

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.958 of 2019**

Arising Out of PS. Case No.-80 Year-2018 Thana- MURLIGANJ District- Madhepura

Pawan Yadav Son of Late Dhukha Yadav Resident of Village-Ram Singh  
Tola, Jitapur, Ward No.2, P.S.-Muraliganj, District-Madhepura.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                      |   |                                   |
|----------------------|---|-----------------------------------|
| For the Appellant/s  | : | Mr. Ansul, Advocate               |
|                      | : | Ms. Sagarika, Advocate            |
|                      | : | Mr. Aditya Pandey, Advocate       |
| For the Respondent/s | : | Mr. Satya Narayan Prasad, APP     |
| For the Informant    | : | Mr. Anirudh Kumar Sinha, Advocate |

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**

**and**

**HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)**

**Date : 30-10-2023**

Heard learned counsel Mr. Ansul appearing on behalf of the appellant, learned counsel Mr. Anirudh Kumar Sinha appearing on behalf of the informant and learned Additional Public Prosecutor Mr. Satya Narayan Prasad appearing on behalf of the State.

2. The present appeal preferred under Section 374(2) read with 389(1) of Criminal Procedure Code in short (Cr.P.C.) by above named accused/appellant, challenging the judgment of conviction dated 09.07.2019 and order for sentence dated 12.07.2019 passed in connection with Session Trial No. 108 of 2018/C.I.S. No. 108 of 2018, arising out of Murliganj



P.S. Case No. 80 of 2018 corresponding to G.R. No 399 of 2018, whereby and whereunder learned Sessions Judge, Madhepura convicted the appellant under Sections 302 of the Indian Penal Code (In short 'I.P.C.') and 27 of the Arms Act and sentenced him to undergo imprisonment for life with fine of Rs. 25,000/- and in default of payment further sentenced to undergo three months of R.I. and for three years and to fine of Rs. 10,000/- in default of payment three months of R.I., respectively. The appellant was further convicted under Section 341 of I.P.C. and sentenced to undergo S.I. for one month. All sentences shall run concurrently.

3. The crux of prosecution case as it springs from the written information of informant/**PW-9**, Jai Chand Lal that on 09.03.2018 at 06:30 PM in evening, when his father, namely, Sri Nageshwar Yadav was attacked allegedly with an intention to kill and when he was on way to hospital, it was told by his father to him that while he was returning to his house from Bhatkhora Bazar then in the south of Railway crossing, the accused persons including appellant alongwith 2-3 other unknown persons surrounded him and pointing weapons, threatened him to withdraw Murliganj P.S. Case No. 52 of 2018, failing which his whole family would be killed and when



informant's father protested then the accused/appellant Pawan Yadav fired bullet from his pistol, which hit on his back, due to which he fell down there. Thereafter, another bullet was also fired and thinking that the informant's father is dead, they fled away by firing in the air. Subsequently, informant's father found himself in the vehicle alongwith his family members. It is further alleged that the informant/PW-9 came to know about the occurrence on the hearing of firing sound and when informant alongwith others reached at the place of occurrence, he found his father in unconscious condition and thereafter, the informant brought his father to Sadar Hospital, Madhepura from where informant's father was referred to Surya Hospital, Saharsa for better treatment. In case of Murliganj P.S. Case No. 52 of 2018, all accused have been granted bail by the Court and they are threatened to kill all family members one by one.

4. On the basis of above statement of informant/PW-9, Murliganj P.S. Case No. 80 of 2018 dated 09.03.2018 was registered. After completion of investigation, the investigating officer submitted charge-sheet against accused persons including appellant under Sections 341, 323, 307, 506/34 & 302 of I.P.C. and Section 27 of Arms Act, where learned Jurisdictional Magistrate took cognizance for afore-



mentioned offences and after compliance of Section 207 of Cr.P.C., committed case to session court for trial and disposal as per mandate available under Section 209 of Cr.P.C.

5. Learned trial Court after perusal of record and materials/evidences collected during course of investigation framed charges against accused persons. A separate charge under Section 341, 302/34 of the I.P.C. and 27 of Arms Act was also framed, which were duly explained to accused persons including accused/appellant Pawan Yadav what they pleaded “not guilty” and claimed trial.

6. On commencing trial, to establish its case before the learned trial court the prosecution altogether examined total of thirteen (13) witnesses, namely, Maklesh Yadav (PW-1), Shankar Yadav (PW-2), Shiv Chand Lal (PW-3), Vikram Chand Lal (PW-4), Uday Kumar Raja (PW-5), Sanjay Kumar Yadav (PW-6), Trilok Kumar (PW-7), Satya Narayan (PW-8), Jai Chand Lal/informant (PW-9), Dudh Nath Singh (PW-10), Dr. Vijay Shankar (PW-11), Dr. Arun Kumar Singh (PW-12), and Triloki Nath Sharma (PW-13).

7. The prosecutions also exhibited the following documents and materials during the trial which are as under:

**1. Exhibit 1** – Signature of informant on Fardbeyan.



**2. Exhibit 2-** Injury report of deceased.

**3. Exhibit 3 –** Post-mortem Report of  
deceased.

and **Material Exhibit 1-** Front part of cartridge removed  
from the body of deceased.

**8.** After closure of the prosecution case, the  
statement of accused/appellant was recorded under Section 313  
of Cr.P.C., where they show their complete innocence by  
denying all incriminating circumstances/evidences explained to  
them.

**9.** In defense no oral evidence has been produced,  
whereas the defense has produced following documentary  
evidences, which were also exhibited, as:

**(i) Exhibit A-** Certified Copy of FIR of  
Murliganj P.S. Case No. 86/2016.

**(ii) Exhibit B-** Certified Copy of charge  
sheet of Murliganj P.S. Case No. 86/  
2016.

**(iii) Exhibit C& C/1-** Photo copy of  
Murliganj Police Station Diary entry  
dated 08.03.2019 and 09.03.2018.

**10.** After conclusion of trial, learned trial court by  
taking note of evidences available on record, legal positions and



argument advanced by the parties, convicted the accused/appellant for the offences under Section 302 of the Indian Penal Code and Section 27 of Arms Act, where upon conviction, accused/appellant was sentenced for life imprisonment with a fine of Rs. 25,000/- for the offence committed under Section 302 of the I.P.C. and three years of RI with fine of Rs. 10,000/- for the offences punishable under Section 27 of the Arms Act, another accused person, namely, Dhaneshwar Yadav was acquitted from respective charges as discussed above. Being aggrieved, with aforesaid order of conviction and sentence accused/appellant, namely, Pawan Yadav preferred the present appeal.

11. Hence, the present appeal.

**ARGUMENT OF LEARNED COUNSEL FOR THE APPELLANT**

12. Learned counsel for the appellant submitted that from the available set of evidence, as surfaced during the trial, it cannot be said that prosecution established its case beyond all reasonable doubts. It is pointed out by learned counsel that the conviction of appellant was recorded on the basis of eye-witness i.e. PW-3 and oral dying declaration of deceased, Nageshwar Yadav, what he made before informant PW-9, namely, Jai Chand Lal, who is his son and other persons accompanied him and walking while going to Sadar Hospital



from the place of occurrence. It is submitted that PW-3 is projected eye-witness being relative. He is nephew of the deceased. It is submitted that previous enmities and pending litigation appear to be motive behind present murder and out of said enmities appellant has been implicated with present case. It is also pointed out that several witnesses deposed before learned trial Court that deceased immediately loosed his consciousness and as such any claim regarding oral dying declaration is not convincing on its face. Learned counsel further pointed out that PW-11 who examined injured/deceased on 08.03.2018 clearly stated that before receiving medical aid at Surya Hospital, he was in a state of shock. It is also pointed out that deceased recovered from said shock only after medical treatment at Surya Hospital, where doctor and I.O. of this case were available but despite having all opportunities, no statement of injured/deceased was recorded. It is also pointed out that PW-12, who conducted post-mortem upon deceased mentioned cause of death as infection i.e. 'Septicemia' without referring anything that such septicemia was caused by alleged bullet injuries. Learned counsel also pointed out that several witnesses deposed certain facts first time before the Court during the trial, contradicting their earlier versions as they were stated before



investigating officer of this case under Section 161 of Cr.P.C. In the background of improved depositions, inimical and interested witnesses and nature of oral dying declaration, it cannot be safely said that prosecution established its case beyond all reasonable doubts. While concluding the argument learned counsel relied upon the report of Hon'ble Supreme Court as reported in the matters of :

*(i) Darshana Devi v. State of Punjab reported as 1995 Supp (4) Supreme Court Cases 126: 1996 Supreme Court Cases (Cri) 38.*

*(ii) Kushal Rao v. State of Bomaby reported as 1957 SCC OnLine Sc 20: 1958 SCR 552: 1958 Cri L J 106 : AIR 1958 SC 22.*

*(iii) Atbir v. Government of NCT of Delhi reported as (2010) 9 SCC 1.*

*(iv) Irfan alias Naka v. State of Uttar Pradesh reported as 2023 SCC OnLine SC 1060.*

**ARGUMENT OF LEARNED APP FOR THE STATE**

13. Learned APP appearing on behalf of State submitted that prosecution established its case beyond all reasonable doubts before the learned trial Court for the reason that PW-3, who is Shiv Chand Lal supported the occurrence as an eye-witness, where nothing surfaced in his cross-examination



which may doubt his version, as deposed in his examination-in-chief, where he specifically deposed that accused/appellant on the order of co-accused Rajo Yadav and Dhaneshwar fired bullet upon Nageshwar Yadav. It is submitted that his presence near place of occurrence is very natural as his house is just away about 250 meters from the place of occurrence and he saw the occurrence while he was at distance of 10 lagga (where 01 lagga is equivalent of 12 hands), while he was going to market. It is also submitted by learned APP that while injured/deceased namely, Nageshwar Yadav, on way to Sadar Hospital, Madhepura, gained his consciousness and same appears a natural medical phenomena and therefore, it cannot be viewed with doubt. It is submitted that though cause of death is mentioned as septicemia but no doubt said septicemia caused by bullet injuries only caused by accused/appellant, where death occurred only after two days. It is pointed out by learned APP that oral dying declaration of deceased, Nageshwar Yadav inspires confidence and there is no reason to disbelieve merely on the ground that it was made before his son and other relatives. In view of submissions, as made above, learned APP while concluding the argument submitted that the conviction as recorded by learned trial court convicting accused/appellant for



the offence punishable under Section 302 & 341 of I.P.C. alongwith offence under Section 27 of Arms Act are correct finding and same does not require any interference, as present appeal devoid of any merit.

**DISCUSSION OF EVIDENCES**

**14.** For just disposal of present appeal, it would be appropriate to discuss the evidences available on record as surfaced during the trial for the purpose of re-appreciations of evidence, which are as:-

**15.** PW-1 is Maklesh Yadav, who has been declared hostile by the prosecutions. He supported the date and time of occurrence by deposing that occurrence took place on 18.03.2018 between 6:00 to 6:30 PM.

**15.1** On cross-examination by learned APP, he denied the suggestions as advanced to him regarding occurrence and involvement of accused/appellant alongwith other co-accused persons in occurrence.

**15.2** On cross-examination by defense, it was stated by him that when he arrived at the place of occurrence, he found injured/deceased Nageshwar Yadav unconscious and he made no communications alongwith persons present over there. Same is the position of PW-2 namely, Shankar Yadav who has been also



declared hostile by the prosecutions. Deposition of these two witnesses does not require any further discussions as same appears not relevant furthermore as to establish the guilt of accused/appellant.

**16.** PW-3 is Shiv Chand Lal, who deposed in his examination-in-chief that occurrence took place on 08.03.2018 somewhere between 6:00 to 6:30 PM, and by that time, he was going to market and as he reached near to railway crossing, he found accused-appellant surrounding to Nageshwar Yadav alongwith other co-accused persons namely, Rajo Yadav, Dhaneshwar Yadav and Kundan Yadav. It was deposed by him that Rajo Yadav and Dhaneshwar Yadav asked accused/appellant Pawan Yadav to fire upon Nageshwar Yadav upon which he fired upon him and thereafter, he fell down and became unconscious. It was deposed that after the occurrence of firing several persons alongwith family members of injured/deceased reached at the place of occurrence and taken away injured Nageshwary Yadav to hospital. This witness identified accused persons present before learned trial Court.

**16.1** On cross-examination, it was stated by him that his father and injured/deceased Nageshwar Yadav are full brother, but living separately. It was stated that his residence is



at about distance of 200-250 metres from railway crossing. It was stated that residence of Nageshwar Yadav is at the distance of about 500 metres towards South from the place of occurrence. It was stated that he was going to market for purchasing vegetables and it was the time of sunset and he found accused persons on railway crossing. It was further stated by him that he saw accused/appellant alongwith other co-accused persons from a distance of 10 lagga (one lagga equivalent to 12 hands) towards North and out of fear he stopped there. It was stated that Nageshwar Yadav was surrounded by accused/appellant Pawan Yadav from western side, from eastern side he was surrounded by Dhaneshwar Yadav, from northern side by Kundan Yadav and from southern side by Rajo Yadav. It was stated that firing was made after two minutes of his arrival, he remained stayed there after firing and raised alarm on which Maklesh Yadav, Shankar Yadav, Jai Chand, Trilok and Vikram reached at the place of occurrence and thereafter, they took Nageshwar Yadav on a tempoo for Sadar Hospital, Madhepura. They were proceeded for hospital at about 7:00 PM and reached Madhepura at about 8:00 PM. He was examined by police. It was stated that accused/appellant Pawan Yadav had lodged a case against him and his family members. His attention was



invited regarding his earlier statement made before the police that he had not stated before police that Nageshwar Yadav was surrounded by accused persons. His attention was also drawn that a never made statement as Rajo Yadav and Dhaneshwar Yadav asked to fire. His attention was also drawn that no statement was made before police by him that Pawan Yadav fired upon Nageshwar Yadav which hit on his back, whereafter Nageshwar Yadav fell down being, unconscious. His attention was also drawn that he made statement before the police that when he arrived at the place of occurrence he found accused persons running away. This witness denied all his earlier statements made before the police before the trial court, on inviting his attention towards his earlier statement made before the police during the course of investigation under Section 16 of Cr.P.C. It was stated by him that since last 10 days a dispute was developed between his father and accused persons. Lastly, he denied suggestions as to depose falsely.

**17.** PW-4 is Vikram Chand Lal, who deposed before the Court in his examination-in-chief that occurrence took place on 08.03.2018 at about 6:00 PM and by that time he was returning to his home from Bhairavpatti and as he came near to railway crossing, heard sound of firing and by going



closure to railway crossing, he found that Shiv Chand Lal was lifting to Nageshwar Yadav. He found accused/appellant Pawan Yadav, Dhaneshwar Yadav, Kundan Yadav and other 2-3 unknown persons running away from there. He also lifted the Nageshwar Yadav alongwith 2-3 persons and by putting him in tempoo proceeded for Sadar Hospital, Madhepura from where he was referred to Surya Hospital. It was deposed that injured was remain admitted in Surya Hospital for one day and thereafter he was referred to Patna where, he was hospitalized in Shri Sai Hospital. He also accompanied injured/deceased up to Patna along with 2-3 persons. The treatment of Nageshwar Yadav (deceased) was continued for two days in Shri Sai Hospital, Patna, where he finally died. It was categorically deposed by him that deceased disclosed that 2-3 persons were giving directions regarding him. This witness identified accused-appellant and other accused persons present before the trial court.

*17.1* On cross-examination, he deposed before the Court that deceased was his uncle. It was stated by him that Pawan Yadav (accused-appellant) lodged Murliganj P.S. Case No. 86 of 2016 on 11.03.2016 against him and his uncle. It was stated by him that he visited Pawan Yadav on the date of



occurrence to Bhairavpatti village. It was stated that he went Bhairavpatti on motorcycle, he went there to return money to Pawan Yadav and met Pawan Yadav on that day. It was stated that when he was at a distance of 150-200 yards from the place of occurrence, he heard bullet sound and as he came to a distance of 50 yards, he found Shiv Chand lifting Nageshwar Yadav. He also came there and after his arrival 15 -20 persons arrived there. He saw Nageshwar Yadav unconscious and found blood oozing from his body. Blood was spread over there, up to 1- 2 hands, some unknown called tempoo through which injured was taken away. Injured was arranged to sit on near seat and were holding by others, as Trilok, Sanjay, Shiv Chand and Rajo, who were accompanied in the said tempoo. He arrived Sadar Hospital, Madhepura at somewhere between 7:00 - 8:00 PM and met with doctor but was refused to admit after remaining there for half an hour and putting some bandage, he was referred to Saharsha through ambulance where injured was hospitalized for 24 hours and thereafter, he was referred to Patna.

**18.** PW-5 is Uday Kumar Raja, who deposed through his examination-in-chief during trial that occurrence took place on 08.03.2018 somewhere between 6:00 - 6:30 PM and by that point of time, he was at his home and after hearing



the sound of firing he came to place of occurrence and saw that Nageshwar Yadav received bullet injury on his back. It was deposed by him that he talked with Nageshwar Yadav who said him that two persons were directing over mobile regarding him. He deposed him that Pawan Yadav, Rajo Yadav, Dhaneshwar Yadav and Kundan Yadav were fired bullet after lifting injured he accompanied him up to Sadar Hospital, Madhepura from where he was referred to Surya Hospital and finally to Patna, where in course of treatment, Nageshwar Yadav died.

**18.1** On cross-examination, it was stated by him that his house is somewhere at distance of 300 metres from the place of occurrence. He found Nageshwar Yadav laying over railway crossing. The blood was oozing from his body and it was stated that he came alone and only after his arrival other persons of village namely, RatiChand, Kaushal were arrived. It was stated by him that he proceeded from his home. Vikram Chand Lal and Shiv Chand Lal were also found going ahead. It was stated that bullet hit on left back of Nageshwar Yadav. It was stated by him that injured was conscious and speaking. It was stated by him that Shiv Chand Lal, Shankar Yadav and Satya Narayana were lifting injured. It was stated by him that from place of occurrence, injured was taken on bike up to



Jitapur market from where through auto went up to Sadar Hospital, Madhepura. He however, stated that Shiv Chand, Vikram and Satya Narayan were brought injured up to Jitapur Market which took about five minutes. He also went up to Madhepura Hospital in auto, injured was accompanied with Shiv Chand Lal, Shankar Yadav, Sanjay and Jai Chand Lal. It was stated that within next 15-20 minutes, they reached Madhepura Hospital about 7:00 PM, where treatment was continued for 10 minutes and they reached Surya Hospital within one and quarter hour, thereafter, he stated to accompany injured up to Surya Hospital Saharsha. It was stated by him that deceased, Nageshwar Yadav was his uncle but failed to depose about any enmities with accused persons but subsequently stated that he heard about litigation between his father and accused persons. It was denied by him to depose falsely out of pending litigation.

**19.** PW-6 is Sanjay Kumar Yadav, who deposed before the Court during the trial that occurrence took place on 08.03.2018 at about 6:00 PM, by that time he was in Ramsingh Tola to meet with his cousin father-in-law, Kusheshwar Yadav and heard firing sound which came from the side of railway crossing. On public alarm, he went there alongwith his brother-in-law Trilok Kumar and Jai Chand and found several persons



thereof namely, Vikram Chand, Shiv Chand, Satya Narayana Yadav, Maklesh Yadav, Shankar Yadav and several other persons and saw bullet injury in back of Nageshwar Yadav and also saw that blood was oozing from the place of occurrence itself, he called tempo-wala but at that point of time he was in Jitapur. He picked up injured Nageshwar Yadav on tempo alongwith Sanjay Kumar, Vikram Chand, Shiv Chand, Rajo Kumar, Trilok Kumar and Jai Chand, from where they proceeded for Madhepura Sadar Hospital. It was deposed by him while they were going to hospital and as so they reached near to Chandani Chowk injured said that Rajo Yadav, Kundan Yadav, Dhani Yadav who were hidden in maize field came out suddenly and after surrounding him asked to withdraw the case otherwise will kill him and in said course of argument Pawan Yadav fired upon him. It was deposed that after putting bandage itself at Madhepura Hospital injured was referred to Saharsha Hospital and they accompanied injured in ambulance up to Surya Hospital Saharsha, where he was operated for bullet injury. On next day at about 9:00 injured was referred to Patna. From where they were proceeded for Shri Sai Hospital, Patna, where treatment was continued for two days and thereafter, he died. He identified accused-appellant alongwith other co-accused facing trial.



**19.1** On cross-examination, it was stated by him that he saw 25-30 persons at the place of occurrence, he already named those persons, whom he identified and all these persons were in process of lifting injured and were also raising alarm. It was categorically stated by him that injured was lifted by Shankar Yadav, Maklesh Yadav and Satya Narayana Yadav. It was stated that blood was oozing from the body of injured which spread over the ground up to one to two hands. It was stated by him that he called for tempo, which came at place of occurrence after 15 minutes of his call, he failed to depose registration no. of said tempo. It was stated that tempo belongs to his co-villager, namely, Santosh. It was stated that injured was allowed to sit over their lap. It was stated that Madhepura Hospital is about distance of 13 Km from the place of occurrence and Chandni Chowk is about 5-6 Km, he categorically stated that when he reached at the place of occurrence his father-in-law (injured/deceased) was unconscious. It was stated that it took about 10-12 minutes to reach Chandni Chowk where injured started to narrate occurrence on his own. Total of 5-7 minutes was taken by injured to narrate the entire occurrence. It was stated that injured while narrating the occurrence was conscious. He was also conscious at Madhepura Hospital but became



unconscious at Madhepura Hospital itself after 5-7 minutes of reaching there, bandage was done in unconscious state. He denied suggestion that injured never regain his consciousness. He remained in Madhepura Hospital for about half an hour where he reached by 8:00 PM and proceeded for Saharsha somewhere between 8:30 to 8:45 PM. It was categorically stated by him that his statement was not recorded by police regarding occurrence. He also stated that there was previous enmities between his cousin father-in-law and accused persons. He denied to depose falsely.

**20.** PW-7 is Trilok Kumar, he also deposed in his examination-in-chief that occurrence is of 08.03.2018 at about 6:30 PM and by that time he was at the house of his uncle Kuseshwar Yadav at Ramsingh Tola, he heard sound of firing which came from the side of Bhairavpatti railway crossing upon hearing sound of firing, he alongwith his brother-in-law Sanjay Kumar, brother Jai Chand Lal run towards railway crossing and found that his father Nageshwar Yadav was unconscious and in pull of blood, he was injured by bullet, he found there Shiv Chand Lal, Vikram Chand Lal, Uday Kumar Raja, Dinesh Kumar, Maklesh Yadav, Satya Narayan Yadav, Shankar Yadav and several other persons who were lifting his father. It was



stated that tempo came over there and after getting injured inside tempo, he alongwith Trilok Kumar, Shiv Chand Lal, Vikram Chand Lal, Jai Chand Lal, Dinesh Kumar and Sanjay Kumar proceeded for Sadar Hospital Madhepura, where his father regained his consciousness on way and stated that while he was returning from Bhatkhora market and came near to railway crossing Pawan Yadav, Dhaneshwar Yadav, Rajo Yadav and Kundan Yadav and 2-3 unknown persons, who were equipped with arms asked him to withdraw the case no. 52 of 2018 lodged against them, otherwise will kill his entire family members. It was protested by his father and on said protest Pawan Yadav fired upon him which hit on his back. Accused persons knowing him dead run away after opening fire upon him. It was deposed that he took his father for Sadar Hospital Madhepura, where he was given first aid (*Murham-patti*) and thereafter, referred to Surya Hospital, Saharsha, where treatment was given to his father and bullet was removed from his body. They remained there for 24 hours and from where his father was referred to Patna, where he admitted in Shri Sai Hospital, Patna where in course of treatment, he died in night of 11.03.2018. He identified accused/appellant Pawan Yadav and co-accused Dhaneshwar Yadav before the court.



**20.1** On cross-examination, it was stated by him that he heard sound of three firing, it was stated that he found his father at the place of occurrence, his blood was spread up to 1-2 hands, he shown said blood to police. It was stated that after his arrival several co-villagers were also reached at the place of occurrence from where his father was taken to Madhepura. He failed to name the person who called tempo and also the name of driver. It was stated by him that his father regained consciousness near Chandani Chowk, which is at about 4-5 Km from the place of occurrence. It was stated by him that there was 5-6 persons, who were sitting inside tempo, where his father regained his consciousness on sudden and he started to narrate the occurrence. It was stated that after going for 2-3 Km towards west his father again became unconscious and thereafter, he never gained his consciousness before his death. It was stated that he remained in Madhepura Hospital for half an hour where his father was only given first aid. It was stated that police came at Madhepura Government Hospital but nothing inquired form them. It was also stated that police did not inquire anything at Surya Hospital on 8<sup>th</sup> calendar day. On next day at about 12:00 Murliganj Police came there. It was stated that before arrival of Murliganj Police, Sahrasha Police came there



but they simply went away without making any inquiry. It was stated that he remained with his father up to Surya Hospital and thereafter, he returned to his home. It was stated by him that co-accused persons were in inimical term with his uncle, his statement was recorded on 9<sup>th</sup> day of month at his residence. He denied to depose falsely out of inimical terms.

**21.** PW-8 is Satya Narayan, who stated that occurrence took place in March 2018 somewhere between 6:00 – 6:30 PM. He deposed in examination-in-chief that he is not the eye-witness of the occurrence. Prosecutions declared this witness hostile, where nothing substantial surfaced on his cross-examination by learned APP as to corroborate the version of prosecutions.

**21.1** On cross-examination, it was stated that he deposed in this matter out of free will and on the date of occurrence, he was not available in village.

**22.** PW-9 is Jai Chand Lal, who is informant of this case and also the son of injured/deceased, namely, Nageshwar Yadav. It was deposed by him in his examination-in-chief that occurrence took place at about 6:30 PM on 08.03.2018, where his father received bullet injuries and by that time of occurrence he was at the residence of his uncle, namely,



Kuseshwar Yadav, upon hearing sound of firing, he alongwith his brother-in-law Sanjay Yadav and brother Trilok Kumar ran towards railway crossing and saw that Maklesh Yadav, Shiv Chand Lal, Satya Narayan Yadav, Shankar Yadav and several other persons were in process to lift his father. He brought his father to Sadar Hospital, Madhepura through tempo where on way near to Chandni Chowk, he regained his sense and narrated that while he was returning to his home from Bhatkhora market and as so he reached near railway crossing, Pawan Yadav (accused/appellant), Rajo Yadav, Dhaneshwar Yadav, Kundna Kumar and 2-3 unknown persons, who were hidden themselves equipped with arms, surrounded him and asked to withdraw case no. 52 of 2018, lodged against them otherwise, will kill entire family, which upon protest Pawan Yadav fired upon him through his pistol which hit on his back and thereafter, he also made one firing and finally run away after opening fire in air. It was deposed by him that after giving first aid (*Marham-patti*) at Madhepura Sadar Hospital, his injured father was referred to Surya Hospital, Saharsha, where he was operated for bullet and it was removed but his condition was not improved and therefore for better treatment, he was referred to Patna, where he was hospitalized in Shri Sai Hospital, where he died on



11.03.2018 at about 11:00 PM. It was stated that his post-mortem was conducted at Patna Medical College and Hospital ( in short “PMCH”) thereafter, he brought dead body to his village and performed last rites. It was deposed by him to make his statement regarding occurrence before police of Murliganj Police Station at Surya Hospital where he identified his signature on Fard-e-beyan (written information), which on his identification was exhibited as before learned trial court as Exhibit No. -1. He identified accused-appellant and co-accused before the trial court.

**22.1** On cross-examination, it was stated by him that his uncle Kuseshwar Yadav lodged a case against Pawan Yadav, Dhaneshwar Yadav etc., which was registered as Murliganj P. S. Case No. 52 of 2018. It was stated by him that the previous enmities with accused persons including accused-appellant is out of land dispute. It was stated that his brother Trilok is also witness in said case alongwith his cousin brother namely, Vikram Chand, Shiv Chand, Uday Kumar Raja. It was stated that after hearing the sound of firing, he came to railway crossing i.e. place of occurrence within 2 - 2½ minutes and found his father unconscious, tempo came thereafter 15-20 minutes. It was stated that his father was bleeding profusely,



where blood was also spread over ground up to 3 feet. It was stated that his father regained his sense before 1 Km of Chandani Chowk, where he narrated the occurrence. It was stated that his father again become unconscious after 2-3 minutes. It was also stated by him that his father regained his sense on certain occasions while, on the way of Patna. He failed to state regarding exact number of occasion when his father regained his sense. It was stated that police came at Madhepura but nothing inquired from him and also not inquired from anyone, they proceeded for Saharsha at about 8:00 PM and reached Surya Hospital by 9:00 PM, where on next day Murliganj police came to him and recorded his statement. It was stated that no statement of any person was recorded by Murliganj Police prior to taking his statement. He proceeded for Patna at 9<sup>th</sup> day at about 9:00 PM alongwith his brother-in-law Sanjay, cousin brother Vikram Chand and Uday Kumar Raja. He denied the suggestions that his father never regained sense.

**23.** PW- 10 is Dudh Nath Singh, who is investigating officer of this case deposed in his examination-in-chief that on 9<sup>th</sup> March 2018, he was posted as ASI (Assistant Sub-Inspector) at Murliganj Police Station and recorded the statement/Ferd-e-beyan of Jai Chand Lal, son of Nageshwar



Yadav. It was stated that Ferd-e-beyan was recorded at Surya Hospital and after taking the charge of investigation, he proceeded for place of occurrence and made inspections. He mentioned place of occurrence as a road near to railway crossing of Bhairavpatti Railway Station. He also found crop of maize and Banana plant near to place of occurrence after recording re-statement of informant (PW-9), he also recorded the statement of witnesses during the course of investigation namely, Trilok Kumar, Sanjay Kumar Yadav, Maklesh Yadav, Shiv Chand Lal, Vikram Chand Lal, Uday Kumar Raja, Shankar Yadav and Satya Narayan Yadav and also received the bullet injury which was removed from the body of deceased Nageshwar Yadav at Surya Hospital, Saharsha. He also deposed to collect postmortem report and after completing investigation submitted Charge-Sheet No. 102 of 2018 against accused persons including accused/appellant under Section 323, 341, 307, 506, 302/34 of I.P.C. and 27 of Arms Act.

**23.1** On cross-examination, it was stated that he nowhere mentioned in diary that upon oral instruction of SHO, he went to Saharsha for recording Ferd-e-beyan. It was stated that at the time of occurrence, ASI Ram Charan Prasad and ASI Dinesh Prasad were available at police station. It was also



stated that the information of occurrence was not received in police station on 08.03.2018, thereafter, he stated that at about 7:00 PM through SD (Station Diary) No. 02/22, the information of this occurrence was received in police station and thereafter, he proceeded at 7:00 PM from police station and returned at 10 PM but did not mention said visit in case diary out of negligence. It was stated that he visited place of occurrence on 08.03 but did not find anyone. At this stage, a suggestion was advanced to him by defense which he denied that this is not true as he did not visit place of occurrence on 08.03.2018 and found Chaukidar and family members of deceased. It was stated that they were not disclosed the name of accused persons. He did not find blood at the place of occurrence and also did not find any empty cartridges. It was stated that there was no house near to place of occurrence. It was stated that he did not collect call details report (C.D.R.) of mobiles used by deceased and accused persons. It was stated by him that Shiv Chand Lal (PW-3) did not state before him that when he reached at place of occurrence, he saw accused persons were surrounding Nageshwar Yadav and when co-accused Dhaneshwar Yadav had given order to fire, upon which Pawan Yadav (accused/appellant) fired upon Nageshwar Yadav and he fell down being



unconscious. It was also stated by him that Vikram Chand Lal (PW-4) did not state before him that while he was returning to his home from Bhairavpatti and reached near to railway crossing heard sound of firing and also not stated that found 4 persons running away from the place of occurrence by waving arms in their hands. It was also stated by him that Trilok (PW-7) also not stated before him that he was at residence of his uncle namely Kusheshwar Yadav alongwith his brother-in-law Sanjay Kumar and Jai Chand Lal and also not stated that when he reached at the place of occurrence saw that Shiv Chand Lal, Vikram Chand Lal, Uday Kumar Raja, Maklesh Yadav, Satya Narayan Yadav, Shankar Yadav were lifting his father and brought him to hospital through tempo alongwith other persons. It was also stated by him that Jai Chand Lal (PW-9), who is the informant of this case had not stated before him that during the time of occurrence, he was at the residence of his uncle alongwith Sanjay Yadav and Trilok Kumar and also stated that he did not give statement that his father regained his sense just before Chandni Chowk.

**24.** PW-11 is, Dr. Vijay Shankar, who on 08.03.2018 was posted as director in Surya Hospital, Saharsa. On that day he examined Nageshwar Yadav, aged about 65 yrs.,



C/o- Trilek Kumar at Vill- Ram singh tola ward No. -2  
Madhepura, Distt- Madhepura and found following Injuries on  
his person:-

A) External Injury- Stitched wound on back of chest of  
Left side with charring of skin there was profuse bleeding.

B) Internal Injury-After Initial resuscitation laprotomy was  
done. There was a rent in stomach. Profuse bleeding was present  
from stomach, greater omentum and edges of spleen.

Patient was referred to P.M.C.H., Patna on 09-03-  
2018. He identified his hand-writing and signature on injury  
report, which on his identification exhibited as **Exhibit-2**.

**25.** PW-12 is Dr. Arun Kumar Singh, who was  
posted at associate professor on 12.03.2018 in the department  
F.M.T., P.M.C.H., Patna. On the same day he conducted P.M.  
examination on the dead body of Nageshwar Yadav, S/o- Late  
Khonay Yadav, aged about 64 yrs. Of village- Ram singh tola,  
P.S.- Murliganj, Distt- Madhepura. The body was brought from  
Sai Hospital, Kankarbagh and identified by Chaukidar 2/2  
Hardeo Das and Jai Chand Lal (Son) and Vikram Chand Lal  
(Nephew).

On examination rigor mortis was found all over the  
body, there was no decomposition and following antemortem



external and internal injuries were found:-

A) One stitch wound of 8 1/2 " vertically on front of abdomen in midline, 1 1/4 " below from xiphisternum and 6" above from pubic symphysis

B) One stitch wound of 1/2" on Rt. flank of abdomen for drainage tube, 10 1/2" below from Rt. nipple and 3 1/2" Rt from umblicus

C) One Stitch wound of 1/2" on Lt. flank of abdomen, for drainage tube, 11 1/2" below from Lt. Nipple and 5 1/2" Lt. from umblicus

D) One stitch wound of 1 1/4 " obliquely chest 10" below from Lt. Shoulder tip, 2" left from midline with tattoo mark present in 6" x 5" area on left side of back of wound and on removal of stitch wound there was an entry wound of 3/4" x 1/2" surrounding the stitch size surrounding the entry wound, there was blackening present in 1" diameter with an abrasion of 1/2" x 1/4" produced by projectile(bullet) with continuation of the entry wound, obliquely from lateral to medial and directed downward.

**On dissection:-** Blood mixed with pus was found in the chest and abdominal cavity. Diaphragm was lacerated. Stomach was stitched in 2" length, on postero lateral aspect. 8th



rib on left of chest was found fractured at costo- vertebral junction. In stomach contained about 150 gm reddish pasty material. In general all viscera were found mildly congested. Bladder was empty and stitched.

I) Time Since Death:- 12 to 24 hrs. approx

II) Cause of death:- Infection (Septicemia)

III) Nature of Violence- Fire arm, however opinion regarding injury No. concerned. - 01 to 04 can be obtained from the surgeon. He identified his signature and seal on post-mortem report, which on his identification, was exhibited as **Exhibit-3**.

### **On Cross-Examination**

Septicemia occurs due to bacteria in blood and also due to delay treatment, it may be or may not.

If deceased was standing what will be the direction of entry wound and said question was replied as: "In my P.M report- it is mentioned obliquely from lateral to medial and directed downward."

If ribs will be fractured there will be pain?

Yes, there are so many causes of shock and out of one is due to loss of blood and medical aid is necessary to overcome the shock.

If profuse bleeding occurs from stomach, omentum,



and edges of spleen and fracture of ribs, the patient can overcome the shock, if the age of patient is 65 yrs? Which was answered as:

“Then without medical aid there is less probability to overcome the Shock. I.V./Fluids/bloods/drugs are necessary in medical aid.”

**26.** PW-13 is Triloki Nath Sharma, who produced before Court, the front part of bullet removed from the body of deceased in a sealed box, which was given to him by SHO Murliganj Police Station-cum-Incharge of Warehouse (Malkhana), which was exhibited before the trial court as Material Exhibit No.-1.

**26.1** On cross-examination, it was stated by him that he brought material exhibit from Murliganj Police Station. He also stated that the small box in which bullet is being kept was inside the big box, where both boxes were not sealed.

**27.** On the basis of discussion as made above, it appears that PW-1 and PW-2 became hostile during trial and did not support the case of prosecution. PW-3, namely Shiv Chand Lal claimed himself to be an eye-witness of the occurrence from a distance of 10 *lagga*. He is the own nephew of deceased and stated about inimical terms with accused persons including



appellant/accused. If the version of this witness be taken into consideration he appears claiming to see the occurrence at least from a distance of 100-120 steps, as one lagga is equivalent to 10-12 human hands in term of local measurement unit. He deposed that injured/deceased was surrounded from all four sides by accused persons including accused/appellant. Admittedly, occurrence is of early days of March, at about 6:30 PM, these *prima facie*, factual description creates a preliminary doubt above his version being eye-witness of this occurrence. He is also amongst the persons/witnesses, who accompanied deceased in vehicle (tempo) upto Madhepura Sadar Hospital, but he remains silent on material aspect of oral dying declaration, which was made in said vehicle as per fard-e-beyan of PW-9/ informant. PW-4, namely Vikarm Chand Lal, who is also the nephew of deceased and claimed to be near place of occurrence at a distance of 150-200 yards, when he heard sound of firing and when he went further as close to 50 yards, he saw that PW-3 was lifting the injured/deceased namely, Nageshwar Yadav, who fell down to ground out of receiving bullet injury. Deposition of PW-4, to be present near the place of occurrence, while returning home from Bhairpatti village, appears doubtful in view of deposition of PW-3 that PW-4 came at place of



occurrence only after his raising alarm alongwith Maklesh Yadav, Shankar Yadav, Jay Chand and Trilok. Attention was drawn to PW-3 that he never made statement before police that accused person including accused/appellant were surrounding injured/deceased Nageshwar Yadav and on order of co-accused Rajo Yadav and Dhaneshwar Yadav, accused/appellant fired upon Nageshwar Yadav, where bullet hit to his back, which were denied and affirmed as to give all such statement before police i.e. Investigating Officer (PW-10), whereas, investigating officer before trial court, as PW-10, contradict those versions and stated that PW-3 never stated such statements before him during investigation. Thus, statement of PW-3 is inconsistent to the statement made before the learned trial court, and same appears first time statement made during trial, out of previous enmities arises out of Murliganj P.S. Case No. 52/18. In similar manner attention invited to PW-4 that he had not made any statement before police that he heard the sound of firing while returning home from village Bhairpatti and found accused persons, including accused/appellant running away from place of occurrence, which he denied and affirmed that such statements were given before police, but PW-10, denied to make any such statement by PW-4, during investigation. He also failed to name



informant (PW-9), as to accompanied in tempo with injured/deceased and categorically stated that only Trilok (PW-7), Sanjay (PW-6), Shivchand (PW-3) and Raja (PW-5) were accompanied deceased, and had not stated about presence of informant/PW-9 in said vehicle, as it is apparent from fard-e-beyan, which is Exhibit No. 1. All these substantial part of evidence and inconsistent statement, as discussed above, forced to accept us, both PW-3 and PW-4 as projected eye-witnesses of the occurrence in view of their relation with deceased as own nephew and pending inimical case.

28. Hon'ble Supreme Court in the matter of ***Ramashish Rai v. Jagdish Singh*** as reported in ***2005 Cr. LJ 669 (SC)*** held in Para 7, which is as follows:-

*7.....The High Court discarded the eye witness account branded them as inimical witnesses. This is not the requirement of law. The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well settled principle of law that enmity is a double edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the Court to examine the testimony of inimical witnesses with due caution and diligence. In the present case the High Court has rejected the otherwise creditworthy testimony of eye-witness*



*account merely on the ground that there was enmity between the prosecution party and the accused party.*

29. Now, coming to the second aspect regarding oral dying declaration of injured/deceased, namely, Nageshwar Yadav, which claimed to be made by informant/PW-9, while going in tempo to Madhepura Sadar Hospital is to be considered, whether it is reliable or not, as to record the order of convictions of accused/appellant. It appears from the depositions of PW-9, who is informant of this case that while he was going alongwith his injured deceased father and reached near to Chandni Chowk on the way of Madhepura, it was stated by his father after regaining his consciousness that ***“while he was returning to home from Bairaopatti market and as so he reached near to railway crossing, accused persons including accused/ appellant, namely, Pawan Yadav, Rajo Yadav, Dhaneshwar Yadav, Kundan Kumar and 2-3 unknown persons equipped with arms, who were already hidden thereof, surrounded him and asked him to withdraw the Case No. 52/18 failing which entire members of the family would be killed when he protested them, out of said protest, Pawan Yadav (accused/appellant) fired upon him by pistol, which hit on his back side thereafter, another bullet was fired and subsequently, accused persons including accused/appellant***



***ran away.***

**30.** It is important to note that PW-4 was also accompanied with them in said tempo who had deposed in his examination-in-chief that deceased said only without naming any persons that 2-3 persons were discussing/directing about him over phone. Most interestingly, he stated in his cross-examinations that in said tempo only Trilok (PW-7), Sanjay (PW-6), Shiv Chand (PW-3) and Raja (PW-5) were present and failed to name informant (PW-9) as to be present there. The statement of these two witnesses are entirely different regarding oral dying declaration claimed to be made by deceased Nageshwar Yadav.

**31.** It would be important to reproduce Para-10 of legal report as reported in matter of ***Darshana Devi v. State of Punjab*** reported in ***1995 Supp (4) SCC 126: 1996 SCC (Cri)***  
**38.**

*10..... Even though an oral dying declaration can form basis of conviction, in a given case, but such a dying declaration has to be trustworthy and free from every blemish and inspire confidence. The reproduction of the exact words of the oral declaration in such cases is very important. The difference in the exact words of the declaration in this case detract materially from the value of the oral dying declaration.*



32. It would also be appropriate to reproduce Para-16 of legal report as reported in matter of ***Kushal Rao v. State of Bombay*** reported in ***AIR 1958 SC 22***.

*16) On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made ; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions -and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human, memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the*



*crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.*

**33.** It would be further appropriate to reproduce Para 43, 44 and 62 of legal report as reported in matter of ***Irfan alias Naka vs. State of Uttar Pradesh*** reported in **2023 SCC OnLine SC 1060**.

*43. The juristic theory regarding the acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth.*

*Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason, the requirements of oath and cross-examination are dispensed with.*

*Since the accused has no power of cross-examination, the courts insist that the dying*



*declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, should always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. [See: Laxman v. State of Maharashtra, (2002) 6 SCC 710]*

*44. The mode and manner, in which the dying declarations came to be recorded, is also something which creates a doubt, as regards its truthfulness and trustworthiness. Although, the Investigating Officer says that the recording of the dying declarations was video-graphed and the CD has been exhibited in evidence yet it is very important to determine the evidentiary value of the same.*

*62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -*

*(i) Whether the person making the statement was in expectation of death?*

*(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"*

*(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?*

*(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?*



*(v) Whether the statement was not recorded properly?*

*(vi) Whether, the dying declarant had opportunity to clearly observe the incident?*

*(vii) Whether, the dying declaration has been consistent throughout?*

*(viii) Whether, the dying declaration in itself is a manifestation / fiction of the dying person's imagination of what he thinks transpired?*

*(ix) Whether, the dying declaration was itself voluntary?*

*(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?*

*(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?*

**34. PW-5**, namely, Uday Kumar Raja, who also accompanied deceased in tempo, deposed in his examination-in-chief that he talked with deceased Nageshwar Yadav, who told him without naming any persons that two persons were talking over mobile and were directing. He also stated that injured was firstly, carried up to Jitapur Bazar and from there he was taken in auto up to Sadar Hospital, Madhepura, whereas rest of the witnesses including informant/PW-9 stated that injured deceased was taken to Madhepura by tempo from place of occurrence itself. **PW-6**, who is Sanjay Kumar Yadav deposed that injured/deceased/Nageshwar Yadav stated before them that Rajo



Yadav, Kundan Yadav, Dhani Yadav, Pawan Yadav (accused/appellant) after coming from maize field surrounded him and asked to withdraw the case otherwise will kill him and during hot exchange firing was made by accused/appellant Pawan Yadav. This version is also appearing different *qua* version of injured/deceased as stated by PW-9/informant. This witness also categorically stated in his cross-examinations that tempo was called by him, which came after 15 minutes at place of occurrence and it was owned by one Santosh, who is his co-villager. He also stated that when it was narrated, injured/deceased was in his sense. He also deposed that injured/deceased was conscious at Madhepura Hospital but his statement was not recorded by police during the course of investigation, whereas **PW-7** stated in his cross-examination that after narrating the occurrence near to Chandani Chowk his injured father, after going ahead for 2-3 Km became senseless and he never regained his sense and died. This version also appears in contradiction to the version of **PW-6**, who stated that injured was in sense at Madhepura hospital.

**35.** In view of above factual and legal discussions, it appears that oral dying declarations of injured/deceased/ Nageshwar Yadav comes in different ways from different mouth



of witnesses, loosing its credibility and does not inspire such confidence on the basis of which conviction of accused/appellant can be recorded.

**36.** Moreover, **PW-11**, who is doctor and examined injured at Surya Hospital, Saharsha and operated upon him to remove bullet stated during the trial that patient was in state of shock and after medical aid he recovered from shock which is sufficient to suggest that the statement as claimed to be made by deceased, was not in a fit state of mind. It appears that the injured recovered from shock after treatment, but police personnel, (I.O.), who came to Surya Hospital to record fard-e-beyan of informant/PW-9, had not made any attempt to record the statement of injured/deceased, when deceased was out of shock and in fit state of mind. **PW-10**, who is the investigating officer of this case did not find any blood or empty cartridges at the place of occurrence, he immediately met with family members after the occurrence on 08.03.2018, where the name of accused persons including accused/appellant were not disclosed to him. In view of above discussed evidences, it can be gathered safely that prosecutions failed to establish its case against accused/appellant beyond all reasonable doubts, during the trial.

**37.** Hence, the appeal stands allowed.



**38.** The impugned judgment of conviction dated 09.07.2019 and the consequent order for sentence dated 12.07.2019 passed by the learned Sessions Judge, Madhepura in Session Trial No. 108 of 2018/C.I.S. No. 108 of 2018, arising out of Murliganj P.S. Case No. 80 of 2018 corresponding to G.R. No 399 of 2018, are set aside. The accused/appellant is acquitted of the charges levelled against him. He is directed to be set at liberty forthwith unless his detention is required in any other case.

**39.** LCR, if any, be sent back to learned trial court along with the copy of this judgment. Fine, if any, paid by accused/appellant in furtherance of order of sentence, be refunded to him immediately.

**(Vipul M. Pancholi, J.)**

**(Chandra Shekhar Jha, J.)**

Archana/-

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| AFR/NAFR          | AFR        |
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