

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.654 of 2014

Arising Out of PS. Case No.-108 Year-2010 Thana- BHAGWANPUR District- Kaimur
(Bhabhua)

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Raju Dubey Son of Shri Bharat Dubey Resident of Village- Dubauli, Police
Station- Belaon, District- Kaimur at Bhabhua.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Vikramdeo Singh, Advocate
		Mr. Dr. Rajesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Binod Bihari Singh, APP
For the Informant	:	Mr. Kumar Sunil, Advocate

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE A. M. BADAR)
Date : 11-10-2022

By this appeal, the appellant/accused is challenging the judgment and order dated 17.06.2014 and 18.06.2014 respectively passed in Sessions Case No. 244 of 2011/ 31 of 2011 by the learned 1st Additional Sessions Judge, Kaimur (Bhabhua), thereby convicting him of the offences punishable under Section 302 of the Indian Penal Code, 1860 (IPC for the sake of brevity) Section 27 of the Arms Act, 1959, as well as



Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Prevention of Atrocities Act for the sake of brevity). For the offence punishable under Section 302 of the IPC, the appellant/accused is sentenced to suffer imprisonment for life apart from imposition of fine of Rs.5000/- (five thousand). For the offence punishable under Section 27 of the Arms Act, he is sentenced to suffer rigorous imprisonment for three years apart from imposition of fine of Rs.1000/- (one thousand). For the offence punishable under Section 3 (2) (v) of the Prevention of Atrocities Act, the appellant/accused is sentenced to suffer imprisonment for life apart from imposition of fine of Rs.5000/- (five thousand). In default of payment of fine, he is sentenced to suffer simple imprisonment for three months. Co-accused Baliram Dubey and Ram Bharat Dubey were however acquitted by the learned Trial Court. For the sake of convenience, the appellant shall be referred to in his original capacity as an accused.

2. Facts in brief leading to the prosecution of the accused, projected from the police report, can be summarized thus:

(a). According to the prosecution case, injured



Narayan Ram belongs to a schedule caste- Chamar. He along with his family members including his wife Dhanvarti Devi (since deceased) were resident of village Dabauli, Police Station Belaon in Kaimur District of Bihar. He was handicapped by leg and was using crutches for walking.

(b). The incident in question took place at about 9.00 AM of 08.09.2010. On that day, injured Narayan Ram was suffering from dysentery. He was required to go for easing time and again. At about 9:00 AM, he was going to the open area outside the village for easing. He being a handicapped person, his wife Dhanvarti Devi was accompanying him carrying a pot filled with water. When they were passing by the side of the disputed field situated near Kaliasthan of the village, accused Ram Bharat Dubey who along with co-accused Raju Dubey and Baliram alias Munu Dubey started giving abuses to him. When injured Narayan Ram protested, Ram Bharat Dubey exhorted and ordered appellant/accused Raju Dubey and Baliram alias Munu Dubey to kill injured Narayan Ram. Then appellant/accused Raju Dubey fired bullets at injured Narayan Ram and his wife Dhanvarti Devi. Narayan Ram was hit at the groin area by the gun shot fired by appellant/accused Raju Dubey. His wife Dhanvarti Devi died because of gun shot



wound. Villagers including PW 10 Madan Ram and PW 7 Nathuni Ram had seen the incident of firing bullets on injured Narayan Ram and his wife Dhanvarti Devi by the accused persons.

(c). The incident was informed to the concerned Police Station. Police Sub-Inspector N.L. Das of Belaon Police Station then visited the spot of incident and recorded the First Information Report lodged by injured Narayan Ram – Chamar at about 10.30 AM of 08.09.2010 on the spot of the incident itself. That is how crime in question bearing No. 108 of 2010 came to be registered against accused persons including the appellant/accused.

(d). Dead body of Dhanvarti Devi was then dispatched for post mortem examination to the Sadar Hospital, Bhabhua, where PW 11 Dr. Arvind Kumar conducted Autopsy. The Investigating Officer recorded statement of witnesses and after completing routine investigation, in all three accused persons including the appellant/accused came to be charge sheeted.

(e). The learned Trial Court had framed charge for the offences punishable under Sections 302, 307, 326 of the IPC, as well as under Section 27 of the Arms Act and under



Section 3 (2) (v) of the Prevention of Atrocities Act against the appellant/accused. So far as the other accused persons, namely, Baliram alias Munu Dubey and Ram Bharat Dubey are concerned, the learned Trial Court had framed the charge for offences punishable under Section 302 read with Section 149, 307 read with Section 34 of the IPC, as well as under Section 3 (2) (v) of the Prevention of Atrocities Act. All accused persons pleaded not guilty and claimed trial.

(f). In order to bring home the guilt to the accused, the prosecution has examined in all 12 witnesses. Kameshwar Rao, who had put his signature as an attesting witness on the FIR lodged by injured Narayan Ram, is examined as PW 1. He was declared hostile by the prosecution. Co-villagers Pujan Bind and Ramakant Pandey, who were examined as PWs 2 and 3, are also declared hostile by the prosecution as they failed to support the prosecution case. Ram Surat Ram – brother-in-law of brother of First Informant Narayan Ram is examined as PW 4. Dihal Bind is examined as PW 5. His evidence is hearsay in nature. PW 6 Guddu Ram, PW 7 Nathuni Ram, PW 8 Binda Devi, PW 9 Bhairo Ram and PW 10 Madan Ram, who are relatives of injured Narayan Ram and deceased Dhanwanti Devi, are claiming to be eyewitnesses to the crime in question.



Autopsy surgeon Dr. Arvind Kumar of Sadar Hospital, Bhabhua, is examined as PW 11. Clerk of an advocate, namely, Munna Ram is examined as PW 12 for proving handwriting of Police Officer Budel Das on the printed FIR.

(g). The defence of accused persons as gathered from the line of the cross-examination of the prosecution witnesses as well as from their statement under Section 313 Cr.P.C. was that of total denial. However, they did not enter in the defence.

(h). After hearing both the parties, the learned Trial Court by the impugned judgment and order was pleased to hold that the prosecution has failed to prove the charges levelled against accused Baliram @ Munu Dibey and Ram Bharat Debey. However, it is held by the impugned judgment that the prosecution is successful in proving the charge for the offences alleged against the appellant/accused Raju Dubey. Hence, by the impugned order, co-accused Baliram @ Munu Dubey and Ram Bharat Dubey came to be acquitted whereas the appellant/accused came to be convicted as indicated in the opening para of the judgment.

3. We heard Mr. Vikramdeo Singh, learned counsel appearing for the appellant/accused at sufficient length of time.



By taking us through the record and proceeding, he argued that none of the prosecution witness is speaking about seeing the accused with Gun at the time of incident. It is further argued that no fire-arm came to be seized during the course of investigation and, therefore, prosecution witnesses are belied on the point of firing a bullet on First Informant Narayan Ram. It is further argued that though prosecution witnesses are stating about different time of death of injured Narayan Ram, the prosecution has failed to adduce any evidence regarding sustaining of injury by First Informant Narayan Ram in the course of the incident. It is further argued that the prosecution has not even dared to file supplementary charge sheet with an accusation that injured Narayan Ram died because of injuries sustained in the said incident. Even no evidence is adduced in respect of alleged medical treatment to First Informant Narayan Ram or his subsequent death because of the injuries sustained in the incident in question. It is further argued that though according to the prosecution case, the Police Officer reached on the spot of the incident within few hours, nothing was seized from the spot of the incident. The crutches, pot of water, blood stained soil etc, ought to have been seized from the spot of the incident if the incident really took place as per the version of



the prosecution. Even blood stained clothes of witnesses who had held injured Narayan Ram were not seized by the prosecution. It is further argued that though it is claimed by the prosecution witnesses that injured Narayan Ram was sitting on the spot of the incident for a period of about one and a half hours, not a single prosecution witness is stating about any disclosure in respect of incident of injured Narayan Ram to them. It is further argued that even evidence of the prosecution is to the effect that injured Narayan Ram was a crippled person who was unable to walk and because of dysentery he was relieving himself at the house itself. Therefore, it cannot be said that Narayan Ram had gone all the way outside the village for relieving himself accompanied by his wife. With this, it is argued that evidence of all witnesses who are near relatives of injured Narayan Ram and deceased Dhanvarti Devi is wholly untrustworthy. It is suffering from major contradictions and inconsistencies. It is argued that the appellant/accused is entitled for acquittal because on the same set of evidence co-accused were acquitted by the learned Trial Court.

4. The learned Additional Public Prosecutor supported the impugned judgment and order by contending that several eyewitnesses are naming the accused as a person who



had committed murder of Dhanvarti Devi by firing a bullet on her.

5. We have considered the submissions so advanced and we have also perused the record and proceeding.

6. At the outset, it needs to be pointed out that though the prosecution has levelled the charge of an attempt to commit murder of First Informant Narayan Ram by accused persons, the prosecution has failed to examine any Medical Officer who might have treated Narayan Ram after allegedly sustaining bullet wound at the hands of appellant/accused Raju Dubey. The prosecution has failed to prove any document of medical treatment of injured Narayan Ram showing that he had suffered a bullet wound in the incident in question. Though prosecution witnesses who are near and dear ones of injured First Informant Narayan Ram have made a statement during the course of recording of their evidence by the Court that after taking treatment at B.H.U. Hospital at Varanasi, Narayan Ram succumbed to the injuries suffered in the incident, the prosecution has failed to file supplementary charge sheet by alleging commission of offence punishable under Section 302 of the IPC by the accused persons by causing death of Narayan Ram by firing a bullet. Report of post mortem examination of



dead body of Narayan Ram is also not finding its place on the record and proceedings. We are also not having advantage of evidence of injured eyewitness Narayan Ram probably because of his death during the course of pendency of investigation or the trial. None of the prosecution witness has even gave specific details about date, time and place of death of First Informant Narayan Ram. We fail to understand under which circumstances this material evidence is not forthcoming or why the prosecution has suppressed this evidence. To crown this all, the prosecution has not even examined the Investigating Officer in the case in hand. Resultantly, even the First Information Report allegedly lodged by injured Narayan Ram soon after the incident is not proved by the prosecution. With all these laconic conduct of prosecution by the State, now let us examine whether the prosecution has succeeded in proving that the accused had committed murder of Dhanvarti Devi by firing a bullet on her on the ground that she is member of the scheduled caste.

7. In order to prove homicidal death of Dhanvarti Devi, the prosecution has adduced evidence of PW 10 Dr. Arvind Kumar, Medical Officer of Sadar Hospital, Bhabhua. As per his version, on 08.09.2010 he had conducted post



mortem examination on the dead body of Dhanvarti Devi wife of Narayan Ram, resident of village Dabauli and had noticed that the dead body was having numerous oval shaped lacerated wounds, margins of which were inverted and tattooed. Surrounding area of those wounds were charred and blackened. The injuries were muscle and cavity deep. This Medical Officer further deposed that upon internal examination of the dead body he found that both pleura and lungs as well as heart of the dead body was lacerated. Dark blood and clots were collected in a thoracic cavity. The autopsy surgeon further deposed that lower abdominal cavity of the dead body was containing heavy amount of dark blood and clots mixed with territorial fluid. He has deposed that other internal parts of the body were also found lacerated at several places. As per version of the autopsy surgeon, those injuries were ante mortem in nature caused by the fire arm. PW 10 Dr. Arvind Kumar further deposed that death of Dhanvarti Devi was due to haemorrhage and shock. There is nothing in cross examination of this witness to disbelieve his version. Thus, evidence of the autopsy surgeon shows that Dhanwarti Devi died on 08.09.2010 because of ante mortem wounds suffered by firing a cartridge from the fire arm.



8. Now, let us examine whether the prosecution has proved that it was the accused who fired a cartridge at Dhanvarti Devi from the gun with an intention to cause her death on the ground that she is a member of the scheduled caste.

9. At the inception itself, it needs to mention that the prosecution has not placed on record any evidence to show that deceased Dhanvarti Devi was belonging to a scheduled caste. Neither her caste certificate nor her caste validity certificate certifying that Dhanvarti Devi belongs to Chamar caste which falls under the category of scheduled caste is placed on record by the prosecution. Oral evidence of relatives of deceased Dhanvarti Devi referring her as Chamar cannot be said to be sufficient to hold that deceased was belonging to the scheduled caste. Hence, in absence of evidence to that effect, the charge for commission of offence punishable under Section 3 (2) (v) of the Prevention of Atrocities Act fails.

10. According to the prosecution case, unfolded during the course of trial, PW 4 Ram Surat Ram, PW 6 Guddu Ram, PW 7 Nathuni Ram, PW 8 Binda Devi, PW 9 Bhairo Ram and PW 10 Madan Ram are eyewitnesses to the incident of firing a cartridge from the gun by accused Raju Dubey on



deceased Dhanvarti Devi. Let us now, therefore, examine the evidence of these witnesses in order to ascertain whether they can be said to be witness of truth and whether their evidence can be accepted to base conviction for the capital offence against the accused.

11. It is noteworthy to state that all alleged eyewitness to the incident are close relatives of deceased Dhanvarti Devi and injured Narayan Ram. Sister of Narayan Ram is married to brother of PW 4 Ram Surat Ram. PW 6 Guddu Ram is cousin of injured Narayan Ram. PW 7 Nathuni Ram is his brother. PW 8 Binda Devi is wife of PW 7 Nathuni Ram and as such is sister-in-law of injured Narayan Ram. PW 9 Bhairo Ram is nephew of injured Narayan Ram whereas PW 10 Madan Ram is son of injured Narayan Ram. We have already noted that the prosecution has failed to adduce any medical evidence in respect of sustaining gun shot injuries in the incident in question by First Informant/injured Narayan Ram. His near and dear ones who are examined by the prosecution as eyewitnesses are stating that injured Narayan Ram succumbed to the injuries suffered by him in the incident in the Hospital at Banaras. They all are giving different time of death of Narayan Ram. Some are stating that he died within 15



days whereas some are stating that he died after a period of about three and half months. Neither his death certificate nor the report of his post mortem examination is placed on record by the prosecution. The Investigating Officer, as noted by us is also not examined by prosecution during the course of trial. With this position of record now let us examine whether eyewitness account, given by all these close relatives of deceased Dhanvarti Devi and First Informant Narayan Ram is reliable and trustworthy in order to base conviction. It is needless to mention that it is settled position of law that close relatives of the deceased hardly spare the actual culprit and rope in the innocent person as an accused. However, it is also well settled that there are chances of false implication when the parties are on hostile terms. In the case in hand, undoubtedly there was dispute between the prosecuting party and the accused party over agricultural land. It is clear from evidence of PW 9 Bhairo Ram nephew of injured Narayan Ram that Ram Bharat Dubey (acquitted accused) who is father of appellant/accused Raju Dubey had filed civil suit against injured Narayan Ram as well as all his relatives including PW 7 Nathuni Ram and this witness i.e., PW 9 Bhairo Ram. PW 7 Nathuni Ram, who is brother of injured Narayan Ram, has also



stated in clear term that since beginning his brother i.e., injured Narayan Ram was having dispute with the accused persons in respect of the landed property. However, he denied that the title suit filed by acquitted accused Ram Bharat Dubey is still pending. Pendency of this suit of the accused is clearly established from evidence of PW 9 Bhairo Ram. Even PW 4 Ram Surat Ram, who happens to be close relative of injured Narayan Ram, has vouched that there was dispute in respect of land with accused persons and civil suit is pending in that regard. He has stated that he is also a party to that dispute. PW 8 Binda Devi has stated that she worked as an agricultural labour in the field of the accused but accused had not paid wages to her. Thus, keeping in mind the hostile relations between the prosecuting party and the accused persons out of which two are already acquitted by the learned Trial Court on same set of evidence, one will have to scrutinize evidence of the alleged eyewitness with due care and caution. Almost all the eyewitnesses, who are related to deceased Dhanvarti Devi and injured Narayan Ram, have stated that since a day prior to the incident injured Narayan Ram was suffering from dysentery. His son PW 10 Madan Ram has stated in his evidence that in the earlier night his father injured Narayan



Ram had passed motions on four to five occasions in the house itself. As per his version, his father had passed motion lastly at 6:00 AM of the day of the incident i.e., 08.09.2010. This position is not disputed by the defence. On this backdrop, let us put on record what is stated by alleged eyewitnesses, in their chief examination, as they are posing themselves as persons who had actually witnessed the incident.

12. PW 4 Ram Surat Ram has stated that at the time of the incident he was washing his hands and legs at the hand pump situated near Kaliasthan. He stated that Kaliasthan is on the eastern side of the village. He heard sound of firing a gun shot and saw accused Raju Dubey fired bullets at Narayan Ram and Dhanvarti Devi. Next eyewitness PW 6 Guddu Ram has stated in his chief examination that when he was going for easing himself in the field, he saw injured Narayan Ram was going for easing and as Narayan Ram was a crippled person, his wife Dhanvarti Devi was accompanying him, carrying water with her. As per version of PW 6 Guddu Ram, at that time accused Raju Dubey along with acquitted accused Ram Bharat and Munnu were undertaking sowing operations in their field. Upon seeing Narayan Ram, acquitted accused ordered accused Raju Dubey to fire a bullet and, then, accused Raju



Dubey fired bullets and killed Dhanvarti Devi. Narayan Ram was injured in the incident. As per version of this witness he was then taken to the Hospital at Bhabhua and then to Banaras where he died. Next eyewitness PW 7 Nathuni Ram has stated that at the time of the incident he was drinking water at the hand pump and saw injured Narayan Ram and his wife Dhanvarti Devi were going for easing. Dhanvarti Devi was carrying a pot containing water as Narayan Ram was a crippled person. This witness further stated that when Narayan Ram and Dhanvarti Devi reached near Kaliasthan, acquitted accused Ram Bharat exhorted and ordered accused Raju Dubey to kill and thereupon Raju Dubey fired two bullets. Dhanvarti Devi died on the spot whereas Narayan was injured. This witness further stated that two or three months thereafter Narayan Ram died. PW 8 Binda Devi is wife of PW 7 Nathuni Ram. As per her version at the time of the incident she was preparing cow dung cakes on the road and saw Narayan and Dhanvarti Devi. She stated that when they reached a spot known as Kaliasthan, acquitted accused persons Ram Bharat and Baliram who had undertaken sowing operations in their field has ordered accused Raju Dubey to kill and thereupon Raju Dubey fired two bullets causing death of Dhanvarti Devi and injuries to Narayan Ram,



who subsequently died. PW 9 Bhairo Ram in a similar manner has stated that at the time of the incident he was cutting the grass and saw crippled Narayan Ram going for easing along with his wife Dhanvarti Devi who was carrying a pot (Lota) containing water. He testified that when they reached near the field of acquitted accused Ram Bharat Dubey, he ordered other accused persons to kill and then accused Raju Dubey fired two bullets causing death of Dhanvarti Devi and injury to Narayan Ram. He further testified that after 15 to 20 days Narayan Ram also died while taking treatment at the Hospital. PW 10 Madan Ram has stated that at the time of incident he was digging the stacked earth at his house. His father, who was suffering from loose-motion, started going for easing himself and his mother accompanied his father carrying a pot of water. PW 10 Madan Ram further testified that when they reached near the field where the accused persons had undertaken sowing operations, co-accused ordered accused Raju Dubey to kill and thereupon Raju Dubey fired bullet causing death of his mother Dhanvarti Devi and injuries to Narayan Ram. This is what all the eyewitnesses related to the prosecuting party has stated in their chief examination. All of them were subjected to searching cross-examination by the defence in order to ascertain whether



they are witnesses of truth or not. Now let us examine the material elicited from cross-examination of these witnesses in order to ascertain whether their evidence is of sterling quality to justify conviction.

13. PW 4 Ram Surat Ram, in his cross-examination has candidly stated that when he reached on the spot of the incident, he saw Dhanvarti Devi lying on the middle of the road whereas Narayan Ram lying near her in an injured condition. He claims to be present at the hand pump which was just ten feet away from the spot of the incident. He has further stated in cross-examination that after he reached on the spot of the incident, PW 10 Madan Ram, PW 9 Bhairo Ram, PW 6 Guddu Ram and PW 8 Binda Devi came on the spot. As per his version, from the spot of the incident injured Narayan Ram was taken by a vehicle to Bhabhua. This witness has not spoken about lodgment of the FIR by injured Narayan Ram while lying injured at the spot. He has not spoken about arrival of this police force on the spot of the incident and recording of the FIR by Sub-Inspector N. L. Das. He has not even spoken as to how the accused persons vanished from the spot of the incident as his evidence contains no explanation as to where the accused had gone when he reached on the spot instantaneously



from a distance of ten feet where he was present. This witness has not even claimed that when he was washing his hands and legs at the hand pump he had noticed presence of the accused persons in the field. Thus, his claim is to the effect that he was just ten feet away from the spot of the incident and had rushed at the injured immediately before arrival of any of the witness.

14. Now let us compare this evidence of PW 4 Ram Surat Ram with version appearing in cross-examination of other witnesses. PW 6 Guddu Ram claims to be present nearby the spot of incident. He stated that when he was sitting in the field for easing himself he heard sound. This witness has also surprisingly claimed in the cross-examination that when he rushed and reached near injured Narayan Ram, nobody from the village was present there. As per his version in cross-examination other witnesses came on the spot of the incident after him. He has stated that then he tried to lift injured Narayan Ram and thereafter PW 10 Madan Ram, PW 4 Ram Surat Ram, PW 9 Bhairo Ram and PW 8 Binda Devi reached on the spot of the incident. It is also elicited from cross-examination of this witness that 8 to 10 labourers engaged by the accused persons were undertaking sowing operation in that field in the vicinity of which the incident took place. Evidence



of this witness, if read as a whole, shows that this witness has not even spoken about arrival of the police on the spot of the incident and recording of the FIR lodged by Narayan Ram at the spot of the incident in injured condition. This witness has not spoken about the accused persons being armed with fire-arms. He has not stated that when he was going for easing, he had seen presence of the accused persons in the field with weapons. This witness has not even stated as to what happened to the accused persons after the incident and how they escaped from the spot.

15. Next witness PW 7 Nathuni Ram in his cross-examination has accepted the fact that he was drinking water at the hand pump which was on the lane going towards the Kaliasthan. PW 7 Nathuni Ram also claims to be the first person to be reached on the spot of the incident. As per his version, firstly, he heard sound of gun shot and, then, rushed to the spot by running. He has categorically stated in the cross-examination that when he reached near the injured, nobody was present at that place. While under cross-examination, this witness has stated that Narayan was sitting there for two hours and when water was sprinkled on him he regained consciousness. PW 7 Nathuni Ram has not spoken about



arrival of the police on the spot of the incident. Though as per his version injured Narayan was on the spot of the incident for two hours. PW 7 Nathuni Ram, who is brother of the injured, has not claimed that the injured has stated anything about the assailants.

16. PW 4 Ram Surat Ram had claimed that he was 10 feet away from the spot of the incident, PW 6 Guddu Ram had claimed to be present in the field of Uma Dubey when the incident took place and PW 7 Nathuni Ram had claimed to be present at the hand pump in the lane proceeding towards the Kaliasthan i.e., spot of incident. However, PW 8 Binda Devi, who is wife of PW 7 Nathuni Ram, who was just 10 to 12 feet away from her house has stated that she heard sound of gun shot and saw PW 4 Ram Surat Ram, PW 6 Guddu Ram, her husband PW 7 Nathuni Ram coming towards her by running and, therefore, she stood up and then went to the spot of the incident with them. PW 8 Binda Devi in her cross-examination clarified that all these witnesses came running from the side of the village. Alleged eyewitnesses, PW 4 Ram Surat Ram, PW 6 Guddu Ram and PW 7 Nathuni Ram are as such belied by their own relative PW 8 Binda Devi who was in the vicinity of her house at the time of incident. Her version coming from



cross-examination makes it clear that all these three witnesses were not present in the vicinity of the scene of the occurrence but they were at the village and from there they proceeded to the spot of the incident after hearing the sounds of firing gun shot. They all went together accompanied by this witness PW 8 Binda Devi on the spot of the incident.

17. PW 9 Bhairo Ram in his cross-examination has claimed that he was cutting grass near the pond of Kamla Devi at the time of the incident. His evidence is not clear as to the distance of that point from the spot of the incident. In cross-examination he has stated that after hearing the sound of firing, he stood on the spot of the incident for one minute and then went to the spot of the incident. This witness also claims to be the first in point of time to reach on the spot of the incident. This witness in cross-examination has stated that rest of the witnesses thereafter came on the spot from the village. Thus, evidence of this witness is also falsifying presence of other witnesses in the vicinity of the spot of the incident. In cross-examination, PW 9 Bhairo Ram has accepted the fact that while cutting the grass he had not seen anybody in the vicinity nor met anybody else. He accepted the fact that when he reached on the spot of the incident nobody was present there.



He has not explained how the accused persons vanished from the spot of incident when he reached thereat. He claimed that he had lifted Narayan Ram on his lap as Narayan Ram was writhing in pain. As per his version his clothes were also stained with blood and he had shown those clothes to police.

18. PW 10 Madan Ram who was allegedly digging the earth at his own house has stated in his cross-examination that when he proceeded towards the spot of the incident he saw the accused persons running away. He has not stated that at that time the accused persons were having fire-arms with them. This witness has also stated that when he was proceeding towards the spot of the incident, PW 9 Bhairo Ram, PW 7 Nathuni Ram, PW 6 Guddu Ram and PW 8 Binda Devi also came from the side of the village and that is how they reached on the spot of the incident. Thus, this witness is falsifying the claim of PW 9 Bhairo Ram that he was present in the vicinity of the spot of the incident cutting grass in the field of Kamla Dubey. In fact, as per version of PW 10 Madan Ram, PW 9 Bhairo Ram came from the side of the village and joined him to reach on the spot of the incident along with other witnesses such as PW 7 Nathuni Ram, PW 6 Guddu and PW 8 Binda Devi.



19. This is what is coming on record from the version of eyewitnesses examined by the prosecution who are closely related to the deceased and injured Narayan Ram. Almost all of them are claiming to be the first in point of time to reach on the spot of incident. However, their version is being falsified by other witnesses and particularly by PW 8 Binda Devi and PW 10 Madan Ram, who are claiming that these eyewitnesses were not in the vicinity of the spot of the incident but they had come from the direction of the village to reach on the spot of the incident. Thus, lurking doubt creeps in the judicial mind as to whether these eyewitnesses who were in the village had an occasion to see the incident of actual firing of bullets on deceased Dhanvarti Devi and injured Narayan Ram. They were not near the field outside the village where the incident in question took place. On this backdrop, non-seizure of blood stained clothes of at least two witnesses who have claimed to have touched injured Narayan Ram and kept him on the lap assumes importance. PW 9 Bhairo Ram has also claimed that he has shown his blood stained clothes to police. For the reasons best known to the Prosecuting Agency those clothes were not seized.

20. As per version of the alleged eyewitnesses,



Dhanvarti Devi was carrying a pot containing water while accompanying injured Narayan Ram. Injured Narayan Ram was crippled and was using crutches in normal course. When because of gun shot wounds Dhanvarti Devi died on the spot of the incident whereas Narayan Ram sustained injuries, the pot carried by Dhanvarti Devi and crutches of injured Narayan Ram must be lying on the spot of the incident where the deceased and injured were lying while bleeding profusely. The police, according to the prosecution case, arrived on the place of incident after the incident to record the FIR lodged by injured Narayan Ram. However, no explanation can be found in evidence adduced by the prosecution as to why blood stained earth, the pot which was allegedly carried by deceased Dhanvarti Devi and crutches used by injured Narayan Ram were not seized by the police from the spot of the incident by recording Panchnama of situation prevailed on the scene of the occurrence. Because of non-examination of the Investigating Officer, all these aspects are not getting clarification. Even the FIR allegedly lodged by injured Narayan Ram is not proved by the prosecution by examining the Police Officer who had recorded that FIR. The fire-arm from which cartridges were fired on deceased Dhanvarti Devi and injured Narayan Ram



was also not recovered and seized during the course of investigation and produced before the Court leave apart the forensic examination thereof. Empty cartridges were also not seized from the spot of the incident. Evidence on record shows that at least 8 to 10 labourers were working in the field adjacent to which the incident took place. None of them is examined by the prosecution. Evidence of all eyewitnesses who are near and dear ones of the deceased is doubtful and untrustworthy for the reasons noted by us hereinbefore and as such non-examination of independent witnesses who were present on the spot of the incident at the time of incident casts a serious shadow of doubt on the prosecution case. Evidence of PW 1 Kameshwar Ram, PW 2 Pujan Bind and PW 3 Ramakant Pandey is of no assistance to the prosecution as they have turned hostile to the prosecution. PW 5 Dihal Bind is a hearsay witness whereas PW 12 Munna Ram, who is clerk of the advocate, has no concern with the crime in question.

21. In this view of the matter, it cannot be said that the prosecution is successful in proving the charge levelled against appellant/accused Raju Dubey thereby entitling him to acquittal. The learned Trial Court has missed all these aspects and the finding recorded by it is certainly perverse and liable to



be upset at the hands of this Court. Hence, the order:

I. The appeal is allowed.

II. The impugned judgment and order convicting the appellant/accused of offences punishable under Sections 302 of the IPC, under Section 27 of the Arms Act as well as under Section 3(2)(v) of the Prevention of Atrocities Act is quashed and set aside. The appellant/accused is acquitted of the charges levelled against him. He be set at liberty if not required in any other case.

22. Let the Lower Court Records be sent back to the learned Court below with a copy of this judgment and order.

(A. M. Badar, J)

(Rajesh Kumar Verma, J)

Mkr./saurabhkrshi
nha/-

AFR/NAFR	NAFR
CAV DATE	14.09.2022
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