance which attracts for proper consideration.

38. As per prosecution version, motive of accused was



to commit murder of all the family members, which would have been easily carried out at the Darwaza itself as there was no obstacle.

39. This allegation should be viewed through another angle. Informant happens to be person causing hindrance. Litigation was with the informant. Informant was present outside as well as inside the Angan. Then in that circumstance, leaving apart informant, hurling bomb over minors is another circumstance, as it will serve no purpose. No allegation has been attributed that bomb was hurled over informant.

40. Now the aforesaid theme has to be seen under the garb of suggestion given to the injured, as they had sustained it while playing with crackers. Had there been examination of doctor, it would have been clarified whether the injuries over the persons of respective injured were due to bomb or crackers, which would have played a pivotal role in deciding the case.

41. In *Latesh @ Dadu Baburao Karlekar v. State of Maharashtra* as reported in (2018) 3 SCC 66 under paras 45 & 46, it has been held as follows

45. Both the courts went wrong in finding these accused guilty without there being any evidence which points out at the guilt of these accused beyond reasonable doubt. The prosecution has to prove the guilt of the accused beyond all reasonable doubt. The accused has a profound right not to be convicted for an offence which is not established by the evidential standard of proof beyond reasonable doubt. The law does not permit



the court to convict the accused based on suspicion or on the basis of preponderance of probability.

46. In our opinion, an ingenious mind can question anything and, on the other hand, there is nothing which it cannot convince. When you consider the facts, you have a reasonable doubt as to whether the matter is proved or whether it is not a reasonable doubt in this sense. The reasonableness of a doubt must be a practical one and not on an abstract theoretical hypothesis. Reasonableness is a virtue that forms as a mean between the excessive caution and excessive indifference to a doubt.

42. After giving anxious consideration to the facts of the case, it is evident that prosecution has not been able to prove its case above board, hence, the finding recorded by the learned lower court is set aside. All these appeals are allowed.

43. Since all the appellants of Cr. Appeal Nos. 2170 and 1993 of 2017 are on bail, they are discharged from the liability of their bail bonds.

44. Since appellants, Md. Wasi Ahmad @ Md. Wasim Ahmad [Cr. Appeal (SJ) No. 2590/2017], Radhey Dusadh [Cr. Appeal (SJ) No. 2528/2017] and Vijay Singh [Cr. Appeal (SJ) No. 2270/2017] are under custody, they are directed to be released forthwith if not required in any other case.

perwez

(Aditya Kumar Trivedi, J)

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