

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.261 of 1996

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1. Narayan Sah son of Late Darogi Sah
 2. Yogendra Sah son of Late Darogi Sah
 3. Hari Nandan Sah @ Hiro Sah son of Late Darogi Sah
 4. Shambhu Sah son of Sahdeo Sah

All residents of village Madhelli, Police Station -Singheshwar, District-Madhepura

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Subhro Sanyal, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 23-02-2024

Heard learned counsel for the appellants and learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the aforesaid appellants under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction dated 29.06.1996 and order of sentence dated 01.07.1996 passed by learned 1st Additional Sessions Judge, Madhepura in Sessions Trial No. 136 of 1989 whereby and whereunder appellants, namely, Narain Sah, Yogendra Sah, Hari Nandan Sah and Shambhu Sah



have been convicted under Section 302 read with Section 149 of the Indian Penal Code (hereinafter referred as I.P.C). They have also been convicted under Sections 323, 147 and 447 of I.P.C. The appellants have been sentenced to undergo rigorous imprisonment for life and it was ordered that the period of imprisonment undergone during investigation and trial of the case shall be set off.

3. The prosecution story, in brief, is that on 11th June, 1987 at about 6:00 a.m. the informant Sukh Sagar Paswan along with his brother Raj Kishore Paswan (deceased) and bullocks reached at his field to plough his field. His brother Raj Kishore Paswan started tilling his land and the informant was standing there. In the meantime all accused persons came there with deadly weapons i.e. *lathi*, *fatta*, *farsa* and arrow forming unlawful assembly and accused Darogi Sah questioned about tilling of the land. The informant told that he was tilling his own land, upon which on the command of accused Darogi Sah, the accused Yogendra Sah started beating the informant with *fatta* and Narain Sah, Harinandan Sah, Darogi Sah and Shambhu Sah started beating his brother. Narain Sah inflicted *farsa* blow on the head of the brother of the informant due to which blood started coming out from his head. Thereafter the



informant raised alarm. On alarm, the witnesses and the wife of the informant Radha Devi came there. Radha Devi was also assaulted by accused Narain Sah and Harinandan Sah with *fatta*. Thereafter the accused persons took away bullocks and plough of the informant and ran away towards the village. The informant has stated that the occurrence took place due to previous enmity. The fardbeyan was recorded by ASI, Umesh Prasad Singh in presence of two witnesses at Kaluha O.P. Shankarpur and forwarded the same to SHO Singheswar Police Station who on the basis of the said fardbeyan, Singheshwar P.S. Case No. 99 of 1987 was registered against the accused persons/appellants. During the treatment, Raj Kishore Paswan died in the Hospital. The investigation of the case was carried out by the Investigating Officer (hereinafter referred to as I.O.).

4. After completion of investigation, the police submitted charge sheet against eleven accused persons (out of which proceeding against Shiv Nandan Sah was dropped vide order dated 12.08.1989). Thereafter cognizance was taken on 13.05.1988 against them. The copy of the police papers were supplied to accused persons under Section 207 of Cr.P.C. Since offence under Section 302 I.P.C. is exclusively triable by the Court of Sessions, therefore, the case was committed to the



Court of Sessions on 16.10.1989 and charges were framed by 1st Additional Sessions Judge, Madhepura on 22.08.1992 against the accused persons. The accused persons denied the allegations levelled against them and claimed to be tried. During trial, out of ten accused persons, one Darogi Sah died.

5. In order to substantiate the charges, the prosecution adduced the following oral evidences:

PW-1	Khattar Paswan (Hostile)
PW-2	Ashok Paswan (Tendered Witness)
PW-3	Binhai Paswan (Hostile)
PW-4	Shiv Shankar Paswan (Hostile)
PW-5	Kedar Paswan (Tendered Witness)
PW-6	Radha Devi (wife of informant)
PW-7	Sukh Sagar Paswan (informant)
PW-8	Shiv Shankar Manjhi (I.O.)
PW-9	Dr. K.B. Yadav (Medical Officer who had treated the deceased Raj Kishore Paswan)

6. The prosecution also adduced the following documentary evidences:

(i) Exhibit 1	Informant's signature on fardbeyan
(ii) Exhibit 2	Signature of I.O. on Formal F.I.R.
(iii) Exhibit 3	Injury Report of Raj Kishore Paswan

7. After completion of evidence on behalf of the prosecution, the statements of accused persons under Section 313 of the Cr.P.C. were recorded and they claimed to be innocent.

8. The defence has not produced any evidence either



oral or documentary in support of its defence.

9. At the conclusion of trial, the Trial Court convicted the appellants and sentenced them as aforesaid and acquitted five accused persons of the offences charged. Being aggrieved by the said judgment of conviction and order of sentence, the appellants filed the instant appeal.

10. It will be most appropriate to note the findings given by the learned Trial Court for convicting the accused persons/appellants and sentencing them accordingly.

11. The learned Trial Court in the impugned judgment has given following findings:-

- (i) It is clear that Radha Devi (PW-6) had not seen the occurrence with her own eyes but she had come to the P.O. land immediately after the occurrence and had seen Raj Kishore Paswan fallen and her husband Sukh Sagar Paswan injured.
- (ii) Sukh Sagar Paswan (PW-7) at para 6 of his cross-examination stated that he had not seen the occurrence, with his own eyes because he had hidden himself in a maize field some distance away from the P.O. land.
- (iii) In the beginning Sukh Sagar Paswan (PW-7) was all along with his brother Raj Kishore Paswan and he had seen accused persons coming with *lathi*, *fatta* and *farsa*. PW-7 had clearly stated that he was hit by accused Yogendra Sah and Harinandan Sah @ Hiro Sah with *fatta* and his brother Raj Kishore Paswan was hit by Narain Sah with *farsa*. PW-7 also stated that accused Yogendra Sah had hit the deceased with *fatta* and accused Shambhu Sah



and Darogi Sah had hit the deceased with *lathi*. Therefore, there is clear evidence that accused persons, namely, Narain Sah, Yogendra Sah, Harinandan Sah @ Hiro Sah, Shambhu Sah and Darogi Sah (since dead) took part in assault causing death of Raj Kishore Paswan.

- (iv) From the doctor's report, it is clear that injury on the back part of the head was so severe that it caused injury to the brain substance also leading to the death of Raj Kishore Paswan. It is, therefore, clear that injury was sufficient in ordinary course of nature to cause death.
- (v) It appears from the evidence that the accused persons had formed an unlawful assembly and were armed with deadly weapon such as *farsa* and they had mercilessly attacked Raj Kishore Paswan.
- (vi) The evidence of Radha Devi (PW-6), informant Sukh Sagar Paswan (PW-7) and the doctor (PW-9) inspires confidence and guilty of the aforesaid five accused persons is proved beyond all reasonable and probable doubts.
- (vii) The five accused persons, namely, Jagdish Sah, Jagdish Yadav, Kamal Kishore Sah, Kanik Yadav @ Gajendra Yadav and Ramchandra Sah are entitled to benefit of doubt because no overt act has been attributed against them.

12. Learned counsel for the appellants has submitted that the accused persons are innocent and have wrongly been convicted in this case. He has further submitted that no independent witnesses have supported the prosecution case and pointed out that PWs-1, 3 and 4 were declared hostile, PWs-2



and 5 tendered cross-examination and these witnesses have not supported the prosecution case and the witness PW-6 and PW-7 are Bhabhi and brother of deceased who are interested witnesses and between both the parties, there is land dispute and due to these reasons, the appellants have been falsely implicated. He has next submitted that PW-6 Radha Devi (wife of informant) and PW-7 (Sukh Sagar Paswan who is informant) are not eye witnesses of the occurrence and the Trial Court has also given the said finding. It is further submitted that the prosecution has failed to bring the injury report of the informant and failed to examine the doctor who treated the informant which creates doubt in the prosecution case. He has submitted that the prosecution failed to examine the fardbeyan witnesses. There was no recovery of *lathi*, *farsa*, *fatta*, spear or any other arms allegedly used in the occurrence and the I.O. has not found or collected the blood stained soil from the place of occurrence. He has argued that the doctor (PW-9) has stated that the injuries were caused by hard and blunt substance but as per the prosecution case appellant no.1 Narain Rai had given farsa blow on the head of deceased which does not corroborate the injury report of deceased. He has next submitted that the prosecution failed to prove the post-mortem report of the deceased and also



failed to examine the doctor who conducted the post-mortem and thus cause of death of deceased has not been duly proved and non-examination of the doctor who conducted autopsy of the dead body of victim is fatal for the prosecution case and learned Trial Court failed to consider this vital point.

13. Learned counsel for the appellants argued that the I.O. (PW-8) in his deposition admitted that fardbeyan was not recorded before him. He has admitted that neither the inquest report was prepared nor produced by the prosecution. The statements of PW-7 do not corroborate with the injuries found in the injury report. From the evidence of witnesses, it can be concluded that there are several contradictions/discrepancies between ocular and medical evidence, hence, it may not be proper for the Court to hold the accused persons/appellants guilty and the appellants are liable to be acquitted.

14. On the other hand, the learned Additional Public Prosecutor for the State has submitted that the prosecution has been able to prove its case. The witnesses including the informant and his wife have fully supported the prosecution case. The medical evidence also corroborates the cause of death. It is further submitted that there being no merit in this appeal filed by the accused persons/appellants and the impugned



judgment of conviction and order of sentence are in accordance with law, therefore, the instant appeal is liable to be dismissed.

15. We have carefully perused the records and proceedings and considered the submissions advanced by learned counsel for the parties.

16. The appellate Court is empowered to reappreciate the entire evidence on record for the purpose of ascertaining as to whether the accused persons or any of them had committed any offence or not and if the impugned judgment and order is ultimately found to be clearly unreasonable and perverse then such judgment and order can be set aside by the appellate Court.

17. Before we proceed to notice the rival submissions in order to have a clear understanding of the context in which the submissions on behalf of the parties have been made, it would be apposite to notice the testimony of the prosecution witnesses. Out of nine prosecution witnesses, the independent witnesses PW-1, PW-3 and PW-4 have been declared hostile whereas PW-2 and PW-5 have not supported the prosecution case but tendered themselves for cross-examination. PW-6, Radha Devi is wife of PW-7, Sukh Sagar Paswan who is informant of this case and they are family members of the deceased.



18. PW-6 Radha Devi, who is wife of informant has deposed in her examination-in-chief that at the time of occurrence she was peeling grass in the field. Appellants had assaulted Raj Kishore Sah. She had gone at the place of occurrence and she also received one assault with stick. The injured was taken to Shankarpur Camp and thereafter to Singheshwar Hospital where Raj Kishore Yadav died. The accused persons had taken her one pair bullock plough. In her cross-examination she has stated that on hearing alarm (halla) of assault she went there and found that her brother-in-law and her husband were fallen on the ground. She also stated that after 15 minutes of her reaching, co-villagers came there. She also got injury but she cannot say how the injury was caused.

19. PW-7 Sukh Sagar Paswan, who is the informant of this case has stated that at the time of occurrence he was standing by the side of the field while the deceased Raj Kishore Paswan was tilling the land then appellants and Darogi Sah came having armed with *fatta*, *lathi* and *farsa* and Darogi Sah asked him to go away with plough and bullocks upon which he replied that the land belongs to him and he is in possession of the said land then Narain Sah and Yogendra Sah started beating him (PW-7) and his brother Raj Kishore Paswan. Accused



Yogendra Sah and Harinandan Sah hit him (informant) with *fatta* and the deceased was hit by accused Narain Sah with *farsa* and accused Yogendra Sah hit him with *fatta*. Accused Shambhu Sah hit the deceased with *lathi* due to which his brother got head injury and fell down. Witnesses, namely, Ashok Paswan (PW-2), Shiv Shankar Paswan (PW-4), Khatar Paswan (PW-1), Kedar Paswan (PW-5) and the wife of informant i.e. Radha Devi (PW-6) arrived there to save them. The accused persons fled away with plough and bullocks. Thereafter the informant went to Shankarpur police outpost with his injured brother where his fardbeyan was recorded by the police. He proved his signature marked as Ext.1. His brother Raj Kishore Paswan died in hospital in course of treatment.

20. In cross-examination PW-7 has stated that after sustaining injury he fled away in maize field where he remain 15-20 minutes and then came on place of occurrence then his brother was fallen. He admitted that he had not seen the occurrence with his own eyes and after *mar-pit* witnesses came there.

21. PW-9 is Dr. K.V. Yadav, who was posted at Singheshwar Primary Health Centre as Civil Assistant Surgeon, had examined the deceased Raj Kishore Paswan on 11.07.1987



at about 12:30 p.m. and found the following injuries on the body of the deceased:

- (i) One lacerated wound 1"x1/6" x scalp deep on the posterior aspect of the head.
- (ii) One bruise 3"x3" on the dorsum of left hand.
- (iii) Another bruise 1"x 1/2" on the upper lip and
- (iv) One bruise 5" x 1" on the right side of the back.

22. The doctor has opined that all the injuries were caused by hard and blunt substances within 10 hours from the time of examination. He has further opined that injury no.1 has caused internal injury to the brain substances resulting into his death. All other injuries were simple in nature. This witness has proved his signature on the injury report which was marked as Ext.3. In his cross-examination, he has deposed that injury no.1 can be caused by any hard and blunt substance. Other injuries mentioned in his report may be by another substances also.

23. PW-8 is S.N. Manjhi (one of the I.O. of the case) has stated that the place of occurrence is the field of this informant situated adjacent east to the metaled road at village Maheli. The khata number of the P.O. land is 368 (old) and Khesra No.1474 and area is 2 kathas 6 dhurs. The I.O. found the land tilled in the western part of the land in question and the tilled land was also upset. He further deposed that he was



transferred on 14.02.1988 and so he had made over charge of this case to one Sri Indra Deo Ram and that Indra Deo Ram had submitted charge sheet in this case.

24. In cross-examination, PW-8 has stated that inquest report was not prepared in this case. He has proved the formal F.I.R. (Ext.2). According to this witness, he has identified the writing of fardbeyan by Sri Umesh Singh, A.S.I., which was marked as Ext.4. He has admitted that Radha Devi (PW-6) had not stated that she was peeling grass at the time of occurrence and had not stated about assaulting with *fatta*.

25. It is well settled that the evidence of interested witnesses has to be examined with great care and caution to obviate possibility of false implication or over-implication. In cases involving group enmities, it is not unusual to rope in persons other than who were actually involved. In such a case, court should guard against the danger of convicting innocent persons and scrutinize evidence carefully and if doubt arises, benefit should be given to the accused.

26. The Hon'ble Supreme Court in **Yogesh Singh vs. Mahabeer Singh**, AIR 2016 SC 5160 on the subject interested/inimical witnesses in paragraph nos. 24 to 28 held as under:



“Testimony of Interested/Inimical Witnesses:

24. On the issue of appreciation of evidence of interested witnesses, ***Dalip Singh v. State of Punjab, AIR 1953 SC 364 = 1954 SCR 145***, is one of the earliest cases on the point. In that case, it was held as follows:

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.”

25. Similarly, in ***Piara Singh v. State of Punjab, (1977) 4 SCC 452 : AIR 1977 SC 2274***, this Court held:

“It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence.”

26. In ***Hari Obula Reddy v. The State of Andhra Pradesh, (1981) 3 SCC 675***, a three-judge Bench of this Court observed:

“.. it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny



and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.”

27. Again, in **Ramashish Rai v. Jagdish Singh, (2005) 10 SCC 498**, the following observations were made by this Court:

“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.”

28. A survey of the judicial pronouncements of this Court on this point leads to the inescapable conclusion that the evidence of a closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (See *Anil Rai v. State of Bihar*, (2001) 7 SCC 318; *State of U.P. v. Jagdeo Singh*, (2003) 1 SCC 456; *Bhagalool Lodh v. State of U.P.*, (2011) 13 SCC 206; *Dahari v. State of U.P.*, (2012) 10 SCC 256; *Raju @ Balachandran v. State of Tamil Nadu*, (2012) 12 SCC 701; *Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298; *Jodhan v. State of M.P.*, (2015) 11 SCC 52).

27. In the present case, we find that the witnesses examined by the prosecution i.e. Radha Devi (PW-6) and Sukh



Sagar Paswan (PW-7) who are Bhabhi and own brother of the deceased, respectively have projected themselves as eye witnesses and assigned the role of appellants in the incident but as discussed above, they themselves admitted that they had not seen the occurrence. Accordingly, they are not eye witnesses and their depositions with regard to the role of appellants are not credible. Their relations were also strained with the appellants on account of land dispute. PW-1, PW-3 and PW-4 have been declared hostile by the prosecution. PW-2 and PW-5 tendered cross-examination and they have not supported the prosecution case. The I.O. (PW8) has admitted that neither the fardbeyan was recorded before him nor the inquest report was prepared in this case. The alleged weapons used in the crime were not recovered nor blood stained soil was collected from the place of occurrence. The doctor (PW-9), who had examined the deceased found injuries such as lacerated wounds and bruises caused by hard and blunt substance resulting his death whereas it is alleged that *farsa* blow was given on the head of deceased by appellant no.1, namely, Narain Sah, which does not corroborate the prosecution case. The prosecution has also failed to examine the doctor who had treated the informant and also not proved the injury report of the informant and his wife to prove that they got



injury by the assault of the appellants. Hence, the evidence of the witnesses raises serious doubts about the prosecution story.

28. The prosecution despite opportunity failed to prove the post-mortem through the medical officer concerned by leading oral evidence. It appears from the case-diary available on the record that the I.O received the post-mortem report of deceased Raj Kishore Paswan prepared by doctor A.K. Mandal, CAS, Madhepura Hospital on 18.06.1987 and recorded its contents as stated in paragraph no.83.

29. It is well settled that the post-mortem report or the injury report is not substantive evidence. It has to be proved by the maker of it. The doctor's statement in Court is alone the substantive evidence. The post-mortem report contains the opinion of the Medical Officer whether injuries were post-mortem or ante-mortem, approximate time of death, kind of weapon which was used in causing the injuries. The post-mortem report is obtained by the I.O. during investigation to find out the cause of death. The post-mortem report of doctor is his previous statement based on his examination of the dead body. The post-mortem report can be used only to corroborate his statement under Section 157, or to refresh his memory under Section 159, or to contradict his statement in the witness-box



under Section 145 of the Evidence Act.

30. According to prosecution there is previous enmity between the parties. It is held by the Hon'ble Supreme Court in the case of **Ramashish Rai v. Jagdish Singh (2005) 10 SCC 498**, previous enmity is a double-edged sword. One hand, it provides motive to the crime and on other, there is a possibility of false implication.

31. The law is well settled that when there is no eye witness, then the entire case of prosecution depends upon circumstantial evidence. The circumstances from which the conclusion of guilt is to be drawn should be fully established.

32. The Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116: (AIR 1984 SC 1622)** laid down five golden principles (Panchseel) which govern a case based only on circumstantial evidence and has observed:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as



was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

33. The Hon’ble Supreme Court in a recent judgment,

Pradeep Kumar vs. State of Haryana, AIR 2024 SC 518 in

paragraph 28 has quoted the aforesaid judgment and observed:

“28. In a recent decision, Pritinder Singh v. State of Punjab, (2023) 7 SCC 727 : (AIR Online 2023 SC 575) one of us (Justice Gavai) has taken note of the judgment in Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116: (AIR 1984 SC 1622) and observed:

17. It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned “must or should” and not “may be” established. It



has been held that there is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". It has been held that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

18. It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. In the light of these guiding principles, we will have to consider the present case."

34. Applying the aforesaid principle in the fact and circumstances of the case and analysing the evidence and testimonies of witnesses it is clear that PW-6 and PW-7 are not eye-witnesses of the incident and injury report of deceased does not corroborate the prosecution case and there is a yawning gap between the charge against the appellants and the evidence that prosecution had adduced. The prosecution failed to prove the cause of death by not proving the post-mortem report of deceased and failed to examine the doctor who had conducted the autopsy without any valid reason. Non-examination of material witnesses in trial is also fatal to the prosecution to



establish the guilt of appellants at all.

35. In the light of above discussions and taking into consideration the facts and circumstances of the case and the evidences available on record, we are of the considered view that the prosecution has miserably failed to prove the charges levelled against the accused/appellants beyond all reasonable doubts thereby entitling the accused/appellants for acquittal.

36. In the result, the instant appeal deserves to be allowed and is allowed with the following orders:

I. The appeal is allowed.

II. The impugned judgment of conviction dated 29.06.1996 and order of sentence dated 01.07.1996 passed by learned 1st Additional Sessions Judge, Madhepura in Sessions Trial No. 136 of 1989 thereby convicting the appellants and sentencing them, accordingly, is set aside.

III. The appellants are acquitted of the charges levelled against them and held to be proved against them by the learned Trial Court.

IV. The appellants, who are on bail, are discharged from liabilities of their bail bonds and sureties.

37. The aforesaid appeal, accordingly, stands disposed of.



38. The Trial Court records of the instant appeal be returned to the Trial Court forthwith.

39. Interlocutory application(s), if any, also stand(s) disposed off, accordingly.

I agree
Arvind Srivastava, J

(Sunil Dutta Mishra, J)

(Arvind Srivastava, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	11.12.2023
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