

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.135 of 2015

Arising Out of PS. Case No.-46 Year-2007 Thana- BARHARA District- Bhojpur

Rajesh Yadav, Son of Late Sheo Shankar Yadav, Resident of Padaminia, P.S. -
Krishnagarh Barahara, District - Bhojpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 919 of 2014

Arising Out of PS. Case No.-46 Year-2007 Thana- BARHARA District- Bhojpur

- 1. Dineshwar Yadav, Son of Late Raghbir Yadav
- 2. Suresh Yadav, Son of Late Awadhesh Yadav
- 3. Kamta Yadav, Son of Late Awadhesh Yadav

All resident of village -Padminia, P.S.-Barahra Krishnagarh, District -
Bhojpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 929 of 2014

Arising Out of PS. Case No.-46 Year-2007 Thana- BARHARA District- Bhojpur

Ram Bihari Yadav, Son of Sri Jhuman Yadav, Resident of village -
Padaminiya, P.S. Barahra Krishnagarh , District - Bhojpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 938 of 2014

Arising Out of PS. Case No.-46 Year-2007 Thana- BARHARA District- Bhojpur

Raj Kumar Yadav, Son of Late Bir Bhajan Yadav, resident of Padaminia, P.S.-
Krishnagarh Barahara District- Bhojpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 135 of 2015)

For the Appellant/s : Mr. Vijay Kumar Sinha, Advocate

Mr. Ajay Nandan Sahay, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

For the informant : Mr. Kumar Uday Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 919 of 2014)

For the Appellant/s : Mr. Vindhya Keshari Kumar, Senior Advocate

Mr. Ajay Nandan Sahay, Advocate

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

For the informant : Mr. Kumar Uday Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 929 of 2014)

For the Appellant/s : Mr. Ravindra Kumar

For the Respondent/s : Mr. A. Sharma, APP

For the informant : Mr. Kumar Uday Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 938 of 2014)

For the Appellant/s : Mr. Vindhya Keshari Kumar, Senior Advocate

Mr. Binod Kumar Yadav, Advocate

For the Respondent/s : Mr. Maya Nand Jha, APP

For the informant : Mr. Kumar Uday Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

Date : -08-2021

Criminal Appeal (DB) No. 135 of 2015 has been filed on behalf of the appellant Rajesh Yadav, Criminal Appeal (DB) No. 919 of 2014 has been filed on behalf of the appellants, namely, Dineshwar Yadav, Suresh Yadav and Kamta Yadav, Criminal Appeal (DB) No. 929 of 2014 has been filed on behalf of the appellant Ram Bihari Yadav, whereas Criminal Appeal (DB) No. 938 of 2014 has been preferred by

appellant Raj Kumar Yadav. The appellants, in all these four appeals, were tried together, in Sessions Trial Nos. 460 of 2008, 462 of 2008 and 20 of 2012, arising out of Barhara (Krishnagarh) Police Station Case No. 46 of 2007, and as such, all these four appeals have been heard together and are being disposed of by this common judgment.

2. By the judgment, dated 19.11.2014, passed, in Sessions Trial Nos. 460 of 2008, 462 of 2008 and 20 of 2012, by Sri Ram Padarath, learned 2nd Additional Sessions Judge, Bhojpur, at Ara, all the above named appellants stood convicted under Sections 147 and 302 read with Section 149 of the Indian Penal Code. Further appellant, Rajesh Yadav, was also convicted under Section 27 of the Arms Act. In consequence of their conviction under Section 302 read with Section 149 of the Indian Penal Code, the appellants were, by the order, dated 24.11.2014, sentenced to suffer rigorous imprisonment for life and fine of Rs. 50,000/- each. In default of payment of fine, the appellants were directed to further undergo simple imprisonment for a period of six months. In consequence of their conviction under Section 147 of the Indian Penal Code, the appellants were, by the order, dated 24.11.2014, sentenced to suffer simple imprisonment for a term of two years. In consequence of his conviction under Section 27 of the Arms Act, the appellant, Rajesh Yadav, was, by the order, dated 24.11.2014, sentenced to suffer rigorous imprisonment for a term of three years and fine of Rs. 1000/-. In default of payment of fine, the appellant Rajesh Yadav was directed to further undergo simple imprisonment for a period of two months. The sentences were directed to run concurrently.

3. The case of the prosecution, as unfolded by the informant, Pawan Kumar Singh (PW 6), in the fardbayan, recorded at Sadar Hospital, Ara, on 08.03.2007, at about 11 PM by Sub Inspector of Police Moti Choudhary, of Ara Town Police Station, in brief, is that

(i) about four days ago, Rajesh Yadav came to his house and went away after having a talk with his father, Parshuram Singh (deceased). It has further been stated by the informant that today (on 08.03.2007), at about 07:45 PM, Rajesh Yadav and Raj Kumar Yadav came to his house and sat in the veranda (dalan) of his house, where his father was also sitting on a wooden cot (chowki) and was taking his meal. Dineshwar Yadav, Kamta Yadav, Suresh Yadav, Ram Bihari Yadav and 4-5 other persons were also sitting on the ground outside the door of his house.

(ii) The informant further stated that at about 08:20 PM, on the exhortation of Raj Kumar Yadav to kill the father of the informant, Parshuram Singh, Rajesh Yadav took out a country-made pistol from his waist and fired upon the father of the informant. The bullet so fired by Rajesh Yadav hit the father of the informant on his chest.

(iii) The informant (PW 6) claimed that his brother Sanjay Singh (PW 1), Satyanarayan Singh (PW 3), Awadh Singh (not examined), Satyendra Singh (PW 4), Dhananjay Singh (PW 2), Shiv Ishwar Singh (not examined) and many other persons of his village came and saw the accused persons fleeing towards north after making firing.

(iv) The informant further stated that while taking his injured father to Sadar Hospital, Ara, his father died on the way to the hospital.

(v) The reason behind this occurrence, as disclosed by the informant, is the old land dispute.

4. On the basis of the said *fardbeyan*, a formal First Information Report has been registered as Barhara (Krishnagarh) Police Station Case No. 46 of 2007, under Sections 302/34 of the Indian Penal Code read with Section 27 of the Arms Act, on 09.03.2007, against accused Rajesh Yadav, Raj Kumar Yadav, Dineshwar Yadav, Kamta Yadav, Suresh Yadav, Ram Bihari Yadav and 4-5 other persons .

5. The inquest was held over the dead body of Parshuram Singh, who was also subjected to post mortem examination, and, on completion of investigation, charge sheets were submitted, under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act, against the appellants. Cognizance of the offence punishable under Sections 302, 307, 324, 452 and 120B/34 of the Indian Penal Code and Section 27 of the Arms Act was taken by learned Chief Judicial Magistrate, Bhojpur, at Ara. In this case, three charge sheets were submitted by the police. The first charge sheet, being Charge sheet no. 73 of 2007, dated 05.06.2007, was submitted by the police against Suresh Yadav, Ram Bihari Yadav and Manoj Yadav (not named in the First Information Report), the second charge sheet, being charge sheet no. 05 of 2008, dated 31.01.2008, was submitted by the police against Kamta Yadav and Dineshwar Yadav; whereas the third

charge sheet, being supplementary charge sheet no. 35 of 2008, dated 30.04.2008, was submitted by the police against Rajesh Yadav and Raj Kumar Yadav. The case was committed to the Court of Sessions by the orders passed by the learned Judicial Magistrate, 1st Class, Ara, dated 01.09.2008, and by order of the learned Sessions Judge, the case was transferred to different courts and finally to the Court of learned 2nd Additional Sessions Judge, Bhojpur, at Ara, for disposal.

6. At the trial, when charges, under Section 302 read with Section 34 of the Indian Penal Code was framed on 27.09.2013 against all the above named appellants, they pleaded not guilty thereto. Charge, under Section 27 of the Arms Act, was framed on 23.09.2013 against the accused-appellant, Rajesh Yadav, he pleaded not guilty thereto and the appellants claimed to be tried.

7. In support of its case, prosecution examined altogether 08 (eight witnesses), namely, P.W. 1 Sanjay Singh, P.W. 2 Dhananjay Singh, P.W. 3 Satyanarayan Singh, P.W. 4 Satyendra Singh, P.W. 5 Vijay Bahadur Singh, P.W. 6 Pawan Kumar Singh, P.W. 7 Dr. Jitendra Kumar and P.W. 8 Shaligram Singh. The accused were, then, examined under Section 313 of the Code of Criminal Procedure, 1973, wherein the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial and false implication due to land dispute.

8. The defence has not examined any witness in support of his case. However, the defence has produced and exhibited some documents relating to the criminal cases against the deceased and

existence of a case under Section 145 of the Code of Criminal Procedure, 1973.

9. Having, however, found the accused guilty of the offences, convicted under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, learned trial Court convicted them accordingly and passed sentences against them, as mentioned above.

10. Aggrieved by their conviction and the sentences, which has been passed against them, the accused have preferred these four appeals.

11. We have heard Mr. Vijay Kumar Sinha, learned Counsel appearing on behalf of the appellant Rajesh Yadav, Mr. Vindhya Keshari Kumar, learned Senior Counsel for the appellants, namely, Dineshwar Yadav, Suresh Yadav, Kamta Yadav and Raj Kumar Yadav and Mr. Ravindra Kumar, learned Counsel for the appellant Ram Bihari Yadav. We have heard Mr. Ajay Mishra, Mr. S. C. Mishra, Mr. Abhimanyu Sharma and Mr. Mayanand Jha, learned Additional Public Prosecutors, appearing on behalf of the State in the four appeals. We have also heard Mr. Kumar Uday Singh, learned Counsel for the informant.

12. Mr. Vindhya Keshari Kumar, learned Senior Counsel appearing on behalf of the appellants, Dineshwar Yadav, Suresh Yadav and Kamta Yadav [Criminal Appeal (DB) No. 919 2014] and appellant Raj Kumar Yadav [Criminal Appeal (DB) No. 938 of 2014], after placing the entire evidence in his argument, has submitted that PW 1 (Sanjay Singh) and PW 4 (Satyendra Singh) have not seen the

occurrence and are not eye-witnesses. Referring to the deposition of PW 3 (Satyanarayan Singh) and PW 4 (Satyendra Singh), who claimed themselves to be the eye-witnesses, learned Senior Counsel has submitted that at the time of occurrence, they were standing on the roofs of their respective houses, situated adjacent to the house of the informant and they saw the entire occurrence in the light of the lantern, but no lantern was seized by the Investigating Officer from the place of occurrence. Learned Senior Counsel, referring to paragraph 34 of the judgment, submits that the place of occurrence has not been established by the prosecution inasmuch as no blood stained earth and/or blood stained cloths of the deceased were seized from the place of occurrence and exhibited by the prosecution. Learned Senior Counsel, referring to paragraphs 10 and 12 of the deposition of PW 7 (Dr. Jitendra Kumar), has submitted that upon dissection of the stomach, PW 7 has found the stomach empty and that no food can be digested by a dead body, whereas the prosecution witnesses, in their deposition, have stated that the deceased was eating *litti* when appellant Rajesh Kumar Yadav had fired upon him. In support of his submission, learned Senior Counsel has placed reliance, in the case of **Moti v. State of U.P. (AIR 2003 SC 1897)**, at paragraph 12, which reads as under:

“12. It is rather surprising that the High Court should find this part of the medical evidence as being of no consequence at all. The High Court referring to this part of the medical evidence has observed : "In our opinion the stomach contents are not very material to determine the time of incident." We are of the considered opinion this view of the High Court is wholly

erroneous. It may be possible to contend that contents of the stomach may not always be an indicator of the time of death. But in a case where stomach is empty and the prosecution evidence is that the murder had taken place shortly after the deceased has his last meal, to say that the contents of the stomach have no material bearing on the determination of the time, in our opinion, is not acceptable. In the instant case, time of death being a material factor to verify the presence of the eye-witnesses it was obligatory for the prosecution to have clarified the discrepancy between the medical evidence and the oral evidence. The prosecution having failed to do so, in our opinion, a serious doubt as to the time of incident and the presence of the eye-witnesses at the time of incident and their narration of the incident also becomes doubtful.”

13. Learned Senior Counsel further submits that the time and manner of the death of the deceased was also not established by the prosecution. Learned Senior Counsel has also submitted that PW 7 has not found any sign of blackening or charring near the bullet injury; whereas as per the prosecution case, the bullet was fired by the appellant Rajesh Yadav from a very short distance. Learned Senior Counsel has further submitted that no overt act has been attributed to the appellants, except appellant Rajesh Yadav, who is alleged to have fired on the deceased and the appellant Raj Kumar Yadav, who is said to have exhorted the appellant Rajesh Yadav to kill the deceased and if no overt act was alleged against some persons of the unlawful assembly, they are entitled to be acquitted. In support of his contention, learned Senior Counsel has placed reliance on a Division Bench decision of this Court, in the case of **Pitambar Thakur**

v. The State of Bihar, reported in **1999 (3) PLJR 412**. The Division Bench, in paragraphs 27 and 28, in the case of **Pitambar Thakur** (supra), has held as follows:

“27. From the facts of the case it appears that the members of the prosecution party and the defence party came near Khanua Ghat. At that stage no one was armed. It cannot also be lost sight of that the members of the prosecution party were the supporters of the informant(P.W.2), who was a candidate for the post of Mukhiya. Similarly, the members of the defence party were the supporters of the rival candidate, namely, appellant Ram Singhasan Rai. After they reached Khanua Ghat and the members of the defence party armed themselves with the weapons supplied by ten or fifteen persons sitting near the bank of the river, they certainly constituted themselves into an unlawful assembly. The evidence on record is that by the time they reached Khanua Nala the member of the defence party had become agitated and were anxious to pick up a quarrel. Appellant Dhirendra Thakur, Ram Singhasan Rai, Anup Lal Rai (deceased), Ramswaroop Rai (deceased) and Nand Kishore Rai armed themselves with guns. The firing was resorted to in the first instance by appellant Dhirendra Thakur though the evidence is not consistent as to whether Ram Singhasan Rai or Ramswaroop Rai fired simultaneously with him. The members of the prosecution party were thereafter chased. The informant hid himself inside the house of Tildhari. After the house was set on fire and Tildhari wanted to escape, Ram Singhasan Rai fired at him causing him injuries. In course of the occurrence, there is clear evidence of P.Ws. 4, 11 and 17, that it was Nand Kishore Rai who fired at them causing gun shot injuries,

as found by the medical officer. We are, therefore, of the considered view that having armed themselves, and having commenced the assault with the use of guns, the five appellants who were armed with guns did constitute themselves into an unlawful assembly, the object of which was to commit the murder of one or more members of the prosecution party who belonged to the rival group. This is reinforced by the fact that they were all carrying firearms and the same. There could be no other purpose behind their arming themselves with guns. Apart from the two appellants who are dead, there is clear allegation of overt act against the remaining three appellants. Dhirendra Thakur has been held guilty of the offence under section 302 of the Indian Penal Code and there appears to be no good reason to set aside his conviction, subject to the finding on his plea of alibi. Ram Singhasan Rai fired at the informant and has been found guilty of the offence under section 307 of the Indian Penal Code. His participation clearly established that he was acting in concert with other accused persons who were also armed with, guns. Similarly, appellant Nand Kishore Rai fired from his gun causing injuries to P.Ws 4, 11, 15 and 17. There is clear allegation of overt acts against them and the prosecution has successfully proved its case as against them.

28. A question then arises as to whether in the facts and circumstances of this case they should be convicted under section 302 read with section 149 of the Indian Penal Code, or under any other section. Out of the five appellants armed with guns the overt act alleged against Ramswaroop Rai (since deceased) has not been believed. As against Anup Lal Rai there was an allegation that he set fire to the house of Tildhari,

but the charge of arson against him has not been proved. Thus, out of five appellants armed with guns, as against two, namely, Anup Lal Rai and Ramswaroop Rai it has not been established that they participated by using their guns. The overt acts alleged against them have not been proved. Applying the principle as enunciated in Cr. Appeal No. 17 of 1985, it can be said with certainty that after arming themselves with guns appellant Dharendra Thakur, Ram Singhasn Rai and Nand Kishore Rai acted in concert and used their weapons. Even assuming that by reason of their not having used their weapons, it can be said that Anup Lal Rai and Ramswaroop Rai (both since deceased) did not share the common unlawful object of committing the murder of anyone, the remaining appellants can still be held guilty of the offence under section 302 of the Indian Penal Code read with section 34 of the Indian Penal Code. The appeal preferred by Anup Lal Rai and Ramswaroop Rai has abated. Appellants Ram Singhasan Rai and Nand Kishore Rai are, therefore, convicted of the offence under section 302 read with section 34 of the Indian Penal Code instead of section 302 read with section 149 of the Indian Penal Code. On the same reasoning appellant Dharendra Thakur can also be held guilty of the offence under section 302 read with section 34 of the Indian Penal Code, apart from his conviction under section 302 of the Indian Penal Code. We shall presently consider the plea of alibi set up by Dharendra Thakur in Cr. Appeal No. 77 of 1985. So far as Cr. Appeal No. 36 of 1985 is concerned, the appeals of Anup Lal Rai and Ramswaroop Rai, stand abated. Appellant Rajendra Rai and Bhola Rai said to be armed with bombs, are acquitted of the charge under section 302/149 of the Indian Penal Code but their conviction under section 147 of the Indian Penal Code

is upheld, and the sentence is reduced to the period already undergone by them. Appellant Ram Singhasan Rai and Nand Kishore Rai are convicted of the offence under section 302/34 of the Indian Penal Code instead of section 302/149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. The conviction of appellant Ram Singhasan Rai under section 307 of the Indian Penal Code is upheld, but he is sentenced to undergo rigorous imprisonment for a term of seven years on this count. The conviction and sentence of Ram Singhasan Rai and Nand Kishore Rai under section 27 of the Arms Act is upheld. Cr Appeal No. 36 of 1985 is disposed of accordingly. "

14. Learned Senior Counsel has further submitted that the deposition of PW 3, PW 4 and PW 5 are self-contradictory as well as their testimonies have been contradicted by the Investigating Officer (PW 8). Learned Senior Counsel, referring to deposition of PW 3, submits that this witness, in paragraph 28, has stated that it is not true that he has not stated before the police that he and his brother (PW 4) were sitting on the roofs of their respective houses and were talking to each other; whereas PW 8 (Investigating Officer), in paragraph 23, has deposed that PW 3 had not stated before him that he and his brother (PW 4) were sitting on the roofs of their respective houses and were talking to each other. Learned Senior Counsel has further submitted that PW 8 (Investigating Officer) has also contradicted the statement of PW 4, made in paragraph 36 of the deposition, that while he and his brother (PW 3) were sitting on the roofs of their respective houses and were talking to each other, they saw that Parshuram Singh was eating *litti* and *chokha* and the

informant was standing near the deceased and reached the place of occurrence on witnessing the exhortation of appellant Raj Kumar. Learned Senior Counsel has further submitted that PW 1, PW 2, PW 3, PW 4, PW 5 and PW 6 are the most interested witnesses inasmuch as there was previous enmity also among them and a case, under Section 144/145 of the Code of Criminal Procedure, 1973, was pending for the land. Learned Senior Counsel has submitted that source of identification has not been brought on record by the prosecution. Learned Senior Counsel has further submitted that the deceased was having arm license and the father of PW 3 and PW 4 had also arm licence and nobody would dare to enter into the premises of the deceased, who is well known to the appellants and, thus, submission is that the place of occurrence is not established by the prosecution on this count also. Learned Senior Counsel, referring to paragraph 2 of the deposition of PW 1 (Sanjay Singh), has submitted that this witness has identified Ram Bihari as Rajesh.

15. Mr. Vijay Kumar Sinha, learned Counsel appearing on behalf of the appellant Rajesh Yadav [Criminal Appeal (DB) No. 135 of 2015], while adopting the submissions advanced by Mr. Vindhya Keshari Kumar, learned Senior Counsel, has submitted that PW 1 has failed to identify this appellant in the dock and, thus, the story propounded by the prosecution is improbable because the deceased was having criminal background and a number of cases were running against him.

16. Mr. Rabindra Kumar, learned Counsel appearing on behalf of the appellant Ram Bihari Yadav [Criminal Appeal (DB) No.

929 of 2014], while adopting the submission advanced by Mr. Vindhya Keshari Kumar, has submitted that PW 6, in paragraph 12 of his deposition, has clearly stated that the appellants, along with others, had not come with the intention to kill his father. He further submits that the materials seized by the Investigating Officer, i.e. blood stained earth and apparels of the deceased, were neither sent for examination nor produced before the Court for marking exhibit. He further submits that non-examination of the independent witnesses, like S.I. Moti Choudhary, who had drawn the formal First Information Report and the driver of the jeep, who carried the deceased to the Sadar Hospital, Ara, creates serious doubt on the prosecution.

17. On the other hand, learned Additional Public Prosecutors, have submitted that quantity of evidence is immaterial; rather, the quality of evidence is important and PW 1, PW 3, PW 4 and PW 6 have narrated the entire occurrence vividly and the prosecution has been able to not only prove the manner of occurrence, place of occurrence, time of occurrence but also proved the guilt of the appellants beyond the shadow of all reasonable doubts.

18. Mr. Kumar Uday Singh, learned Counsel appearing on behalf of the informant, while adopting the submissions advanced on behalf of the State, in its totality, submits that the deposition of the prosecution witnesses were consistent and on the basis of their deposition the learned Trial Court has rightly convicted the appellants. He further submitted that though the doctor (PW 7) did not find any blackening and charring near the wound of the

deceased, but gun powder was found by the doctor (PW 7) all over the chest.

19. After having minutely scrutinizing the evidence, both oral and documentary, available on record and the arguments advanced on behalf of the parties, I am, *prima facie*, of the opinion that the prosecution has failed to establish its case beyond the shadow of all reasonable doubts and the judgment of conviction, dated 19.11.2014, and order of sentence, dated 24.11.2014, passed, in Sessions Trial Nos. 460 of 2008, 462 of 2008 and 20 of 2012, arising out of Barhara (Krishnagarh) Police Station Case No. 46 of 2007, are not sustainable.

20. In order to give my conclusive finding, it is necessary to analyze and discuss the evidence of prosecution witnesses.

21. In order to appreciate the evidence adduced by the prosecution against the appellants, I would like to first take note of the evidence of Dr. Jitendra Kumar (PW 7), who had conducted, on 09.03.2007, *post mortem* examination on Parshuram Singh's dead body and found the following *ante mortem* injuries:

"External Examination: Average built, small hairs over scalp which was white, eyes closed, mouth closed, Rigor Mortis appeared in upper extremity

(1) Lacerated Wound 1" x 1" x cavity deep in right 3rd inter coastal space lateral to sternum. Blood coming through wound, margin inverted, gund powder spread all over chest.

(2) Lacerated Wound 1/2" x 1/2" x cavity deep on right side of back just below right scapula. Blood coming through this wound.

Wound (1) is wound of entry and wound no. (2) is wound of exit.

On dissection-

Skull : Brain and meninges – pale, Chest: chest cavity filled with blood, Right lung lacerated, Abdomen: Liver, spleen and kidney-Pale, Bladder : 50ML urine was present.”

22. In the opinion of the doctor (PW 7), death was caused due to haemorrhage and injuries of vital organs, resulting from the injuries sustained on chest, the injuries have been caused by fire arm.

23. This witness has identified his hand-writing and signature on the post mortem report of deceased Parshuram Singh, which has been marked as Exhibit-2.

24. The finding of the doctor and his opinion with regard to the cause of death of the said deceased and his opinion with regard to the weapon used for causing the death of the deceased, were not disputed either by the prosecution or by the defence and I also do not notice anything improbable in the evidence given by the doctor (PW 7). From the evidence of PW 7, it becomes clear that Parshuram Singh's death was homicidal in nature.

25. Now the question which remains is as to whether the appellants were the persons responsible for the death of the deceased and, thus, they have committed the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act?

26. Coming to rest of the witnesses (seven in number) examined on behalf of the prosecution,. PW 6, Pawan Kumar Singh

(an eye-witness to the entire occurrence), the informant of this case and son of the deceased, in his evidence, has deposed that the occurrence took place on 08.03.02007 at about 08:20 pm, when he was at his home with his father (deceased) at the veranda (*dalaan*) and Rajesh Yadav and Raj Kumar Yadav came and sat near his father; whereas Kamta Yadav, Suresh Yadav, Ram Bihari, Dineshwar Yadav, Manoj Yadav were standing below the stairs and they were holding arms. This witness has further deposed that when Rajesh Yadav and Raj Kumar Yadav were talking to his father, he told his father to take food and I gave him food and was standing there and when his father had not eaten one *litti* completely, Raj Kumar Yadav told to shot him, in the mean time, Rajesh Yadav took out a country-made pistol from his waist and shot at the chest of his father and after firing all the accused persons fled away towards north. This witness further deposed that on hearing the sound of firing, first of all Sanjay Bhaiya (PW 1) came and then Satyendra Singh (PW 4), Satya Narayan Singh (PW 3), Dhananjay Singh (PW 2) and many other persons came and on receiving the bullet injury, his father fell beside the chowki and this witness, along with his brother, Sanjay Singh (PW 1) had tied an Indian towel (*gamachi*) to stop the blood which was oozing out, but a lot of blood had already come out. This witness has further deposed that someone had brought a jeep from the baraat and this witness along with others took the deceased to Sadar Hospital and when they crossed Saraiya, someone told that now your father is no more. This witness has further deposed that his fardbayan was recorded at the Sadar Hospital by the Daroga ji of Town Police Station, which was

read over to him and finding the same correct, he put his signature on his fardbayan, which has been marked as Annexure-1/1. This witness has disclosed in his examination-in-chief that the reason behind the occurrence is that the land of the informant is at *dias* where the accused persons used to commit robbery.

27. In his cross-examination, this witness (PW 6), in paragraph 6, has deposed that the accused person had not come to meet his father before and again said that they had come 4-5 days ago and in paragraph 7, this witness (PW 6) has denied any land dispute with the accused persons. This witness (PW 6) has further deposed in paragraph 11, that the generator light was on in the house of his neighbour Tiwary ji, in whose house marriage ceremony was going on. This witness (PW 6) has further deposed that accused persons had not come with the intention to kill his father, though the accused were armed with guns, no one asked him the reason for carrying arms with them. This witness (PW 6) has claimed that he was all along with his father and heard the talk between his father and accused persons and according to him, the talk was about compromise of land dispute. This witness (PW 6) has further deposed that when Rajesh Yadav fired at his father, his father fell down and he raised alarm and his brother (PW 1), who was inside the house, came running near his father and Pws 2, 3 and 4, along with more than hundreds of persons from north of the house of the informant and from the shamiyana (pandal) also reached there, but nobody tried to catch hold of the accused persons while they were fleeing away. This witness (PW 6) has further deposed that he did not get any blood

stain in his body; whereas the hand of his brother (PW 1) got some blood stained while they were covering the wound of their father with the Indian towel. This witness has denied that there is any licensed arm in his house and his neighbours, who are witnesses in this case, have kept their arms in Ara, though they were present in their houses at the village (place of occurrence) and also admitted that he is an accused in the murder of Rameshwar Yadav of the village of the accused persons. This witness was not aware about the information being given to the Police Station either while going to the Sadar Hospital, Ara, or while returning from the hospital with the dead body of his father. This witness (PW 6) has further shown his ignorance about the criminal antecedent of his father, though he has admitted that his father had gone to jail in the murder of Babaru Dome.

28. PW 1, Sanjay Singh, son of the deceased (claimed to be an eye-witness to the occurrence), has deposed that the occurrence took place on 08.03.02007 at about 08:20 pm, in the evening, when he was at his home and his father (deceased) was at the veranda (*dalaan*) of his house and then Rajesh Yadav and Raj Kumar Yadav came and started talking to his father while his father was eating litti sitting on the chowki. This witness (PW 1) has further deposed that Raj Kumar Yadav told to shot him, and Rajesh Yadav took out a country-made pistol from his waist and shot at the left side of the chest of his father. This witness (PW 1) has further deposed that Dineshwar Yadav, Kamta Yadav, Suresh Yadav, Ram Bihari Yadav and Manoj Yadav were also present at the door (*duar*) of his house,

having armed with guns. This witness (PW 1) has also deposed that while the accused persons were fleeing, the villagers chased them, but they succeeded in fleeing away towards north and then east. This witness (PW 1) has further deposed that he took the deceased to Sadar Hospital and when they crossed Saraiya bazaar, his father was dead. This witness (PW 1) has disclosed the reason behind the occurrence to be the land dispute. This witness (PW 1) has identified accused Ram Bihari as Rajesh in the dock.

29. In the cross examination, this witness (PW 1) has deposed that his father was not accused in any criminal case (paragraph 5), he had shown ignorance about the involvement or custody of his father in connection with the murder case of Bagharia Dome (paragraph 6) and has also denied the existence of any case with the accused persons (paragraph 7). In paragraph 8 of his deposition, this witness (PW 1) has deposed that the dalaan was surrounded by all sides and he came out of this house after hearing hulla covered he did not hear the sound of firing. In paragraph 8, this witness (PW 1), in one breath has deposed that he could not say whether any orchestra was there in the marriage ceremony of family members of his close door neighbour, Tarak Tiwary and on the other breath, he has deposed that orchestra had come in the baraat of Tarak Tiwary and sound of mike was coming. This witness (PW 1), in paragraph 10, has deposed that while they were crossing Krishnagarh Police Station, his father was alive and in paragraph 11, this witness has deposed that no one had gone to the Police Station to inform about the occurrence. This witness (PW 1), in paragraph 16,

has deposed that his father had eaten only one litti and there was only one chowki in the dallan and his father was sitting on the chowki towards north and there was no room available for anyone to sit in front of his father and if anyone had to sit, he could sit behind his father and in paragraph 17, this witness (PW 1) has further deposed that bullet was fired from a distance of 4-5 steps and neither he nor his brother (PW 6) had raised alarm after bullet was fired (Paragraph 18). This witness (PW 1) has denied the suggestion of the defence that he was not present at the place of occurrence, and someone from the baraat had killed his father due to dozens of enmity and this witness has shown his ignorance about the pending case of land with the accused persons.

30. PW 2, Dhananjay Singh, nephew of the deceased has deposed that the occurrence took place on 08.03.02007 at about 08:30 pm, in the evening, when he was coming from Tribhuwani village and he heard the sound of firing and when he reached at his dalan, he saw the accused persons, armed with guns, fleeing way towards north and then east. This witness has further deposed that when he reached the place of occurrence, Pawan (PW 6) told him that Rajesh Yadav shot his father by means of a country-made pistol at the exhortation of Raj Kumar Yadav and he saw the deceased under the chowki in injured condition and he, along with others, took the deceased to Ara for treatment where the doctor declared him dead. This witness has also disclosed the reason behind the occurrence to be the land dispute for which case has been instituted.

31. In the cross examination, this witness (PW 2) has deposed, in paragraph 6, that he was an accused in Sessions Trial No. 51 of 2012, relating to murder of Rameshwar Yadav and in paragraphs 7 and 8, he has deposed that he was not aware as to whether the deceased was accused in the cases relating to murder, dacoity, attempt to murder etc and he denied that there were eight cases pending against the deceased in Barhara Police Station and one case at Ara Nawada Police Station. This witness (PW 2) further deposed that he had heard the voice of only one firing and saw the accused persons fleeing from a distance of 10-15 steps. This witness (PW 2), in paragraph 15, has deposed that he heard the sound of firing from a distance of 50-60 steps and he heard the sound of firing from south-east direction. This witness has claimed, in paragraph **18 (sic. 8)**, that he was the first person to reach the place of occurrence and after him hundreds of people came there, but he has shown his ignorance to the fact as to whether anyone tried to chase the accused persons or not. This witness (PW 2), in paragraph 13, has deposed that though he was present with the informant (PW 6) on the way to the hospital and also in the hospital, but he did not know at what time, the fardbayan of Pawan (PW 6) was recorded. This witness (PW 2) has denied the suggestion of the defence of the false implication.

32. PW 3, Satya Narayan Singh (claimed to be an eye-witness to the occurrence), has deposed that the occurrence took place on 08.03.02007 at about 08:30 pm, in the evening, when he was at the roof of his home, which is situated towards north-east to the

door of the deceased, and he (PW 3), along with his brother (PW 4) were talking to each other from the roofs of their respective houses and he saw a lantern burning at the door of deceased. This witness (PW 3) further deposed that Rajesh Yadav and Raj Kumar Yadav came and started talking to the deceased who was sitting on the chowki and Kamta Yadav, Suresh Yadav, Ram Bihri Yadav, Dineshwar Yadav, Manoj Yadav were standing, armed with guns, outside the dalan, at that time the deceased was eating. This witness (PW 3) has further deposed that in course of talking, Raj Kumar Yadav told Rajesh Yadav shot the deceased, on which Rajesh Yadav took out a country-made pistol from his waist and shot at the chest of the deceased. This witness (PW 3) has further deposed that Pawan (PW 6) , son of the deceased, was standing beside his father, and this witness, along with the informant raised alarm, and then the accused persons succeeded in fleeing away towards east and then north. This witness has further deposed that when he reached the dalan, PW 6, PW 1 and PW 2 were at the place of occurrence and the deceased had fallen on the earth under the chowki and blood was oozing out of his chest and they took the deceased to Sadar Hospital, but the deceased died on the way and doctor declared him dead in the hospital.

33. In the cross examination, this witness (PW 3) has deposed, in paragraphs 6 and 7, that he had neither seen before any armed person at the door of the deceased nor had asked from the persons carrying arms as to where they were going. This witness (PW 3), in paragraph 3, has deposed that he and PW 4 were sitting on the roof in front of each other and the dalan of the deceased was not

visible from the roof of this witness (PW 3) and further he (PW 3) and PW 4 did not see on the roof of any other house. This witness (PW 3), in paragraph 4, has deposed that the generator lights were on and he had seen the persons coming to the dalan of the deceased from north. This witness, in paragraph 5, has deposed that three persons were carrying arms and Rajesh Yadav and Raj Kumar Yadav were empty handed and rest of the accused were 25-30 yards behind Rajesh Yadav and Raj Kumar Yadav. This witness, in paragraph 8, has deposed that there was no case pending of 144/145 of the Code of Criminal Procedure between the deceased and his sons and the accused persons and in paragraph 9, this witness (PW 3) has admitted dispute of land of the deceased with the accused persons and also admitted, in paragraph 10, about the involvement of the deceased in a murder case. This witness, in paragraph 17, has deposed that within ten minutes of the accused persons reaching the place of occurrence, he heard the sound of firing and was sure that the firing was made in the dalan of the deceased. This witness, in paragraph 18, has deposed that he and PW 4 reached the place of occurrence raising hulla and PW 1 and PW 6 were also making hulla and within five minutes, hundreds of people reached there. This witness, in paragraph 20, has claimed to have seen the bullet hitting the chest of the deceased. This witness, in paragraph 27, has denied the suggestion of the defence of false deposition. This witness (PW 3), in paragraph 30, has deposed that when he reached the dalan, PW 6, PW 1 and PW 2 were present there from before and after hulla, Satyendra (PW 4), , Vijay Singh, Awadh Singh, and many other persons

of the village came. In paragraphs 31 and 32, this witness has disclosed the criminal antecedent of the deceased. This witness, in paragraph 36, has denied that he is a party to the case of 144/145 of the Code of Criminal Procedure and has also expressed his ignorance about the accused persons being the party to that case. This witness, in paragraph 38, has deposed that the accused persons were talking to the deceased by standing in front of the deceased. Further, in paragraph 40, this witness (PW 3) has admitted that nobody had informed the police and they directly went to Sadar Hospital. This witness, in paragraph 42, has denied the suggestion of the defence of false deposition.

34. Closely on the heels of PW 3, Satyendra Singh (PW 4) has deposed in his examination-in-chief. In Cross-examination, this witness (PW 4), in paragraph 3, has deposed that his house is situated south to the house of PW 3 and the main exit gate of his house is towards east and there is a small gate towards west. This witness, in paragraph 5, has deposed that the shamiyan for the marriage ceremony in the house of Tarak Tiwary was fixed towards south of his house (which is south to the place of occurrence) and he was not able to see the Shamiyana, but was able to see the roof of the house of the deceased. This witness, in paragraph 6, has deposed that he and PW 3 is accused in the murder of Rameshwar Yadav. This witness, in paragraph 7, has deposed that while talking to his brother (PW 3), their faces were either towards east or west. This witness has deposed that accused were not used to come to the house of the deceased. This witness, in paragraph 11, has shown his ignorance

about the case between the deceased and the accused persons regarding land and in paragraph 12, he deposed that he, his brother (PW 3) along with 50 persons were first party and the accused side were the second party in the case of 145 of the Code of Criminal Procedure, but this witness has denied that due to that case, the accused persons used to visit the deceased. This witness, in paragraph 19, claimed to have seen litti and chokha in the plate of the deceased and further, in paragraph 20, he deposed that the faces of Rajesh and Raj Kumar were towards east; whereas the face of the deceased was towards north. This witness, in paragraph 25, has deposed that he had seen the occurrence. This witness, in paragraph 35, has confirmed that the deceased was eating litti and chokha at the time of occurrence and has further denied the suggestion of the defence about false implication.

35. PW 5, Vijay Bahadur Singh, has deposed in his examination-in-chief that he reached the place of occurrence after hearing the sound of firing and saw 6-7 persons fleeing and it was PW 6 who disclosed him that on the exhortation of Raj Kumar, Rajesh Yadav had fired from country-made pistol and Kamta Yadav, Suresh Yadav, Dineshwar Yadav, Ram Bihari Yadav were fleeing resorting to firing and someone brought a jeep from the baraat and they took the deceased to the hospital and when they reached Saraiya, the deceased died and at the hospital, the doctor declared him dead. This witness has put his signature of the inquest report and also on the First Information Report.

36. This witness (PW 5), in his cross-examination, has deposed that he reached the place of occurrence after hearing the sound of firing and before him, there were 10-15 persons present at the place of occurrence and he saw a cloth tied on the wound of the deceased and the deceased was in the fallen condition. In paragraphs 11 and 12, this witness has disclosed that he is an accused in the case of murder of Nirmal Yadav and Raj Kumar is a witness in that case. This witness, in paragraph 13, has deposed that he, along with others, was first party in the case of 144/145 of the Code of Criminal Procedure. However, this witness has denied the suggestion of the defence that he was falsely deposing in this case due to the fact that Raj Kumar was a witness in the case of murder of Nirmal Yadav. This witness, in paragraph 27, has accepted that he is closely related to the deceased and in paragraph 28, he disclosed that the deceased was having arm license for his security and PW 3 and PW 4 had also arm licence. This witness, in paragraph 29, has denied the suggestion of the defence about false implication.

37. PW 8, Saligram Singh, was the Officer-in-Charge of Krishnagarh Police Station, on 08.03.2007, i.e. the date of occurrence. In his deposition, this witness has claimed to have identified the hand writings of the S.I. of Police Moti Choudhary, on the fardbayan of the informant (PW 6), formal First Information Report in the hand writing of the Officer-in-Charge of Barhara Police Station and inquest report in the hand writing of S.I., Town Police Station, Ara. This witness has described the area of the place of occurrence in paragraph 4 and in paragraph 6, this witness has deposed that he had seized, in

presence of witnesses, the blood-stained earth, blood-stained gamacha and pillet.

38. This witness (PW 8), in his cross-examination, has deposed that though he had seized the blood-stained earth, blood-stained gamcha and pellet of bullet and prepared a seizure list, but he had not mentioned the name of the witnesses before whom the seizure list was prepared and the seizure list has also not been annexed in the case diary. This witness has further deposed that he had not mentioned as to what happened of the seizure list so prepared by him and has further admitted that he had not sent the seized materials for examination. This witness, in paragraph 23, has deposed that Satya Narayan Singh (PW 3) had not stated before him that he and PW 4 were talking to each other on the roofs of their respective houses. In paragraph 24, this witness has deposed that Satyendra Singh (PW 4) had not stated before him that fire was shot, he heard hulla and Pawan (PW 6) as well as Sanjay (PW 1) were crying and the informant (PW 6) disclosed him that Rajesh Yadav had fired on the chest of the deceased. In paragraph 25, this witness has deposed that Vijay Bahadur Singh (PW 5) had not stated before him that he (PW 5) had seen 6-7 persons fleeing towards north of the house of the deceased and the deceased as still alive when he was fallen under the chowki and a jeep was brought from the baraat and the deceased was carried in the jeep and while they cross village Saraiya, the deceased died. This witness, while describing the place of occurrence, has deposed that there were two chowkis in the dalan of the deceased.

39. After carefully scrutinizing the evidence, both oral and documentary, adduced on behalf of the parties and after having heard learned Counsel for the parties, I have come to the conclusive finding that the prosecution has miserably failed to prove the charges levelled against the appellants, beyond all reasonable doubt. Not only this, the oral evidence adduced on behalf of the prosecution is not corroborating with the medical evidence inasmuch as the witnesses have consistently deposed that the deceased had eaten litti and this theory is being disbelieved by the medical evidence where the doctor (PW 7) has found, while conducting post mortem examination on the dead body of deceased Parhurar Singh, the stomach empty.

40. PW 6 (Pawan kumar Singh), in his evidence, has deposed that there was only one chowki in the dalan; whereas the Investigating Officer has found two chowkis at the place of occurrence. PW 6, in his entire deposition, has not disclosed as to how he identified the accused persons, though he deposed that he had visited the village of the accused persons for only 1-2 times and that too, two-three years prior to the date of occurrence. This witness (PW 6) has deposed that his injured father was carried to the jeep by PW 1, PW 3 and PW 4, but none of these witnesses (PW 1, PW 3 and PW 4) have deposed so. This witness has deposed that generator light was on in the house of Tiwary ji, which is just north to the dalan of this witness. This witness, at no point of time, during the entire evidence, has deposed that any person had even tried to catch the accused persons while they were fleeing despite the fact that

just north to the house of the deceased, there was a shamiyan fixed for the marriage ceremony of the members of Tarak Tiwary and more than hundreds of people were present there. It is also unbelievable that when there were more than 10 persons in the jeep, including the deceased, going to Ara Sadar Hospital and were crossing from the Police Station, nobody had bothered to inform the police about the occurrence. This witness (PW 6) has deposed that except Rajesh Yadav and Raj Kumar Yadav, all other accused persons were standing near the stairs, which was just close to the dalan; PW 3 has deposed that other accused persons were standing 25-30 yards away from the dalan. It is also unbelievable that when the accused persons, armed with gun and pistol, reached to the house of the deceased, neither the deceased nor the informant (PW 6) raised any suspicion; rather this witness (PW 6), in paragraph 12 of his deposition, has stated that the accused persons had not come with the intention to kill his father nor he deposed that hot talks had taken place between the accused persons and the deceased. It is also unbelievable that though this witness, along with his brother (PW 1) had tied a gamacha around the chest of the deceased, he did not get any blood stain on any part of his body, though blood was oozing out of the wound of the deceased. This witness (PW 6) had, in his entire deposition, had not stated that he raised any alarm when Rajesh Yadav shot this father.

41. PW 1 (Sanjay Singh), brother of the informant (PW 6) and son of the deceased, has failed to identify the accused Ram Bihari and he identified Ram Bihari as Rajesh. This witness, in his deposition, has denied the existence of any criminal case against his

father, though from going through the evidence adduced on behalf of the prosecution, it is crystal clear that the deceased was accused in many criminal cases. This witness, in paragraph 8, has deposed that he reached the place of occurrence after hearing hulla and he had not heard the sound of firing, though, the informant (PW 6) had never deposed that he raised hulla. This witness has further deposed that there was no space in front of the chowki on which the deceased was sitting and if anyone has to sit, he would have to sit behind the chowki, which is contrary to the case of the prosecution inasmuch as it is the consistent case of the prosecution that Rajesh and Raj Kumar were sitting in front of the deceased. This witness has deposed, at paragraph 18, that after firing, neither he nor his brother (PW 6) had raised alarm, which is also against the natural behavior of any person. This witness, in paragraph 22, had deposed that he had shown the blood stained earth and blood stained gamacha of his deceased father to the Investigating Officer; however this witness had not deposed that the Investigating Officer had ever collected the same; whereas the Investigating Officer, in paragraph 6, had deposed that he collected the blood stained earth, blood stained gamacha and pillet from the place of occurrence. This witness has also denied the existence of any case of 144/145 of the Code of Criminal Procedure, with him and the accused persons; whereas from the exhibited documents adduced by the defence, it is clear that a case, under Section 145 of the Code of Criminal Procedure, 1973 is pending between the parties.

42. PW 2 (Dhananjay Singh) has deposed that he heard the sound of firing from a distance of 50-60 yards and the sound of firing came from south east. It is unbelievable that when PW 1, who was inside the house at the time of occurrence, did not hear the sound of firing then how this witness (PW 2) had heard sound of firing from a distance of 50-60 yards away from the place of occurrence and that too, when generators were on just north to the place of occurrence.

43. PW 3 (Satya Narayan Singh) and PW 4 (Satyendra Singh) have claimed in their deposition that they reached the place of occurrence on hearing hulla, though it is discussed above that neither the informant nor his brother had raised hulla. These two witnesses have deposed that they saw Rajesh firing at the deceased from the roof of their houses, which is also not believable as according to them, the dalan was covered and only open space was towards north of the dalan and the deceased and Rajesh were inside the dalan. PW 3, in paragraph 6, has deposed that before the date of occurrence, he had not seen any armed person at the door of the deceased and on the date of occurrence also, while seeing a number of persons holding arms, he did not bother to come down and enquire about the presence of armed persons. PW 4, in paragraph 7, has deposed that while talking to his brother (PW 3), their faces were either towards east or west and the dalan was west to their roofs. PW 4, in paragraph 20, has deposed that the faces of Rajesh and Raj Kumar were towards east; whereas the face of the deceased was towards north, which is also contrary to the case of the prosecution.

44. It is also not clear from the deposition of the Investigating Officer (PW 8) as to how he identified the hand-writings of the police officials of the Ara Town Police Station, who had recorded the fardbayan of Pawan Kumar Singh (PW 6) and prepared inquest report when he was not in a position to disclose the name of the police officer who had prepared inquest report.

45. From the evidence discussed above, it is evident that the eye-witnesses were not consistent in their deposition and there is inherent contradictions in their statements. The Investigating Officer (PW 8) has also contradicted the witnesses on material particulars and further as per the medical evidence, no food was found in the stomach of the deceased and the doctor (PW 7) has opined that a dead person cannot digest any food; whereas the specific case of the prosecution is that the deceased was having his last meal and had eaten *litti*, and the stomach of the deceased was found empty by the doctor (PW 7), I find favour with the argument advanced by learned Senior Counsel and the case relied upon by him on this point, in the case of **Moti** (supra) and accordingly, I hold that the prosecution has failed to prove the time of occurrence beyond all reasonable doubt.

46. From the consistent case of the prosecution, it is apparent that the bullet was fired by appellant Rajesh Yadav from a short distance of about 4-5 steps, but the medical evidence does not support this version of the prosecution inasmuch as no blackening and charring was found near the wound of the deceased, which is bound to occur in case of firing from a close range.

47. The prosecution has also failed to clarify the discrepancy between the medical evidence and the oral evidence and there is serious doubt as to the time of the occurrence and manner of the occurrence.

48. Apart from the above, there is inconsistency in the deposition of the prosecution witnesses, who claimed to be the eye-witnesses of the occurrence and their evidence has also been belied by the medical evidence on material factor and further the prosecution has failed to clarify the discrepancy between the statement of the eye-witnesses, in my opinion, the presence of the eye-witnesses at the time of occurrence and their narration to the incident becomes doubtful.

49. In the backdrop of what have been discussed and pointed out above, I am firmly of the view that the prosecution has failed, in the present case, to bring home the charges against the appellants beyond reasonable doubt and that the appellants are entitled to be given benefit of doubt.

50. In the result, these appeals are allowed. The impugned conviction of the appellants and the sentences passed against them by the judgment and order, under appeal, stand, accordingly, set aside. All the appellants are held not guilty of the offences, which they were charged with, and they are acquitted of the same under benefit of doubt.

51. The appellants namely, Dineshwar Yadav, Suresh Yadav and Kamta Yadav [Criminal Appeal (DB) No. 919 of 2014], appellant Ram Bihari Yadav [Criminal Appeal (DB) No. 929 of 2014] and

appellant Raj Kumar Yadav [Criminal Appeal (DB) No. 938 of 2014] are on bail. Accordingly, they are discharged from the liabilities of their bail bonds furnished earlier in this case before the learned Trial Court.

52. Since appellant Rajesh Yadav [Criminal Appeal (DB) No. 135 of 2015] is in jail custody, he is directed to be set at liberty forthwith unless he is required to be detained in connection with any other case.

(Anil Kumar Sinha, J.)

Ashwani Kumar Singh, J.:

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	14-07-2021
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