

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.483 of 2014

Arising Out of PS. Case No.-41 Year-1996 Thana- JOGAPATTI District- West Champaran

Baidhyanath Mukhiya S/o Late Laxmi Mukhiya R/o Village Bhatwaliya, P.S.
Yogapatti, District West Champaran.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

with

CRIMINAL APPEAL (DB) No. 526 of 2014

Arising Out of PS. Case No.-41 Year-1996 Thana- JOGAPATTI District- West Champaran

Basu Yadav Son of Late Somari Yadav Resident of Village - Chaumukha,
Police Station - Jogapatti, District - West Champaran.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

(In CRIMINAL APPEAL (DB) No. 483 of 2014)

For the Appellant : Mr. Binod Murari Mishra, Advocate.
Mr. Bashistha Mishra, Advocate.

For the State : Dr. Mayanand Jha, Senior Advocate (A.P.P.)

(In CRIMINAL APPEAL (DB) No. 526 of 2014)

For the Appellant : Mr. Bashistha Mishra, Advocate.

For the State : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 12-04-2022

Criminal Appeal (DB) No.483 of 2014 has been filed by
appellant/convicted accused Baidhyanath Mukhiya whereas Criminal
Appeal (DB) No.526 of 2014 has been filed by appellant/convicted
accused Basu Yadav. Both of them are convicted on 28.04.2014 by



the learned Adhoc Sessions Judge-IV, West Champaran, Bettiah, in Sessions Trial No.407 of 2009 for the offence punishable under Section 302 read with 34 and under Section 201 read with 34 of the Indian Penal Code. On 30.04.2014, they came to be sentenced to suffer imprisonment for life and fine of Rs.20000/- each as well as rigorous imprisonment for three years and fine of Rs.5000/- each on each count respectively. In addition, appellant/convicted accused Basu Yadav is also convicted of the offence punishable under Section 27 of the Arms Act and is sentenced to suffer rigorous imprisonment for three years apart from fine of Rs.5000/-. Substantive sentences are directed to run concurrently by the learned trial court. For the sake of convenience, appellants/convicted accused shall be referred to in their original capacity as 'accused'.

2. Facts in brief leading to the prosecution of the accused can be summarized thus:

(a). It is alleged by the prosecution that the accused persons, in furtherance of their common intention, had committed murder of Gulli Mukhiya on 16.07.1996 and caused disappearance of evidence of the offence by letting the dead body to flow in the flood water. It is averred by the prosecution that accused Basu Yadav used gun in contravention of the provisions of the Arms Act for committing this offence.

(b). Janki Devi is widow of deceased Gulli Mukhiya. She lodged the F.I.R. of the incident on 17.07.1996. According to the



prosecution case, Janki Devi who happens to be resident of village-Dehi Madarpur under the Police Station-Jogapatti, District-West Champaran, was doing agricultural operations near her house at about 05.00 P.M. of 16.07.1996. At that time, her daughter P.W.3 Dhanraji Devi came to her and disclosed her that Shankar Yadav, Ashraf, accused Basu Yadav and two others abducted Gulli Yadav on the point of guns and had taken him away. First Informant/P.W.6 Janki Devi also came to know about this fact from a lady named Gujri Devi, who in addition also disclosed name of accused Baidhyanath Mukhiya as one of the abductors. Hence, P.W.6 Janki Devi along with her nephews P.W.4 Dinesh Mukhiya and P.W.5 Dular Mukhiya went in search of her husband Gulli Yadav. They saw that at the field of sugarcane in between Madarpur Mallah Tola and Chaumukha village, accused Basu Yadav along with Shankar Yadav and Ashraf fired the bullets from the guns and murdered Gulli Mukhiya. When P.W.4 Dinesh Mukhiya and P.W.5 Dular Mukhiya tried to reach to victim Gulli Mukhiya, they were shooed away on the point of guns. At that time, there was flood on the spot of the incident and the flood water was increasing continuously. Therefore, P.W.4 Dinesh Mukhiya, P.W.5 Dular Mukhiya and P.W.6 Janki Devi could not reach up-to the dead body of Gulli Mukhiya. They returned to their house and on the very next day, P.W.6 Janki Devi lodged report of the incident which came to be recorded by P.W.7 Shivjee Singh the Investigating Officer at the house of P.W.6 Janki



Devi. Accordingly, the subject crime came to be registered. The wheels of investigation were then set in motion.

(c). During the course of investigation, the Investigating Officer visited the spot of the incident in order to trace out the dead body. However, because of flood, the dead body was found to be flown away and it could not be recovered.

(d). Statements of the witnesses came to be recorded. Accused persons were arrested and on completion of investigation, they came to be chargesheeted. However, accused Shankar Yadav was reportedly dead by that time.

(e). Charge for the offences punishable under Sections 302, 201 read with 34 of the Indian Penal Code came to be framed against both the accused persons and in addition, accused Basu Yadav had been charged for the offence punishable under Section 27 of the Arms Act. They pleaded not guilty and claimed to be tried.

(f). In order to bring home the guilt to the accused persons, the prosecution has examined in all seven witnesses. Their description is thus:

- (A). P.W.1 Sat Mukhiya-Hostile.
- (B). P.W.2 Ram Babu Rai-Hostile.
- (C). P.W.3 Dhanraji Devi-daughter of the deceased, who witnessed the abduction of her father Gulli Mukhiya.
- (D). P.W.4 Dinesh Mukhiya-nephew of deceased Gulli Mukhiya, who claims to be an eye witness.
- (E). P.W.5 Dular Mukhiya-son of sister of the deceased-who also claims to be an eye witness.
- (F). P.W.6 Janki Devi-widow of deceased Gulli Mukhiya, who claims to be an eye witness.
- (G). P.W.7 Shivjee Singh-the Investigating Officer.



(g). Defence of the accused persons was that of total denial. They claimed that they are falsely implicated in the subject crime. According to them as the family of the prosecuting party lost the litigation, the first informant has falsely implicated them in the subject crime. However, they did not enter in the defence.

(h). After hearing the parties, the learned trial court was pleased to convict the appellants/convicted accused as indicated in the opening paragraphs of this Judgment and they are sentenced accordingly.

3. We heard the learned counsel appearing for both the appellants. It is argued on behalf of the appellants that as P.W.6 Janki Devi has heard about the incident from P.W.3 Dhanraji Devi, P.W.6 Janki Devi is not an eye witness to the incident. She has claimed that the incident took place at Chaumukha. The prosecution has not examined any independent witnesses to corroborate version of P.W.6 Janki Devi and other witnesses have turned hostile. It is further argued that dead body of Gulli Mukhiya was not found and because of land dispute, the prosecuting party has concocted the case. The Investigating Officer had not found any marks on the place of the occurrence. It is further argued that even P.W.4 Dinesh Mukhiya and P.W.5 Dular Mukhiya are not an eye witnesses to the subject crime as they all are stating different place as the spot of the occurrence.

4. In addition to this, it is vehemently argued on behalf of the appellant/accused Basu Yadav that the sequence in which firing



was opened on deceased Gulli Yadav was not put to him. It was not pointed out as to who fired the first bullet and when in order of sequence Basu Yadav had fired the bullet. According to the learned counsel for the appellants thus the alleged manner in which deceased Gulli Mukhiya came to be murdered is not properly put up to the accused persons and therefore the entire evidence adduced by the prosecution cannot be put to the use against the appellants. That needs to be eschewed from the consideration.

5. To buttress the contention that the statements of the accused were not recorded as per the mandate of Section 313 of the Code of Criminal Procedure, the learned counsel for the appellants placed reliance on the Judgment of the Hon'ble Supreme Court in **Sukhjit Singh Versus State of Punjab, reported in (2014)10 Supreme Court Cases 270**, and by drawing attention to the paragraph-14 of the said Judgment, it is argued that when the requisite questions have not been put to the accused, immense prejudice is caused to him. In that matter, the Hon'ble Supreme Court has placed reliance on its earlier Judgments in **Ranvir Yadav Versus State of Bihar, reported in (2009) 6 SCC 595**, **Tara Singh Versus State, reported in AIR 1951 SC 441**, **Hate Singh Bhagat Singh Versus State of Madhya Bharat, reported in AIR 1953 SC 468** and **Ajay Singh Versus State of Maharashtra, reported in (2007) 12 SCC 341**.

The ratio which can be culled out from the reported rulings



is that the questions which are put to the accused while exercising powers under Section 313 of the Code of Criminal Procedure must be simple. Each circumstance is required to be put up to the accused separately. Complex questions are required to be awarded. The object is to afford the accused a fair and proper opportunity of explaining the circumstances which appear against him in order to follow the principles of natural justice.

6. The learned counsel for the appellants has also relied on the Judgment of the Hon'ble Supreme Court in **Samsul Haque Versus The State of Assam, reported in 2019 AIR (Supreme Court) 4163**, wherein in paragraph-23, earlier Judgment of the Hon'ble Supreme Court reported in **Shivaji Sahabrao Bobade Versus State of Maharashtra, reported in (1973) 2 SCC 793** as well as other Judgments were considered and it was reiterated that in order to give a fair chance to the accused to defend himself, all incriminating material is required to be put to him and the material which is not put to the accused is required to be eschewed from consideration.

7. The learned counsel for the appellants further relied on the Judgment in **Death Reference No.3 of 2016 (The State of Bihar Versus Onkar Nath Singh @ Sheru Singh) decided by the Division Bench of this Court on 07.02.2020**, wherein the law laid down by the Hon'ble Supreme Court in **Sukhjit Singh Vs. State of Punjab reported in (2014)10 Supreme Court Cases 270** is



reiterated by stating that the examination of the accused under Section 313 of the Code of Criminal Procedure cannot be an empty formality. Reliance is also placed on the Judgment of the Division Bench of this Court in **Vyash Mishra Versus The State of Bihar, reported in 2016(1) PLJR 460**, wherein it is observed that the trial court must put to the accused, the circumstances which appears to be incriminating, in order to base the conviction on such circumstances. With the aid of these Judgments, the learned counsel for the appellants argued that the appellants are entitled for acquittal as the relevant circumstances were not put to them properly.

8. As against this, the learned Senior Advocate appearing for the prosecution vehemently argued that it cannot be said as a matter of rule that unless and until the incriminating circumstances are put up to the accused for seeking his explanation, the trial gets vitiated and no such finding can be given by the appellate Court. What is required to be demonstrated is causing the prejudice to the accused due to non putting of the incriminating circumstances to him for eliciting his explanation. To buttress this contention, the learned Senior Advocate placed reliance on the Judgment of the Hon'ble Supreme Court in **Fainul Khan Versus State of Jharkhand and Another, reported in (2019) 9 Supreme Court Cases 549**. It is apposite to quote the relevant portion from the paragraphs- 12, 13, 14, 15 and 16 of the said Judgment for proper appreciation of the contention raised regarding non compliance of provisions of Section



313 of the Code of Criminal Procedure. Those reads thus:

“12.....But equally there cannot be a generalised presumption of prejudice to an accused merely by reason of any omission or inadequate questions put to an accused thereunder. Ultimately it will be a question to be considered in the facts and circumstances of each case including the nature of other evidence available, the kind of questions put to an accused, considered with anything further that the accused may state in his defence. In other words, there will have to be a cumulative balancing of several factors. While the rights of an accused to a fair trial are undoubtedly important, the rights of the victim and the society at large for correction of deviant behaviour cannot be made subservient to the rights of an accused by placing the latter at a pedestal higher than necessary for a fair trial.

13.Merely because no questions were put to the appellants with regard to the individual assault made by each of them, it cannot be said in the facts of the case that any prejudice has been caused to them. The questions asked being similar we consider it proper to extract it with regard to one of the appellants. The appellants did not offer any explanation or desire to lead evidence except for stating that they had been falsely implicated.

14. In *Suresh Chandra Bahri v. State of Bihar*, it was observed as follows : (SCC pp. 78-79, para 26)

“26. ... It is no doubt true that the underlying object behind Section 313 CrPC is to enable the accused to explain any circumstance appearing against him in the evidence and this object is based on the maxim *audi alteram partem* which is one of the principles of natural justice. It has always been regarded unfair to rely upon any incriminating circumstance without affording the accused an opportunity of explaining the said incriminating circumstance. The provisions in Section 313, therefore, make it obligatory on the court to question the accused on the evidence and circumstance appearing against him so as to apprise him the exact case which he is required to meet. But it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance but he must also show that such non-examination has actually and materially prejudiced him and has resulted in failure of justice. In other words in the event of any inadvertent omission on the



part of the court to question the accused on any incriminating circumstance appearing against him the same cannot ipso facto vitiate the trial unless it is shown that some prejudice was caused to him. In *Bejoy Chand Patra v. State of W.B.*, this Court took the view that it is not sufficient for the accused merely to show that he has not been fully examined as required by Section 342 of the Criminal Procedure Code (now Section 313 in the new Code) but he must also show that such examination has materially prejudiced him. The same view was again reiterated by this Court in *Rama Shankar Singh v. State of W.B.*

15. In *Shobhit Chamar*, considering the nature of ocular evidence notwithstanding the infirmities at the stage of Section 313 CrPC, it was observed as follows : (SCC pp. 463 & 465, paras 18 & 24)

“18. ... In the case before us, the prosecution case mainly rested upon the ocular evidence of eyewitnesses. On conclusion of the prosecution evidence, the trial court did put the necessary questions relating to the evidence of eyewitnesses to both the appellants and thereafter recorded the answers given by them.

* * * * *

24. We have perused all these reported decisions relied upon by the learned advocates for the parties and we see no hesitation in concluding that the challenge to the conviction based on non-compliance with Section 313 CrPC first time in this appeal cannot be entertained unless the appellants demonstrate that the prejudice has been caused to them. In the present case as indicated earlier, the prosecution strongly relied upon the ocular evidence of the eyewitnesses and relevant questions with reference to this evidence were put to the appellants. If the evidence of these witnesses is found acceptable, the conviction can be sustained unless it is shown by the appellants that a prejudice has been caused to them. No such prejudice was demonstrated before us and, therefore, we are unable to accept the contention raised on behalf of the appellants.”

16. Notwithstanding our conclusions as aforesaid that there has in fact been no irregularity in procedure under Section 313 CrPC much less any prejudice caused to the appellants we shall now deal with the



issue whether the appellants could at this stage raise objections with regard to the same. In *Sukha v. State of Rajasthan*, it was observed as follows : (AIR p. 520, para 38)

“38. ... We have recently decided that we will be slow to entertain question of prejudice when details are not furnished; also the fact that the objection is not taken at an early stage will be taken into account. There is not a hint of prejudice in the petition filed by the appellants here in the High Court for leave to appeal to this Court; nor was this considered a ground for complaint in the very lengthy and argumentative petition for special leave filed in this Court. The only complaint about prejudice was on the score that there was no proper examination under Section 342 of the Criminal Procedure Code. We decline to allow this matter to be raised.”

The learned Senior Advocate appearing for the respondent further argued that evidence of the prosecution in respect of the alleged offence is clear, cogent and consistent and, therefore, there is no need to interfere in the conviction as well as the resultant sentence imposed on the appellants by the learned trial court.

9. We have considered the submissions so advanced. We have also perused the records and proceedings.

10. It is seen from the evidence on record and rather it is an undisputed fact that dead body of victim of the subject crime namely Gulli Mukhiya could not be found after the incident. The effect of non-finding of the corpus delicti in the case relating to offence of murder is well settled. Homicidal death of the victim can be proved even on the basis of circumstances provided that evidence adduced by the prosecution on this aspect unerringly leads to the



only conclusion of guilt of the accused. The discovery of the dead body has never been considered as the only mode of proving the corpus delicti in the cases relating to murder. True it is that one of the essential ingredients of the offence of murder is proof of the fact that the deceased died homicidal death but the “body” doctrine is merely a rule of caution and if the evidence on record unerringly points out that the accused had caused the death of the victim alleged to have been killed, the offence can be made out. With this let us examine evidence adduced by the prosecution in order to determine whether it has proved homicidal death of Gulli Mukhiya and whether it is established that the accused persons or any of them had caused his death with the requisite intention of causing death.

11. According to the prosecution case, it was P.W.3 Dhanraji Devi, daughter of deceased Gulli Mukhiya who saw the accused persons abducting the deceased on the point of guns. She is examined as P.W.3. It is in her evidence that she saw accused Baidhyanath Mukhiya, accused Basu Yadav along with Shankar Yadav and Ashraf taking her father Gulli Mukhiya away on the point of guns and then she disclosed this fact to her mother P.W.6 Janki Devi. During her cross-examination, she attempted to show that she is an eye witness to the incident by stating that she had seen the incident of killing her father from some distance and she witnessed firing of 10-12 bullets. However, it is well settled that falsus in uno, falsus in omnibus is a principle which cannot be applied in an Indian



culture. Many time under the impression that their versions may not be accepted by the court, the witnesses try to add embellishment. However, it becomes the duty of the court to find out the acceptable portion from the evidence of such witnesses who are deposing the truth partially. Evidence of such witnesses who are not wholly reliable is required to be accepted when it is corroborated by other evidence on record.

12. Let us therefore ascertain whether the evidence of P.W.3 Dhanraji Devi is gaining any corroboration from the other evidence on record and to what extent. Ignoring the improvement made by her during the course of her cross-examination, remaining part of her evidence regarding abduction of the deceased by the accused persons and more particularly by the accused Basu Yadav is in tune with the prosecution case. This witness had disclosed the incident of abduction of her father to her mother P.W.6 Janki Devi- the first informant and therefore let us see what the first informant is stating about the incident.

13. It is in evidence of P.W.6 Janki Devi that P.W.3 Dhanraji Devi had disclosed her about abduction of her husband Gulli Mukhiya by some miscreants. Thereafter, as per her version, her mother-in-law disclosed her that Shankar, Hari, Ashraf as well as accused Baidhyanath Mukhiya and accused Basu Yadav had abducted Gulli Mukhiya. P.W.6 Janki Devi has further deposed that then along with her nephews P.W.4 Dinesh Mukhiya and P.W.5



Dular Mukhiya, she went on search and saw the accused persons. As per her version, accused Basu, Shankar and Ashraf fired bullets from the guns held by them at her husband Gulli Mukhiya and then her husband fell down in the flood water. She disclosed that because of the flood water they could not reach upto her husband and then on the next day, she reported the incident to the police. She explained that on the day of the incident because of flood at the village, she could not reach the police station. She disclosed that her family was having dispute regarding land with the accused Baidhyanath Mukhiya. In her cross-examination, she candidly admitted that after the incident dead body of her husband was never found nor she could meet her husband at any point of time after the incident in question. In her cross-examination, she disclosed that her husband was taken to Chaumukha and there itself her husband was murdered. With the aid of this material coming in cross-examination, the defence is attempting to show that the spot of the incident is stated differently by different witnesses. In her cross-examination, it is also brought on record that at the time of the incident, their village was surrounded by the flood water. Except this, there is no other material worth mentioning in cross-examination of P.W.6 Janki Devi. She claimed to have seen the incident along with her nephews PW.4 Dinesh Mukhiya and P.W.5 Dular Mukhiya. Hence, it would be apposite to put on record what is their version about the incident in question.



14. P.W.4 Dinesh Mukhiya, nephew of the deceased Gulli Mukhiya claimed that when he was at the floor mill he saw accused Basu Yadav and Shankar Yadav, Hari Yadav, Ashraft as well as one more person taking away his uncle Gulli Mukhiya on the point of gun. He then met his aunt P.W.6 Janki Devi and along with her as well as P.W.5 Dular Mukhiya, they went in search of Gulli Mukhiya. P.W.4 Dinesh Mukhiya deposed that in the sugarcane field, Shankar Yadav fired a bullet at the chest of Gulli Mukhiya and shouting loudly, Gulli Mukhiya fell down in the water accumulated in that field and thereafter accused Basu Yadav fired a bullet at Gulli Mukhia. Accused Basu Yadav then abused and threatened them. Being frightened they returned to their houses. This witness has also spoken about the dispute in respect of land with accused Baidhyanath Mukhiya.

15. In cross-examination, P.W.4 Dinesh Mukhiya has reiterated that he has personally seen the incident of abduction as well as murder of his uncle Gulli Mukhiya. He clarified in the cross-examination that Gulli Mukhiya was taken towards the flood water of the sugarcane field and the spot of the incident was near Mallah Toli. As per his version in the cross-examination, he had accompanied P.W.6 Janki Devi and P.W.5 Dular Mukhiya to reach to the spot of the incident. He also reiterated in the cross-examination that he heard firing of three gunshots. As per version of P.W.4 Dinesh Mukhiya in cross-examination, the dead body could not be



found as level of flood water increased. As per his version in the cross-examination, after hit by the bullets, his uncle fell down in the flood water. From cross-examination, it was elicited from him that accused Basu Yadav and Ashraf had also fired bullets at Gulli Mukhiya and thereafter accused persons threatened them to leave the spot.

16. Next eye witness P.W.5 Dular Mukhiya, who happens to be son of the sister of the deceased, has claimed that he had witnessed the abduction of Gulli Mukhiya by accused Basu Yadav, Shankar Yadav, Ashraf and Hari Yadav. Those persons were armed with guns. P.W.5 Dular Mukhiya further stated that then he accompanied his maternal aunt P.W.6 Janki Devi and P.W.4 Dinesh Mukhiya and saw accused persons as well as Gulli Mukhiya standing in the knee deep flood water. Then as per version of P.W.5 Dular Mukhiya, accused Basu Yadav as well as Shankar Yadsav and Ashraf fired bullets at Gulli Mukhiya and killed him. He stated that when they attempted to reach the dead body, accused persons pointed out guns and threatened to kill them. They therefore returned and on the next day lodged the report. This witness has also spoken about land dispute of the family with the accused Baidhyanath Mukhiya. From his cross-examination, it is brought on record that he was knowing accused Basu Yadav since last two years prior to the incident.

17. This is the eye witness account of the incident coming



from the mouth of P.W.4, Dinesh Mukhiya, P.W.5 Dular Mukhiya and P.W.6 Janki Devi. We have already placed on record the material elicited from cross-examination of all these three eye witnesses by the defence. So far as P.W.5 Dular Mukhiya is concerned, he was not even cross-examined in respect of the mode and manner of the happenings of the incident and his evidence regarding murder of Gulli Mukhiya by the accused persons virtually remained unchallenged in the cross-examination and therefore we see no reason to disbelieve the version of this witness. The defence has not challenged their identification by the eye witnesses. So far as P.W.4 Dinesh Mukhiya is concerned, from his cross-examination itself, the defence has elicited on record that he is an eye witness to the subject crime and had witnessed abduction as well as murder of the deceased Gulli Mukhiya. His cross-examination makes it clear that after being hit by bullets, Gulli Mukhiya fell down in the flood water and accused Basu Yadav was one of the assailants who fired a bullet at Gulli Mukhiya. P.W.6 Janki Devi, who happens to be the widow of Gulli Mukhiya was also not cross-examined by the defence in respect of mode and manner of happenings of the incident. Her cross-examination is limited in respect of criminal antecedents regarding Shankar Yadav, a dacoit named Ram Singh as well as her police statement. However, her police statement was not put up to her in order to bring out the contradictions from her earlier version as per the manner required under the Evidence Act. In other



words, searching cross-examination of all these three eye witnesses could not bring any material on record to disbelieve their version regarding abduction of Gulli Mukhiya and killing him by firing bullets by Shankar Yadav, Ashraf and accused Basu Yadav. All these three eye witnesses have consistently deposed about the prosecution case including the fact that that at the time of the incident the water level of the flood was consistently increasing and the incident took place at the place surrounded by the flood water.

18. P.W.7 Shivjee Singh, the Investigating Officer, as well as all these three witnesses have stated because of the flood water, the dead body could not be found. P.W.7 Shivjee Singh, the Investigating Officer, has candidly deposed that on the next day when he visited the spot, he noticed flood water in large quantity flowing from the place where the incident took place and therefore the dead body could not be found.

19. Having examined the mode and manner in which the deceased Gulli Mukhiya was done to death, let us now examine the criminal liability of the accused persons. Accused Baidhyanath Mukhiya is convicted of the offences punishable under Sections 302, 201 read with 34 of the Indian Penal Code. Star witness for the prosecution namely P.W.6 Janki Devi has not spoken a word about the complicity of accused Baidhyananth Mukhiya in the subject crime. What she has stated about this accused is regarding the hearsay information received by her from her mother-in-law. That



information was regarding abduction of Gulli Mukhiya. P.W.6 Janki Devi has not seen presence of accused Baidhyanath Mukhiya on the scene of the occurrence. P.W.5 Dular Mukhiya has also not spoken about presence of accused Baidhyanath Mukhiya either at the time of abduction or at the time of murder of Gulli Mukhiya. Similar is the version of P.W.4 Dinesh Mukhiya. He has not spoken about the involvement of accused Baidhyanath Mukhiya in either abduction or murder of Gulli Mukhiya. Name of accused Baidhyanath Mukhiya is taken only by P.W.3 Dhanraji Devi-daughter of the deceased Gulli Mukhiya regarding his involvement in abduction of Gulli Mukhiya. We have already noted that P.W.3 Dhanraji Devi is not a wholly reliable witness because she, in her cross-examination, has attempted to improve her version by posing herself as an eye witness to the subject crime. Her evidence regarding involvement of Baidhyanath Mukhiya in the subject crime is not gaining corroboration from other witnesses. In such eventuality, we are unable to return the finding of guilt in so far as the accused Baidhyanath Mukhiya is concerned. To that extent, we are unable to uphold the finding recorded by the learned trial court. However, so far as accused Basu Yadav is concerned, there is sufficient evidence to connect him with the offence of commission of murder of Gulli Mukhiya as well as for the offence punishable under Section 27 of the Arms Act. He had fired a bullet at Gulli Mukhiya causing death of Gulli Mukhiya. Eye witness account given by all these three eye witnesses makes it clear



that Gulli Mukhiya died in the incident in question and after the date of incident he was not seen at any point of time even by his widow P.W.6 Janki Devi.

20. We see no reason to disbelieve eye witness account given by P.W.4 Dinesh Mukhiya, P.W.5 Dular Mukhiya as well as P.W.6 Janki Devi with the reason that they have stated different spots as spot of the incident. At the relevant time, the village was surrounded with flood water as seen from this fact which is brought on record by the defence. The incident in question took place at the spot surrounded with the flood water. Evidence on record shows that the incident took place in the field submerged in the flood water. From village-Dihi, the deceased was abducted towards Chaumukha and at the field in that direction the incident took place. Therefore, no merit can be found in the contention in that regard advanced by the learned counsel for the appellants.

21. In the statement of the accused recorded under Section 313 of the Code of Criminal Procedure, it was pointed out to the accused that about 05.00 P.M. on 16.07.1996 they abducted Gulli Mukhiya. It was pointed out to them that Gulli Mukhiya was taken towards Madarpur Mallah Toli and Chaumukha and there the accused along with the co-accused committed his murder by firing the bullets at Gulli Mukhiya. In what sequence and by whom the bullets were fired is totally irrelevant. What was relevant is the circumstance that the accused had fired a bullet at Gulli Mhkhuya.



That circumstance was specifically pointed out to the accused by the learned trial court for bringing the same to the notice of the accused. The learned counsel for the accused/appellants could not point out any prejudice that might have been caused to the accused by not mentioning the sequence in which bullets were fired at the deceased by the accused persons. We have ourselves attempted to examine as to what prejudice is caused to the accused by not mentioning the fact that firstly Shankar Yadav (who was not put to the trial because of his death) had fired a bullet at Gulli Mukhiya and then appellant Basu Yadav had fired a bullet at him. Ultimately, the accused were aware about the charge of commission of murder of Gulli Mukhiya by them in furtherance of their common intention. The prosecution has taken aid of Section 34 of the Indian Penal Code. Accused Basu Yadav had taken active part in killing of Gulli Mukhiya by firing the bullet after initial action of firing a bullet by Shankar Yadav at Gulli Yadav. Thus, the relevant circumstance that accused Basu Yadav had also fired a bullet at the deceased was specifically put to him. As such, we conclude that the relevant circumstance was rightly put to the accused and he has not suffered any prejudice only because it was not put to him that first bullet was fired by Shankar Yadav.

22. As discussed in the foregoing paragraphs, deceased Gulli Mukhiya was done to death at the place which was flooded by flood water and thereafter his dead body could not be traced out. Therefore, it cannot be said that accused Basu Yadav had caused



disappearance of evidence of commission of offence of murder of Gulli Mukhiya with the intention of screening from legal punishment. Therefore, it cannot be said that the prosecution has made out the offence punishable under Section 201 of the Indian Penal Code as against this accused.

23. The net result of foregoing discussions leads us to hold that the prosecution has proved the commission of offence punishable under Section 302 read with 34 of the Indian Penal Code as well as under Section 27 of the Arms Act only against the appellant/accused Basu Yadav but has failed to prove out the same so far as the appellant/accused Baidhyanath Mukhiya is concerned. Hence, the following orders:

(I). Criminal Appeal (DB) No.483 of 2014 filed by accused/appellant Baidhyanath Mukhiya is allowed. The impugned Judgment and Order of his conviction for the offences punishable under Sections 302, 201 read with 34 of the Indian Penal Code is quashed and set aside. He is acquitted of the offences alleged against him and he be set at free if not required in any other case. In the event he is on bail, his bail bonds stand cancelled.

(II). Criminal Appeal (DB) No.526 of 2014 filed by appellant/accused Basu Yadav is partly allowed. His conviction and resultant sentence imposed on him so far as the offence punishable under Section 302 read with 34 of the Indian Penal Code as well as under Section 27 of the Arms Act is maintained. His conviction as



well as resultant sentence imposed on for the offence punishable under Section 201 read with 34 of the Indian Penal Code is quashed and set aside and he is acquitted of the offence punishable under Section 201 read with 34 of the Indian Penal Code.

(A. M. Badar, J)

(Sunil Kumar Panwar, J)

P.S./-

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