

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.570 of 2014

Arising Out of PS. Case No.-35 Year-2010 Thana- SIMRA District- West Champaran

1. Bhola Yadav
2. Krishan @ Krishna Yadav
3. Angoor Yadav,
All three sons of Lalji Yadav
4. Lalan Yadav
5. Lalji Yadav,
Both Sons of Late Shiv Charan Yadav
6. Rohan Yadav
7. Chokat Yadav
8. Shambhu Yadav
9. Rajendra Yadav,
All four sons of Dheli Yadav,
All nine residents of Village-Bariarwa, P.S.-Semara, District-West Champaran.
10. Ramakant Yadav, Son of Late Baliram Yadav Resident of Village-Sawna,
P.S.-Semra, District-West Champaran.
11. Binod Yadav, Son of Late Bhukhal Yadav Resident of Village-Kolhua
Chautarwa, P.S.-Chautarwa, District-West Champaran.
12. Rajesh Yadav, Son of Hari Yadav Resident of Village-Tonwa, P.S.-
Bhairoganj, District-West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Amish Kumar (Amicus Curiae) Ms. Renu Jha, Advocate Mr. Nishant Kumar Sinha, Advocate
For the Respondent/s	:	Mr. D.K. Sinha, APP
For the Informant	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 18-08-2021



In the present criminal appeal, twelve appellants have assailed the judgment of conviction and sentence recorded by the learned *Ad hoc* Additional Sessions Judge-II, Bagaha, whereby they have been held guilty of committing offences punishable under Sections 302, 323 read with Section 149 of the Indian Penal Code. Besides, the appellants No. 1, 8 and 9 have been held guilty, of the offence punishable under Section 148 of the IPC whereas the rest nine have been held guilty of the offence punishable under Section 147 of the IPC. The appellants have been sentenced to undergo imprisonment for life and payment of fine of Rs. 5,000/- and in default of payment of fine, further rigorous imprisonment for six months, for the offence punishable under Section 302 read with Section 149 of the IPC and to undergo rigorous imprisonment for a term of six months for the offence punishable under Section 323 read with Section 149 of the IPC. Appellants No. 1, 8 and 9 have been sentenced to undergo rigorous imprisonment for a term of two years for the offence punishable under Section 148 of the IPC. Rest of the appellants, other than Appellants No. 1, 8 and 9; have been sentenced to undergo rigorous imprisonment for a term of one year for the offence punishable under Section 147 of the IPC and rigorous imprisonment for a term of six months for the offence



punishable under Section 323 read with Section 149 of the IPC. The sentences of the offenders are to run concurrently; the periods of detention in jail custody during trial are to be set off, learned trial court has held.

2. We have heard Mrs. Renu Jha and Mr. Nishant Kumar Sinha learned counsel for the appellants, Mr. D.K. Sinha, learned Additional Public Prosecutor for the State of Bihar and Mr. Amish Kumar, learned *Amicus Curiae*.

3. For the benefit of precision, the appellants have been denoted, in short, as A-1 for Appellant No. 1 and so on, as per their position in the cause title of the memo of appeal, for the purpose present judgment and order. The prosecution's witnesses have been referred to as the 'PW-1' and so on.

4. Narration of the case of the prosecution, as unfolded in the FIR registered on the basis of written report of the informant Rameshwar Prasad Yadav (**P.W.-11**) on 15.07.2010, is that at 8.00 a.m. in the morning he, accompanying his elder brother Rajdeo Yadav (**deceased-1, in short D-1**), had gone for agriculture across a canal, nearly 3 kilometers away from their house and as soon as they reached their destination, they saw 12 persons named in the FIR and 10-15 unknown who were variously armed, emerging from an adjacent sugarcane field.



They surrounded the informant and the deceased. The informant **(P.W.-11)** somehow managed to escape and returned back to his village and narrated the incident to Nand Kishore Yadav @ Batkhari Yadav **(deceased-2, in short D-2)**, Chandra Mohan Yadav **(P.W.-8)**, Yogi Yadav **(P.W.-6)**, Pujari Yadav **(P.W.-7)** and Arvind Yadav. Immediately thereafter Arvind Yadav, son of Rajdeo Yadav **(D-1)** took the licensed firearm (gun) of Rajdeo Yadav **(D-1)** for being handed over to him, seemingly, for his protection and to rescue him. The informant is said to have disclosed the villagers that the accused persons were contemplating to kill Rajdeo **(D-1)**. Thereafter Nand Kishore Yadav @ Batkhari Yadav **(D-2)**, Chandra Mohan Yadav **(P.W.-8)**, Shiv Sagar Yadav **(deceased-3, D-3 in short)**, Pujari Yadav **(P.W.-7)** and Yogi Yadav **(P.W.-6)** accompanied Arvind Yadav. As soon as they reached near the place of occurrence, the accused persons snatched the gun which Arvind Yadav was carrying. Bhola Yadav **(A-1)** thereafter assaulted Rajdeo Yadav **(D-1)** with *farsa* in his head and because of the injuries which he sustained, he fell down. After Rajdeo Yadav fell down, Rajendra Yadav **(A-9)** hit Rajdeo Yadav **(D-1)** with the butt of the gun in his chest. Rajdeo Yadav **(D-1)** thereafter became unconscious. Chokat Yadav **(A-7)** hit Nand Kishore Yadav @ Batkhari Yadav **(D-2)**



with gun. Rajendra Yadav (A-9) hit Nand Kishore Yadav @ Batkhari Yadav (D-2) with *farsa* who died on the spot. Brij Mohan gave *farsa* blow in the head of Chandra Mohan (P.W.8) and Lalan Yadav (A-4) assaulted Chandra Mohan (P.W.8) with *lathi* injuring his left eye. Rohan Yadav (A-6) hit Chandra Mohan (P.W.-8) with *bhala*. The accused persons thereafter broke both the arms of Chandra Mohan (P.W.-8). Angoor Yadav (A-3) and Krishna Yadav (A-2) hit Shiv Sagar (D-3) with *lathi* and Shambhu Yadav (A-8) assaulted Shiv Sagar with *farsa*. Accused Dheli Yadav hit Pujari Yadav (P.W.-7) with *farsa* because of which he fell down, whereafter Lalji Yadav (A-5) assaulted Pujari Yadav (P.W. 7) with *lathi* in his head, whereafter he became unconscious. Co-accused Nand Lal Yadav assaulted Yogi Yadav (P.W. -6) with *farsa* in his head and Lalan Yadav (A-4) assaulted Yogi Yadav (P.W.-6) with *lathi*. Rakesh Yadav and Rajesh Yadav (A-12) were assaulting Yogi Yadav with *lathi*. Binod Yadav (A-11), Ramakant Yadav (A-10) and Dinesh Yadav also hit Shiv Sagar (D-3) with *lathi*. Upon knowing about the occurrence taking place, Anirudh Yadav (P.W.-5), Satrugan Yadav, Rajesh Yadav and Nagendra Yadav (P.W.-1) rushed and all of them together managed to take Rajdeo (D-1), Chandra Mohan (P.W.-8), Yogi (P.W.-6), Pujari (P.W.-7) and Shiv Sagar (D-3) to Sub-



Divisional Hospital, Bagha. Rajdeo (**D-1**) died soon after he was brought to the Sub-Divisional Hospital, Bagha. Shiv Sagar (**D-3**) was referred to Gorakhpur Government Hospital for treatment but he died on way to hospital.

5. According to the case of the prosecution, as noted above, three persons succumbed to the injuries sustained by them in the occurrence.

6. Inquest reports were prepared. Based on written report of the informant (Exhibit-3) Samra P.S. Case No. 35 of 2010 was registered leveling allegation of commission of offences punishable under Sections 147, 148, 149, 341, 323, 324, 307, 379 and 302 of the Indian Penal Code and Section 27 of the Arms Act against the accused persons.

7. Upon completion of investigation the police submitted charge-sheet against the appellants for the offences punishable under Sections 147, 148, 149, 341, 323, 324, 326, 307, 379, 411 and 302 of the IPC, showing six other persons as absconders and kept the investigation against others, pending. Cognizance of the offences was taken thereafter by learned ACJM, Bagha as co-accused Dinesh Yadav and Rakesh Yadav had been shown absconders in the charge-sheet. The learned ACJM, Bagaha separated their case and the case of the appellants



and four others, namely, Brij Mohan, Dheli Yadav, Nand Lal Yadav and Lorik Yadav was committed to the court of sessions by an order passed on 13.12.2010. As the said Brij Mohan, Dheli Yadav, Nand Lal Yadav and Lorik Yadav absconded, their cases were also separated.

8. The trial court framed charges against the appellants for the offences punishable under Sections 148, 341, 307, 302, 326 read with Section 379 of the Indian Penal Code, which were read over and explained to them in Hindi. They pleaded not guilty and claimed trial.

9. The prosecution examined altogether 18 witnesses including the medical experts (P.Ws. 14 and 15), Investigating Officers (P.Ws. 16 and 17). P.W.-12 is a formal witness who proved the inquest report and P.W.-13 proved the postmortem report of the deceased Nand Kishore Yadav @ Batkhari Yadav (D-3). Statements of the accused persons were been recorded by the trial court under Section 313 of the Code of Criminal Procedure. Upon appreciation of oral and documentary evidence adduced at the trial, the learned trial court has reached a definite conclusion that the prosecution could establish beyond all reasonable doubts that the deceased, namely, Rajdeo Yadav (D-1), Nand Kishore Yadav @ Batkhari Yadav (D-2) and Shiv Sagar



Yadav (D-3) had been murdered by the accused persons in prosecution of their common object of the unlawful assembly formed by them and, therefore, all of them are guilty of commission of the offence punishable under Section 302 read with Section 149 of the IPC. The trial court has concluded in its judgment that the prosecution has been successful in proving beyond all reasonable doubts that on the alleged date, time and place of occurrence the appellants and their associates had formed unlawful assembly. Appellants No. 1, 8 and 9 were armed with *farsa* and others were armed with *lathi*. Learned trial court has rejected the case of the prosecution that **A-7** and **A-11** were armed with gun, in the absence of any corroboration relating to use of fire arm in the occurrence, by the medical evidence. Accordingly, while convicting Appellants No. 1, 8 and 9, Appellants No. 7 and 11 have been convicted of the offence punishable under Section 147 of the IPC. Upon recording that medical evidence did not corroborate use of spear by A-6, he has also been convicted of the offence punishable under Section 147 of the IPC and not under Section 148 of the IPC. The charge under Sections 326/149 of the IPC has been held to have not been proved by the prosecution as the X-ray reports and the X-ray plates were not proved at the trial. The trial court has further



recorded that the charge under Section 323/149 of the IPC stood established against all the accused persons. The trial court has also concluded that as the murderous attempt made by the appellants resulted in death of three persons, there was no need to record separate conviction against them for the offences punishable under Sections 307 and 341 read with Section 149 of the IPC. The trial court has noted in its judgment that though all the appellants have been charged of commission of the offence punishable under Sections 148 and 326 read with Section 149 of the IPC and though they were not charged for the offences punishable under Sections 147 and 323 read with Section 149 of the IPC, their conviction could be recorded under the aforesaid provisions taking aid of Section 222 of the Cr.P.C., the same being minor cognate offences of the aforesaid major offence. The charge of commission of offence under Section 379 of the IPC, in the opinion of the trial court, could not be established in the background of general and omnibus allegation of snatching away of the gun belonging to Rajdeo Yadav **(D-1)** from his son Arvind Yadav.

10. Learned counsel appearing on behalf of the appellants has submitted that the case of the prosecution, as disclosed in the First Information Report, itself gives an



indication that the appellants had no intention to kill nor their presence at the place of occurrence can be described as their unlawful assembly formed with any common object of committing murder. It has been argued that the evidence of the prosecution witnesses are full of inconsistency.

11. They have urged that the informant (**P.W.-11**), who claimed himself to be an eye-witness, is not at all trustworthy for the reason that in his evidence at the trial he specifically deposed that **A-7** had shot at the deceased Nand Kishore Yadav @ Batkhari Yadav (**D-2**) with gun but no firearm injury has been found on the body of the deceased Nand Kishore Yadav @ Batkhari Yadav (**D-2**) in the postmortem report. The evidence of the informant that Nand Kishore Yadav @ Batkhari Yadav (**D-2**) received firearm injury in his left thigh has been disbelieved by the court below also, in the absence of corroboration of use of firearm in the medical evidence. The very foundation of the accusation made in the First Information Report is shaken because of the false evidence of the informant to the said extent at the trial. It has been argued that, in any view of the matter, had it been the intention of the appellants to kill Rejdeo (**D-1**), they would have not waited till his son's arrival with firearm along with other persons who sustained injuries and were subsequently



killed. It has been argued that even if the case of the prosecution is treated, for the argument sake only, to be correct, it is a case of self defence where the appellants did not have any option but to act in a particular manner to save their lives after son of Rajdeo (D-2) arrived armed with a firearm along with several persons who had attacked the appellants. The occurrence, they would argue, appears to have taken place in spur of the moment and there was absolutely no premeditation for commission of the offence.

12. Mr. Amish Kumar, learned *Amicus Curiae* has added to the submissions advanced on behalf of the appellants by learned counsel representing them, by contending that the trial court has not duly complied with the requirements of Section 313 of the Cr.P.C. while examining an accused under the said provision, inasmuch as, the appellants were not clearly explained the circumstances appearing in the evidence against them, which is a mandatory requirement. Strict non-compliance of Section 313 of the Cr.P.C., he contends, has vitiated the trial as it has resulted into denial of a significant opportunity for the appellants to explain those circumstances appearing in evidence against them. He has urged that it is a valuable right for a person put on a criminal trial as duly recognised under Section 313 of the Cr.P.C.



13. Mr. D.K. Sinha, learned Additional Public Prosecutor appearing on behalf of the State of Bihar, on the other hand, has submitted that the appellants set up before the court below a case of self defence which plea has rightly been rejected by the learned trial court upon weighing the nature of injuries sustained by each side. Once having taken the plea of the acts of the appellants in the right of private defence, the appellants cannot deny their participation in the occurrence, he contends. He has argued that minor inconsistencies in the evidence of witnesses cannot be a ground for this Court to disbelieve the evidence of witnesses. According to him, as the prosecution has been able to establish guilt of the appellants at the trial on the basis of oral testimony of eye-witnesses corroborated by medical evidence/ expert's evidence, their conviction is wholly justified. The prosecution, according to him, has been able to bring home the charges against the appellants as have been rightly found to have been proved by the learned trial court.

14. After having heard learned counsel appearing on behalf of the appellants, learned Additional Public Prosecutor for the State of Bihar and Mr. Amish Kumar, learned *Amicus Curiae* and upon perusal of entire material on record, in my opinion, following are the main points which have emerged for



determination in the present appeal :-

- (i) Whether the plea of the appellants of self defence taken before the court below could be sustained or whether the same has been rightly rejected by the learned trial court?
- (ii) Whether the prosecution proved its case beyond all reasonable doubts against the appellants before the trial court on the basis of the evidence adduced at the trial?
- (iii) Whether inconsistency, if any, in evidence of the witnesses, in the present case, can have the consequence of disbelieving the witnesses in the facts and circumstances of the present case?
- (iv) Whether there is any deficiency in compliance of the requirement under Section 313 of the Cr.P.C. which materially prejudiced the case of the appellants, based on which the finding of conviction recorded by the court below, can be said to have vitiated?

15. It is noteworthy, at this juncture, that a counter-case was filed by Shambhu Yadav (**A-8**) in respect of the occurrence which had taken place at the same time and at the same place giving rise to Semra P.S. Case No. 36 of 2010 with the allegation that Rajdeo Yadav (**D-1**) had come at the place of occurrence accompanied by Umesh Yadav (**P.W.-3**), Anirudh Yadav (**P.W.-5**), Yogi Yadav (**P.W.-6**), Pujari Yadav (**P.W.-7**), Chandra Mohan



Yadav (P.W.-8) and others when he was engaged in sowing paddy crop in the field. The accused persons of Semra P.S. Case No. 36 of 2010, as alleged in the *fardbeyan* of A-8, were forcing him to stop sowing. When A-8 did not yield, Rajdeo Yadav (D-1), Rameshwar Yadav (P.W.-11), the informant) opened fire targeting Shambhu Yadav (A-8). Somehow or the other he managed to save his life. In the meanwhile, one Hira Yadav assaulted him in his head and when his uncle Lalan Yadav (A-4) arrived at the place of occurrence, Anirudh Yadav (P.W.-5) assaulted him in his head. Umesh Yadav (P.W.-3) is said to have assaulted Rajendra Yadav (A-9) in his head. The persons named in Semra P.S. Case No. 36 of 2010 thereafter chased Shambhu Yadav (A-8) and his men. Certified copy of *fardbeyan* of Shambhu Yadav (A-8) has been exhibited as Exhibit-B at the instance of the defence. The injury reports of Lalan Yadav (A-4), Shambhu Yadav (A-8) have also been exhibited at the instance of the defence.

16. The land dispute between the parties is the reason behind the occurrence, which has been set up by both sides i.e. prosecution and the defence.

17. Before referring to the deposition of witnesses, it would be useful to notice, at this juncture, that dead body of the



deceased Nand Kishore Yadav @ Batkhari Yadav **(D-2)** was found lying at the place of occurrence where the inquest report was prepared by the police officer. The postmortem examination on the dead body of the deceased Nand Kishore Yadav @ Batkhari Yadav **(D-2)** was done on the same day showing following antemortem injuries :-

- “(i) Lacerated wound on left forearm of size 2 cm x 1cm x 1cm Radius and ulna bones of arm were fractured.*
- (ii) Lacerated wound on left thigh of size 2 cm x ½ cm x 1 cm Left femur bone was fractured.*
- (iii) Two abrasions on left side of face of size 4 cm x 3 cm and 3 cm x 2 cm.*
- (iv) Lacerated wound on right forearm of size 2 cm x ½ cm x ½ cm.*
- (v) Bruise on back of size 5 cm x 2 cm.”*

18. The inquest report and the postmortem report of the deceased Nand Kishore Yadav @ Batkhari Yadav have been proved as Exhibits 4 and 5/1.

19. Similarly, the inquest report of the dead body of the deceased Shiv Sagar **(D-3)** was prepared in Sub-Divisional Hospital, Bagaha where the dead body was lying in an ambulance. The postmortem report on the dead body of deceased Shiv Sagar **(D-3)** discloses following antemortem injuries :-

- (i) Lacerated wound on left parietal occipital region of scalp of size 6 cm. X 1 cm. X scalp deep.*



- (ii) Lacerated wound on right elbow of size 1 cm x ½ cm.*
- (iii) Bruise on right forearm of size 6 cm x 2 cm.*
- (iv) Three bruises on upper side of back of size 8 cm x 3 cm, 6 cm x 2 cm and 5 cm x 2 cm.*
- (v) Sharp cutting wound on left elbow of size 1½ cm x 3 mm x ½ cm.”*

20. Inquest report of the deceased Rajdeo Yadav **(D-1)** was also prepared on the same day and the postmortem report conducted on his dead body disclosed following antemortem injuries :-

- “(i) Lacerated wound of size 6 cm x 1 cm x bone deep on right frontal scalp.*
- (ii) Two sharp cutting wound on upper part of left leg of size 2½ cm x ½ cm x bone deep and 1½ cm x ½ cm x bone deep.*
- (iii) Swelling (diffused) on left forearm.”*

21. Dr. Surendra Prasad Agrawal **(P.W.-14)**, who had conducted the postmortem examination on the dead body of the deceased Nand Kishore Yadav @ Batkhari Yadav **(D-2)** deposed in his evidence that cause of death was due to hemorrhagic shock leading to respiratory failure due to trauma by hard and blunt substance and back portion of *farsa*. In respect of deceased Rajdeo Yadav **(D-1)** he deposed that the death was caused due to Neurohaemorrhagic shock arising out of trauma caused by hard and blunt object as well as sharp cutting weapon. In relation to



deceased Shiv Sagar (**D-3**), he opined that the cause of death was Neurohaemorrhagic shock due to trauma caused by hard and blunt substance and sharp cutting weapon.

22. As has been noted above, the prosecution examined altogether 18 witnesses. The informant was examined as PW-11, who proved the written report given by him before the police (Exhibit-3), which was the basis for registration of FIR. The witnesses who had sustained injuries, namely, Anirudh Yadav, Yogi Yadav, Pujari Yadav and Chandra Mohan Yadav deposed at the trial as P.W.-5, P.W.-6, P.W.-7 and P.W.-8 respectively. Other witnesses, who claimed to be eye-witnesses to the occurrence, namely, Nagendra Yadav, Dhrub Yadav, Umesh Yadav and Anand Yadav deposed at the trial for the prosecution as P.W.-1, P.W.-2, P.W.-3 and P.W.-4 respectively. P.W.-9 and P.W.-10, namely, Satrugan Yadav and Mukesh Yadav are other eye-witnesses. P.Ws.-12 and 13 are formal witnesses, who have proved the inquest report and postmortem report of the dead bodies of the deceased Nand Kishore Yadav @ Batkhari Yadav. As has been noticed above, Dr. Surendra Prasad Agrawal (P.W.-14) is the doctor who had conducted postmortem examination of the dead body of all the three deceased and proved the postmortem reports as Exhibits 5, 5/1 and 5/2. P.W.-15 is the doctor who had



examined the injured witnesses, namely, Anirudh Yadav (P.W.-5), Yogi Yadav (P.W.-6), Pujari Yadav (P.W.-7), Chandra Mohan Yadav (PW-8), Arvind Yadav and Shiv Sagar Yadav (**D-3**) and proved the injury reports, which are Exhibits 6 to 6/10. The Investigating Officers, namely, Maheshwar Paswan and Barmeshwar Nath Mishra deposed as P.Ws.-16 and 17 respectively. PW-17 had conducted major portion of investigation and proved the formal FIR (Exhibit-7), endorsements on the death inquest report of the deceased Rajdeo and Shiv Sagar. PW-9 Satrugan Yadav proved his signature on the death inquest report of deceased Rajdeo Yadav (Exhibit-1) and PW-10 proved the seizure-list (Exhibit-2).

23. Besides the above, the prosecution brought on record following public documents by way of evidence which are as under :-

- “1. Correction order of mutation order (Exhibit-10)*
- 2. Certified copies of formal FIRs of Semra P.S. Case No. 62 of 2010, 06 of 2011 and 10 of 2004 respectively (Exhibits 11 to 11/2)*
- 3. Certified copies of final forms respectively submitted in above-mentioned three cases (Exhibits 12 to 12/2)*
- 4. Certified copy of deposition of witness Brijesh Yadav (Exhibit-13)*
- 5. Certified copy of order-sheets dated 16.07.2010 to 25.04.2011 passed by the*



*court in S.T. No. 81 of 2009 (Exhibit-14)
6. Certified copy of the order-sheets dated
25.01.2005 to 09.02.2011 passed by the
court in Tr. No. 927 of 2011.”*

24. As has already been mentioned, after examination of witnesses for the prosecution and before the accused persons were called on for defence, the trial court had explained to the accused persons incriminating circumstances appearing in the evidence against them, in accord with the provision under Section 313 of the Cr.P.C.

25. On perusal of the statement of the accused recorded under Section 313 of the Cr.P.C., I am of the opinion that the circumstances appearing in evidence against them were broadly explained to them and there is substantial compliance of the requirement stipulated under Section 313 of the Cr.P.C.

26. The defence examined only one formal witness, namely, Dinesh Prasad Yadav (DW-1), who formally proved complaint petition of Complaint Case No. 10 of 1994. Further, the defence filed following documentary evidence in the nature of public documents, which are as under :

“1. Certified copy of Exhibit-1 series documents of S.T. No. 663 of 2012, which are injury reports and supplementary injury reports of accused Lalan Yadav and Shambhu Yadav respectively(Exhibits A to A/3)



2. *Certified copy of Exhibit-2 of S.T. No. 663 of 2012 i.e. fardbeyan of accused Shambhu Yadav (Exhibit-B)*
3. *Certified copy of rent receipt (Exhibit 3 of S.T. No. 663 of 2012) (Exhibit-C)*
4. *Certified copy of Exhibit-4 of S.T. No. 663 of 2012 i.e., sale-deed dated 10.04.1982 (Exhibit-D)*
5. *Certified copy of order-sheets passed by court in S.T. No. 37 of 2002 (Exhibit-E)*
6. *Certified copy of order-sheet of Case No. 185 of 2007 (Exhibit-F)*

27. **P.W.-11**, the informant fully supported the case of the prosecution as disclosed in the FIR. I need not encumber this judgment by referring in detail the deposition of the informant (PW-11), which is consistent with the accusation made by him in his *fardbeyan*. He, however, deposed in his oral evidence that Chokat Yadav (A-7) had shot at Nand Kishore @ Batkhari (**D-2**) with gun causing bullet injury in his left thigh. In cross-examination he deposed that he had escaped from the place of occurrence out of fear and had concealed himself at a place, nearby, from where he could see the entire occurrence taking place but he could not be seen by the accused persons. He also deposed that Arvind Yadav, son of Rajdeo Yadav (**D-1**) was himself carrying a gun with ammunition, whereas others who were accompanying him, including the informant, were unarmed. He admitted during the course of cross-examination, existence of



land dispute between the parties.

28. P.W.-5 in his evidence, supporting the case of the prosecution, deposed that Rajdeo Yadav (**D-1**) and Rameshwar Yadav (**P.W.-11**) had gone to the field and when he learnt that Rajdeo (**D-1**) was wrongfully confined by the accused persons, he along with others had rushed to the place of occurrence with Arvind Yadav carrying a licensed gun. He deposed that Bhola Yadav (**A-1**) gave *farsa* blow in the head of Rajdeo (**D-1**) and when he fell down on the ground Rajendra Yadav (**A-9**) started assaulting him with the butt of the gun which was snatched from Arvind Yadav by the accused persons. Further Chokat Yadav (**A-7**) assaulted Nand Kishore @ Batkhari (**D-2**) with gun causing firearm injury. He further deposed that A-9 assaulted with *farsa* in the head of Nand Kishore @ Batkhari (**D-2**). Rajendra Yadav (**A-9**) also assaulted Nand Kishore @ Batkhari (**D-2**) with *farsa* and kept on assaulting him till he died. Binod Yadav (**A-11**) had assaulted Shiv Sagar (**D-3**) with gun in his neck and Shambhu Yadav (**A-8**) gave *farsa* blow in the head of Shiv Sagar (**D-3**). Angoor Yadav (**A-3**) assaulted Shiv Sagar (**D-3**) with *farsa*. Krishna Yadav, Ramakant Yadav, Rakesh Yadav, Rajesh Yadav also assaulted Shiv Sagar (**D-3**). Brij Mohan assaulted Chandra Mohan (P.W.-8) with *farsa* and Rohan Yadav (**A-6**) assaulted



Chandra Mohan (P.W.-8) with spear. Lorik assaulted Chandra Mohan (P.W.-8). Dheli Yadav assaulted Pujari Yadav (P.W.-7) with farsa. Nandlal Yadav assaulted P.W.-7 with *farsa* in his head. He also deposed that when he intervened, accused Binod Yadav opened fire with a bullet hitting in his head and he was assaulted with *lathi* also. He supported the case of the prosecution that Nand Kishore @ Batkhari (**D-2**) died on the spot, Rajdeo (**D-1**) died soon after he was brought to hospital at Bagha and Shiv Sagar (**D-3**), who was referred to Gorakhpur for treatment, died on his way to hospital. Nothing surfaced during the cross-examination of Anirudh Yadav (A-5) which can be considered to be a basis for completely discarding his evidence.

29. Yogi Yadav (P.W.-6) in his deposition has supported the prosecution's case apropos the time, place and manner of occurrence. He, however, deposed that co-accused Binod Yadav had shot at Shiv Sagar (**D-3**) with gun. During the cross-examination he deposed that the occurrence had taken place because of dispute between the parties over sowing of paddy crop in the field in question.

30. Pujari Yadav (P.W.-7), another injured witness while fully supporting the manner of occurrence, as set up in the prosecution's case, has deposed that when he interceded to



pacify, accused Dheli Yadav assaulted him with *farsa* in his head whereafter Lalji Yadav (A-5) assaulted him with *lathi*. Pujari Yadav (P.W.-7) was initially examined on 15.07.2013 and was subsequently cross-examined on 18.07.2013. It appears that he was subsequently recalled and examined again on 26.08.2013 and cross-examined. In his deposition, while fully supporting the manner of occurrence he deposed that Lalan Yadav (A-4) had fired at Yogi Yadav (P.W.-6). He too admitted about the existence of land dispute between the parties. The other injured witness Chandra Mohan Yadav (P.W.-8) also supported the case of the prosecution disclosing the manner of occurrence as set up by the prosecution's case. Consistent with the deposition of P.W.-5, he deposed, *inter alia*, that Rajendra Yadav (A-9) after taking *farsa* from Bhola (A-1) assaulted Nand Kishore @ Batkhari (**D-2**) who had fallen on the ground after having been assaulted by Chokat (A-7). He also deposed that the bullet hit Nand Kishore @ Batkhari (**D-2**) in his thigh and waist.

31. Satrugan Yadav (P.W.-9), as an eye-witness, while supporting the case of the prosecution, also deposed that Chokat Yadav (A-7) had shot at Nand Kishore @ Batkhari (**D-2**).

32. Mukesh Yadav (PW-10) also supported the prosecution's case of snatching of gun from Arvind Yadav at the



place of occurrence and assault made by the accused persons leading to death of three and injuring other persons including the eye-witnesses. In his deposition, he has stated that Chokat Yadav (A-7) had shot at Nand Kishore @ Batkhari (D-2) with gun leading to gun shot injury in his thigh. He is the seizure-list witness of seizure of gun and other articles from the place of occurrence. During the course of cross-examination, he claimed to be an eye-witness and denied the suggestion that he was deposing at the instance of the informant (PW-11).

33. Prem Chandra Yadav (PW-12) has proved the inquest report of the dead body of Nand Kishore @ Batkhari (D-2). Sudama Tiwari (PW-13) is another constable who proved the inquest report of the dead body of Nand Kishore @ Batkhari, who had also put his signature over the said report.

34. A close scrutiny and analysis of the evidence adduced at the trial leaves no scope of doubt that an occurrence had taken place at the place of occurrence on the date and time as alleged in the FIR as set up by the prosecution at the trial. It is the common case of the prosecution as well as the defence that there was land dispute between the two groups over the land in question and the informant and deceased Rajdeo had objection to the accused persons sowing paddy crop on the said land.



Presence of Rajdeo Yadav (**D-1**), Chandra Mohan Yadav (P.W.-8), Rameshwar Yadav (P.W.-11, the informant), all sons of late Baban Yadav; Satrugan Yadav (PW-9), Anirudh Yadav (PW-5), Yogi Yadav (PW-6), Umesh Yadav (PW-3), Pujari Yadav (PW-7) at the place and time of occurrence stands proved beyond doubt on the basis of consistent evidence adduced by the prosecution's side corroborated by other materials on record, as noted above. In any event, it is the case of the appellants themselves that these persons were present at the place of occurrence as disclosed in the *fardbeyan* of Shambhu Yadav (A-8) which has been marked as Exhibit-B at the instance of the defence. Undeniably, therefore, they were eye-witnesses to the occurrence.

35. The case of the prosecution that the three deceased persons and injured witnesses were variously assaulted by the accused persons is corroborated by the inquest reports, injury reports and the postmortem reports which have been duly proved at the trial.

36. The prosecution witnesses deposed that Nand Kishore Yadav @ Batkhari (**D-2**) had suffered gun shot injury in his thigh. The medical evidence does not corroborate this aspect of any firearm injury caused during the occurrence.

37. As has been noticed above, it is the case of the



appellants that there is serious inconsistency in the evidence of witnesses and the medical evidence on the point of firearm injury sustained by the deceased Nand Kishore @ Batkhari **(D-2)**, and according to them, the same creates doubt over the entire prosecution's case and, therefore, the appellants deserve to be given benefit of doubt. According to the appellants, the witnesses are not trustworthy and are unreliable and, therefore, their evidence deserve to be noted with suspicion, particularly in the background of admitted land dispute between them. Further, their false implication is also because the parties are on litigating terms, they urge.

38. As an alternative to the aforesaid plea, as has already been noticed hereinabove, the appellants have taken plea justifying their action in self defence, taking shelter of Section 100 of the Indian Penal Code, which falls under Chapter IV of the Code and contains general exceptions. It is their case that the prosecution side was the aggressor and the acts of the prosecution side reasonably caused the apprehension of death/ grievous hurt.

39. It is true there is some inconsistency in the evidence of witnesses, one of which is on the point of Nand Kishore @ Batkhari **(D-2)** sustaining firearm injury which has not been corroborated by medical evidence, inasmuch as, the



postmortem report does not suggest any antemortem firearm injury sustained by the deceased Nand Kishore @ Batkhari (D-2). The immediate question, which the Court is required to answer, is as to whether such inconsistency can be considered as ground for disbelieving the entire testimony of the witnesses and the case of the prosecution or, the inconsistency is such as to give the appellants benefit of doubt and acquit them of the charges fund proved by the learned trial court.

40. In my opinion, the proverb, ‘separate chaff from the grains’ has gained status of a legal principle partaking the nature of an adage, particularly in criminal trials, which casts on the courts to make an attempt to separate the chaff from the grains in every case. It has been repeatedly held that in criminal trials where the prosecution evidence may be found to be suffering from certain inconsistency here and discrepancies there, the court is required to examine whether such inconsistency or discrepancy goes to the root of the matter or pertain to such aspects which are not so significant as to brush aside the significant part of the prosecution’s evidence.

41. It is considered useful to notice, at this stage, the observations made by the Supreme Court in case of *State of U.P. vs. Krishna Master* reported in (2010) 12 SCC 324, paragraphs



15 to 17 of which read as under :-

“15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, 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, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

16. If the court before whom the witness gives evidence had the opportunity to form



the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

17. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made



at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case.”

42. In case of ***Mohan Singh and another vs. State of M.P.*** reported in ***(1999) 2 SCC 428*** the Supreme Court observed that mere variance of the prosecution story with the medical evidence, in all cases, should not lead to inevitable conclusion of rejection of the prosecution's case. Efforts should be made to find the truth, which is the very object for which the courts are created. To search it out, the courts have been removing the chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth, the Supreme Court observed. It further remarked that so long as the chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt and, therefore, it is a solemn duty of the courts not to merely conclude and leave the



case the moment suspicions are created. It is the onerous duty of the court, within permissible limit, to find out the truth. The Supreme Court in case of **Mohan Singh** (supra) in paragraph 11 observed as under:-

“----- It means on one hand, no innocent man should be punished but on the other hand, to see no person committing an offence should get scot-free. If in spite of such effort, suspicion is not dissolved, it remains writ at large, benefit of doubt has to be credited to the accused.”

43. It has to be kept in mind that the doctrine of *falsus in uno falsus in omnibus* is not an accepted legal principle in India. A witness cannot be branded as a liar *in toto* and his testimony cannot be rejected even if parts of their statements are demonstrably incorrect or doubtful, observed Supreme Court in case of **Laxman and others vs. State of Maharashtra** reported in **(1974) 3 SCC 704**.

44. The Court lucidly recorded that ‘the astute Judge can separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon. It is sound common-sense to refuse to apply mechanically, in assessing the worth of necessarily imperfect human testimony, the maxim *falsus in uno*



falsus in omnibus’.

45. In my opinion, the trial court has rightly treated inconsistency of the aforesaid nature to be inconsequential, in the background of overwhelming other oral and documentary evidence available on record which are sufficient for the Court to record a finding that the charges against the appellants stood proved beyond all reasonable doubts.

46. In the present case, the eye-witnesses to the occurrence are natural witnesses whose presence at the place of occurrence was not only highly probable, their presence has rather been accepted as disclosed in the FIR registered at the instance of Shambhu Yadav (A-8).

47. The witnesses have consistently deposed that Bhola Yadav (A-1) gave *farsa* blow in the head of Rajdeo (**D-1**) and after Rajdeo fell on the ground, Bhola Yadav (A-1) and Rajendra Yadav (A-9) kept on assaulting him variously. He succumbed to the injuries so sustained. There is consistent evidence that Chokat (A-7) had assaulted Nand Kishore @ Batkhari (D-2) and Shambhu Yadav (A-8) assaulted him with *farsa* in his head, repeatedly. Nand Kishore @ Batkhari (**D-2**) died on the spot. Accused Binod Yadav had assaulted Shiv Sagar with gun and, thereafter Shambhu Yadav (A-8) assaulted him with *farsa*.



48. There is overwhelming evidence that the appellants were present at the place of occurrence and they actively participated in commission of offence which culminated into death of three persons who had sustained injuries. The plea that there was no motive for the appellants to commit murder and the occurrence took place at the spur of moment in unforeseen circumstances is not acceptable to this Court, considering the evidence on record. When the evidence overwhelmingly show commission of offence by accused persons, there is no requirement of establishing motive by the prosecution. In the present case, the land dispute between the parties is an admitted fact which had given rise to the occurrence. The manner in which the appellants present at the place of occurrence committed the offence as established by the prosecution on the basis of evidence cannot be mitigated by the plea of lack of establishment of motive.

49. For the reasons discussed hereinabove, the trial court, in my view, has rightly convicted the appellants of the offence punishable under Section 302 read with Section 149 of the IPC upon scrutiny of evidence on record pointing towards their constructive and vicarious liability for the unlawful acts committed pursuant to the common object. It is evident from the



consistent deposition of the prosecution witnesses that the deceased and other injured persons were brutally assaulted by the members of unlawful assembly. There is no exception to the rule that once a court reaches a conclusion that certain accused persons formed unlawful assembly and an offence is committed by any member of that assembly in prosecution of the common object of that assembly, it would not be open for the court to see as to who actually did the offensive act or require the prosecution to prove which of the members did which of the offensive act.

50. Section 141 of the IPC defines unlawful assembly as an assembly of five or more persons, if the common object of the persons composing that assembly is :-

*“by means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to **enforce any right or supposed right.**”*

51. Explanation to Section 141 provides that an assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly. I do not have any hesitation in recording my conclusion, on the basis of the evidence adduced at the trial, that assembly of the appellants and



other accused persons at the place of occurrence was an unlawful assembly within the meaning of Section 141 of the IPC at the time of occurrence.

52. The plea that the appellants exercised their right of private defence is not acceptable, considering the nature of the evidence adduced by the prosecution as noted above. It is consistent case of the prosecution that the gun, which Arvind Yadav, son of Rajdeo Yadav (D-1) was carrying, was snatched by the accused persons soon after he reached the place of occurrence with other persons on learning about the fact that Rajdeo was unlawfully confined by them. The Supreme Court in case of ***Darshan Singh vs. State of Punjab and another*** reported in ***(2010) 2 SCC 333*** has laid down the principles regarding right of private defence in paragraph 58 which reads as under :-

“58. The following principles emerge on scrutiny of the following judgments:

(i) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly



confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.



(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.

53. Before laying down the abovementioned principles of right of private defence available under Section 100 of the IPC, the Supreme Court in case of Darshan Singh (*supra*) has noticed a series of judicial precedents including in case of ***Laxman Sahu v. State of Orissa*** reported in **1986 Supp SCC 555**, ***Raghavan Achari v. State of Kerala*** reported in **1993 Supp (1) SCC 719**, ***Jagtar Singh v. State of Punjab*** reported in **(2009) 16 SCC 772**, ***Puran Singh v. State of Punjab*** reported in **(1975) 4 SCC 518**, ***Bhagwan Swaroop v. State of M.P.*** reported in **(1992) 2 SCC 406**, ***Kashmiri Lal v. State of Punjab*** reported in **(1996) 10 SCC 471**, ***James Martin v. State of Kerala*** reported in **(2004) 2 SCC 203**, ***Gottipulla Venkatasiva Subbrayanam v. State of A.P.*** reported in **(1970) 1 SCC 235**, ***Mahabir Choudhary v. State of Bihar*** reported in **(1996) 5 SCC 107**, ***Munshi Ram vs. Delhi Admn.*** reported in **AIR 1968 SC 702**, ***State of M.P. v. Ramesh*** reported in **(2005) 9 SCC 705**, ***Triloki***



Nath v. State of U.P. reported in (2005) 13 SCC 323, *Vidhya Singh v. State of M.P.* reported in (1971) 3 SCC 244, *Jai Dev vs. State of Punjab* reported in AIR 1963 SC 612 and in the case of *Buta Singh vs. State of Punjab* reported in (1991) 2 SCC 612.

54. The Supreme Court in case of *Darshan Singh* (supra) has held that in order to find out whether right of private defence is available or not, the injury received by the accused, immense of threat of his safety, injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authority are all relevant factors to be considered.

55. Applying the principles enunciated in case of *Darshan Singh* (supra) on the right of private defence as noted hereinabove, in my definite opinion, the case of the appellants does not fall under general exceptions as stipulated under Section 100 of the IPC.

56. Further, considering the evidence adduced at the trial as noted in the foregoing paragraphs, finding of conviction of the appellants No. 1, 8 and 9 for the offence punishable under Section 148 of IPC and conviction of rest of the appellants for the offence punishable under Section 147 of IPC as recorded by the learned trial court is justified.



57. On reading of the examination of witnesses recorded by the trial court under Section 313 of the Cr.P.C., I am of the view that the circumstances appearing in the evidence against the accused persons were broadly explained to them and there is substantial compliance of the said provision at the trial.

58. Accordingly, the points for determination, as set out in the present judgment, stands answered.

59. Situated thus, in view of the aforesaid discussions and findings, I do not find any legal infirmity in the impugned judgment of conviction and order of sentence recorded by the court below. This appeal, in my opinion, has no merit and is accordingly dismissed.

60. I record my deep sense of appreciation for able and sincere assistance extended by Mr. Amish Kumar, learned *Amicus Curiae*.

(Chakradhari Sharan Singh, J)

Ashwani Kumar Singh, J : I agree.

(Ashwani Kumar Singh, J)

Rajesh/-

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