

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.505 of 1994

1. Ramroop Nonia, son of Somar Nonia,
2. Rajendra Nonia, son of Somar Nonia,
3. Ram Ishwar Nonia, son of Somar Nonia,
4. Badri Kandu, son of Bishram Kandu,
5. Lalit Kandu, son of Gulab Chand Kandu,
6. Baliram Kandu, son of Shankar Kandu,
7. Krishna Kandu, son of Ram Dayal Kandu,
8. Ram Dayal Kandu, son of Juthan Kandu &
9. Gulabchand Kandu, son of Bishram Kandu, all resident of village-Amjhar
Tola Budhan Bigha, P.S.Belaganj in the district of Gaya

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 542 of 1994

Shankar Kandu, son of Juthan Kandu, resident of village-Amjhar Tola,
Budhan Bigha, P.S.Belaganj, District-Gaya.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 505 of 1994)

For the Appellants : Miss Divya, Amicus Curiae

For the Respondent : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 542 of 1994)

For the Appellant : Miss Divya, Amicus Curiae

For the Respondent : Mr. S.C.Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

20-08-2019

Both the above stated criminal appeals have
been preferred against impugned judgment of conviction



and sentence order dated 16.09.1994 passed by learned 10th Additional Sessions Judge, Gaya in Sessions Trial No.115 of 1991/218 of 1990 by which and whereunder the learned 10th Additional Sessions Judge (hereinafter referred to as the 'trial Court') convicted the appellants for the offence punishable under Section 302/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life thereunder and furthermore, learned trial Court convicted the appellant Badri Kandu for the offence punishable under Section 147 of the Indian Penal Code whereas convicted the remaining appellants for the offence punishable under Section 148 of the Indian Penal Code and sentenced the appellant Badri Kandu to undergo rigorous imprisonment for six months for the offence punishable under Section 147 of the Indian Penal Code and remaining appellants to undergo rigorous imprisonment for one year for the offence punishable under Section 148 of the Indian Penal Code. The learned trial Court further convicted the appellant Ramdayal Kandu for the offence punishable under Section 3 and 5 of the Explosive Substance Act and appellant Shankar Kandu for the offence punishable under Section 27 of the



Arms Act and, accordingly, sentenced the appellant Ramdayal Kandu to undergo rigorous imprisonment for seven years for offence punishable under Section 3 and 5 of the Explosive Substance Act and sentenced the appellant Shankar Kandu to undergo rigorous imprisonment for five years for the offence punishable under Section 27 of the Arms Act. The learned trial Court also convicted all the appellants for the offence punishable under Section 201 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for five years thereunder. However, the learned trial Court directed that all the sentences shall run concurrently. Since both the above stated appeals have arisen out of common judgment of conviction and sentence order, the above stated both criminal appeals are being disposed of by this common judgment.

2. Briefly stated prosecution case is that informant Ramlakhan Jamadar gave his statement to PW-7 (Anil Kumar Singh) on 21.07.1988 at 7 P.M. in presence of his son Sugriv to this effect that on the same day at about 4 P.M. his younger brother, namely, Jagdish Jamadar was returning to his home from Belaganj market



and as soon as he reached near Devasthan of his village, Ramchandra Nonia, Ramswaroop Nonia, Ramchandra Nonia, Ramishwar Nonia each armed with gun, Badri Kandu armed with lathi, Lalit Kandu armed with gun, Shankar Kandu armed with gun, Baliram Kandu armed with gun, Krishna Kandu armed with *fasuli*, Ramdayal Kandu armed with bomb, Gulabchand Kandu armed with *fasuli*, total 11 in number, came out from sugarcane field and started assaulting him. The above stated persons assaulted Jagdish Jamadar by means of gun, bomb and *fasuli* and killed Jagdish Jamadar. Informant Ramlakhan Jamadar further claimed that he as well as his son Ravindra Jamadar (PW-3) ran towards the place of occurrence raising alarm but the aforesaid persons opened fire on them as a result of which PW-3 sustained fire arm injury. He, further, claimed that all the aforesaid persons took the dead body of deceased Jagdish Jamadar and threw it into the water of *Aahar*. He, further, claimed that he and his other family members went near the *Aahar* and brought the dead body of deceased Jagdish Jamadar when the aforesaid persons left the place of occurrence. He, further, claimed that the wife of deceased, namely, Kaili



Devi (PW-2) had also sustained some injury in the aforesaid occurrence. He, further, claimed that prior to the alleged occurrence his brother Kailash and his cousin brother Laldas were killed and the FIR named accused persons were made accused in the case of killing of the aforesaid two persons. He, further, claimed that the FIR named accused persons were pressurizing the deceased Jagdish Jamadar to change his statement of the above stated murder case but deceased Jagdish Jamadar did not buckle upon the pressure of the aforesaid persons as a result of which deceased Jagdish Jamadar was killed by the above stated persons.

3. On the basis of aforesaid fardbeyan, Belaganj P.S. Case No.91 of 1988 under Sections 147, 148, 149, 341, 323 and 302 of the Indian Penal Code and Section 27 of the Arms Act and Section 3 and 5 of the Explosive Substance Act was registered and formal Fir was drawn up against the appellants on the same day for the above stated occurrence.

4. PW-7 (Anil Kumar Singh) took charge of investigation and after completion of investigation, he submitted chargesheet against the appellants. The



cognizance of the offence was taken and the case was committed to the Court of Sessions. In course of trial, prosecution examined, altogether, nine prosecution witnesses and also got exhibited inquest report, postmortem report etc as documentary evidence. All the appellants stood charged for the offences punishable under Sections 302/149, 302/34 and 201 of the Indian Penal Code whereas appellant Badri Kandu stood separately charged for the offence punishable under Section 27 of the Arms Act whereas remaining appellants stood charged for the offence punishable under Section 148 of the Indian Penal Code. Furthermore, appellants Ramroop Nonia, Rajendra Nonia, Ram Ishwar Nonia, Lalit Kandu, Shankar Kandu and Baliram Kandu also stood charged for the offence punishable under Section 27 of the Arms Act whereas appellant Ramdayal Kandu stood charged for the offence punishable under Section 3 and 5 of the Explosive Substance Act. The charges were read over and explained to them to which they denied the charges and claimed to be tried.

5. The statements of appellants were recorded under Section 313 of the Cr.P.C. in which they reiterated



their innocence and claimed their false implication. However, appellant Shankar Kandu, specifically, claimed that on the alleged date of occurrence, he was on his duty whereas some of the appellants, specifically, claimed that they were not accused in murder case of Laldas. Moreover, all the appellants claimed their false implication.

6. One defence witness was examined to prove that on the alleged date and time of the occurrence, the appellant Shankar Kandu was on his duty.

7. Learned trial Court after scanning and evaluating the evidences available on the record, passed the impugned judgment of conviction and sentence order having relied upon testimonies of PW-1 (Manju Kumari), PW-2 (Kaili Devi) and PW-3 (Ravinder Jamadar) who claimed themselves to be eye witness of the alleged occurrence.

8. Miss Divya, Advocate, learned Amicus Curiae appearing for the appellants assailed the impugned judgment of conviction and sentence order arguing that the learned trial Court failed to appreciate the evidences available on the record in right perspective as a result



whereof the learned trial Court came to wrong conclusion. She, further, submitted that it is well known that in criminal case, prosecution is bound to prove its case beyond all shadow of reasonable doubts but in the present case, prosecution failed to discharge its judicial duty as there are several contradictions and improvements in the statements of PW-1 (Manju Kumari), PW-2 (Kaili Devi) and PW-3 (Ravindra Jamadar) which create doubt about their claims but the learned trial Court failed to take note of aforesaid contradictions and improvements. She, next, submitted that the statements of PW-1, PW-2 and PW-3 are not consistent with the medical evidence. Continuing her submission, she submitted that PW-3 (Ravindra Jamadar) claimed that he had sustained pellet injuries when he went to save the deceased Jagdish Jamadar but PW-5 (Dr. Ramesh Kumar Rai) did not find any fire arm injury on the person of PW-3 (Ravindra Jamadar). She further, submitted that PW-5 (Dr. Ramesh Kumar Rai) found injuries of swelling with abrasions on back of PW-3 (Ravindra Jamadar) and, therefore, the aforesaid injuries contradict the claim of PW-3 because PW-3 has, nowhere, stated that he, sustained injury on his back rather PW-3



(Ravindra Jamadar) claims that while he went running to save the deceased Jagdish Jamadar, he sustained fire arm injury and, therefore, in the aforesaid circumstance, it is very difficult to believe on the statement of PW-3 (Ravindra Jamadar). She, further, submitted that PW-3 claimed that near about four *fasuli* blows were given to the deceased Jagdish Jamadar by the appellants but the aforesaid claim of PW-3 is not corroborated by the postmortem report as only one incised penetrating wound was found on the person of deceased Jagdish Jamadar. She, further, submitted that similarly, PW-2 (Kaili Devi) claimed that deceased Jagdish Jamadar sustained fire arm injury on his abdomen but postmortem report of deceased Jagdish Jamadar goes to show that fire arm injury was found on his scalp and, therefore, the aforesaid contradictions indicate that neither PW-2 (Kaili Devi) nor PW-3 (Ravindra Jamadar) had seen the actual killing of the deceased. She, further, submitted that no doubt PW-5 (Dr. Ramesh Kumar Rai) claimed to have found one incised wound 1"x1/2"x1/4" on the right wrist joint of PW-2 (Kaili Devi) and, according to opinion of PW-5 (Dr. Ramesh Kumar Rai), the aforesaid injury was simple in



nature caused by sharp cutting weapon but the aforesaid injury found on the person of PW-2 (Kaili Devi) was superficial in nature and PW-5 admitted in his cross-examination that the aforesaid injury might be caused, if the bangles are broken. She, submitted that PW-2 claimed that she sustained injury caused by *fasuli* but it is well known fact that *fasuli* is a heavy weapon and if *fasuli* blow is given with force, the injury must be deep but the injury found on persons of PW-2 was superficial in nature and, therefore, the aforesaid circumstance creates doubt about the claim of PW-2 (Kaili Devi)

9. She, next, submitted that it is true that the status of injured witness is on better footing to that of general witness but in the present case, the alleged injuries found on the person of PW-2 (Kaili Devi) and PW-3 (Ravindra Jamadar) appear to be manufactured and doubtful and, therefore, no reliance can safely be placed upon the testimonies of PWs.2 and 3.

10. She referred the decision of **State of Harayana vrs. Ram Singh reported in (2002) 2 SCC 426** to fortify her contention that if there is contradiction between medical evidence and ocular evidence, the



prosecution case shall be deemed to doubtful.

11. She, further, submitted that the fact and circumstances of the case reflects that there was no common object of the appellants and, therefore, the learned trial Court committed error in convicting all the appellants for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code.

12. She, next, submitted that fardbeyan of informant Ramlakhan Jamadar was proved as Ext-4 and the fardbeyan of informant Ramlakhan Jamadar goes to show that while deceased Jagdish Jamadar was returning from the market, the appellants came out from *Ketari* field and committed the alleged occurrence but in course of trial, almost all the so called eye witnesses changed the prosecution story saying that first the appellants went to the house of deceased Jagdish Jamadar and after that they caught the deceased Jagdish Jamadar near *Devi Asthan*. She, submitted that the so called eye witnesses purposely changed the prosecution story so that they could become an eye witness of the alleged occurrence and as a matter of fact, PWs.1,2 and 3 had not seen the actual killing of the deceased.



13. She, next submitted that deceased Jagdish Jamadar was killed by some unknown nexalities near the Aahar which is far from the house of PWs.1,2 and 3 and that is the reason, PW-7 (Anil Kumar Singh) did not find any blood near the Devi *Asthan* rather the blood was found near the Aahar. She, further, submitted that if all the above stated facts are taken into consideration, then it can easily be said that the prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and, therefore, the impugned judgment of conviction and sentence order cannot sustain in the eye of law.

14. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that PWs.1,2 and 3 are family members of deceased Jagdish Jamadar and they have very clearly stated that while they were sitting at their door, the appellants being armed with deadly weapons, came there in search of deceased Jagdish Jamadar and, in the meantime, deceased Jagdish Jamadar was returning from market and having seen deceased Jagdish Jamadar, the appellants ran towards him and caught him near Devi *Asthan* where deceased Jagdish



Jamadar was assaulted and killed by the appellants and after that the dead body of deceased Jagdish Jamadar was taken near Aahar and the dead body of deceased Jagdish Jamadar was thrown in the Aahar by the appellants. He, further, submitted that PW-4 (Mithilesh Kumar Sinha) did postmortem examination of the dead body of deceased Jagdish Jamadar and found not only fire arm injury and incised wounds but also injury caused by explosive substance and the aforesaid fact corroborates the claim of PWs.1,2 and 3.

15. Having heard the rival contentions of the parties, we went through the record along with the lower court records. Admittedly, altogether nine prosecution witnesses were examined by the prosecution to bring the appellants guilty home. Out of the aforesaid nine prosecution witnesses, PWs-1,2 and 3 are claimed themselves to be eye witness of the alleged occurrence whereas PW-6 (Binay Kumar) is a witness on the inquest report, PW-8 (Ramnandan Singh) and PW-9 (Ravi Shankar Prasad) are formal witnesses whereas PW-4 did postmortem examination on the dead body of the deceased Jagdish Jamadar whereas PW-5 (Dr. Ramesh



Kumar Rai) examined the injuries of PWs.2 and 3 and PW-7 (Anil Kumar Singh) is investigating officer.

16. PW-1 (Manju Kumari) is daughter of deceased Jagdish Jamadar. She claims herself to be eye witness of the alleged occurrence. She states that at the time of alleged occurrence, she along with her brother Ravindra Jamadar ((PW-3) was sitting at her door and in the meantime, appellants being armed with guns and other weapons came there and started abusing them and also started searching her father, namely, Jagdish Jamadar. She, further, claims that her mother had gone to Bela Bazar. She, further, claims that in the meantime, appellant Lalit Kandu uttered that deceased Jagdish Jamadar was coming and after that all the appellants entered into *Ketari* field and went on the road and encircled the deceased Jagdish Jamadar near *Devi Asthan* bridge. She further, states that she as well as her brother, uncle and aunt also followed the appellants and saw that appellant Badri Kandu gave one *lathi* blow to her father whereas appellant Ramdayal Kandu hurled bomb on her father. She, further, states that her brother Ravindra Jamadar (PW-3) escaped unhurt luckily though the fire touched the back of her



brother. She, further, claims that in the meantime, her mother also came there and tried to save her father but appellant Krishna Kandhu assaulted her mother as a result of which her mother sustained injury on her wrist. She, further, states that she went to save her father but appellant Badri Kandhu over threw her and, thereafter, appellant Gulabchand Kandhu cut both the elbows of her father by means of *fasuli* and the appellants took her father at *Aahar* where appellant Shankar Kandhu shot fire on her father as a result of which her father died and after that the dead body of her father was thrown in the *Aahar*. She, further claims that her father was informant in murder case of her uncle Laldas whereas Babulal Nonia, Dwarika Nonia, Ramchandra Nonia and Suresh, were accused in the aforesaid case and Ramchandra Nonia used to presurize her father to withdraw the above stated case but her father refused to obey the command of appellants and that was the reason, her father was killed by the appellants.

17. The perusal of deposition of PW-1 (Manju Kumari) goes to show that appellants first came at her door and after that when they saw the deceased Jagdish



Jamadar coming towards his house, they left the door of PW-1 (Manju Kumari) and went near *Deviasthan* where they caught hold the deceased and assaulted the deceased Jagdish Jamadar near *Devi Asthan*. The statement of PW-1 is not in consonance with the fardbeyan of the informant because informant in his fardbeyan claims that the appellants were hidden in a field and when the deceased Jagdish Jamadar was returning from market, all of a sudden, they came out from the field and encircled the deceased Jagdish Jamadar and, thereafter, assaulted him with various weapons. Furthermore, the deposition of this witness goes to show that she along with her brother Ravindra Jamadar (PW-3), her uncle and aunt went running to save the deceased Jagdish Jamadar and, thereafter, appellant, Rahebdra Nonia opened fire but the aforesaid fire only touched the back of PW-3 (Ravindra Jamadar). No doubt, the injury was found on the back of PW-3 (Ravindra Jamadar) but according to doctor PW-5 (Dr. Ramesh Kumar Rai), the aforesaid injury was caused by hard and blunt substance and not by the fire arm. Furthermore, this witness has claimed that both elbows of deceased were cut by appellant Gulabchand Kandhu by



means of *fasuli* but the statement of this witness does not get corroboration from the postmortem report of deceased Jagdish Jamadar. This witness further admitted that she had seen her father from her house when her father was on the bridge. She also admitted that her father sustained injury on the bridge and the blood was fallen there. This witness, further, admitted that while her father was being taken by the appellants, the blood had fallen on the road. She also stated that her father sustained fire arm injury on his abdomen. The attention of this witness was drawn towards her previous statement recorded under Section 161 of the Cr.P.C. and she claimed that she had made statement before the police that appellants Rajendra Nonia, Ramchander, Ram Ishwar Nonia, Ramroop Nonia, Lalit Kandu, Shankar Kandu and Baliram Kandu were carrying gun whereas Gulabchand Kandu and Krishna Kandu were carrying *fasuli* and appellant Ramdayal Kandu was carrying bomb in their hands and others were carrying *lathi* in their hands. She also stated that she had made statement before the police that appellant Lalit Kandu uttered that deceased Jagdish Jamadar was coming and after that appellants came out from *Ketari* field and



she, further, claimed that she had stated before the police that the appellants started assaulting her father and she as well as others went running to the place of occurrence. She also claimed that she had made statement before the police that appellant Badri Kandu gave *lathi* blow to her father whereas appellant Ramdayal Kandu hurled bomb upon her father and, furthermore, her brother (PW-2) went to save his father but Ramchandra opened fire which missed though touched the back of PW-2. She also claimed that she had made statement before the police that appellant Krishna Kandu assaulted her mother Manju Kumari (PW-1) as a result whereof she sustained injury on her wrist. She also claimed that she had made statement before the police that appellant Shankar Kandu shot fire on the deceased Jagdish Jamadar but PW-7 (Anil Kumar Singh), the investigating officer of this case admitted that PW-1 had not given statement to him that appellants Rajendra Nonia, Ramchandra, Ramroop Nonia, Ram Ishwar Nonia, Lalit Kandu, Shankar Kandu and Baliram Kandu were carrying gun whereas appellants Gulabchand and Krishna were carrying *fasuli*, appellant Badri was carrying *lathi* and appellant Ramdayal Kandu



was carrying bomb at the time of alleged occurrence but she had claimed that all the FIR named accused were armed with weapons. Furthermore, PW-7 (Anil Kumar Singh) admitted that PW-1 had not made statement before him that appellant Lalit Kandu uttered that deceased Jagdish Jamadar was coming. PW-7 (Anil Kumar Singh) further stated that PW-1 had not made statement before him that she had gone to save the deceased Jagdish Jamadar and she had not shown any injury to him, and, furthermore, PW-1 (Manju Kumari) had not claimed before him that appellant Badri Kandu had given *lathi* blow and appellant Ramdayal Kandu had hurled bomb at the deceased and when PW-3 (Ravindra Jamadar) went to save the deceased Jagdish Jamadar, Ramchandra opened fire and the aforesaid fire touched the back of PW-3 (Ravinder Jamadar). PW-7 (Anil Kumar Singh) further stated that PW-1 had also not made statement before him that her mother also went to save her father but she was assaulted by appellant Krishna Nonia. PW-7 further stated that PW-1 had not made statement before him that her mother Manju Kumari (PW-1) and her brother Ravindra Jamadar (PW-3) had also sustained injury. The perusal of



above stated statements of PWs.1 and 7, we find that PW-1 improved her statement in course of trial as in course of investigation when her statement was recorded by the police, she had not made such statements as stated by her before the trial court. Furthermore, we find that she has also changed the manner of occurrence as the informant claimed in his fardbeyan that the deceased Jagdish Jamadar was encircled by the appellants when he was coming from the market but this witness claimed that appellants when to her house and after that they went to bridge and assaulted the deceased Jagdish Jamadar. Therefore, taking note of the aforesaid contradictions as well as improvements in the statement of PW-1, in our view, it is unsafe to rely upon the statement of PW-1 (Manju Kumari).

18. PW-2 (Kaili Devi) is the wife of deceased Jagdish Jamadar and claimed herself to be eye witness of the alleged occurrence as well as injured. She claims that at the time of alleged occurrence, she was at her door along with her daughter Manju Kumari (PW-1), Ravindra Jamadar (PW-3) and her *Gotani* as well as informant (Ramlakhan Jamadar) and in the meantime, appellants



armed with gun and *fasuli*, came there and started inquiring about deceased Jagdish Jamadar. She further claims that appellant Lalit Kandu uttered that deceased Jagdish Jamadar was coming and thereafter all the appellants went in *Ketari* field and came on bridge where they encircled the deceased Jagdish Jamadar. She, further claims that PW-1 and PW-3 and informant (Ramlakhan Jamadar) followed the appellants and witnessed the occurrence. She claims that her husband was assaulted by *lathi*, bomb and *fasuli* and after that the appellants took her husband near *Aahar*. She also claims that while her husband was being taken by the appellants in *Aahar*, her son (Ravindra Jamadar) PW-3 made attempt to save her husband but Ramchandra opened fire which touched the back of PW-3 (Ravindra Jamadar). She, further claims that appellant Krishna Kandu gave *fasuli* blow causing injury on her wrist. She, further, claims that appellant Shankar Kandu shot fire to her husband and, thereafter dead body of her husband was thrown into the *Aahar*. She, further, claims that when the appellants left the place of occurrence, the dead body of her husband was brought at her door. She also claims that the appellants were accused



in the murder case of Laldas and the appellants were insisting to her husband to depose in their favour and when her husband refused, her husband was killed by the appellants. Being cross-examined, she claimed that she had seen her husband coming from market at the time of alleged occurrence and at that time, she was at her door. The attention of this witness was drawn towards her previous statement and she claimed that she had made statement before the police to this effect that appellant Badri Kandu assaulted her husband by means of *lathi* whereas appellant Ramdayal Kandu hurled bomb and appellant Gulabchand Kandu assaulted by *fasuli* to her husband. This witness claims that appellant Shankar Kandu shot fire which hit on the abdomen of her husband. The perusal of statement of this witness goes to show that she has claimed herself to be eye witness of the alleged occurrence but PW-1 (Manju Kumari) who happens to be daughter of PW-2 (Kaili Devi) has admitted in her examination-in-chief that at the time of alleged occurrence, her mother had gone to Bela Bazar. The informant has, no where, stated in his fardbeyan about the presence of PW-2 at the time of alleged occurrence and



informant has only stated that he as well as his other family members went running to the place of occurrence when deceased Jagdish Jamadar was killed by the appellants. PW-2 (Kaili Devi) has claimed that she had sustained injury on her wrist said to be caused by *fasuli* and PW-5 found one incised wound 1"x1/2"x1/4" on the right wrist joint of PW-2 (Kaili Devi) and, according to PW-5, the aforesaid injury was found simple in nature caused by sharp cutting weapon. However, PW-5 admitted in his cross-examination that if a woman bearing bangles throws her hand on earth or on chest, then if the bangle are broken, the such type of injury may occur. Furthermore, it is a matter of common sense that *fasuli* is a heavy weapon and if *fasuli* is used by force causing injury, the injury must be deep but the injury found on the person of PW-2 (Kaili Devi) appears to be superficial in nature and, therefore taking note of the above stated infirmities in the statement of PW-2, we are of the view that no reliance can safely be placed upon the testimony of PW-2 (Kaili Devi).

19. PW-3 (Ravindra Jamadar) happens to be nephew of the deceased Jagdish Jamadar and son of



informant (Ramlakhan Jamadar). This witness also claims that at the time of alleged occurrence, he along with his father Ramlakhan Jamadar (informant), his sister Manju Kumari (PW-1) and his aunt Kaili Devi (PW-2) were at home and in the meantime, the appellants being armed with lathi, gun, *fasuli* and came there and started searching deceased Jagdish Jamadar but in the meantime, they saw deceased Jagdish Jamadar, who was returning from Bela Bazar and reached near the bridge and, thereafter, all the appellants went running near the Devi Asthan and encircled him and started assaulting deceased Jagdish Jamadar. This witness claimed that he as well as his father, sister and aunt also followed the appellants and witnessed the occurrence. This witness further stated that Ramchandra opened fire of his gun as a result of which he had sustained injury. This witness further stated that appellant Badri Kandu assaulted the deceased Jagdish Jamadar by means of *lathi*, appellant Ramdayal Kandu hurled bomb on the deceased Jagdish Jamadar whereas appellant Gulabchand Kandu assaulted the deceased Jagdish Jamadar by *fasuli* and after that all the appellants took the deceased Jagdish Jamadar near Aahar and after



that appellant Shankar Kandu shot fire on the deceased Jagdish Jamadar, and, thereafter, the dead body of deceased Jagdish Jamadar was thrown into Aahar. This witness, further, claimed that his aunt PW-2 (Kaili Devi) tried to save the deceased Jagdish Jamadar but appellant Krishna Kandu gave *fasuli* blow to PW-2 as a result of which, she sustained injury on her waist. This witness, on being cross-examined by the defence, admitted that the above stated *Aahar* was situated at village-Barbigaha which is called Kamandal. This witness, further, admitted that the aforesaid *Aahar* was at the distance of 3 to 4 *Baans* (bamboo) from the village. This witness also admitted that the temple was situated in village-Barbigaha @ Kamandal and the aforesaid temple and *Aahar* was not straight from his house whereas the road which connects the aforesaid temple and *Aahar* from his house is a zigzag road. This witness further admitted that the road which is adjacent to his house goes towards east and towards north. He also admitted that the temple was adjacent to east whereas *Aahar* was adjacent west from the aforesaid road. This witness, further, admitted that when appellants came at his door, they remained there for near about 25



minutes. This witness also admitted that he narrated the entire occurrence to his family members. This witness, further, claimed that he had also seen the deceased Jagdish Jamadar coming from Devi *Asthan*. This witness, further, claimed that he fired on him was made from south side of the temple and at that time, he was at the distance of 20 to 25 yards from the said temple. This witness also admitted that the blood was fallen where the deceased Jagdish Jamadar sustained injury. This witness, further, stated that there was no blood on the *Aahar* as the appellants had washed of the said blood. This witness also admitted that at the time of alleged occurrence, no one of his village came near the place of occurrence but the villagers of village-Kamandal had assembled there. This witness further stated that altogether four *fasuli* blows were given to deceased Jagdish Jamadar. This witness claimed to have made same statement before the police as stated by him before the trial Court. However, PW-7 (Anil Kumar Singh) in his cross-examination admitted that PW-3 (Ravindra Jamadar) had not made statement before him describing the manner of occurrence. This witness denied the suggestion of the defence that his uncle was killed by



unknown extremists and he as well as his other family members implicated the appellants on account of enmity.

20. PW-4 (Mithilesh Kumar Singh) claimed that on 22.08.1988, he did postmortem examination on the dead body of deceased Jagdish Jamadar and found following injuries:-

“Lacerated blacken sloughed opened wound over front of upper chest below neck size 4”x3/ 3/”x chest cavity deep Manubrium body of sternal and Ist to 5th costal cartilages of both side fractured into pieces, both lungs hurt blood vessals were found lacerated sloughed at pieces.

(ii) Incise penetrating wound over left loin region of abdomen abdominal wall size 1” 1/2”x1” with coil of intestine bulging through opening. Coil of intestine left kidney were found to be perforated. Penetration was filled with blood and blood clots.

(iii) Abrasion over left cheek extending to left temporal region size 3 1/2”x 1 1/4”.

(iv) One circular wound of entry size 3/4” diameter over occipital region of scalp with blacken and scorch margin which were found inverted. Occipital bone was found fracture and brain and meninges were lacerated. In brain and meninges pellet were found lodged which have been preserved in sealed container and is being sent through constable----.

Opinion – All injuries were antemortem in nature and all injuries were grievous and dangerous to life except injury no.3 which was simple in nature. Injury no.1 caused by bomb explosion and injury no.2 by sharp printed weapon, injury no.4 by fire arm and injury no.3 is by friction of hard and rough object. Death due to shock haemorrhage and comma 1, 2 and 4. Except injury no.3, the injuries are sufficient in ordinary course of nature.



Time since death from the time and PHR 24 to 36 hours approximately”.

21. PW-5 (Dr. Ramesh Kumar Rai) claimed that on 21.08.1988 at about 10 A.M. and onwards, he examined PW-2 (Kaili Devi), PW-3 (Ravindra Jamadar) and found incised wound 1”x1/2”, 1/4” on the right wrist joint on the person of PW-2 (Kaili Devi), swelling with abrasion 3/4”x1/4”x1/8” on the middle of the back and swelling abrasion 1/2”x1/4”x1/8” back of right shoulder on the person of PW-3 (Ravindra Jamadar). PW-5 (Dr. Ramesh Kumar Rai) opined that both the injuries of PW-3 (Ravindra Jamadar) were simple in nature and caused by hard and blunt substance.

22. PW-6 (Binay Kumar) is a witness on inquest report and claimed that the inquest report of the dead body of deceased Jagdish Jamadar was prepared before him.

23. PW-7 (Anil Kumar Singh) is the investigating officer and this witness claimed that informant Ramlakhan Jamadar came to Belaganj police station 21.08.1988 and gave his fardbeyan which was recorded by the police. This witness further claimed that he took the charge of investigation and inspected the place of occurrence. This witness states that the place of



occurrence was of *Kachhi* road of Amarpur Tola which was at the distance of 50 yards from Devi *Asthan* of Barbigha. This witness also states that there was a bridge towards south side of the place of occurrence at the distance of 10 feet. He found sign of foots as well as blood towards western side of *Aahar*. He, further, states that the house of appellants was at the distance of 250-300 yards from the aforesaid Devi *Asthan*. This witness also states that he found injury on the person of PW-2 (Kaili Devi) and PW-3 (Ravindra Jamadar) and sent them to hospital for treatment. On being cross-examined by the defence, this witness admitted that the place of occurrence was at the distance of 50 yards from Devi *Asthan*. He also admitted that he did not find any remains of bomb on the place of occurrence. He also admitted that he did not find any trail of blood on the place of occurrence but he found blood near *Aahar* which was at the distance of 60 to 70 yards from the place of occurrence. He, further admitted that he did not find any trail of blood between place of occurrence and said *Aahar*. Furthermore, this witness admitted that the house of deceased Jagdish Jamadar was at the distance of 500 yards from the aforesaid *Aahar*. He,



further admitted that he did not mention the distance of house of the informant from the aforesaid Devi *Asthan*. However, he admitted that the Barbigha *Basti* was situated at the distance of 250 to 300 yards from the Barbigha Devi *Asthan*. The attention of this witness was drawn towards the statement of PWs.1,2 and 3 and this witness accepted that the witnesses had not made such statements as they have made before the trial Court.

24. PW-8 (Ramnandan Singh) and PW-9 (Ravi Shankar Prasad) are witnesses of formal nature and they have stated nothing in respect of alleged occurrence.

25. Defence witness no.1 (Krishna Nand Singh) claimed that in the month of August, 1988, he was posted as Junior Engineer at Chakand Section and appellant Shankar Kandu was posted in his office as unskilled labour. This witness brought the attendance register of appellant Shankar Kandu. The defence brought the above stated document to show that at the time of alleged occurrence, appellant Shankar Kandu was present at Chakand.

26. On perusal of entire evidence of the prosecution as well as defence witness, we find that



admittedly, the alleged occurrence took place near Devi *Asthan* of Barbigha and the house of PW-1, PW-2 and PW-3 was at the distance of 250-300 yards from the aforesaid Devi *Asthan*. Furthermore, we find that PW-1, PW-2 and PW-3 claimed that after assaulting the deceased Jagdish Jamadar near Devi *Asthan*, the appellants took him to *Aahar* where appellant Shankar Kandhu shot fire on the deceased Jagdish Jamadar. Furthermore, we find that witnesses claimed that blood was fallen near Devi *Asthan* as well as between Devi *Asthan* to *Aahar*. Furthermore, we find that the distance between house of PW-1, PW-2 and PW-3 and *Aahar* was at about 500 yards. PW-7 (Anil Kumar Singh) admitted in his deposition that he did not find any blood near Devi *Asthan* nor between Devi *Asthan* and said *Aahar* though he claimed that he found blood near *Aahar*. Furthermore, Ext-4, the fardbeyan of informant Ramlakhan Jamadar goes to show that the appellants were hidden themselves in a *Ketari* field at the time of alleged occurrence and when deceased Jagdish Jamadar was returning from *Belaganj* Bazar, the appellants came out from *Ketari* field and encircled the deceased and assaulted him but PWs.1,2 and 3 stated a



different story saying that all the appellants first came at their door and started searching the deceased Jagdish Jamadar and after that they went near Devi Asthan seeing the deceased Jagdish Jamadar coming from *Belaganj* market and after that they committed the alleged occurrence. Therefore, it is obvious that PWs.1,2, and 3 changed the manner of occurrence. Learned Amicus Curiae has submitted that the above stated prosecution witnesses purposely changed the manner of occurrence so that they could become eye witness of the alleged occurrence because the Devi *Asthan* was situated at the distance of 250-300 yards from the house of above stated prosecution witnesses. We find force in the above stated contention of learned Amicus Curiae and it appears from the materials available on record that PWs.1,2 and 3 purposely changed the manner of occurrence so that they could claim themselves to be eye witness of the alleged occurrence.

27. PWs.1,2 and 3 claimed that the appellants assaulted the deceased Jagdish Jamadar by means of *fasauli*, *lathi*, bomb and, subsequently, by fire arm but the postmortem report of deceased Jagdish Jamadar does not



corroborate the claim of PWs.1,2 and 3. We have noticed that PW-1 (Manju Kumari) at para-4 of her examination-in-chief claimed that both the elbows of her father (deceased Jagdish Jamadar) was cut by appellant Gulabchand Kandu by means of *fasuli* but no such injury was found on the person of deceased Jagdish Jamadar. Similarly, PW-2 (Kaili Devi) claimed at para-3 of her examination-in-chief that appellant Badri Kandu assaulted her husband (deceased Jagdish Jamadar) by *lathi*, appellant Ramdayal Kandu hurled bomb on the chest of her husband (deceased Jagdish Jamadar) whereas appellant Gulabchand Kandu gave *fasuli* blows on shoulder and cheek of her husband. Furthermore, this witness claimed at para-59 of her cross-examination that appellant Shankar Kandu shot fire on the abdomen of deceased Jagdish Jamadar from the distance of 10 yards. However, the postmortem report of deceased Jagdish Jamadar reveals that no fire arm injury was found on the abdomen of deceased Jagdish Jamadar and, similarly, no incised wound was found on the abdomen of deceased Jagdish Jamadar and no incised wound was found on the cheek of deceased Jagdish Jamadar.



28. No doubt, PW-5 (Dr. Ramesh Kumar Rai) claimed that he had examined PWs.2 and 3 on 21.08.1988 and found injuries on their person, but, admittedly, only one incised wound 1"x1/2"x1/4" on the right wrist joint of PW-2 (Kaili Devi) and two swelling with abrasion on back of PW-3 (Ravindra Jamadar) were found by PW-5 (Dr. Ramesh Kumar Rai). It is true that the status of injured witness is on better footing to that of other witnesses but in the present case PW-5 (Dr. Ramesh Kumar Rai) admits that the injury found on the person of PW-2 (Kaili Devi) might be caused by broken of bangles. Similarly, PW-3 (Ravindra Jamadar) claimed that he sustained pellet injury but no pellet injury was found on the person of PW-3 and it appears that the injuries of PWs.2 and 3 are superficial in nature and we are totally in agreement with the submission of learned Amicus Curiae that if *fasuli* blow is given to any person, the said blow shall cause deeper injury. As we have noticed, that the injury found on the joint wrist of PW-2 (Kaili Devi) is not much deeper and, therefore, it is very difficult to believe the injury reports of PW-2 (Kaili Devi) and PW-3 (Ravindra Jamadar).



29. After scrutinizing the entire evidence of the prosecution, we are of the view that the prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and, in our view, the appellants are entitled to get the benefit of doubt.

30. On the basis of aforesaid discussions, both the above stated criminal appeals are allowed and the impugned judgment of conviction and sentence order are hereby set aside. The appellants are acquitted of charges. The appellants are on bail. They are discharged from the liabilities of their respective bail bonds.

31. The copy of first and last pages of the judgment be handed over to Amicus Curiae so that she may claim her remuneration from the competent authority.

(Hemant Kumar Srivastava, J)

Brajesh Kr./-

(Prabhat Kumar Singh, J)

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