

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.367 of 2019

Arising Out of PS. Case No.-127 Year-2012 Thana- LAUKAHI District- Madhubani

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Rajkumar Yadav @ Raja Yadav, Son of Badelal Yadav, Resident of Village-
Chichodhwa, P.S-Laukahi, District-Madhubani.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 264 of 2019

Arising Out of PS. Case No.-127 Year-2012 Thana- LAUKAHI District- Madhubani

=====

Bare Lal Yadav, Son of late Achelal Yadav, Resident of Village - Chichodwa,
Police Station - Laukahi, District – Madhubani.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 313 of 2019

Arising Out of PS. Case No.-127 Year-2012 Thana- LAUKAHI District- Madhubani

=====

Bishun Deo Paswan @ Vishnu Paswan, Son of Gunjan Paswan, Resident of
Village - Chichodhwa, P.S.- Laukhi, District- Madhubani.

... .. Appellant

Versus

1. The State of Bihar
2. Rohit Yadav Son of Dhanik Lal Yadav
3. Nirmal Yadav Son of Dhanik Lal Yadav
4. Ram Bilas Yadav Son of Rameshwar Yadav
5. Ramdeo yadav Son of Luchai Yadav
6. Devendra Yadav @ Bhaijee Yadav Son of Ramful Yadav
7. Dhanik Lal Yadav Son of Late Achche Lal Yadav
8. Birbal Yadav Son of Ramful Yadav



9. Chandradeo Yadav Son of Late Jeetan yadav
10. Raj Narayan Yadav Son of Late Dhanbeer Yadav, All resident of Village -
Kachnarwa, P.S.- Laukhi, District- Madhubani.

... ... Respondents

with
CRIMINAL APPEAL (DB) No. 392 of 2019

Arising Out of PS. Case No.-127 Year-2012 Thana- LAUKAHI District- Madhubani

Budhan Yadav Son of Late Asharfi Yadav, Resident of Village- Kachnarwa,
Police Station- Laukahi, District- Madhubani.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 367 of 2019)

For the Appellant	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Lakshmi Kant Sharma, Advocate Mr. Akshay Ashish, Advocate
For the Informant	:	Mr. Ravi Prakash, Advocate
For the State	:	Mr. Abhimanyu Sharma, A.P.P. Mr. Bipin Kumar, A.P.P. Mr. Binay Krishna, Spl. P.P.

(In CRIMINAL APPEAL (DB) No. 264 of 2019)

For the Appellant	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Lakshmi Kant Sharma, Advocate Mr. Akshay Ashish, Advocate
For the Informant	:	Mr. Ravi Prakash, Advocate
For the State	:	Mr. Binay Krishna, Spl. P.P.

(In CRIMINAL APPEAL (DB) No. 313 of 2019)

For the Appellant	:	Mr. Ravi Prakash, Advocate
For the Respondent	:	Mr. Binay Krishna, Spl. P.P.

(In CRIMINAL APPEAL (DB) No. 392 of 2019)

For the Appellant	:	Mr. Saroj Kumar, Advocate
For the Informant	:	Mr. Ravi Prakash, Advocate
For the Respondent	:	Mr. Binay Krishna, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 19-09-2023



These Criminal appeals arise out of the common judgment dated 24.01.2019, passed in G.R. case No.1687/2012, corresponding Trial No.368/2017 by the learned 1st Additional Sessions Judge-cum-Special Judge, Madhubani, therefore, having been heard together, and accordingly, being disposed of by this common order.

2. Criminal Appeal (DB) No.367 of 2019, Criminal Appeal (DB) No.264 of 2019 and Criminal Appeal (DB) No.392 of 2019 have been filed by the respective appellants above named against the judgment of conviction recorded vide order dated 24.01.2019 and order of sentence dated 29.01.2019, and the Criminal Appeal (DB) No.313 of 2019 has been filed by the informant, namely, Bishun Deo Paswan @ Vishnu Paswan against the judgment of acquittal recorded in respect of 10 named accused persons by the learned trial court vide the same order dated 24.01.2019.

3. The informant of the case, who is the appellant in Criminal Appeal (DB) No.313 of 2019, has also entered his appearance through his advocate in Criminal Appeal (DB) No.264 of 2019 (appeal against conviction) and in view of the analogous hearing of all the appeals, no fresh notice is required to be served upon the informant.



4. Criminal Appeal (DB) No.313 of 2019 (appeal against acquittal) as referred above is also being disposed of at the stage of admission itself by this common order.

Criminal Appeal (DB) No.367 of 2019

and

Criminal Appeal (DB) No.264 of 2019

and

Criminal Appeal (DB) No.392 of 2019

All the three appeals mentioned above have been filed by the respective appellants convicted by the trial court vide judgment dated 24.01.2019 and the order of sentence dated 29.01.2019, passed by the Additional Sessions Judge 1st-cum-Special Judge, Madhubani in G.R. case No.1687 of 2012, corresponding Trial No.368 of 2017, arising out of Laukahi P.S. case No.127 of 2012, whereby and whereunder appellant Rajkumar Yadav @ Raja Yadav of Criminal Appeal (DB) No.367 of 2019 has been convicted under Sections 302/34 of the Indian Penal Code (referred to 'I.P.C.'), and has been sentenced to undergo life imprisonment with fine of Rs.10,000/- and in case of default of payment of fine, additional imprisonment for six months. He has also been convicted under Section 27 of the Arms Act and has been sentenced to undergo rigorous imprisonment for three years with fine of Rs.5,000/- and in case of default of payment of fine,



additional imprisonment for six months. He has further been convicted under Sections 3(1)(X) of the SC/ST (Prevention of Atrocities) Act and has been sentenced to undergo rigorous imprisonment for one year with fine of Rs.10,000/- and in case of default of payment of fine, additional imprisonment for six months. The sentences of the appellant have been directed to run concurrently. Appellant Bare Lal Yadav of Criminal Appeal (DB) No.264 of 2019 has been convicted under Sections 302/34 of the I.P.C. and has been sentenced to undergo life imprisonment with fine of Rs.10,000/- and in case of default of payment of fine, additional imprisonment for six months. He has further been convicted under Sections 3(1)(X) of the SC/ST (Prevention of Atrocities) Act and has been sentenced to undergo rigorous imprisonment for one year with fine of Rs.10,000/- and in case of default of payment of fine, additional imprisonment for six months. The sentences of the appellant have been directed to run concurrently. Appellant Budhan Yadav of Criminal Appeal (DB) No.392 of 2019 has been convicted under Sections 307/34 of the I.P.C. and has been sentenced to undergo rigorous imprisonment for ten years with fine of Rs.10,000/- and in case of default of payment of fine, additional imprisonment for six months. He has further been convicted under Sections 3(1)(X) of the SC/ST



(Prevention of Atrocities) Act and has been sentenced to undergo rigorous imprisonment for one year with fine of Rs.10,000/- and in case of default of payment of fine, additional imprisonment for six months. The sentences of the appellant have been directed to run concurrently.

5. The prosecution case, as per the fardbeyan of informant Bishundeo Paswan (PW8) recorded by S.I. of Laukahi P.S. at Primary Health Centre, Emergency Ward, Laukahi on 14.12.2012 at 13:00 hours, is that on the same day at about 9-10 O' clock in the day time the informant was harvesting paddy in his Bataidari field and his nephew Shivendra Paswan and Dilip Paswan were easing themselves near the Boring. Suddenly from north-east about 15-20 persons forming unlawful assembly came variously armed with desi katta, bhala, teer-dhanush and lathi, farsa started surrounding Dharamlal Paswan, who was sowing wheat, seeing them he fled away towards his nephew Dilip, then the leader of unlawful assembly Bare Lal Yadav ordered Raja and said that *"dekhte kya ho sale kamla ka beta hai jo kafi netagiri karta hai usko goli mar do"*. Thereupon, Raj Kumar Yadav @ Raja Yadav fired upon the chest of informant's nephew with countrymade gun from the close range, due to which he sustained grievous injury on his chest and he fell down 50 feet west in the field of Ishwar



Paswan. In the meantime Budhan Yadav, Nirmal Yadav also resorted firing from their desi katta. On the firing made by Budhan Yadav, informant's cousin nephew Dilip Paswan sustained grievous injury on his left side of rib cage (*panjra*) and other parts of body. Other members of unlawful assembly Rohit Yadav, Ramdeo Yadav, Chandradeo Yadav, Bhaijee Yadav @ Devendra Yadav, Rambilas Yadav, Birbal Yadav, Dhanik Lal Yadav, Raj Narayan Yadav, all resorted firing from their respective weapons and fled away. The informant and others were trying to save their life, in the meantime, from the village side Sri Narayan Paswan, Surendra Paswan, Yogendra Paswan, Ami Paswan, Madan Paswan and other villagers came there and raised alarm, then all the accused persons fled away by resorting fire, which were identified by the aforesaid persons. His nephew was brought by them at Primary Health Centre, Laukahi, where his nephew Shivendra Paswan was declared dead, whereas the treatment of Dilip Paswan was going on. The motive behind the alleged occurrence was that the disputed Bataidari land was purchased by Raj Kumar Yadav @ Raja Yadav and was restraining him not to plough the same, whereas the said land was previously in cultivating possession of Dharam Narayan Paswan and Sri Narayan Paswan. The informant claimed that the accused persons named with their associates by



forming unlawful assembly killed his nephew Shivendra Paswan by Raj Kumar Yadav and inflicted injury to Dilip Paswan, whose treatment was going on.

6. On the basis of aforesaid fardbeyan of the informant, formal F.I.R. was drawn up and Laukahi P.S. case No.127 of 2012 dated 14.12.2012 was registered under Sections 147, 148, 149, 323, 324, 326, 307, 302 of the I.P.C., Section 27 of the Arms Act and Sections 3(x) of the SC/ST (Prevention of Atrocities) Act. The police after investigation submitted charge sheet and thereafter cognizance was taken by the Jurisdictional Magistrate and then the case was committed to the court of Sessions. Charges were framed against the appellants, to which the appellants pleaded not guilty and claimed to be tried.

7. During trial, the prosecution examined altogether fifteen witnesses, namely, Surendra Paswan (PW1), Yogendra Paswan (PW2), Madan Paswan (PW3), Shyam Devi Paswan (PW4), Dharma Lal Paswan (PW5), Bhami Paswan (PW6), Dilip Paswan (PW7), Bishun Deo Paswan-informant (PW8), Ravindra Kumar Singh (PW9), Dr. Avindra Kumar Jha (PW10), Dr. Vinod Kumar (PW11), Raj Kishore Baitha (PW12), Kamal Narayan Paswan (PW13), Chandraveer Singh (PW14) and Dr. S. Kazmi (PW15). In support of its case, the prosecution has also produced exhibits as



Ext.1 (signature on statement under Section 164 Cr.P.C.), Ext.1/1 (signature on statement under Section 164 Cr.P.C.), Ext.1/3 (signature on statement under Section 164 Cr.P.C.), Ext.2 (inquest report of the deceased), Ext.3 (writing in F.I.R. and signature), Ext.4 (charge sheet No.17/13 dated 11.08.13), Ext.4/a (Charge sheet No.62/13 dated 11.08.13), Ext.4/b (Charge sheet No.11/14 dated 28.02.14), Ext.5 (injury report of Dilip Paswan given by Dr. Arvind Kumar Jha), Ext.5/a (postmortem report of Sibendra Paswan by Dr. Binod Kumar), Ext.6 (writing and signature of dead body challan slip by Raj Kishore Baitha), Ext.7 (an application was given to obtain injury report of Dilip Paswan dated 14.12.12), Ext.8 (seizure list), Ext.9 (arresting memo accused Nirmal Yadav), Ext.9/a (arresting memo of accused Dhanik Lal Yadav), Ext.9/b (arresting memo of accused Ramdeo Yadav), Ext.9/c (arresting memo of accused Devendra Yadav @ Bhaijee Yadav), Ext.10 (writing and signature of Sri Chandraveer Singh, J.M. 1st class, Jhanjharpur and itself signature), Ext.11 (statement under Section 164 Cr.P.C. and signature identified by Sri Chandraveer Singh, J.M. 1st class, Jhanjharpur to Dilip Paswan), Ext.11/1 (statement under Section 164 Cr.P.C. and signature identified by Sri Chandraveer Singh, J.M. 1st class, Jhanjharpur to Sri Narayan Paswan), Ext.11/2 (statement under Section 164 Cr.P.C. and



signature identified by Sri Chandraveer Singh, J.M. 1st class, Jhanjharpur to Surendra Paswan), Ext.11/3 (statement under Section 164 Cr.P.C. and signature identified by Sri Chandraveer Singh, J.M. 1st class, Jhanjharpur to Yogendra Paswan), Ext.11/4 (statement under Section 164 Cr.P.C. and signature identified by Sri Chandraveer Singh, J.M. 1st class, Jhanjharpur to Bhami Paswan), Ext.11/5 (statement under Section 164 Cr.P.C. and signature identified by Sri Chandraveer Singh, J.M. 1st class, Jhanjharpur to Madan Paswan), Ext.11/6 (statement under Section 164 Cr.P.C. and signature identified by Sri Chandraveer Singh, J.M. 1st class, Jhanjharpur to Kamal Narayan Paswan), Ext.11/7 (statement under Section 164 Cr.P.C. and signature identified by Sri Chandraveer Singh, J.M. 1st class, Jhanjharpur to Bishundeo Paswan), Ext.12 (injury report of Dilip Paswan issued by D.M.C.H. Laheriasarai and identification of writing and signature), Ext.13 (certified copy of S.T. No.20/93), Ext.14 (c.c. of charge sheet in S.T. No.20/93), Ext.15 (c.c. of charge frame in S.T. No.20/93) and Ext.16 (c.c. of postmortem report in S.T. No.20/93). The defence also examined five witnesses, namely, Balram Mandal (DW1), Kirani Yadav (DW2), Surya Narayan Yadav (DW3), Satrugan Prasad Sah (DW4) and Manoj Kumar (DW5). In support of its case, the defence has also produced exhibits, viz.



Ext.A (identification of application filed by Ram Prasad Chaudhary in the examination of witness Shatrughan Prasad Sah), Ext.B (identification made by Panch decision on application of injured Ram Prasad Chaudhary), Ext.C (identification of release order of Raj Kumar Yadav made by Ilaka Prahari office Kathhauna), Ext.D (translated form of release order issued by Ilaka Prahari office Kathhauna under the signature of Shatrughan Prasad Sah), Ext.E (Hindi translation of the application made by the injured Ram Prasad Choudhary in Nepali language), Ext.F (Hindi translation of decision of Panch on the application filed by Ram Prasad Choudhary in the writing of Shatrughan Prasad Sah), Ext.G (typed copy of release order), Ext.H (typed copy application) and Ext.I (typed copy panch decision). Eight court witnesses were also examined by the trial court, namely, Dilip Paswan (CW1), Sri Narayan Paswan (CW2), Surendra Paswan (CW3), Yogendra Paswan (CW4), Bhami Paswan (CW5), Madan Paswan (CW6), Kamal Narayan Paswan (CW7) and Bishun Deo Paswan (CW8). After conclusion of the trial, the learned Trial Court convicted and sentenced the appellants in the manner as indicated above.

8. The learned Counsels for the appellants in Criminal Appeal (DB) Nos. 264/2019, 367/2019 and 392/2019 along with



the learned Counsel for the respondents in Criminal Appeal (DB) No. 313/2019 submitted that the judgment of conviction and the order of sentence suffered from several infirmities that had been overlooked by the trial Court, rendering the impugned judgment unsustainable in the eyes of the law. The learned counsels argued that there are material inconsistencies between the testimonies of the eyewitnesses and the medical evidence. Furthermore, they pointed out that Investigating Officer (PW 12) himself stated in paragraph 30 and 31 of his deposition that he did not inspect borewell as well as the place where the deceased and PW 7 purportedly defecating. Moreover, PW 12 did not prepare a site map of the place of occurrence, stating the *khata-khesra* of the field. Therefore, based on these facts, they argued that the place of occurrence is doubtful. The learned counsels contended that the manner of occurrence is also doubtful, as they were not present at the place of occurrence at the time of the incident. Additionally, they submitted that the prosecution deliberately refrained from examining any independent witnesses, despite the presence of many such witnesses at the place of occurrence. Consequently, the learned counsels submitted that the findings of the learned trial Court were flawed in terms of both the law and the facts, bereft of



sound legal reasoning, devoid of merit, and consequently, the judgment of conviction should be set aside.

9. The learned A.P.P. for the State and the counsel for the informant, on the other hand, have submitted that the common judgment of conviction and order of sentence under challenge in all these three appeals require no interference, as the prosecution has been able to prove the case beyond all reasonable doubts. It is observed that the testimony of the witnesses has been consistent throughout, thereby strengthening the prosecution's case, and minor inconsistencies in the witnesses' testimonies do not undermine the entirety of their evidence. It has been submitted that there is no doubt regarding the place of occurrence, as the Investigating Officer recovered incriminating materials from there. Furthermore, the counsel for the informant submitted that the prosecution has established, through concrete evidence, that all accused persons had the common object of killing the deceased and his cousin (PW 7). Merely because an overt act is not attributed to a person alleged to be a member of an unlawful assembly, it cannot be asserted that they were not part of the assembly if they possessed a common object. As such, the counsels contended that the guilt of the appellants has been satisfactorily proven by the evidence adduced during the course of



the trial, and therefore, Criminal Appeal (DB) Nos. 264/2019, 367/2019, and 392/2019 should be dismissed, and Criminal Appeal (DB) No. 313/2019 should be allowed by setting aside the order of acquittal passed by the learned trial court.

10. After hearing the arguments advanced by the learned counsels appearing for the parties and upon thorough examination of the entire material available on the record, the following issues arise for consideration :

(I) Whether the prosecution has established the place of occurrence beyond all reasonable doubts?

(II) Whether the prosecution has proved the manner of occurrence beyond all reasonable doubts?

(III) Whether the non-examination of independent witnesses in the facts of the present case has prejudiced the trial of the appellants?

11. With reference to the first issue formulated above, after a thorough examination of the materials on record, it is found that the entire incident is reported to have taken place between Dharamlal Paswan's (PW 5) field and a borewell located in Shri Narayan's field. The eyewitnesses, including PW 1, PW 2, PW 3, PW 4, PW 5, PW 6, and PW 8 (the informant), who were actively engaged in their work in the adjacent fields at the time of the incident, as well as PW 7, an injured witness, have consistently



stated in their depositions about the aforementioned place of occurrence. These eyewitnesses have testified that when the deceased was initially shot in the chest, he fell in the field of one Kishor Paswan @ Ishwar Paswan. Additionally, the Investigating Officer (PW 12), in corroboration of such testimonies, has categorically deposed during the course of the trial that at the scene of the incident, he discovered fired bullet fragments, pellets, and cartridge parts in the paddy field of Shri Narayan, along with blood-soaked soil in the potato field of Kishor Paswan @ Ishwar Paswan, and the same have been seized therefrom vide seizure memo (*Ext. 8*). In the case of ***Balwan v. State of Haryana, reported in (2014) 13 SCC 560*** the Hon'ble Apex Court in paragraph 18 of the judgment has observed that :

“...The investigation officer, PW 18, Sub-Inspector Balwan Singh has seized bloodstained earth from the occurrence place and that clinches the situs of the crime. The contention of the appellants that the occurrence had not taken place in the house of Bani Singh is devoid of merit...”

Thus, considering the facts of this case as indicated above, we are of the considered opinion that there remains no doubt as regards to the place of occurrence. Accordingly, the issue no. I is decided in ***affirmative***.



12. With reference to the second issue at hand, the attention of this Court was drawn towards the testimony of the PW 1, PW 2, PW 3, PW 4, PW 5, PW 6, PW 7 and PW 8. These prosecution witnesses, in unison, have stated in their depositions that a group of 15-20 accused persons variously armed with *lathi, bhala, bow and arrow, gun, desi pistol, and farsa* came and surrounded PW 5. In an attempt to save his life, PW 5 ran towards the deceased and PW 7, who were in the process of returning after a nature call. At this point, one of the accused, Bare Lal Yadav, ordered to open fire upon the deceased, whereupon another accused, Rajkumar Yadav, discharged a gunshot into the chest of the deceased, causing him to collapse in the potato-field of Kishor Paswan @ Ishwar Paswan. Subsequently, accused Budhan Yadav fired a shot at PW 7 in his chest, causing him to fall in the same field of Kishor Paswan @ Ishwar Paswan. Thereafter, all the accused persons, brandishing their weapons, fled the scene of the occurrence. Upon scrutinizing the postmortem report (**Ext. 5/A**) of the deceased, we find multiple firearm injuries on chest, abdomen and right arm of the deceased. Moreover, the doctor (PW 11) had recovered ten pellets from the person of the deceased. On the other hand, the injury report (**Ext. 5**) of PW 7 shows multiple firearm injuries caused on his chest. Apparently, the injuries documented by the doctors (P.Ws. 10, 11



& 15) correspond precisely with the testimony of the eyewitnesses, providing a consistent description of the manner, nature, and extent of the assault, as well as the weapons used in the assault. However, it is worth noting that the informant (PW 8), in his *fardbeyan*, stated that the accused Rajkumar Yadav shot the deceased from close range. On the other hand, PW 11 (the doctor) mentioned in his deposition that he did not document the shape and size of the injuries, nor did he include information about whether gunpowder was found on the body or any tattooing or singeing around the injuries. Nevertheless, upon reviewing the inquest report (Ext. 2) and considering the testimony of the Investigating Officer (PW 12), it becomes apparent that there was a burnt mark present on the T-shirt of the deceased. Thus, in the facts of the present case the evidence led by the above-stated eyewitnesses, one of them is injured witness is consistent, clinching, tallying with each other and clearly implicating the accused persons, namely, Bare Lal Yadav, Rajkumar Yadav @ Raja Yadav, and Budhan Yadav. Therefore, in our considered view, the prosecution has effectively and convincingly established the sequence of events involving the aforementioned appellants.

Accordingly, the issue no. II is decided in ***affirmative***.



13. Now adverting to the third issue in hand, the learned counsel for the appellants has drawn attention of this Court towards non-examination of any independent witness despite their presence at place of occurrence. It is apparent from the records, that eyewitnesses PW 1 to PW 8 are either related witnesses or interested witnesses. After undertaking a thorough and meticulous scrutiny of the depositions offered by these witnesses, it is evident that their narrations converge towards establishing the guilt of the accused persons. Namely. Bare Lal Yadav, Rajkumar Yadav @ Raja Yadav, and Budhan Yadav. No significant disparities or contradictions materialize with respect to the time, place or manner of the occurrence. The mere fact that a witness is a close relative should not be sufficient grounds for dismissing their testimony, provided that their testimony is otherwise deemed credible. It's important to recognize that being related to someone doesn't automatically imply that they would hide the true perpetrator. Therefore, it becomes imperative to meticulously examine the evidence in question to determine whether there's a possibility of an innocent person being wrongly accused. Blindly disregarding the evidence, even when it comes from a witness who might have a bias or vested interest, has the potential to result in a miscarriage of justice. At this juncture, we find it relevant to refer



to the judgment of Hon'ble Supreme Court in the case of ***Appabhai v. State of Gujarat***, reported in ***1988 Supp SCC 241***, wherein in paragraph 11 it was held as under:

“11. In the light of these principles, we may now consider the first contention urged by the learned counsel for the appellants. The contention relates to the failure of the prosecution to examine independent witnesses. The High Court has examined this contention but did not find any infirmity in the investigation. It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider



the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused...”

We also put reliance on the decision rendered by Hon'ble Supreme Court in the case of **Meharaj Singh (L/NK) v. State of U.P.** reported in **(1994) 5 SCC 188**, wherein the Hon'ble Apex Court has been held that “*Testimony of eye witnesses cannot be rejected on the sole ground of interestedness but should be subjected to close scrutiny.*”

In light of the aforementioned discussion and the legal precedents referred to, this Court firmly believes that the prosecution's case remains sound and unaffected despite the absence of any independent witness. Therefore, the non-examination of an independent witness does not cast any aspersion on the credibility or strength of the prosecution's case.

Accordingly, the issue under consideration is decided in ***negative.***

14. In view of the findings arrived at on the issues formulated hereinabove, we are of the considered opinion that the prosecution has successfully proved the charges beyond reasonable doubt against the appellants, namely, Rajkumar Yadav @ Raja Yadav, Bare Lal Yadav and Budhan Yadav. Hence, Criminal



Appeal (DB) No.367 of 2019, Criminal Appeal (DB) No.264 of 2019 and Criminal Appeal (DB) No.392 of 2019 stand dismissed and the judgment of conviction dated 24.01.2019 and the order of sentence dated 29.01.2019 passed by Shri Ishrat Ullah, Additional Sessions Judge 1st-cum-Special Judge, Madhubani in G.R. case No.1687 of 2012/ T.R. No.368 of 2017 arising out of Laukahi P.S. case No.127 of 2012 are affirmed.

15. The appellant namely Raj Kumar Yadav @ Raja Yadav in Criminal Appeal (DB) No.367 of 2019, and Budhan Yadav in Criminal Appeal (DB) No.392 of 2019, are in custody to serve the sentence, therefore, no further direction is required after dismissal of the appeals. The appellant, namely, Bare Lal Yadav in Criminal Appeal (DB) No.264 of 2019 has been released on bail suspending the sentence, therefore, trial court is directed to cancel his bail bond and send him to jail for serving the sentence.

Criminal Appeal (DB) No.313 of 2019

16. As discussed above, this appeal has been filed by the appellant against the judgment of acquittal recorded by the trial court vide order dated 24.01.2019, in respect of as many as 10 (ten) named accused persons, who have been made respondent Nos.2 to 10 in this appeal.



17. Against all these respondents, charges were framed under different heads with the aid of Section 149 of I.P.C.

18. We have already heard the arguments advanced by the learned counsels appearing for the appellant i.e. informant and the State.

19. I.A. No.1 of 2019 is allowed.

20. In view of the charges framed against the Respondent Nos.2 to 10 of this appeal, the issue arises for consideration as under:

Whether the accused persons, who are respondents herein and have been acquitted by the learned trial court shared a 'common object' in causing the death of the deceased and attempting to cause death of PW 7, namely, Dilip Paswan?

21. Now, to consider the issue as formulated above, we have carefully examined the testimonies of the eyewitnesses, namely, PW 1 to PW 8. Upon thorough scrutiny of these testimonies, it becomes evident that these eyewitnesses have consistently stated that they identified the accused individuals, who were acquitted by the trial court, as being present in an assembly armed with deadly weapons such as *lathis, bhalas, bows and arrows, gadasas, and farsas*. However, it is crucial to



emphasize that mere presence in an assembly does not automatically classify a person as a member of an unlawful assembly. The determination of membership in such an assembly hinges on whether it can be proven that there was a shared common object, and whether the individual was actuated by that common object. This common object must be shown to be shared by all the members. In cases where the common object of an unlawful assembly is not proven, Section 149 cannot be invoked to convict the accused persons. In the present case, the prosecution has not presented any evidence to demonstrate that the acquitted accused individuals shared a common objective to assault the deceased or PW 7. The existence of the common object of unlawful assembly must be ascertained in light of the facts and circumstances of each case. There must be a nexus between the common object and the offense committed, and it must be established that the offense was committed to accomplish the common object. In the facts of this case, the accused persons did not share a common object at all stages. It is apparent from the evidence of eyewitnesses as well as the *fardbeyan* that the accused persons, forming an unlawful assembly, had come to the field of PW 5 with the intent to encircle and assault him. That was the common object of the assembly. However, PW 5, in an attempt to



save his life, fled towards the deceased. It was at this moment that accused persons, namely Bare Lal Yadav, ordered Rakumar Yadav to fire upon the deceased. This sequence of events illustrates a shift in the intent and actions of the assembly. For accomplishing their common object, it was not necessary to shoot at the deceased and PW 7 with the intent to take their lives, as they were not hindrances to the accused persons in accomplishing their common object. Thus, it cannot be said that all the accused persons had the common object to murder the deceased and PW 7 (injured). At this juncture, it would be relevant to take note of the decision of the Hon'ble Supreme Court passed in the case of **Allauddin Mian v. State of Bihar**, reported in **(1989) 3 SCC 5** wherein in para 8, it was held as follows:

“8...This section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence provided the same was/were committed in prosecution of the common object or was/were such as the members of that assembly knew to be likely to be committed. Since this section imposes a constructive penal liability, it must be strictly construed as it seeks to punish members of an unlawful assembly for the offence or offences committed by their associate or associates in carrying out the common object of the assembly. What is



important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was one which the members knew to be likely to be committed. There must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object every member of the assembly will become liable for the same. Therefore, any offence committed by a member of an unlawful assembly in prosecution of any one or more of the five objects mentioned in Section 141 will render his companions constituting the unlawful assembly liable for that offence with the aid of Section 149, IPC. In the present case, the common object of the unlawful assembly as alleged in the charge was to kill PW 6 Baharan Mian. To accomplish that objective accused 1 and 2 went after PW 6. Sensing danger PW 6 ran into the adjoining room to fetch a spear to defend himself. His wife PW 5, however, blocked his way and did not permit him to go out. When accused 1 and 2 realised that PW 6 was beyond their reach, they, frustrated at their failure to accomplish their mission, wielded their weapons on the innocent girls who were playing in the “dalan”. The common object having thus been frustrated, accused 1 and 2 took out their wrath on the innocent girls which was no part of the common object of the unlawful assembly. It was not necessary to kill these girls to accomplish their object of killing PW 6 as these two girls had not prevented them from reaching PW 6. The learned counsel for the



accused, therefore, rightly submitted that while accused 1 and 2 can be punished for their individual acts committed after the common object stood frustrated and abandoned on PW 6 placing himself beyond their reach, the other members of the unlawful assembly could not be punished for the acts of accused 1 and 2 as the killing of the girls was no part of the common object of the assembly. Once PW 6 was beyond the reach of his two tormentors, the common object to kill him stood frustrated and whatever the individual members did thereafter could not be said to have been done in prosecution of the common object of the assembly. It is not the intention of the legislature in enacting Section 149 to render every member of an unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to invoke Section 149 it must be shown that the incriminating act was done to accomplish the common object of the unlawful assembly. Even if an act incidental to the common object is committed to accomplish the common object of the unlawful assembly it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object they would be liable for the same under Section 149, IPC. In the instant case, however, the members constituting the unlawful assembly had gone to the house of PW 6 to



kill him. That was the common object of the unlawful assembly. For accomplishing that common object it was not necessary to kill the two girls who were not an hinderance to accused 1 and 2 accomplishing their common object. We are, therefore, of the opinion that accused 3 to 6 cannot be convicted for the injuries caused to the two minor girls by accused 1 and 2 with the aid of Section 149, IPC. We, therefore, set aside the conviction under Section 326/149, IPC, and also the sentence imposed on accused 3 to 6 on that count...”

Furthermore, it is apparent from the testimonies of the eyewitnesses that none of them alleged any specific overt acts on the part of the acquitted accused persons, nor did they specify which accused individuals were holding which weapons, except for the account provided by PW 5, who deposes for the first time during the trial. Importantly, PW 7, who was an injured witness, did not mention anything about the use of such weapons in his evidence. Additionally, neither the postmortem report nor the injury report of PW 7 indicated any injuries caused by sharp-cutting or hard and blunt weapons which they allegedly wielded. There is no evidence whatsoever to suggest that the acquitted accused individuals acted in concert or pursued a common objective.



Thus, in light of the factual matrix of this case and considering the established legal position as discussed above, this Court is of the view that the prosecution has utterly failed to establish that the acquitted accused individuals shared a ‘common object’ in causing the death of the deceased and attempting to cause death of PW 7.

Accordingly, the issue is decided in *negative*.

22. In view of the discussions made above, we are of the firmed opinion that no case of interference is made out in the judgment of acquittal recorded in respect of Respondent Nos.2 to 10 vide order dated 24.01.2019.

23. Therefore, Criminal Appeal (DB) No.313 of 2019 is, accordingly, dismissed.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

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