

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.971 of 2013**

Arising Out of PS. Case No.-54 Year-2011 Thana- DHANGAI District- Bhojpur

1. Sudarshan Sah S/O Saryu Sah Resident Of Village- Dolippur, P.S- Dhangal, District- Bhojpur.
2. Upendra Sah S/O Sudarshan Sah Resident Of Village- Dolippur, P.S- Dhangal, District- Bhojpur.
3. Rajkumari @ Ram Kumari W/O Sudarshan Sah Resident Of Village- Dolippur, P.S- Dhangal, District- Bhojpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Subodh Kumar Jha, Advocate Mr. Pranav Kumar Jha, Advocate
Amicus Curiae	:	Mr. Prince Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Binod Bihari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE A. M. BADAR)
Date : 04-07-2023**

All three appellants before the Court came to be convicted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code by the learned 2nd Additional Session Judge, Bhojpur at Ara in Sessions Trial No.250 of 2012 by the impugned judgment dated 18.09.2013. By the impugned order dated 26.09.2013, appellant/accused No.1 Sudarshan Sah and appellant/accused No.2 Upendra Sah came to be sentenced to suffer imprisonment for remainder of



their life whereas appellant/accused No.3 Rajkumari @ Ram Kumari is sentenced to suffer rigorous imprisonment for life. No fine has been imposed on any of them by the learned Trial Court by the impugned order. For the sake of convenience, the appellants shall be referred to in their original capacity as an accused.

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

(a). PW3 Lal Bahadur Sah – the First Informant used to reside at Dolippur Pakri Chauk falling under jurisdiction of Dhangai Police Station of Bhojpur district along with his family members. Sonu Kumar (since deceased) was one of his sons whereas Sumitra Devi @ Silwanti (since deceased) was his wife. The accused persons are his relatives. According to the prosecution case, when PW 3 Lal Bahadur Sah was at his house at about 07:00 P.M. of 17.10.2011, all three accused, namely, Sudarshan Sah, Upendra Sah and Rajkumari @ Ram Kumari accompanied by Sarli Kumari, Seema Kumari and Priyanka Kumari rushed in his house while hurling abuses. At that time, they were armed with lathi, danda as well as knives. By barging inside his house they assaulted Sonu Kumar by means of knife.



When Sumitra Devi @ Silwanti heard commotion she came there and all those persons then assaulted her by means of a knife. They all then rushed on the person of PW 3 Lal Bahadur Sah. However, he managed to escape and shouted. After gathering of some persons on the spot of the incident, PW 3 Lal Bahadur Sah again returned and noticed that his son Sonu Kumar died because of injuries suffered by him and his wife was lying in his house while blood oozing from her wounds. He then took his wife Sumitra Devi @ Silwanti to the Primary Health Centre of Jagdishpur from where she was referred to Patna for the purpose of her medical treatment.

(b). When PW 3 Lal Bahadur Sah brought his wife Sumitra Devi @ Silwanti to the Primary Health Centre, Jagdishpur, at about 09:00 P.M. of 17.10.2011 itself, PW 11 Tapeswar Prasad Singh, Police Inspector, had recorded the FIR of PW 3 Lal Bahadur Sah at the said hospital. Accordingly, Crime No.54 of 2011 came to be registered at Police Station, Dhangai and wheels of investigation were set in motion.

(c). During the course of investigation, PW 11 Tapeswar Prasad Singh, Police Inspector, prepared inquest notes after inspecting dead body of Sonu Kumar. He attempted to record statement of Sumitra Devi @ Silwanti but she was not



in a position to make any statement. The spot of the incident which was house of PW3 Lal Bahadur Sah at Dolippur Town came to be inspected by the Investigator. Dead body of Sonu Kumar was sent for autopsy to the Sadar Hospital, Ara. During the course of investigation on 01.11.2011, Sumitra Devi @ Silwanti were succumbed to the injuries suffered by her. Upon inspecting her dead body, inquest notes were prepared and the dead body was dispatched for post-mortem examination.

(d). PW 9 Dr. Arun Kumar, Medical Officer of Sadar Hospital of Ara, had conducted post-mortem examination on dead body of Sonu Kumar on 18.10.2011 whereas PW 10 Dr. Ashutosh Singh had conducted post-mortem examination on dead body of Sumitra Devi @ Silwanti on 02.11.2011.

(e). During the course of routine investigation, statement of witnesses came to be recorded. On completion of routine investigation, the charge-sheet came to be filed against accused No.1 Sudarshan Sah and accused No.2 Upendra Sah. The prosecuting agency had not filed any charge-sheet against accused No.3 Rajkumari @ Ram Kumari and other persons named in the FIR viz. Sarli Kumari, Seema Kumari and Priyanka Kumari.

(f). The learned Trial Court had framed charge for the



offence punishable under Section 302 read with Section 34 of the Indian Penal Code against appellant/accused No.1 Sudarshan Sah and appellant/accused No.2 Upendra Sah. They pleaded not guilty and claim trial.

(g). In order to bring home the guilt, the prosecution has examined in all 11 witnesses. Eyewitnesses Pramod Kumar Sah and Budhan @ Bandhan Yadav are examined as PW 1 and PW 2 respectively. They are neighbours of the prosecuting party. First Informant Lal Bahadur Sah is examined as PW 3. Upon recording this much evidence, the learned Trial Court came to the conclusion that apart from the accused who are put up for the trial, accused No.3 Rajkumari @ Ram Kumari has also committed the alleged offence and she could be tried together with accused Nos.1 and 2 for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. Accordingly, accused No.3 Rajkumari @ Ram Kumari came to be summoned by the learned Trial Court. The learned trial Court has further decided to rehear all three prosecution witnesses again. After recording their evidence again by the learned Trial Court, the prosecution further examined Anup Patel, Ram Niwas Sharma, Mahendra Sah, Arvind Choudhary and Pappu Sharma as PW 4 to PW 8. They are neighbours of the



prosecuting party and according to the prosecution case they had seen the post event happenings soon after the incident. However, they all turned hostile to the prosecution case. Autopsy surgeons Dr. Arun Kumar and Dr. Ashutosh Singh came to be examined as PW 9 and PW 10, Investigator Tapeswar Prasad Singh is examined as PW 11.

(h). Defence of the accused persons was that of total denial. However, they did not enter in the defence.

(i). After hearing the parties, the learned Trial Court by the impugned judgment and order was pleased to convict and sentence all the three accused persons as indicated in the opening para of the judgment. Hence this appeal.

3. We heard Mr. Subodh Kumar Jha, the learned Advocate appearing for the appellant at sufficient length of time. He argued that in fact there is no eyewitness to the incident in question and the appellants are falsely implicated in the crime in question. It is further argued that the Investigator has deliberately failed to record dying declaration of Sumitra Devi @ Silwanti.

4. On 30.06.2022 when this appeal was previously listed for final hearing, the learned counsel for the appellants was not in a position to enlighten this Court as to why



depositions of prosecution witnesses Nos.1 to 3 were recorded twice by the learned Trial Court. At that time, the State of Bihar was unrepresented as no prosecutor had appeared before the Court when the matter was called out. Therefore, this Court had appointed Mr. Prince Kumar Mishra, the learned Advocate to act as an Amicus Curiae to assist the Court in the matter. That is how, Mr. Prince Kumar Mishra, the learned Amicus Curiae, advanced his arguments in the matter. By relying on judgments of the Hon'ble Apex Court in the matter of **Amar Singh Vs. State (NCT of Delhi)** reported in **(2020) 19 SCC 165** and **Chunthuranm Vs. State of Chhattisgarh** reported in **(2020) 10 SCC 733**, Mr. Mishra argued that evidence of PW 3 Lal Bahadur Sah cannot be relied as the conduct shown by him at the time of the incident is totally improbable and unreliable. Though, according to the prosecution case, the accused persons rushed at his house armed with weapons, this witness had not resisted them and allowed them to eliminate his minor son and wife. Thereafter, he claims to have flee from the spot. It is further argued by Mr. Mishra that evidence of PW 3 Lal Bahadur Sah renders the version of PW 1 Pramod Kumar Sah and PW 2 Budhan @ Bandhan Yadav untrustworthy. Neither PW 3 Lal Bahadur Sah nor these two witnesses had actually



seen the incident in question. They are got up witnesses by the prosecution and, therefore, the appellants are entitled for benefit of doubt. It is further argued that PW 3 Lal Bahadur Sah is an interested witness having close relations with the deceased and, therefore, his testimony needs to be scrutinized carefully and cautiously. Such scrutiny is rendering his evidence unacceptable for basing conviction.

5. As against this, the learned Additional Public Prosecutor relying on evidence of PW 3 Lal Bahadur Sah argued that the accused persons had driven Lal Bahadur Sah out of house before commission of the crime. He further argued that the prosecution has proved the offence alleged against the accused persons beyond all reasonable doubt.

6. We have considered the statements so advanced. We have perused the records and proceedings including oral as well as documentary evidence. We have carefully gone through the judgments cited by Mr. Mishra the learned Amicus Curiae.

7. As according to the prosecution case, in furtherance of their common intention, the accused persons had committed murder of Sonu Kumar and Sumitra Devi @ Silwanti, at the outset let us examine whether the prosecution has established that these two persons died homicidal death.



8. Death of Sonu Kumar occurring on 17.10.2011 and that of Sumitra Devi @ Silwanti occurring on 01.11.2011 is not in dispute. The defence has not questioned the prosecution on this aspect and evidence of PW 3 Lal Bahadur Sah as well as that of PW 1 Pramod and PW 2 Budhan @ Bandhan Yadav on the aspect of death of Sonu Kumar and Sumitra Devi @ Silwanti on 17.10.2011 and on 01.11.2011 respectively is not challenged by the defence. Evidence of the Investigator PW 10 shows that he had inspected dead body of Sonu Kumar on 17.10.2011 and had prepared inquest notes Exhibit-9. He has also deposed about inspection of dead body of Sumitra Devi @ Silwanti for preparing inquest notes Exhibit-10/1. PW 11 Tapeshwar Singh further deposed that dead bodies of both these persons were dispatched to the Sadar Hospital, Ara, for post-mortem examination.

9. It is in evidence of PW 9 Dr. Arun Kumar that he had conducted post-mortem examination on dead body of Sonu Kumar on 18.10.2011 at the Sadar Hospital, Ara, and had noted a lacerated wound over the occipital area apart from the penetrating wound on left upper part of chest of dead body of Sonu Kumar. Evidence of this autopsy surgeon shows that there was an incise wound damaging left lung and upper part of hard



vessel as well as hard tissues of Sonu Kumar. The autopsy surgeon further testified that Sonu Kumar died because of stab wounds on left side of his chest which has resulted in profuse bleeding and hypovolemic shock. The autopsy surgeon testified that the injuries found on person of Sonu Kumar were sufficient in the ordinary course of nature to cause his death. PW 10 Dr. Ashutosh Singh had conducted post-mortem examination of dead body of Sumitra Devi @ Silwanti on 02.11.2011 at the Sadar Hospital, Ara. As per his version, that dead body was having four stab injuries mainly over left side of abdomen caused by sharp pointed cutting weapon. As per opinion of this autopsy surgeon, Sumitra Devi @ Silwanti died because of septicemia leading to multiple organ failure caused by the resultant shock. He further stated that injuries on the dead body of Sumitra Devi were sufficient in the ordinary course of nature to cause death of a human being.

10. It is thus seen from evidence of the prosecution that in the incident in question, Sonu Kumar and Sumitra Devi died homicidal death resultant from wounds suffered by them by sharp cutting objects. Thus, the prosecution has established the factum of homicidal death of both the persons in the incident in question. Now let us examine whether the prosecution has



proved that the accused persons or any of them had authored those wounds with requisite intention on the person of Sonu Kumar or Sumitra Devi leading to their death.

11. The star witness of the prosecution is PW 3 Lal Bahadur Sah – father of deceased Sonu Kumar and husband of deceased Sumitra Devi @ Silwanti. He is the First Informant and the incident of twin murders took place inside his own house. He claims to be present in his house at the time of the incident as per his version in the FIR lodged by him on the day of the incident itself. At the cost of repetition, the case set out by him in his FIR needs to be reiterated. PW 3 Lal Bahadur Sah in his FIR has stated that at 07:00 P.M. of 17.10.2011, he was present in his house. His son Sonu Kumar was studying on the cot and his wife Sumitra was doing house hold works. All accused persons came hurling abuses while armed with lathi, danda and chura and entered in his house. They stabbed his son Sonu on chest and abdomen and thereafter stabbed Sumitra Devi when she came after hearing shouts. He then claims in the FIR that he ran away and raised shouts. After some people gathered on the spot, he ventured to come back to his house. This is all what PW 3 Lal Bahadur Sah has stated in his FIR which is no doubt a corroborative piece of evidence and not a



substantive evidence.

12. While in the dock, PW 3 Lal Bahadur Sah has deposed that at about 07:00 P.M. of the day of the incident, he returned to his house from the shop and at that time, his son Sonu Kumar was studying whereas his wife Sumitra was washing utensils. He stated that then accused Nos.1 to 3, namely, Sudarshan Sah, Upendra Sah and Rajkumari @ Ram Kumari entered in his house along with Priyanka Kumari. At that time accused No.1 Sudarshan and accused No.2 Upendra were holding knives whereas others were armed with danda. They gave abuses. Then accused No.1 Sudarshan and accused No.2 Upendra gave blows of knife to Sonu Kumar and when Sumitra rushed to save, accused No.3 Rajkumari held her and accused No.1 Sudarshan Sah so also accused No.2 Upendra Sah gave blows of knife to Sumitra. PW 3 Lal Bahadur Sah further testified that then he went to save the victims but accused persons rushed at him and he ran away while shouting and hide himself in the house of Markat Sah. PW 3 Lal Bahadur Sah further deposed that it was after four to five minutes thereafter he came out of house of Markat Sah and noted that PW 1 Pramod, PW 2 Budhan and PW3 Srinivas are coming. He then told them that the accused persons had assaulted. Then he saw



his son Sonu lying dead and his wife in an injured condition. As per his version, he took his wife to the hospital where his FIR came to be recorded. As per evidence of PW 3 Lal Bahadur Sah the incident took place because accused No.2 Upendra was selling *samosas* at a stall in front of the school in the town but subsequently, his son Pappu had also started stall for selling eatables in front of the said school. Thus, chief examination of PW 3 Lal Bahadur Sah makes it clear that in his presence, the accused persons armed with weapons entered in his house and assaulted his son and wife. It was thereafter he ran away and hide himself in the house of Markat Sah.

13. To test the veracity of PW 3 Lal Bahadur Sah the defence has cross-examined him and brought on record that he was standing at the outer door of his house when the incident took place. He has stated in his cross-examination that he saw the accused persons coming out of their house and the accused persons then entered in his house but without uttering any word. Cross-examination of this witness makes it clear that he did not made any attempt to stop the accused persons who entered in his house by crossing him nor he had shouted when the accused persons entered in his house. It is further brought on record from cross-examination of this witness that he ran away after



the accused persons were in his house for two to three minutes and kept himself hiding for about four to five minutes. PW 3 Lal Bahadur Sah further stated that during that period, the accused persons did not make any attempt to trace him out. He came out from the place where he was hiding of his own after the accused persons ran away from the spot of the incident. PW 3 Lal Bahadur Sah had further stated in his cross-examination that when he came out from the place he was hiding he did not see anyone outside and thereafter he entered in his house and saw his son Sonu Kumar lying in dead condition and his wife lying in a pool of blood. It was thereafter he came out of his house and shouted. That is how as stated by PW 3 Lal Bahadur Sah in his cross-examination, PW 5 Ram Niwas Sharma, PW 1 Pramod Kumar Sah and PW 2 Bandhan Yadav @ Budhan came to his house after he himself returned from the hideout.

14. Careful scrutiny of version of PW 3 Lal Bahadur Sah, as such makes it clear that though he claims in his chief examination as well as in his FIR lodged with promptitude that the accused persons barged inside his house armed with deadly weapons while hurling abuses in his presence, in cross-examination, he has changed his stand by stating that the accused persons entered in his house without uttering any word



when he was standing at the door of the house and he did not attempt to stop them so also he did not raise shout at that point of time. In other words, his cross-examination makes it clear that though standing at the door of his house and though PW 3 Lal Bahadur Sah noted that the accused persons armed with weapons were entering in his house, he allowed them to enter his house without any protest and without raising any alarm. At this point of time it needs to be noted that even according to the prosecution case the accused persons are relatives of PW 3 Lal Bahadur Sah and, as such, were not unknown to him. In normal course had he really seen his own relatives armed with weapons, hurling abuses, forcibly entering in his house where his own minor child and wife were present it was expected of PW 3 Lal Bahadur Sah to resist entry of the accused persons inside his house. He would not have allowed the accused persons to reach up to his minor son so also up to his wife for enabling them to assault these two victims murderously. Despite standing at the front door, meekly allowing the hostile armed relatives to enter inside his house makes version of PW 3 Lal Bahadur Sah improbable and not with tune with natural conduct of a normal human being. An element of improbability creeps in his version. It is averred by this witness in his FIR that the incident



took place because of past dispute between the relatives and while in the witness box theory of putting the stall of eatable by his son Pappu for competing accused No. 2 Upendra Sah is made out. As such, in normal course if this was the reason for the incident then the accused persons had no cause to assault Sonu Kumar, a minor child, taking education in second standard and Sumitra Devi @ Silwanti by leaving PW 3 Lal Bahadur Sah unscratched while securing entry in his house by bypassing him through the main door. PW 3 Lal Bahadur Sah is closely related witness as his son and wife died in the incident and as per his own version he was having inimically disposition towards the accused. Therefore, close scrutiny of evidence of this witness is required to be done and only if his evidence is found to be trustworthy then only it can be accepted. Careful scrutiny of evidence of this witness shows that his evidence is not intrinsically reliable, inherently, probable and wholly trustworthy. His conduct is highly improbably.

15. At this juncture, it is apposite to note how the Hon'ble Apex Court has appreciated the evidence of related prosecution witnesses in similar situation. In the matter of **Amar Singh (Supra)** one Devinder Singh died homicidal death and at the time of the said incident his brothers Parmindar Singh



and Amar Singh were with him. The accused therein are said to have assaulted Devinder Singh by means of hockey stick and knife in presence of Parmindar singh and Amar Singh. The Hon'ble Supreme Court has refused to rely on evidence of PW 1 Parmindar Singhy and PW 11 Amar Singh- both brothers of deceased Devinder Singh with the following observations found in paragraphs 20 and 32:-

“20. The assailants were only armed with hockey sticks and a knife and not with any firearms. It seems very unnatural that two brothers present on the spot will not even make slightest attempt to intervene and try to save the other brother being assaulted, merely on the threat extended by the assailants armed with hockey sticks and a knife. This unnatural conduct totally against natural human behaviour casts a serious doubt of shadow on the presence of eyewitness on the spot at the time of occurrence. Moreover, the facts stated by PW 1 Parminder Singh in this regard, as already discussed above, have not been corroborated by the other brother Amar Singh PW 11.

32. The conviction of the appellants rests on the oral testimony of PW 1 who was produced as eyewitness of



the murder of the deceased. Both the learned Sessions Judge, as well as the High Court have placed reliance on the evidence of PW 1 and ordinarily this Court could be reluctant to disturb the concurrent view but since there are inherent improbabilities in the prosecution story and the conduct of eyewitness is inconsistent with ordinary course of human nature we do not think it would be safe to convict the appellants upon the uncorroborated testimony of the sole eyewitness. Similar view has been taken by a three-Judge Bench of this Court in Selvaraj v. State of T.N. [(1976) 4 SCC 343 : 1976 SCC (Cri) 620] wherein on an appreciation of evidence the prosecution story was found highly improbable and inconsistent of ordinary course of human nature, concurrent findings of guilt recorded by the two courts below was set aside.”

Though different person react to a situation in a different way and it is not possible to assess human conduct by applying straitjacket formula, in the case in hand, we are of the opinion that conduct of PW 3 Lal Bahadur Sah depicted in his evidence is wholly unnatural casting a serious shadow of doubt on his presence on the scene of occurrence at the time of the



incident in which his son and wife was killed.

16. In the matter of **Chunthuram (Supra)**, the Hon'ble Supreme Court discarded testimony of witness Bhagat Ram as that witness did not take any pro-active steps in the matter of murder of Laxman. It is observed thus in para-15 of that judgment by the Supreme Court:-

“15. Next the unnatural conduct of PW 4 will require some scrutiny. The witness Bhagat Ram was known to the deceased and claimed to have seen the assault on Laxman by Chunthuram and another person. But curiously, he did not take any proactive steps in the matter to either report to the police or inform any of the family members. Such conduct of the eyewitness is contrary to human nature. In Amar Singh v. State (NCT of Delhi), one of us, Krishna Murari, J. made the following pertinent comments on the unreliability of such eyewitness : (SCC para 32)

“32. The conviction of the appellants rests on the oral testimony of PW 1 who was produced as eyewitness of the murder of the deceased. Both the learned Sessions Judge, as well as High Court have placed reliance on



the evidence of PW 1 and ordinarily this Court could be reluctant to disturb the concurrent view but since there are inherent improbabilities in the prosecution story and the conduct of eyewitness is inconsistent with ordinary course of human nature we do not think it would be safe to convict the appellants upon the uncorroborated testimony of the sole eyewitness. Similar view has been taken by a three-Judge Bench of this Court in Selveraj v. State of T.N. {(1976) 4 SCC 343} wherein on an appreciation of evidence the prosecution story was found highly improbable and inconsistent of ordinary course of human nature concurrent findings of guilt recorded by the two courts below were set aside.”

In the case in hand also we have noted that conduct of PW 3 Lal Bahadur Sah which is totally inconsistent with ordinary course of human nature. Therefore, we are of the opinion that unless version of PW 3 is gaining corroboration from independent source no explicit reliance can be placed on uncorroborated testimony of related witness PW 3 Lal Bahadur



Sah.

17. For corroborating version of PW 3 Lal Bahadur Sah, the prosecution is relying on evidence of neighbours in the town, most of whom have turned hostile to the prosecution, as stated by us in forgoing para. However, PW 1 Pramod Kumar Sah and PW 2 Bandhan Yadav @ Budhan had made an attempt to toe the line of prosecutuion and, therefore, let us examine whether these witnesses have seen the incident of murder or their evidence can be used to corroborate the version of PW 3 Lal Bahadur Sah.

18. PW 1 Pramod Kumar resides at a distance of three houses away from house of PW 3 Lal Bahadur Sah. He stated that while he was in his house he heard shouts and therefore went near the house of PW 3 Lal Bahadur Sah. As per his version then he saw accused Nos. 1 to 3 with three daughters of accused No.1 running from the house of PW 3 Lal Bahadur Sah and entering in their own house. PW 1 Pramod Kumar testified that at that time accused No.1 Sudarshan Sah and Upendra Sah were holding knife. PW 1 further testified that then he entered in the house of PW 3 Lal Bahadur Sah and at that time PW 3 Lal Bahadur Sah was present there. Lal Bahadur Sah told him that accused No.1 Sudarshan Sah and accused



No.2 Upendra Sah assaulted Sonu Kumar and Sumitra Devi by knife. This witness claims to have seen dead body of Sonu Kumar lying on the cot and Sumitra Devi wreathing in pain near. Now let us examine whether this witness is a witness of truth and his evidence is corroborating the version of PW 3 Lal Bahadur Sah. In cross-examination PW 1 Pramod Kumar had admitted that by the time he reached on the spot of the incident, 15 to 20 persons were already present there. When we compare evidence of this witness PW 1 Pramod with that of PW 3 Lal Bahadur Sah then a serious doubt creeps in version of PW 1 Pramod Kumar as to whether he has really seen accused Nos.1 to 3 running away from the house of PW 3 Lal Bahadur Sah. Version of PW 3 Lal Bahadur Sah is to the effect that he had witnessed murderous assault on his son and wife and thereafter he flee from the spot, hide himself in the house of Markat Sah and remained there for 4 to 5 minutes. After accused ran away from the spot of the incident, PW 3 Lal Bahadur Sah claims to have came out of the place where he was hiding. He claims that when he came out there was nobody in that area then he ventured to go back to his house and noticed dead body of his son Sonu. PW 3 Lal Bahadur Sah has stated that it was thereafter PW 1 Pramod came at his house. If that is so then it



was not possible for PW 1 Pramod Kumar to see accused No.1 to accused No.3 running away from the place of incident while holding knives in their hand. PW 1 Pramod had seen PW 3 Lal Bahadur Sah at the spot of the incident i.e., house. PW 3 Lal Bahadur Sah returned on the spot of the incident i.e., his house only after the accused left the spot and there was nobody in the vicinity. Thus, there was no occasion for PW 1 Pramod Kumar to see post event happenings like the accused persons running away from the scene of the occurrence. His cross-examination makes the matter further clear as in cross-examination PW 1 Pramod Kumar has candidly stated that there were 15 to 20 persons on the spot when he reached there. Hence, it cannot be said that PW 1 Pramod Kumar has seen the accused persons near the spot of the incident soon after the incident. Therefore, evidence of PW 1 Pramod Kumar is of no assistance to the prosecution and it cannot be used to corroborate testimony of PW 3 Lal Bahadur Sah.

19. Now comes evidence of PW 2 Bandhan Yadav @ Budhan. He is residing at a distance of 2 to 4 houses away from house of PW 3 Lal Bahadur Sah. As per his version he heard commotion and by running went to the house of PW 3 Lal Bahadur Sah. He testified that then he saw accused Nos.1 to



3 as well as daughters of accused No.1 coming out from the house of PW 3 and running towards their own houses. This witness then claims to have entered in the house of PW 3 Lal Bahadur Sah to see that injured Sonu Kumar lying on the cot and injured Sumitra lying on south side. He then claims that PW 3 Lal Bahadur Sah who was present there told him that accused Nos.1 to 3 and daughter of accused No.1 had assaulted Sonu Kumar and Sumitra Devi. The reason which we have assigned for rejecting the testimony of PW 1 Pramod Kumar are equally applicable for rejecting the testimony of this witness PW 2 Budhan. As per version of PW 2 Budhan @ Bandhan when he reached on the spot of the incident after the incident, at that time PW 3 Lal Bahadur Sah was already present on the spot of the incident. Cross-examination of this witness makes it clear that it was only after he heard shouts of PW 3 Lal Bahadur Sah he went to the spot and noticed that PW 3 Lal Bahadur Sah was crying loudly on the spot of the incident. This version of PW 2 Budhan makes it clear that he reached on the spot of the incident when PW 3 Lal Bahadur Sah came out of his hideout and after noticing that everything is clear, returned to own house where incident had taken place. So question of noticing the accused persons running away from the spot of incident by PW 2



Budhan does not arise. Therefore, it cannot be said that PW 2 Budhan has noticed presence of the accused persons at the spot of the incident soon after the incident. In all probabilities he reached on the spot of the incident when the assailant had already left the spot of the incident and when the First Informant PW 3 Lal Bahadur Sah had returned at the place of occurrence after the incident. As such, evidence of this witness PW 2 Budhan is also of no use to corroborate interested version of PW 3 Lal Bahadur Sah.

20. Other neighbours examined by the prosecution, such as Anup Patel, Ram Niwas Sharma, Mahendra Sah, Arvind Choudhary and Pappu Sharma had turned hostile to the prosecution and, as such, their evidence is of no assistance to infer guilt of the accused persons in the crime in question. Evidence of PW 11 Tapeswar Prasad Singh only explains the line of investigation conducted by him. This Investigator had not seized weapons of offence and there is no forensic evidence made available on record by the prosecution which might have corroborated version of PW 3 Lal Bahadur Sah.

21. The net result of foregoing discussion requires us to hold that evidence adduced by the prosecution suffers from inherent improbabilities making it unsafe to place explicit



reliance thereon for recording finding of guilt of the accused persons or any of them. It is not possible to hold PW 3 Lal Bahadur Sah is an eyewitness to the incident and had witnessed the murderous assault on his son and wife by the accused persons. Similarly, it is not possible to hold that PW 1 Pramod and PW 2 Budhan are witnesses of truth as reasonable doubt creeps in their version and their evidence indicates that they had reached on the spot of the incident much latter in the point of time when the assailant had already left the spot of the incident and when PW 3 Lal Bahadur Sah was already present in his house after the incident.

22. In result, it is not possible to hold that the prosecution has proved that the accused persons or any of them had killed deceased Sonu Kumar and Sumitra Devi @ Silwanti with an intention to caused their death by assaulting them by means of sharp edged weapons. The accused persons deserves to be acquitted by granting them benefit of doubt. As such the following orders:-

(I) The appeal is allowed.

(II) The impugned judgment and order of conviction of resultant sentence imposed on the appellants/convicted accused by the learned Trial Court is quashed and set aside.



(III) The appellants/accused persons are acquitted of the offence alleged against them.

(IV) They be set at liberty if not required in any other case.

23. We put on record words of appreciation for the able assistance rendered by Mr. Prince Kumar Mishra, learned Amicus Curiae, to this Court in arriving at the proper conclusion for deciding in that appeal. We direct the High Court Legal Services Authority to pay an amount of Rs.5,000/- to Mr. Prince Kumar Mishra, learned Amicus Curiae, for the services rendered by him.

24. 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)

(Harish Kumar, J)

Mkr./Saurabhkrsinha/-

AFR/NAFR	AFR
CAV DATE	20.06.2023
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Transmission Date	04.07.2023

