

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.21 of 2013**

Arising Out of PS. Case No.-54 Year-1997 Thana- SIWAN CITY District- Siwan

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Rustam Khan, son of Late Annul Haque Khan, Resident of Village-
Machkana, P.S.- Hussainganj, District- Siwan.

... .. Appellant/s

Versus

The Union of India through CBI

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Surendra Singh, Sr. Advocate,
Mr. Akhalesh Kumar Singh, Adv.
Mr. Ajay Kumar Thakur, Advocate.
Mr. Ramadhar Shekhar, Advocate.
Mr. Bikramdeo Singh, Advocate.

For the Respondent/s : Mr. Bipin Kumar Sinha SC, CBI

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
and
HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA)

Date : 10-05-2019

1. Heard learned counsels for the parties.
2. The sole appellant stood convicted under Sections 302/149, 307/149 and 120B of the Indian Penal Code as well as Section 27 of the Arms Act and sentenced him to undergo imprisonment for life under Sections 302/149 of the Indian Penal Code and to pay a fine of Rs. 25,000/- and in case of default, further to undergo S.I. for one year. He has further been sentenced to undergo R.I. for ten years under Sections 307/149 of Indian Penal Code and to pay a fine of Rs. 10,000/- and in



case of default to suffer S.I. of six months. The appellant has also been sentenced R.I. for seven years under Section 120B of the Indian Penal Code and R.I. for five years under Section 27 of the Arms Act with a fine of Rs. 5,000/- and all sentences were directed to run concurrently vide judgment dated 7.11.2012 and order dated 9.11.2012 passed by Sri Choudhary B.K.Rai, Additional Sessions Judge-14, Patna in Sessions Trial No. 948 of 2001.

3. Prosecution case is based on the *fardbeyan* of Ramesh Singh Kushwaha (PW12) recorded on 31.03.1997 at 17.00 hours, stating therein, *inter alia* that on 31.03.1997 at 3 P.M., Shyam Narayan Yadav (deceased) and District Committee Member of CPI (ML), Chandrashekhar Prasad (deceased) Former President Jawahar Lal Nehru University, Bhri gurashan Patel, a Member of CPI (ML) of Barhtharia Prakhand Committee (PW 2) and Ramdeo Ram, a District Committee Member, proceeded by a Tempo on a campaign for success of Bihar Band and reached J.P. Chowk as soon as the tempo stopped, accused appellant Dhruw Sah armed with service revolver, accused – appellant Munna Khan armed with service revolver, Reyazuddin Khan armed with service revolver and Mantu Khan armed with sten gun rushed towards the said tempo



and started indiscriminate firing and in the said firing, Chandrashekhar Prasad died on the spot and Shyam Narayan Yadav received severe injury, Bhurigurashan Patel (PW2) also received firearm injury and Ram Deo Ram (PW 20) fell from the tempo and managed to save himself. Further case of the prosecution is that in the said firing, the passers by have also received firearm injury. Further case of prosecution is that deceased Chandrashekhar Prasad and injured Shyam Narayan Yadav were taken to Sadar Hospital by same Tempo, where, Shyam Narayan Yadav was under treatment, and Shyam Narayan Yadav also disclosed to the informant the names of accused-appellants in presence of Satyadeo Ram. Bhurigurashan Patel after bringing the injured to hospital went to the party office to inform the incident.

4. On the basis of the aforesaid *fardbeyan*, Town Police Station Case No. 54/1997 was registered under Sections 302, 307, 120B and 34 of the Indian Penal Code against the appellant and other accused persons.

5. Later on, vide notification dated 28.07.1997 of the State Government (Ext. 17) and also vide notification dated 31.07.1997 (Ext. 18) C.B.I. was entrusted with the investigation of the case. Accordingly, RC 2(S)/97-SCB-II/DI (Ext. 16) was



registered against the sole appellant and other accused persons namely Dhruv Kumar Jaiswal @ Dhruv Sah, Sheikh Munna and Ilyas Waris @ Ilham Waris @ Mintu Kha @ Mintu. As the appellant was absconding, his trial was separated and his case was committed to the court of sessions by the learned Special Magistrate, CBI, Patna on 20.12.2001. Sessions Trial No. 948/2001 was opened. It is relevant to mention here that for the other accused persons, a separate trial being S.T.No. 213 of 2001 was also initiated.

6. In the present case, sole appellant had been charged for the offence punishable under Sections 302/149, 307/149 and 120-B of the Indian Penal Code read with Sections 302/307 of the Indian Penal Code and Section 27 of the Arms Act.

7. During Trial altogether twenty witnesses were examined on behalf of prosecution. They are:-

(i) PW-1 Satyadeo Ram, the then M.L.A. of CPI(ML) Party, Mairwa and he claims to reach the place of occurrence after receiving information and thereafter he reached at the hospital and according to him, deceased Shyam Narayan Yadav, prior to his death, named the appellant and other accused persons as assailants.

(ii) PW-2, Bhrigurashan Patel, claimed to be eye witness



of the occurrence and according to his evidence, he is an injured and eye witness of the occurrence and named the appellant and other accused persons.

(iii) PW -3 is Kaushalya Devi, mother of deceased Chandra Shekhar Prasad. She claims that on information she reached at Sadar Hospital and saw dead body of her son Chandra Shekhar Prasad. She also disclosed that Sahabuddin had threatened her to ask her son to mend his way otherwise he would be killed.

(iv) PW-4 Chandraketu Singh is also one of the injured and as per his evidence, while he was coming from the Court he received gun shot injury. This witness has not named the assailants including the appellant.

(v) PW-5, Indra Kumar, is the driver of Tempo No. B.R. -04-A0087, who was, according to his evidence, engaged for campaigning and he supported the factum of occurrence and he brought the deceased persons and PW-2 to the Hospital, but he did not name any accused persons including appellant.

(vi) PW-6 is Dr. Lakshman Prasad, who has conducted postmortem examination on the dead bodies of deceased Chandrashekhar Prasad and Shyam Narayan Yadav on



01.04.1997 and postmortem reports are marked as Ext. 2 and 2/1. This witness has also treated PW-4 Chandra Ketu Singh and PW-7 Md. Alam Khan and their injury reports are marked as Ext. 1 and 1/ 1. He sent information to the police by Ext. 3.

(vii) PW-7, Md. Alam Khan, has also received injury in the occurrence but he has not named the assailants and appellant.

(viii) PW-8, Dr. Bimal Kumar, is the doctor who has examined Bhurigurasan Patel (PW-2).

(ix) PW-9, Rafik Ahmad Khan, is Sub Inspector, who has recorded the statement of Ramesh Singh Kushwaha (PW-12) on 31.03.1997 on the basis of which *fardbeyan* (Ext. 4) was recorded.

(x) PW-10, Rajbanshi Baitha, is then A.S.I. of Town Police Station and according to his evidence, while he was coming near J.P.Chauraha, he heard sound of firing and saw some persons fleeing, he chased them. His evidence also disclosed that for that he has lodged FIR being Town P.S.Case No. 55 of 1997, which is marked as Ext. 6.

(xi) PW-11, Ram Sagar Rai, is Sub Inspector of Town



Police Station and is the first Investigating Officer of the case.

(xii) PW-12, Ramesh Singh Kushwaha, is the informant in this case though this witness has turned hostile but his evidence disclosed that the occurrence took place on 31.03.1997. His evidence further disclosed that later on, he heard that Chandra Shekhar Prasad and Shyam Narayan Yadav were killed on 31.03.1997 at 4 O'clock by the accused persons at J.P.Chauraha.

(xiii) PW-13 Md. Samsuddin, who has been declared hostile. However, his examination-in-chief disclosed that in support of Bihar Band , meetings were scheduled to be held at different places on 31.03.1997. In his evidence, he also disclosed that Chandra Shekhar Prasad and Shyam Narayan Yadav were killed on 31.03.1997 and the occurrence took place at J.P.Chauraha.

(xiv) PW-14 is Nag Narayan Singh, the then Dy.S.P., CBI, Special Crime Branch, New Delhi. He had received the documents relating to Siwan Nagar P.S.Case No. 54 of 1997 in connection with RC 2(S)/97/SCB-II from Sri Ram Sagar Rai, S.I. Guthani P.S. (PW-11) and handing and taking over charge were prepared.



(xv) PW-15 is Rashid Ahmad Khan, the then District Magistrate-cum-Collector, Siwan, who approved the prosecution sanction report as Ext.-11.

(xvi) PW-16 is Rajdeep Singh Rawat, who was Inspector, CBI and also was one of the Investigating Officers and his evidence disclosed that on the order of the Superintendent of Police, he had issued notice to Ramesh Singh Kushwaha (PW-12) under Section 160 Cr.P.C. which is Ext.-9 and Ramesh Singh Kushwaha appeared before him and Ramesh Singh Kushwaha had not told him that his signature was obtained in plain paper.

(xvii) PW-17 is K.Nand Kumar, who was working as Upper Division Clerk in CPWD and as per his disclosure, statement of Dhruv Kumar Jaiswal was recorded by the CBI in front of him, which is in the writing and signature of Hari Kumar. This witness has identified the same and marked as Ext. 13.

(xviii) PW-18 is Surya Bhan Sinha, who was the Dy.S.P., Special Crime Branch, CBI, at the time of occurrence and he identified the writing and signature of Sri I.S. Saroha, the then Superintendent of Police, on the FIR RC Case No. 2(s)/97-SCB-II/CBI dated 07.08.1997 (Ext. 16) and



also identified the Notification dated 28.07.1997 (Ext. 17) and second Notification as Ext. 18.

(xix) PW-19 is Y.Hari Kumar, the then Inspector, CBI, Special Crime Branch, who was entrusted with further investigation in the CBI case.

(xx) PW-20 is Ramdeo Ram, though has turned hostile, but his evidence-in-chief also disclosed the factum of occurrence on 31.03.1997 and Shyam Narayan Yadav and Chandra Shekhar Prasad and Bhurigurasan Patel were also present and at 4:00 P.M. a meeting was to be held at J.P.Chauraha.

8. On behalf of defence also, four witnesses have been examined and they are:-

(i) DW-1 Satyapal Shrivastava @ Dhiraj, as per his evidence, on 31.03.1997 he heard the sound of firing but he has stated that Nepalis were firing. His evidence in cross-examination disclosed that he came to know that on 31.03.1997 at 4:00 P.M., Chandra Shekhar Prasad, Shyam Narayan Yadav and Bhuteli Mian were killed.

(ii) DW-2 is Dharmendra Kumar Patha and his evidence also disclosed about the occurrence of firing but stated that Nepali Bhutias were firing. His evidence in cross-



examination in para 4 however disclosed that Chandra Shekhar Prasad, Shyam Narayan Yadav were died in that firing.

(iii) DW-3 is Amit Kumar. He has admitted about the occurrence took place on 31.03.1997 and further disclosed that he was not summoned and Bhutias were firing.

(iv) DW-4 is Birendra Singh. He is on the point of alibi of Rustam Khan.

9. On conclusion of trial, the trial court, relying on the evidence of PW-2, being the eye witness of the occurrence, and also disclosure of deceased Shyam Narayan Yadav to PW-1 soon before his death, convicted the sole appellant under Section 302/149, 307/149 and 120B of the Indian Penal Code and Section 27 of the Arms Act.

10. Being aggrieved by, criminal appeal has been preferred by sole appellant.

11. The impugned judgment has been assailed by Mr. Surendra Singh, learned senior counsel appearing on behalf of the appellant, on the ground that all witnesses have been declared either hostile or not have identified the accused persons, except PW-2, Bhurigurasan Patel, who claims himself to



be eye witness of the occurrence, but his presence is doubtful in the background of evidence of PW-8, as PW-2 was examined on 01.04.1997 and not on 31.03.1997 i.e., the date of occurrence, secondly, on the ground that there are contradictions in between the evidence of PW-2 and PW-8, so far injury is concerned and furthermore, he is highly interested witness as he was a member of CPIML (MALE). It has been argued that in the above background, conviction cannot be sustained on solitary evidence of PW-2 in absence of any corroboration, relying on the decision of Shivaji Sahebrao Bobade & Anr. vs. State of Maharashtra reported in AIR 1973 SC 2622 and in the case of Anil Phukan vs State of Assam reported in AIR 1993 SC 1462.

12. Further contention of learned counsel for the appellant is that occurrence took place at J.P.Chawk at 4:00 P.M. which is crowded place but in spite of that, no independent witness has been examined in this case and that also makes the prosecution case doubtful.

13. Further contention of learned counsel for the appellant is that the prosecution has also relied upon on the oral dying declaration of deceased Shyam Narayan Yadav made before PW-1, Satya Deo Ram, the then M.L.A., however, prosecution story of oral dying declaration does not appear to be reliable and



trustworthy in the background of evidence of PW-6, Dr. Lakshman Prasad, who has conducted postmortem examination of deceased Shyam Narayan Yadav as his evidence in cross-examination fully shows that Shyam Narayan Yadav was not in a fit state of mind to make any disclosure and furthermore, in the background of evidence of PW-7, Md. Alam Khan, that deceased Shyam Narayan Yadav was unconscious. Further submission is that prosecution evidence suggests that he disclosed the name in the hospital but in spite of that there is no certification of doctor that he was in a fit state of mind. Referring to the decision of Hon'ble Apex Court in the case of Umakant and Anr. vs. State of Chhattisgarh reported in AIR 2014 SC 2943, it has been submitted that as per principle settled in the above judgment, no reliance can be placed on the oral dying declaration of deceased Shyam Narayan Yadav.

14. Further submission of learned counsel for the appellant is that apart from that, FIR lodged by the CBI is hit under Section 162 Cr.P.C.

15. On the above submission, it has been submitted that the learned trial court has not considered the above discrepancy and inconsistency in the prosecution story while convicting the appellant as such impugned judgment cannot be sustained.



16. Defending the impugned judgment, learned counsel appearing on behalf of the CBI, Mr. Bipin Kumar Sinha, submitted that in this case informant (PW-12) has been declared hostile, but his evidence supports the prosecution case so far date of occurrence and manner of occurrence and also about the death of deceased Chandra Shekhar Prasad and Shyam Narayan Yadav in the occurrence and as such even though he has been declared hostile, his evidence cannot be washed out in toto, that is the settled principle of law held by the Hon'ble Apex Court in several judgments.

17. Further contention of learned counsel for the CBI is that evidence of PW-2, PW-4, PW-7, PW-12 and PW-20 supports the prosecution case so far manner of occurrence is concerned and evidence of PW-10 further disclosed the name of accused persons including the appellant and the evidence of PW-2 cannot be doubted on the ground that he is interested witness especially in the background that he has also received injury in the occurrence. In support of his contention, learned counsel for the CBI referred the decision of Piara Singh and Others vs. State of Punjab reported in AIR 1977 SC 2274 and of Seeman alias Veeranam vs. State by Inspector of Police reported in 2005 Cri.L.J 2618. It has also been submitted that Dr. Bimal Kumar



(PW-8) has also found injuries over PW-2 and evidence of injured witness is always considered to be on high pedestal than of other witness.

18. It has further been submitted that though Ramesh Singh Kushwaha (PW-12) and Ramdeo Ram (PW-20) have been declared hostile by the prosecution but they have supported the prosecution case so far factum of occurrence and date of occurrence is concerned and there is nothing in their cross-examination to doubt the above evidence, as such in the light of several decisions of Hon'ble Apex Court e.g. in the case of Khuji alias Surendra Tiwari vs. State of M.P. reported in 1991 Cri. L. J. 2653 as well as of Arjun and Anr. vs. State of Chhatisgarh reported in (2017) 3 SCC 247, their evidence is also admissible.

19. Further submission is that even Chandra Ketu Singh (PW-4) injured, Indra Kumar, Tempo driver (PW-5), Md. Alam Khan (PW-7) injured and Rajbanshi Baitha (PW-10), a police official, who reached at the place of occurrence, have also supported the factum of occurrence. It has also been submitted that the aforesaid facts found corroboration from Ext.-4, the *fardbeyan*, which has been lodged immediately after the occurrence disclosing the prosecution case and showing the



names of accused persons including appellant and further showing that PW- 2 also received injury and Shyam Narayan Yadav, deceased, named all the accused persons including the appellant.

20. Defending the prosecution story of oral dying declaration, it has been submitted that PW-1 has stated that deceased disclosed the names of the appellant and other accused persons before him when he reached at the hospital and no suggestion has been given to PW-6, who had conducted the postmortem examination regarding that deceased Shyam Narayan Yadav was not in a condition to speak. None of the witnesses including the informant (PW-12) or Bhargurasan Patel (PW-2) or Rafik Ahmad Khan (PW-9), who were the authors of the *fardbeyan*, have been suggested that Shyam Narayan Yadav was not in a condition to speak. In such a situation, story of oral dying declaration cannot be disbelieved specially when it is made immediately after the occurrence, which is admissible under Section 6 of the Indian Evidence Act and in this connection, learned counsel of CBI relied upon a decision of Hon'ble Apex Court in the case of Gian Chand & Ors. vs. State of Haryana reported in 2013(4) PLJR SC 7.

21. Considering the arguments advanced by the learned



counsels on behalf of the appellant as well as the CBI and on close scrutiny of the materials available on record, it appears that *fardbeyan* of PW-12, Ramesh Singh Kushwaha, has been recorded by PW-9, Rafik Ahmad Khan, the then Officer-in-charge of Town Police Station at 1700 Hours and occurrence is said to be of about 1600 Hours that shows promptness in lodging of the case. *Fardbeyan* disclosed that there was a call of Bihar Band by CPIML (MALE) and both deceased along with Bhrigurasan Patel (PW-2) and Ramdeo Ram (PW-20), who were workers of MALE, were on campaign for Bihar Band. They reached near J.P.Chawk at 4:00 P.M. Accused persons including the appellant reached there and started indiscriminate firing causing death of Chandra Shekhar Prasad and Shyam Narayan Yadav. Bhrigurasan Patel (PW-2) received injuries and passers-by also received injuries. Shyam Narayan Yadav disclosed the names of accused persons in presence of Satya Deo Ram that shows that FIR has been lodged by PW-12 showing the names of accused persons including appellant as assailant and also disclosed the presence of Bhrigurasan Patel (PW-2) and Satyadeo Ram (PW-1) and also about disclosure made by Shyam Narayan Yadav, deceased. Ramdeo Ram (PW-20) was also shown as an eye witness in the *fardbeyan*.



22. On scrutiny of evidence of PW-12, Ramashish Singh Kushwaha, his evidence in examination-in-chief, disclosed about the call of Bihar Band and occurrence is of 31.03.1997 at about 4:00 P.M. It further disclosed that several *Nukkar* meetings were held and there was meeting at J.P.Chawk at 4:00 P.M., which has to be addressed by deceased Chandra Shekhar, Shyam Narayan Yadav, Bhrigurasan Patel (PW-2) and Ramdeo Rai(PW-20). He did not have to address the meeting and he did not have knowledge whether Chandra Shekhar and Shyam Narayan Yadav reached there or not. Further, this witness has proved his signature on the *fardbeyan* as Ext. 5, but stated that he had made his signature on a plain paper. His evidence further disclosed that he has not stated about the signature being obtained in any plain paper to the party office or the CBI officials. His evidence further disclosed that he heard later on that Chandra Shekhar and Shyam Narayan Yadav were killed by accused persons on 31.03.1997 at 4:00 P.M. however, his evidence does not disclose from whom he gathered information. This witness has been later on declared hostile and has been cross-examined at length but there is nothing available in his cross-examination to doubt about his evidence which supports the prosecution case so far occurrence of 31.03.1997, meeting



was to be held on 31.03.1997 at 4:00 P.M. and deceased were killed on 31.03.1997. Evidence of this witness also disclosed that earlier he was a member of the District Committee of CPIML but thereafter he left. His attention has also been drawn towards statements made before PW-9, Rafik Ahmad Khan and to the statements made before C.B.I. officials though he denied to have made such statements. PW-16, CBI officer, has been confronted in para-6 towards the statement made by PW-12 and he has stated that PW-12 had made such statements, as such it appears that this witness is concealing material facts, due to fear or he has been gained over. However, his evidence shows that PW-2 and PW-20 were also to address the meeting at J.P.Chawk.

23. PW-9 is Officer-in-charge, who has recorded the *fardbeyan* of Ramesh Singh Kushwaha (PW-12) and his evidence disclosed that he received information about firing at J.P.Chawk, Siwan on 31.03.1997 at 1600 hours and went to hospital and found Chandra Shekhar dead and Shyam Narayan Yadav, Chandraketu, Allauddin Ansari, Bhargurasan Patel and Buteli Mian were in injured condition. Ramesh Singh Kushawaha (PW-12) got recorded his statement, which is in his writing and signature and in all four pages, Ramesh Singh Kushawaha (PW-12) put his signatures after going through it.



Fardbeyan is Ext.-4. He prepared inquest reports and on the basis of statement of Ramesh Singh Kushwaha, FIR was lodged, which is Ext.-5. A suggestion has been given to him that FIR was not recorded on 31.03.1997 rather on 01.04.1997 which he denied. He has also identified formal FIR in the writing of Mr. K.L.Das, the then Officer-in-charge as Ext. 15.

24. PW-16, Rajdeep Singh Rawat, has also assisted in the investigation on behalf of CBI and stated that he has recorded the statement of Ramesh Singh Kushwaha (PW-12) who disclosed about the call of Bihar Band and deceased as well as PW-2 and PW-20 were on campaign on a tempo and at 4:00 P.M., when they reached J.P. Chawk, accused persons came and made indiscriminate firing causing death of Chandra Shekhar Prasad and Shyam Narayan Yadav received serious injuries, Bhrigurasan Patel also received injury and Ramdeo Ram fallen down and did not receive any injury.

25. PW-1 is Satyadeo Ram, the then M.L.A. and FIR (Ext.5) also disclosed about his presence at Sadar Hospital and his evidence disclosed that for 02.04.1997, there was call of Bihar Band and on 31.03.1997, Chandra Shekhar, Shyam Narayan Yadav, Ramdeo Ram (PW-20) and Bhrigurasan Patel (PW-2) were on campaign and he received information at 4:00



P.M that there was firing on them. He came to J.P.Chawk and came to know that they were taken to Sadar Hospital by Ramesh Singh Kushawaha (PW-12), Ramdeo Ram (PW-20) and Bhigurasan Patel (PW-2), he reached hospital and found Chandra Shekhar in dead condition and Shyam Narayan Yadav disclosed before him the name of appellant and other accused persons that they fired on him. In the meantime, Daroga came and he disclosed the same to the Daroga also. He identified the appellant and further stated that Ramesh Singh Kushawaha (PW-12) had got his statement recorded before the Officer-in-charge of Town Police Station on which after going through it, PW-12 put his signature, sometime thereafter Shyam Narayan Yadav became unconscious. His evidence disclosed that Shyam Narayan Yadav and Buteli Mian both died. This witness has been cross-examined at length about his evidence made earlier in S.T.No. 213 of 2001 and about the expenses of the parties. Even after his cross-examination, there is nothing in his evidence to doubt his credibility. So far, disclosure by Shyam Narayan Yadav is concerned, no suggestion has been made to this witness to the extent that no such disclosure has been made by Shyam Narayan Yadav and his evidence found corroboration from the *fardbeyan* also (Ext.-4) about factum of disclosure



made by Shyam Narayan Yadav to PW-1.

26. PW-2, Bhrigurasan Patel, claims to be eye witness in this occurrence and has received injury. He has supported the prosecution case so far date of occurrence and manner of occurrence is concerned and his evidence disclosed that he was on campaign for Bihar Band and at J.P.Chauk at 4:00 P.M., meeting was to be addressed by Chandra Shekhar Prasad , Shyam Narayan Yadav and Ramesh Singh Kushawaha. They reached at J.P.Chauk at 4:00 P.M. Chandra Shekhar Prasad and Shyam Narayan Yadav were sitting on the back seat of the tempo and he and Ramdeo Ram (PW-20) were sitting beside the driver and as soon as he started to address, all named accused persons, including the appellant came and started indiscriminate firing. His evidence also disclosed that Ramesh Singh Kushawaha (PW-12) and Samsuddin Ansari reached by motorcycle. His evidence also disclosed that in the firing, Chandra Shekhar, Shyam Narayan Yadav and he himself received injuries and Shyam Narayan Yadav became unconscious. Ramdeo Ram did not receive any injury as he concealed himself beneath the tempo. Ramesh Singh Kushwaha (PW-12) and Ramdeo Ram (PW-20) took the injured to Sadar hospital where the doctor declared Chandra Shekhar dead and he



and Shyam Narayan Yadav were under treatment. In the meantime, Satyadeo Ram (PW-1) reached there. His evidence also disclosed that Ramdeo Ram (PW-20) has donated blood to Shyam Narayan Yadav. His evidence also disclosed that police recorded the statement of Shyam Narayan Yadav, after written application of Ramesh Singh Kushawaha (PW-12) earlier given to police by him. Police also recorded the statement of Ramesh Singh Kushwaha (PW-12) and at about 6/6:30 P.M., Shyam Narayan Yadav died and Buteli Mian also died in that occurrence. Evidence of PW-2 also disclosed that all accused persons are men of M.P. Shahabuddin and at his instance, they have committed the occurrence. This witness has been cross-examined at length. Even in his cross-examination, this witness has stated that meeting was to be presided over by Ramesh Singh Kushawaha (PW-12). His cross-examination also disclosed that when he initiated speech, firing starts and there was stamped. In his cross-examination, he has stated that bullet hit, crossed him touching his body and there was bleeding. On scrutiny of his entire testimony, there is nothing in his cross-examination to doubt his evidence about the firing by accused persons causing injuries to the deceased and him and even no suggestion has been given to him that he had not received any



injury and the injury report is manufactured one. A general suggestion has been given that he has deposed falsely.

27. PW-3, Kaushalya Devi, is mother of Chandra Shekhar Prasad (deceased) and her evidence is that her son was the President of Student Union of Jawahar Lal Nehru University and Shahabuddin had threatened her to ask her son to mend his way otherwise he has to loss his life and she even went to Delhi to advise him. There is no cross-examination to this witness on the above point of threatening given by Shahabuddin.

28. PW-4, Chandra Ketu Singh, is one of another injured, who has received injury in the occurrence and according to his evidence, while coming to J.P.Chawk from Court to office, he reached near J.P.Chawk, he saw that there was crowd and in the meantime, he received one injury. His evidence disclosed that he was treated by Dr. Laxman Prasad (PW-6). He had seen two dead bodies, one of Chandra Shekhar Prasad and another of Shyam Narayan Yadav and heard that they had gone to campaign for Bihar Band and in that, they received firearm injuries. This witness is an injured witness. As such his evidence disclosed that deceased Chandra Shekhar Prasad and Shyam Narayan Yadav received injury in such occurrence but he has not named anybody.



29. PW-5, Indra Kumar, is a tempo driver and as per his evidence, tempo was hired for campaigning Bihar Band and when they reached at J.P. Chawk, there was indiscriminate firing, he fled away and when he returned, Chandra Shekhar Prasad and Shyam Narayan Yadav, who were in unconscious condition, were brought to Sadar Hospital where Chandra Shekhar was declared dead. Shyam Narayan Yadav died after 2-5 minutes. Even in his cross-examination, he supports the occurrence of indiscriminate firing.

30. PW-7, Md. Alam Khan, is also one of the injured and his evidence also disclosed that occurrence is of 31.03.1997 and when he reached near J.P. Chawk, he received one firearm injury. Thereafter, he was taken to hospital. His evidence also disclosed in cross-examination that one person died at hospital and other was not speaking anything. Both PW-5 and PW-7 though has stated that occurrence is of 31.03.1997 at about 4:00 P.M. but not named any of the accused persons.

31. PW-10, Rajbanshi Baitha, the then ASI of Town Police Station and as per his evidence, while he was coming from court and reached near J.P.Chawk, he heard sound of firing. He parked his motorcycle and saw accused persons fleeing towards Registry Office, he chased them and fired on



them and when came back to J.P. Chawk, he saw three persons in injured condition, who were taken to hospital. There is nothing else in his evidence and he has not named the appellant or any other accused persons.

32. PW-20 is Ramdeo Ram. According to evidence of this witness and also as per FIR, he is eye witness of the occurrence. His evidence disclosed that there was call of Bihar Band on 2nd April, 1997 and on 31st March, 1997, there were campaign for that, and Shyam Narayan Yadav, Chandra Shekhar and Bhrigurasan Patel were with him. There were several street corner meetings held and there was an announcement that at 4:00 P.M. there would be a meeting at J.P.Chawk and Shyam Narayan Yadav, Chandra Shekhar and Bhrigurasan Patel were on tempo but he had not gone there and remained in the office till 4:00 P.M. and at 4:00 P.M., receiving information of firing, he reached there and found Chandra Shekhar has died, Shyam Narayan Yadav had fallen and Bhrigurasan Patel also received injury on his back and they have taken them to hospital by same tempo and the doctor declared Chandra Shekhar dead. Shyam Narayan Yadav was alive, he donated blood to Shyam Narayan Yadav. His evidence also disclosed that Ramesh Singh Kushwaha (PW-12), Bhrigurasan Patel (PW-2) and Satyadeo



Ram (PW-1) came there. Kaushalya Devi (PW-3) also came there after half an hour and Shyam Narayan Yadav died after 2-3 minutes. He has also stated that his evidence was not recorded by the police. Thereafter, this witness has been declared hostile by the prosecution and his attention has been drawn towards the statement made before the police which he has denied to have made before CBI. However, from the evidence of PW-16, his attention has been drawn towards statement made by him before PW-16. It appears that he is suppressing the fact before the court to shield the accused persons including appellant.

33. PW-6 Dr. Laxman Prasad, who has conducted postmortem examination (Ext. 2) on the dead body of Chandra Shekhar Prasad and Shyam Narayan Yadav and also examined Chandra Ketu Singh (PW-4) and Md. Alam Khan (PW-7). His evidence disclosed that on 31.03.1979, he was posted at Sadar Hospital, Siwan and he has conducted postmortem of deceased Chandra Shekhar (Ext. 2) and found one gun shot injury in the region of back and also found several injuries caused by firearm and on the same day at 7:20 P.M., he conducted postmortem on the dead body of Shyam Narayan Yadav and found several injuries caused by firearm on his body. He further examined Md. Alam (PW-7) and Chandra Ketu Singh (PW-4) and found



firearm injuries on their persons. In his cross-examination, this witness has stated that in case of Shyam Narayan Yadav there were three holes which he cannot say whether it was caused by bullet or pellet. His cross-examination also disclosed that massive laceration of lungs in both cases will cause immediate haemorrhage, which will cause immediate acute respiratory distress. Both these condition will cause loss of speech, excessive haemorrhage laceration will cause mental imbalance.

34. PW-8, Dr. Bimal Kumar, examined Bhrigurasan Patel (PW-2) and in his evidence, he stated that on 31.03.1997, he was posted at Sadar Hospital and he had sent the information about death of Shyam Narayan Yadav to the Officer-in-charge and he examined Bhrigurasan Patel on 31.03.1997 and again on 01.04.1997 at 10:00 A.M. and found one circular injury 1cm diameter with black margin on left lateral chest at the level of sixth inter poster ribs space. The patient was advised X-ray of chest but not submitted report. He has also stated that he has examined the patient on request of police. This witness has been cross-examined but there is no cross-examination on the point that he has not examined him on 31.03.1997 rather on 01.04.1997.

35. From the above discussions of the evidence, PW-2



appears to be eye witness, however, his evidence is doubted by the learned counsel for the appellant on the ground of discrepancy in his evidence in the background of evidence of PW-8, showing that injury report disclosed that PW-2 was examined on 01.04.1997 and as such his presence is doubtful and his evidence in cross-examination disclosed that bullet crossed touching his body whereas he has stated in his examination-in-chief that he received injury on his back. However, as discussed above, PW-8 has categorically stated in his examination-in-chief that he examined PW-2 on 31.03.1997 and again on 01.04.1997 at 10:00 A.M. but neither PW-8 has been cross-examined nor any suggestion has been given to him that PW-2 has been examined on 01.04.1997 and not on 31.03.1997. So far contradiction in the evidence of PW-2 is concerned that appears to be minor and furthermore, PW-8 has found injury over his person and no suggestion has been given to him that injury was manufactured one. Even though, there are some discrepancies but that is bound to occur in his evidence as PW-2 was deposing long time after the occurrence. On the other hand, his name is mentioned in the *fardbeyan* (Ext. 4) and though the informant (PW-12) has been declared hostile but his evidence in his examination-in-chief also disclosed that meeting



was to be addressed by PW-2, deceased persons and PW-20.

36. The Hon'ble Apex Court, in a case of Smt. Shamim v. State (NCT of Delhi) reported in 2019 Cri.L.J. 732 SC, has considered the aspect of discrepancies in the evidence of witnesses, para-12 of the judgment reads as follows:-

“12. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal”.

37. Further, in the case of Sohrab and Anr. vs. State of M.P. reported in AIR 1992 SC 220, the Hon'ble Apex Court has also considered the evidence of injured witnesses and held that merely because there have been discrepancies and contradictions in the evidence of some or all the witnesses, the same does not



mean that entire evidence of prosecution has to be discarded. It is only after exercising caution and care shifting the evidence to separate the truth from untruth, exaggeration, embellishment and improvement, the Court had come to the conclusion that what could be accepted implicated the appellants and convicted them as the Court has held that *falsus in uno falsus in omnibus*. is not a sound rule for the reason that hardly any one comes across witness whose evidence does not contain a grain of untruth or at any era some exaggeration or embellishment.

38. Further in the case of Mukesh and Anr. vs. State of NCT of Delhi reported in 2017 Cri.L.J. 4365, the Hon'ble Apex Court, while considering the evidence of injured witness, taking into consideration several judgments of the Apex Court, observed that "the evidence of injured witness is entitled to a greater weight and the testimony of such a witness is considered to be beyond reproach and reliable. Firm, cogent and convincing ground is required to describe the evidence of injured witness. It is to be kept in mind that the evidentiary value of an injured witness carries great weight".

39. Further, in the case of State of Maharashtra vs. Tulshiram Bhanudas Kamble reported in AIR 2007 SC 3042 has observed that the evidence of an eye witness, who is also an



injured witness, cannot be doubted merely on the ground that he is inimical to the respondents and held in paragraph 29, which reads as follows:-

“29. Each of the reasoning assigned by the High Court, in our opinion, is contrary to the well-settled legal principle. The witnesses examined on behalf of the prosecution, apart from being eye-witnesses, were injured witnesses. Their presence at the place of occurrence, therefore, cannot be doubted. Only because they were inimical to the respondents, the same by itself cannot be a ground to discard their evidences. Although in accepting the same, some amount of caution is required to be maintained.

40. Learned counsel for the appellant also assailed the judgment on the ground that on the evidence of solitary eye witness and that too, when his evidence suffers from discrepancies and his presence is doubtful, conviction cannot be based and in this case, there is no other evidence available on record to support the prosecution case. So far number of witnesses to be examined in a trial to prove its case, **Section 134 of Indian Evidence Act**, provides that; **no particular number of witnesses shall in any case be required for the proof of any fact.**

41. Hon’ble Apex Court in the case of Vadivelu Thevar vs The State of Madras reported in AIR 1957 SC 614, has also considered the same and held in para 11 and 12, which read as



follows:-

“11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's 'Law of Evidence' - 9th Edition, at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s. 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime had been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the



crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely :

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars



by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution”.

42. In the case of Shivaji Sahebrao Bobade (supra), the Hon’ble Apex Court has held that “even if the case against the accused hangs on the evidence of a single eye-witness it may be enough to sustain the, conviction given sterling testimony of a



competent, honest man, although as a rule of prudence courts call for corroboration. It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs”.

43. Further, in the case of Anil Phukan (supra), it has been held by Hon’ble Apex Court that “conviction can be based on the testimony of a single eye-witness and there is no rule of law or evidence which says to the contrary provided the sole eye witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye-witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, In material particulars, before recording conviction. It is only when the courts find that the single eye-witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect”.

44. Further the Hon’ble Supreme Court in the case of Piara Singh (supra) relied upon by the CBI, has observed that



“evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence”. Similar view has also been taken by the Hon’ble Apex Court in the case of Seemon alias Veeranam v. State through Inspector of Police reported in 2005 CriLJ 2618”.

45. In the background of above settled law, on close scrutiny of evidence, it appears that, so far factum of occurrence, place of occurrence, date of occurrence and manner of occurrence is concerned, PW-4, PW-5 and PW-7 also support the prosecution case in their evidence, as discussed above, and their evidence also shows that occurrence has taken place and on the date of occurrence deceased Chandra Shekhar Prasad and Shyam Narayan Yadav received injuries and both of them died.

46. Apart from that PW-12, who is the informant in this case, no doubt he has been declared hostile, but, as discussed above, his evidence disclosed the time of occurrence, place of occurrence and factum of occurrence of firing and his evidence also disclosed that at J.P.Chawk at 4:00 P.M., meeting was to be addressed by deceased Chandra Shekhar Prasad, Shyam



Narayan Yadav, Bhurigurashan Patel (PW-2) and Ramdeo Ram (PW-20) though this witness has turned hostile but his evidence further disclosed that he heard that Chandra Shekhar Prasad and Shyam Narayan Yadav were killed by accused persons on 31.03.1997 at 4:00 P.M. and he has proved his signature on the *fardbeyan* also and attention of this witness has been drawn towards statement made before the police as well as to the CBI which he has denied but PW-16, CBI Officer, has been confronted with the statement of PW-12, and he has stated that PW-12 has disclosed about Bihar Band and deceased persons as well as PW-2 and PW-20 were on campaign and accused persons came and made indiscriminate firing. Considering the fact as stated above, it appears that PW-12 is not coming with true fact and is concealing the same. In the present case, occurrence is at 16:00 hours and FIR has been lodged immediately after the occurrence at 17:00 hours in which all accused persons are named and there is also mention of disclosure made by Shyam Narayan Yadav (deceased) and further, disclosed that PW-2 and PW-20 were present at the time of occurrence and as such lodging of prompt FIR rules out the possibility of manipulation and addition in FIR. The Hon'ble Apex Court also considered this aspect of matter in a decision in



the case of *Ravinder Kumar & Anr. v. State of Punjab* reported in *AIR 2001 (SC) 3570* and observed that “ of course, a prompt and immediate lodging of F.I.R. is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version”.

47. PW-13 and PW-20 have also been declared hostile in this case, but evidence of PW-13 has also disclosed that Chandra Shekhar Prasad and Shyam Narayan Yadav were killed on 31.03.1997 at J.P.Chawk and evidence of PW-20 also disclosed the presence of deceased Shyam Narayan Yadav, Chandra Shekhar Prasad and PW-2 at J.P.Chawk at 4:00 P.M. in connection with Bihar Band and he, receiving information of firing, reached there and saw Chandra Shekhar Prasad had died and Shyam Narayan Yadav had fallen and PW-2 received injury on his back. According to this witness (PW-20), he has also donated blood to Shyam Narayan Yadav. His attention has also been drawn towards the statement made before the CBI and the CBI officer (PW-16) has also been confronted with the same and that disclosed, he is suppressing the material fact and that appears to be liar. Hence, his evidence is of no help to the



appellant. On the other hand, their evidence supports the prosecution case about the factum of occurrence, date of occurrence and place of occurrence and also about the fact that deceased persons received injuries and died in the occurrence.

48. It is well settled principle that evidence of such witness cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof (reported in Khujji alias Surendra Tiwari (supra) and Arjun (supra)).

49. Hence, from the discussions made above, it is evident that PW-12, PW-13 and PW-20 tried to conceal the material fact with the purpose of shielding and protecting the appellant, may be due to fear or they might have been gained over and for that appellant will not be allowed to get any benefit.

50. Apart from that in the case of Hemudan Nanbha Gandhi vs. State of Gujarat reported in 2019 Cri.L.J 736, wherein the prosecutrix-informant has been declared hostile, the Hon'ble Apex Court, considering the judgment in the case of State vs. Sanjeev Nanda reported in (2012) 8 SCC 450, has observed that "...if a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal



justice system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked” and further held in paras 9 and 10 of its judgment, which reads thus:-

“9. A criminal trial is but a quest for truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim, and above all the societal interest for preservation of the rule of law. Neither the accused nor the victim can be permitted to subvert a criminal trial by stating falsehood and resort to contrivances, so as to make it the theatre of the absurd. Dispensation of justice in a criminal trial is a serious matter and cannot be allowed to become a mockery by simply allowing prime prosecution witnesses to turn hostile as a ground for acquittal, as observed in *Zahira Habibullah Sheikh vs. State of Gujarat*, (2006) 3 SCC 374 and *Mahila Vinod Kumari vs. State of Madhya Pradesh*, (2008) 8 SCC 34. If the medical evidence had not confirmed sexual assault on the prosecutrix, the T.I.P. and identification therein were doubtful, corroborative evidence was not available, entirely different considerations may have arisen.

10. It would indeed be a travesty of justice in the peculiar facts of the present case if the appellant were to be acquitted merely because the prosecutrix turned hostile and failed to identify the appellant in the dock, in view of the other overwhelming evidence available. *In Iqbal vs. State of U.P., 2015*



(6) *SCC 623*, it was observed as follows:

“15. Evidence of identification of the miscreants in the test identification parade is not a substantive evidence. Conviction cannot be based solely on the identity of the dacoits by the witnesses in the test identification parade. The prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime, like recovery of articles which are the subject matter of dacoity and the alleged weapons used in the commission of the offence.”

51. Considering the same, it appears that even though PW-12 and PW-20 have been declared hostile but their evidence also supports the prosecution case so far date of occurrence, place of occurrence and manner of occurrence are concerned, as such their such evidence³ can be used for coming to just decision of the case.

52. One of the arguments of learned counsel for the appellant is that no independent witness has been examined in the present case in spite of the occurrence taken place in a crowded place, however, this court cannot shut its eyes towards the situation prevailing in the society where witnesses are not willing to come forward to support the prosecution case. The Hon'ble Apex Court, in the case of *Ramesh and others v. State of Haryana* reported in *2017 Cri. L.J. 352 SC*, has observed this



fact in paras 35 and 36 of the judgment, which reads as follows:-

“35. We find that it is becoming a common phenomenon, almost a regular feature, that in criminal cases witnesses turn hostile. There could be various reasons for this behaviour or attitude of the witnesses. It is possible that when the statements of such witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 by the police during investigation, the Investigating Officer forced them to make such statements and, therefore, they resiled therefrom while deposing in the Court and justifiably so. However, this is no longer the reason in most of the cases. This trend of witnesses turning hostile is due to various other factors. It may be fear of deposing against the accused/delinquent or political pressure or pressure of other family members or other such sociological factors. It is also possible that witnesses are corrupted with monetary considerations.

36. In some of the judgments in past few years, this Court has commented upon such peculiar behaviour of witnesses turning hostile and we would like to quote from few such judgments. In *Krishna Mochi v. State of Bihar*, this Court observed as under:

“31. It is matter of common experience that in recent times there has been sharp decline of ethical values in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they



do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power.

53. In the case of Appabhai and another vs. State of Gujarat reported in AIR 1988 SC 696, the Hon'ble Apex Court has also considered this aspect of the matter and has observed in para 36, which reads as follows:-

“ 36. It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The



Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner. In *Rana Pratap v. State of Haryana* 1988 (3) S.C.C. 327 O. Chinnappa Reddy J. speaking for this Court succinctly set out what might be the behaviour of different persons witnessing the same incident”.

54. Besides that, this Court is aware of the fact that in the present case, earlier deceased Chandra Shekhar Prasad’s mother was threatened and thereafter while he along with others were campaigning for Bihar Band, they have been killed at a crowded place at J.P.Chawk and as such if the witnesses turned hostile or not named the accused persons, the Court cannot ignore the fact that due to fear or any gainful means, some of the witnesses have turned hostile and others have not come forward with truth.

55. Considering the above facts, the evidence of PW-2, on discussion, is found to be wholly reliable and that has also been corroborated by the evidence of PW-4, PW-5, PW-7, PW-10 as well as PW-12 and PW-20 ,so far date of occurrence, place of occurrence and factum of occurrence is concerned, in which deceased persons were shot dead and PW-2 has received injuries



and PW-5 and PW-7 have also received injuries. The evidence of PW-6 and PW-8, who are doctors, also corroborates the evidence of PW-2 and other witnesses, as they found the injuries over the persons of PW-2, PW-5, PW-7 and PW-8, and PW-6 conducted the postmortem examination on the dead body of deceased persons.

56. Besides that, PW-1, though not an eye witness of the occurrence, but he reached at the place of occurrence and the hospital immediately after the occurrence and his evidence disclosed that deceased Shyam Narayan Yadav disclosed him the names of accused persons including the appellant and that part of the evidence of PW-1 appears to be in relation to the fact in issue and part of the same transaction. Hence, that appears to be relevant under Section 6 of the Indian Evidence Act. However, the evidence of PW-1 was assailed by the learned counsel for the appellant, firstly, on the ground that the evidence of PW-6 does not show that deceased Shyam Narayan Yadav was in a fit state of mind and secondly, on the ground that though the evidence of PW-1 and PW-2 shows that oral dying declaration has been made in presence of police officials, but there is no such evidence of police officials available on record.

57. On scrutiny of evidence of PW-1, it appears that when



he reached hospital, Chandra Shekhar Prasad had died and Shyam Narayan Yadav was in injured condition, he was uttering something and officer-in-charge of Town Police Station also reached there and Shyam Narayan Yadav disclosed that appellant and other accused persons fired at them. Even in his cross-examination, PW-1 has stated that whatever Shyam Narayan Yadav was telling, same was listened by others also and further after statement of PW-12, deceased became unconscious. Evidence of PW-2 also disclosed recording of statement of Shyam Narayan Yadav by the Officer-in-charge and Satyadeo Ram (PW-1), Ramesh Singh Kushwaha (PW-12) and Samsuddin Mian (PW-13) were present there. Though there is slight variation in the evidence of PW-1 and PW-2, but as discussed above, some discrepancies are bound to occur as the power of observation differs from person to person and what one may notice another may not and they can only be recalled the version and it is unrealistic to expect a witness to depose like a parrot.

58. Apart from that, Officer-in-Charge (PW-9) has not been cross-examined. So far evidence of PW-6 is concerned, no doubt he was cross-examined about the state of deceased Shyam Narayan Yadav to show that he was not in a position to speak but his cross-examination clearly disclosed that he has stated in



case of Shyam Narayan Yadav, there were three holes of wounds, which he cannot say whether it was caused by bullet or pellet, massive laceration of lungs in both case will cause immediate haemorrhage, which will cause immediate acute respiratory distress. Both these condition will cause loss of speech. However the aforesaid opinion of doctor is suggestive only and no suggestion was given to doctor that deceased was not in a condition to speak at the time of admission whereas there are oral evidence of PW-1 and PW-2 available on record, which has been corroborated by the *fardbeyan* (Ext. 4) that shows that deceased Shyam Narayan Yadav has named the appellant.

59. So far submission of learned counsel for the appellant that there is no certification by the doctor, the Hon'ble Apex Court in the case of State of Madhya Pradesh v. Dal Singh reported in AIR 2013 SC 2059, has considered this aspect and held in para 14, which reads as follows:-

14. The law on the issue can be summarised to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a Doctor in



respect of such state of the deceased, is not essential in every case.

Undoubtedly, the subject of the evidentiary value and acceptability of a dying declaration, must be approached with caution for the reason that the maker of such a statement cannot be subjected to cross-examination. However, the court may not look for corroboration of a dying declaration, unless the declaration suffers from any infirmity.

So far as the question of thumb impression is concerned, the same depends upon facts, as regards whether the skin of the thumb that was placed upon the dying declaration was also burnt. Even in case of such burns in the body, the skin of a small part of the body, i.e. of the thumb, may remain intact. Therefore, it is a question of fact regarding whether the skin of the thumb had in fact been completely burnt, and if not, whether the ridges and curves had remained intact”.

60. The Hon’ble Apex Court in case of *Pothakamuri Srinivasulu alias Mooga Subhaiah v. State of Andhra Pradesh* reported in *AIR 2002 SC 2780*, while dealing with the similar facts observed in para -8 of its judgment, reads as follows:-

“8 It was submitted by Ms. Nanita Sharma, the learned counsel for the appellant that for several reasons the dying declaration cannot be believed. She submitted that looking to the nature of the injuries suffered by the deceased possibly she could not have spoken and must have become unconscious instantaneously. However, no such suggestion has been made to any of the witnesses including the two doctors who respectively conducted the medico-legal examination and post-



mortem examination of the victim. On the contrary the three eye-witnesses have positively stated that the deceased was speaking when they had met her soon after the incident. The victim had died two days after the incident. We cannot in the face of this positive evidence just assume that the injured must have become unconscious and speechless because of the injuries and discard on such assumption the dying declaration deposed to by independent witnesses corroborated by the promptly lodged FIR.

61. As discussed above, PW-9, who has recorded the statement of deceased, has not been cross-examined on the point whether deceased Shyam Narayan Yadav was able to speak, even no suggestion has been given to that witness and no suggestive has also been given to PW-1 and PW-2 that deceased Shyam Narayan Yadav was not in a fit state of mind to speak, as cited by learned counsel for the CBI, held in case of Gian Chand & Others v. State of Haryana reported in 2013 (4) PLJR (SC) 7, in para-11 and 12 which reads as follows:

11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the



said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in [Section 138](#) of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by [Section 146](#) of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”

12. The defence did not put any question to the Investigating Officer in his cross-examination in respect of missing chits from the bags containing the case property/contraband articles. Thus, no grievance could be raised by the appellants in this regard.

62. Learned counsel for the appellant has also referred



to a decision in the case of Umakant (supra) with respect to dying declaration, wherein, Hon'ble Supreme Court has laid down certain guidelines in para-20 of the said judgment which also disclosed that where the court is satisfied that declaration is true and voluntarily, it can base its conviction without further corroboration. In the present case, as discussed above, evidence of PW-2 disclosed that deceased Shyam Narayan Yadav disclosed the names of assailants including appellant and that has also found mentioned in *fardebayan* (Ext.4) lodged promptly after occurrence. In that background, this oral dying declaration appears to be reliable and trustworthy. Now the question arises, as to whether statement made by deceased Shyam Narayan Yadav before his death is relevant in determining the cause of death of deceased Chandra Shekhar Prasad or not. The said question was considered by the Hon'ble Apex Court in the case of Tejram Patil v. State of Maharashtra reported in 2015 Cri.L.J.1829 in which the Hon'ble Apex Court after considering Sections 6 and 32 of the Indian Evidence Act as well as several other pronouncements of Hon'ble Apex Court including the cases Kashiram Tukaram Jadhav v. State of Maharashtra reported in 1984 Cri.L.J. 1447 (Bom), of Ratan Gond v. State of Bihar reported in AIR 1959 SC 18, of Sharad Birdhi Chand



Sarda v. State of Maharashtra reported in (1984) 4 SCC 116 as well as in the case of Pakala Narayan Swami v. Emperor reported in AIR 1939 PC 47, has held in para 25 of the judgment that “it is thus clear that the DD is admissible not only in relation to the cause of death of the person making the statement and as to circumstances of the transaction which resulted in his death, if the circumstances of the said transaction relate to death of another person, the statement cannot be held to be inadmissible when circumstances of “his” death are integrally connected to the circumstances of death of such other person.” In the present case, the statement made by the Shyam Narayan Yadav before his death is not only relates to circumstances of the present case resulting in his death but it also shows the transaction resulting in death of deceased Chandra Shekhar Prasad and as such his evidence is admissible with regard to circumstances of transaction resulting in his death as well as the death of deceased Chandra Shekhar Prasad.

63. Learned counsel for the appellant also argued that FIR lodged by the CBI is the second FIR, as already FIR has been lodged by the Bihar police on the statement of PW-12 as such second FIR is hit under Section 162 Cr.P.C. However, from perusal of record, it appears that FIR lodged by the CBI is



nothing else but reiteration of statement made by PW-12 and on that basis investigation continued and even charge sheet has been submitted by the CBI but no such objection was raised before the trial court as such trial cannot be vitiated on that ground specially when there are enough cogent and reliable materials available on record.

64. Apart from that, defence has also examined 04 witnesses and even according to Dws-1,2 and 3, occurrence of firing took place on 31.03.1997 though those witnesses has tried to develop that some Bhutias were firing and there is evidence of DW-4 on the point of *alibi* of appellant, but their evidence clearly disclosed that they have not depose earlier before the police or CBI during investigation and for the first time, they are appearing before the court and taking such plea. Besides that, the evidence of DW-1 and DW-2 also disclosed that deceased Shyam Narayan Yadav and Chandra Shekhar Prasad died in that occurrence.

65. The statement of appellant recorded under Section 313 Cr.P.C. also disclosed that he has not taken any plea of alibi in his statement.

66. So far motive of occurrence is concerned, the evidence available on record disclosed that local M.P. was not



happy with the deceased persons and he had threatened Chandra Shekhar Prasad earlier. As per evidence of PW-3, appellant and other accused persons are men of local M.P. and as such while the deceased persons and others were campaigning for Bihar Band and addressing the meeting, they were killed in broad day light in a crowded place as such there are materials to prove the motive behind the occurrence.

67. The appellant was convicted under Sections 302/149, 307/149 and 120B of the Indian Penal Code as well as under Section 27 of the Arms Act, however, learned counsel for the appellant has also assailed his conviction under Section 120B on the ground that there is no evidence available on record to show that accused persons conspired with someone to kill the deceased.

68. The Hon'ble Supreme Court in the case of Yogesh alias Sachin Jagdish Joshi vs. State of Maharashtra reported in (2008) 10 SCC 394 has considered the said aspect of the matter and it is manifest that meeting of mind of two or more persons for doing an illegal act by illegal means is *sine qua non* of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from



the surrounding circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement, as such, this Court does not find force in the argument of learned counsels for the appellant that no case under Section 120B of the Indian Penal Code is made out against the appellant.

69. Considering the entire discussions made, we find that PW-2 is an injured and eye witness and his evidence found to be reliable and trustworthy, he supported the prosecution case so far date of occurrence, place of occurrence, manner of occurrence and named the appellant and other accused persons as assailants and the same has been corroborated by oral dying declaration of deceased Shyam Narayan Yadav, just after the occurrence, further been corroborated in part by other evidence as discussed above. As such there are sufficient cogent and reliable evidence available on record against the appellant.

70. We, thus, find no infirmities in the impugned judgment and order. As such conviction and sentence of the appellant under Sections 302/149, 307/149 and 120B of the



Indian Penal Code and Section 27 of the Arms Act is upheld.

71. Accordingly, this appeal is dismissed.

(Vinod Kumar Sinha, J)

Aditya Kumar Trivedi, J I agree.

(Aditya Kumar Trivedi, J)

sujit/-

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