

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1464 of 2018

Arising Out of PS. Case No.-55 Year-2015 Thana- SALAKHUA District- Saharsa

1.

Sakal Sharma, S/o Late Ram Deo Sharma, Resident of village- Raithi Sharma Tola, P.S.- Salkhua, District- Saharsa.
2.

Manohar Sharma, S/o Jago Sharma, Resident of Village-Raithi Sharma Tola, P.S. Salkhua, Distt.-Saharsa.
3.

Pappu Yadav, S/o Suresh Yadav, Resident of Village-Kabira, P.S. Salkhua, Distt.-Saharsa.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1465 of 2018

Arising Out of PS. Case No.-55 Year-2015 Thana- SALAKHUA District- Saharsa

Bhumi Sharma, S/o Late Bindeshwari Sharma, R/o Village-Raithi, P.S. Salkhua, Distt.-Saharsa.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 1464 of 2018)

For the Appellant/s : Mr. Shiva Shankar Sharma, Advocate
Mr. Arun Kumar Sinha, Advocate
Mr. Pankaj Kumar, Advocate

For the Respondent/s : Mrs. Usha Kumari No-1, Spl.PP

(In CRIMINAL APPEAL (DB) No. 1465 of 2018)

For the Appellant/s : Mr. Shiva Shankar Sharma, Advocate
Mr. Arun Kumar Sinha, Advocate
Mr. Pankaj Kumar, Advocate

For the Respondent/s : Mrs. Usha Kumari No-1, Spl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 06-09-2024

Heard learned counsel for the appellants and learned
Special Public Prosecutor for the State in both the appeals.

2. Both the criminal appeals are arising out of the judgment of conviction (hereinafter referred to as the 'impugned judgment') and the order of sentence (hereinafter referred to as the 'impugned order') dated 28.11.2018 and 30.11.2018 respectively passed by learned Additional Sessions Judge I-cum-Special Judge, Saharsa (hereinafter referred to as the 'learned trial court') in S.T. No. 274 of 2015 arising out of Salkhua (O.P. Chiraiya) P.S. Case No. 55 of 2015 whereby and whereunder the appellants have been convicted for the offences punishable under Sections 120-B, 148 and 302/149 of the Indian Penal Code (in short 'IPC') and further Bhumi Sharma (appellant in Cr. Appeal (DB) No. 1465 of 2018) has been convicted for the offence punishable under Sections 25(1-b)a and 27 of the Arms Act. All the appellants have been ordered to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each under Section 302/149 IPC. Further, under Section 120B IPC, appellants have been ordered to undergo life imprisonment with a fine of Rs.10,000/-. They have also been ordered to undergo rigorous imprisonment for three years under Section 148 IPC. Further, under Section 3(2)(v) SC/ST (Prevention of Atrocities) Act, they have been ordered to undergo rigorous imprisonment for life with a fine of Rs.10,000/-. Bhumi Sharma (appellant in Cr. Appeal (DB) No. 1465 of 2018) has also been

ordered to undergo rigorous imprisonment for three years with a fine of Rs.3000/- under Section 25(1-b)a of the Arms Act and further three years' rigorous imprisonment with a fine of Rs.3000/- under Section 27 of the Arms Act. In default to pay a fine of Rs.10,000/-, the convicts shall undergo four months simple imprisonment and in default of payment of fine of Rs.3000/-, one month simple imprisonment. All the sentences are to run concurrently.

Prosecution Case

3. Fardbeyan of informant Kala Devi (PW-5) was recorded on 27.03.2015 at 14:30 hours by S.I. K. K. Bhatt of Chiraya O.P. (Salkhua Police Station) in village Raithi in which she alleged that on 27.03.2015 at about 9:00 am when she was at her residence, Narayan Chaudhary who is her cousin brother came raising alarm that Vikesh Chaudhary has been encircled by some miscreants then the informant with her family members as also villagers started running towards the house of Bhumi Sharma, at that time sound of indiscriminate firing was heard and when they reached nearer then (1) Ashok Yadav, (2) Pappu Yadav, (3) Kamli Yadav, (4) Umesh Yadav, (5) Suro Yadav, (6) Mukho Yadav, (7) Ranbir Yadav, (8) Krishnadev Yadav, (9) Buddhi Sah, (10) Narayan Sah, (11) Pramod Sah, (12) Shankar Sah, (13) Bhumi

Sharma, (14) Manohar Sharma, (15) Dharmdev Sharma, (16) Shambhu Sharma, (17) Sakal Sharma were escaping having firearms who were identified by her and the villagers. When the informant reached at the house of Bhumi Sharma then she saw that Vikesh Chaudhary is lying in dead condition and one villager Kedar Ram is also lying dead there. She found six empty cartridges near the dead body of Vikesh Chauhdary and blood was oozing out from his stomach, back, head and waist and in the same manner, blood was also oozing out from the stomach and waist of Kedar Ram. The informant claimed that her one son Rajesh Kumar Chaudhary is the Mukhiya of Kabish Panchayat and Krishnadev Yadav of Belahi was not liking that he would become mukhiya and for that reason, Vikesh Chaudhary and villager Kedar Ram were called by the above named armed men near the house of Bhumi Sharma and killed them after encircling him by firing indiscriminately upon them.

4. The *fardbeyan* of the informant (PW-5) resulted in registration of formal FIR *vide* Salkhua (Chiraiya O.P.) P.S. Case No. 55 of 2015 dated 27.03.2015 under Sections 147, 148, 149, 302, 120B IPC, Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act and Section 25(1-b)a, 26, 27 of the Arms Act. After investigation, police submitted chargesheet being chargesheet no.

136 of 2015 dated 30.06.2015 against 10 accused, namely, (1) Bhumi Sharma (2) Ranvir Yadav, (3) Suro Yadav, (4) Kamli Yadav, (5) Pappu Yadav, (6) Umesh Yadav, (7) Mukho Yadav, (8) Manohar Sharma, (9) Dharmdev Sharma and (10) Sakal Sharma. On the basis of this chargesheet, learned Additional Chief Judicial Magistrate-II, Saharsa took cognizance on 28.10.2015 against these 10 accused persons. Accordingly, after commitment, Sessions Trial No. 274 of 2015 was registered on 06.11.2015 and the record was transferred to the court of learned Additional Sessions Judge-I, Saharsa for trial and disposal. The charges were explained to the accused-appellants who pleaded not guilty and claimed to be tried. The learned trial court framed charges under Section 148, 302/149, 120B IPC, Section 25(1-b)(a), 27 of the Arms Act and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act against the 10 accused persons vide order dated 03.12.2015.

5. In course of trial, the prosecution examined as many as 22 witnesses and brought some documentary evidences. The name of the prosecution witnesses and the documents exhibited on behalf of the prosecution are mentioned hereinbelow in tabular form:-

List of Prosecution Witnesses

Sl. No.	Prosecution Witnesses
I	Satyanand Chaudhary
II	Sudhir Chaudhary
III	Chamru Chaudhary

IV	Deelip Chaudhary
V	Kala Devi
VI	Narayan Chaudhary
VII	Pranav Kumar
VIII	Jagdish Sada
IX	Birendra Yadav
X	Khurkhur Singh
XI	Phulo Devi @ Phulwanti Devi
XII	Sunil Ram @ Sulendra Ram
XIII	Sadan Ram
XIV	Pavitri Devi
XV	Rajendra Ram
XVI	Dr. Nand Kumar Sada
XVII	Rajesh Kumar Chaudhary
XVIII	Krishna Kumar Bhatta
XIX	Vinod Kumar Mishra
XX	Ranjo Devi
XXI	Kapildev Singh
XXII	Satto Ram

List of Exhibits

Ext. -1	Signature of Sudhir Choudhary on seizure list	Prosecution	17-03-16	Without objection	Sd/- 1 st A.D.J 17.03.16
Ext. 2	Signature of Kala Devi on fardbeyan	“	04-05-16	“	Sd/- 1 st A.D.J.
Ext. 3	Post Mortem report of Kadar Ram	“	21-10-16	“	
Ext. 3/1	Postmortem report of Vikesh Choudhary	“		“	Sd/- 21.10.16
Ext. 1/1	Seizure list	“	14-02-17	“	
Ext. x	Inquest report of Bikesh Choudhary in carbon copy	“	“	“	
Ext. x/1	Inquest copy of Kedar ram in carbon copy	“	“	“	Sd/- 1 st A.D.J. 14.02.17
Ext. 2/1	Fardbeyan (Written petition)	“	“	“	
Ext. -4	Formal F.I.R	“	“	“	
Ext.- 5	Parchari parwar purniya order in carbon copy	“		“	

Ext.- 6	Inquest report in signatur of Binod Kr. Mishra & Krishna kr Bhatta	“		“	
Ext. - 7	Confessional statement	“		“	Sd/- 1 st A.D.J. 14.02.17
Ext.- 8	Charge Sheet	“	03-03-17		Sd/- 1 st A.D.J. 03.03.17
Ext.- M to M/VII	सहरसा थाना से लाये गये पैकेट में एक जिन्दा कारतूस एवं सात खोखा जिसे प्रदर्श होने के पश्चात अस्पष्ट गया, करने हेतु वापस किया।	“	17-05-17	“	
Ext.- 9	परिचारी प्रवर, पूर्णिया विनोद कुमार मिश्र द्वारा थाना अध्यक्ष सलखुआ को दिये गये प्रतिवेदन	“		“	Sd/- 1 st A.D.J. 17.05.17
Ext.- 10	Signature of Satto Yadav on inquest report	“	22-09-17	“	Sd/- 1 st A.D.J. 22.09.17

Findings of Trial Court

6. The learned trial court, after analysing the evidences of prosecution witnesses held that none of the witnesses of prosecution claimed to have seen the occurrence of killing. The Informant (PW-5) upon hearing cried, reached to the house of Bhumi Sharma (appellant in Cr. Appeal (DB) No. 1465 of 2018) and saw the blood drenched and killed bodies of Vikesh Chaudhary and Kedar Ram. The police recovered two dead bodies along with six empty cartridges from the place of occurrence. Further recovered one each a live and empty from the almirah at the place of occurrence. The learned trial court found that appellant Bhumi Sharma confessed his guilt saying that he had a

land dispute and enmity with deceased Vikesh Chaudhary and he hatched a conspiracy with gangster Ramanand Yadav to take revenge. The learned trial court found that the informant identified three accused persons, namely, Pappu Yadav, Sakal Sharma and Manohar Sharma (appellants in Cr. Appeal (DB) No. 1464 of 2018) as amongst the culprits involved in the occurrence. Further, the learned trial court found that Satyanand Chaudhary (PW-1), the FIR attesting witness also identified Pappu Yadav, Sakal Sharma and Manohar Sharma (appellants in Cr. Appeal (DB) No. 1464 of 2018) as amongst the culprits involved in the occurrence.

7. Learned trial court further found that appellant Bhumi Sharma stored arms and ammunition in his house and planned and hatched a conspiracy with Manohar Sharma, Sakal Sharma and Pappu Yadav to kill the deceased who belonged to the Scheduled Castes. Accordingly, learned trial court held that the prosecution has been able to bring home the charges against the appellants named above.

Submission of the Appellants.

8. Mr. Shiva Shankar Sharma, learned counsel for the appellants has submitted before this Court that in this case, altogether 10 accused were charged for the offences punishable under Sections 120B, 148 and 302/149 IPC, 25(1-b)a and 27 of the

Arms Act and 3(2)(v) of SC/ST (Prevention of Atrocities) Act. Out of 10 accused who faced the trial, 6 have been acquitted and 4 accused persons have been convicted for the offences punishable under Sections 120B, 148 and 302/149 IPC, 25(1-b)a and 27 of the Arms Act and 3(2)(v) of SC/ST (Prevention of Atrocities) Act who are before this Court in these two appeals.

9. Learned counsel submits that from the *fardbeyan* of the informant of Kala Devi (PW-5) recorded on 27.03.2015 at 14:30 hours, it would appear that the occurrence took place on the same day at 09:00 am. 17 persons were named in the *fardbeyan* but after investigation only 10 persons were chargesheeted.

10. Learned counsel submits that Satyanand Chaudhary (PW-1) has stated that Shambhu Sharma had taken his brother (deceased) to the house of Bhumi Sharma. One person came from the house of Bhumi Sharma and told him that firing has taken place there, whereafter he along with his mother, sister and villagers from the Tola went there and found that the persons who had been involved in firing were fleeing away. In his examination-in-chief, he has not named Bhumi Sharma amongst others who were identified by him while fleeing away. Learned counsel submits that PW-1 has stated that his deceased brother was an accused in a murder case and in his statement before the

Investigating Officer, he had not disclosed the name of the accused persons.

11. Learned counsel further submits that PW-2, PW-3 and PW-4 have been declared hostile as they did not support prosecution case. Kala Devi who is the informant of this case has been examined as PW-5. She has stated in her examination-in-chief that she had identified the accused persons armed with rifle and they were fleeing away. She had gone to the house of Bhumi Sharma after getting information that Vikash has been surrounded by the miscreants. On reaching there, she found him lying dead and 5-6 empty cartridges were there. She has earlier stated that Kedarnath was also found dead. In her cross-examination, out of 9 accused persons who were standing in the dock, she identified Pappu Yadav, Sakal and Manohar. She did not identify the other six persons. She has stated that though she had lodged the case against 17 persons but she had not seen those 17 persons fleeing away and she had lodged the case on suspicion. Learned counsel submits that in her cross-examination, in paragraph '5', she has stated that she cannot say whether the murder had taken place at the house of Bhumi Sharma or that Bhumi Sharma was involved in the murder of her son. She has stated that the deceased was falsely implicated in the murder case of Naresh.

12. Learned counsel has further submitted that Narayan Chaudhary (PW-6) who is said to be the cousin brother of PW-5 and had informed that her son had been surrounded by the miscreants has not supported the prosecution case as he has turned hostile. Similarly, PW-7, PW-8, PW-9 and PW-10 have become hostile.

13. Learned counsel submits that Phulo Devi @ Phulwati Devi (PW-11) is the wife of Late Kedarnath. In paragraph '4' of her deposition, she had denied to have stated before police that she had heard about the accused fleeing away. It is stated that she had heard the sound of firing and half an hour thereafter she had reached the place of occurrence which was situated at a distance of half kilometer from her house. She has though denied the suggestion of the defence that she stated before police that she had heard about the accused persons from the people and she had not seen the occurrence. From her deposition, it is evident that the occurrence had taken place at a distance of half kilometer from her house and at the time of occurrence, she was in her house, when she heard the sound of firing, therefore, she has neither seen the occurrence nor could have seen the accused persons fleeing away from the place of occurrence.

14. Sunil Ram @ Sulendra Ram (PW-12) is the son of one of the deceased Kedarnath, he has not named Bhumi Sharma in his examination-in-chief. He has stated in paragraph '4' of the deposition that he had not seen the actual occurrence of killing. He had reached to the house of Bhumi Sharma within 5-10 minutes but after reaching there, no one from his family such as Satto Ram, Sadan Ram or any other had reached. They reached there two minutes after his reaching to the place of occurrence. PW-12 has stated that the family members of deceased Vikesh had reached five minutes after his reaching to the place of occurrence. It is submitted that from the evidence of PW-12, it is evident that neither he had seen the occurrence the informant (PW-5) who is the mother of the deceased had seen the occurrence or had seen who were fleeing away from the place of occurrence.

15. Sadan Ram (PW-13) is not a witness to the facts and circumstances of the case. He has stated that he came running after hearing the sound of firing. He has not named any of the accused. He has stated that police has obtained his signature on blank sheet of paper. It is submitted that PW-14 and PW-15 both have been declared hostile as they did not support the prosecution case.

16. Dr. Nand Kumar Sada (PW-16) was posted at Sadar Hospital and he had conducted the autopsy on the dead body on

28.03.2015. He has described the injuries present on the dead body and at his instance, post-mortem reports have been proved as Exhibit '3' and Exhibit '3/1' respectively.

17. Rajesh Kumar Chaudhary (PW-17) is the brother of the deceased Vikesh Kumar, According to his mother (PW-5) her all other sons were outside the village on the date of occurrence. PW-17 has admitted that he was outside his village on 27.03.2015 when the occurrence took place. He has stated in paragraph '3' that later on, he came to know that 10 persons were falsely implicated in the case.

18. Krishna Kumar Bhatt (PW-18) is the I.O. of the case. He had taken the charge of the investigation of the case. He had prepared the inquest reports which have been marked 'X' for identification. He had also prepared the seizure list which has been marked Exhibit '1/1' and the *fardbeyan* which is Exhibit '2/1'. The I.O. (PW-18) has stated in his deposition that he had recorded criminal antecedents of the deceased in paragraph '432' of the case diary. He has further stated that all the witnesses had stated about hearing of the sound of firing and seeing the accused persons fleeing away. Nobody had claimed to have seen the occurrence. Binod Kumar Mishra, PW-19 is another witness who has produced the material exhibit which has been marked as Exhibit 'D' etc.

19. Ranjo Devi (PW-20) is the wife of the deceased Vikesh. She is also not a witness to the actual occurrence.

20. Learned counsel submits that from the evidence of the prosecution witnesses, it would appear that none of the witnesses has claimed to have seen the actual occurrence. In this regard, this Court has been taken through the observations of the learned trial court in paragraph '6' of the impugned judgment wherein it has been categorically recorded that none of the witnesses of the prosecution claim to have seen the occurrence. It is, further, submitted that the learned trial court has completely erred in relying upon the confessional statement of Bhumi Sharma by exhibiting the same as Exhibit '7'. It is submitted that the confessional statement (Exhibit '7') was not admissible in evidence, therefore, no reliance could have been placed upon the same.

21. It is lastly submitted that from the entire evidence on the record, it would appear that the only one circumstance which have been stated by some of the prosecution witnesses is that they had seen the accused persons fleeing away from the place of occurrence. The submission is that if 17 persons were seen fleeing away, any of the witnesses could have only seen the back (पीठ) of the accused and it would not be possible to identify them with all

certainty. The prosecution witnesses are highly inconsistent on the point of identification of the accused persons, hence, the conviction of the appellants on the basis of the circumstantial evidences without connecting the criminological chain would not be safe.

22. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Datar Singh vs. State of Punjab** reported in **AIR 1974 SC 1193** (paragraph '3') to submit that the judicial process can only operate on the firm foundation of actual and credible evidence. In this case, the prosecution has failed to place on record credible evidence to prove all the circumstances and chronological chain of evidence leading to a firm conclusion that the appellants are guilty of commission of the offences.

Submission on behalf of the State

23. Mrs. Usha Kumari No. 1, learned Special Public Prosecutor, has appeared on behalf of the State and assisted this Court. Learned Special P.P. has made efforts to defend the prosecution case and the judgment of the learned trial court. It is submitted that even though some of the prosecution witnesses have not taken name of Bhumi Sharma in their examination-in-chief, it would appear that the learned trial court has rightly

concluded that the circumstances are speaking that the accused persons on trial Bhumi Sharma, Manohar Sharma, Sakal Sharma and Pappu Yadav got stopped and killed both the deceased persons in the house of the accused Bhumi Sharma.

24. Learned Special P.P. has submitted that admittedly there was no eyewitness to the occurrence of killing and none of the prosecution witnesses have supported the *fardbeyan* to the extent that there were seventeen accused persons who had been involved in committing the occurrence, still the conviction of the appellants on the basis of circumstantial evidences would be sustainable.

Consideration

25. We have heard learned counsel for the appellants and learned Special Public Prosecutor for the State as well as perused the trial court's records.

26. In the present case, the learned trial court has recorded a finding in paragraph '6' of the judgment under appeal that none of the witnesses for prosecution claimed to have seen the occurrence of killing. In the trial court as well as before this Court, the learned Special Public Prosecutor has admitted that there being no eyewitness to the occurrence of killing, the prosecution case is based on circumstantial evidences. Keeping in view the findings of

the learned trial court and the submissions of learned counsel for the appellants and learned Special Public Prosecutor for the State, this Court would examine as to whether on the basis of the evidences on the record, it may be safely concluded that the prosecution has been able to prove its case beyond all reasonable doubts and the criminological chain of events leading to the death of Vikesh Chaudhary and Kedar Ram is complete. This Court is reminded of the judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in **(1984) 4 SCC 116**. Paragraph '152' of the said judgment is being reproduced hereunder for a ready reference.

“152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh*¹.

“This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh*¹⁷ and *Ramgopal v. State of Maharashtra*¹⁸. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case*¹: “It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be

1. 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129
17. (1969) 3 SCC 198 : 1970 SCC (Cri) 55
18. AIR 1972 SC 656 : (1972) 4 SCC 625

consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.””

27. In the case of Dilavar Hussain and Others versus the State of Gujarat and Another reported in **(1991) 1 SCC 253**, once again the Hon’ble Supreme Court has laid down the principles governing appreciation of circumstantial evidences. Paragraphs ‘3’ and ‘4’ of the judgment in the case of **Dilavar Hussain** (supra) reads as under:-

“**3.** All this generated a little emotion during submissions. But sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty. Although guilty should not escape (*sic*). But on reliable evidence, truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution however abhorrent and hateful cannot reflect in deciding the guilt.

4. Misgiving, also, prevailed about appreciation of evidence. Without adverting to submissions suffice it to mention that credibility of witnesses has to be measured with same yardstick, whether, it is ordinary crime or a crime emanating due to communal frenzy. Law does not make any distinction either in leading of evidence or in its assessment. Rule is one and only one namely, whether depositions are honest and true. Whether the witnesses, who claim to have seen the incident in this case, withstand this test is the issue? But before that some legal and general questions touching upon veracity of prosecution version may be disposed of.”

28. To bring home the guilt, the prosecution in the present case would be required to prove the presence of the witnesses, possibility of seeing the incident by them and identification of the appellants.

29. In the present case, although altogether twenty two witnesses have been examined on behalf of the prosecution but it is evident from the records that most of the prosecution witnesses have turned hostile. This Court has taken note of it in the various paragraphs recorded under the heading “Submission of the Appellants”. We find that PW-5 Kala Devi is the informant of this case and she is mother of Vikesh Chaudhary (deceased) Phulo Devi @ Phulwati Devi (PW-11) who is wife of late Kedar Ram and Sunil Ram @ Sulendra Ram (PW-12). Son of the deceased Kedar Ram had neither lodged case nor signed the *fardbeyan* of the informant (PW-5) as attesting witnesses.

30. The informant (PW-5) has stated in her *fardbeyan* recorded on 27.03.2015 at 14:30 hours that she had received information from her cousin brother Narayan Chaudhary (PW-6 - declared hostile) that Vikesh Chaudhary has been surrounded by miscreants. In her examination-in-chief, PW-5 has stated that when her son was repairing truck at his door, Shambhu Sharma came and called her son and took him away. She has reiterated that Narayan Chaudhary (PW-6) had come raising *hulla* that Vikesh Chaudhary has been surrounded by the miscreants. Even as PW-6 has not supported PW-5, all that would appear from this part of her testimony that she has not named any of the appellants as either the persons who had taken away her son from his door nor that her son was inside the house of Bhumi Sharma. Her statements would rather show that Vikesh was surrounded by the miscreants. Narayan Chaudhary (PW-6) had not stated her about the name of those persons/miscreants who had surrounded Vikesh.

31. In her *fardbeyan* (Exhibit '2'), PW-5 has stated that after hearing from PW-6, she and other members of her family rushed towards the house of Bhumi Sharma and at this point she heard sound of repeated firing and when she reached nearer, she saw the accused persons (she has named seventeen persons in the *fardbeyan*) armed with big weapons (firearms) fleeing away. In her

examination-in-chief, she has stated that when she reached at the house of Bhumi Sharma, she found that all were armed with rifle and (i) Ashok Yadav, (ii) Pappu Yadav, (iii) Sambhu Sharma, (iv) Narayan Sah, (v) Budhi Sah, (vi) Sabal Sharma and (vii) Manohar Sharma were fleeing away from there. She found that her son was lying dead and five-six empty cartridges were there. Kedar Ram was also lying dead. In paragraph '3' of her cross-examination, PW-5 has stated that she had lodged the case against seventeen persons but she had not seen them fleeing away and she had given their names on suspicion. From her examination-in-chief, it is evident that she had not named Bhumi Sharma who is one of the appellants before this Court.

32. From the evidence of PW-1, who is wife of Kedar Ram, it would appear that this witness heard the sound of firing while she was cooking in her house at 9:00 AM. She has stated that when she reached Salma Tola, she found Kedar Ram and Vikesh Chaudhary lying dead. She has stated that Pappu Yadav, Ashok Yadav, Bhumi Sharma, Dharamdev Sharma, Satan Sharma, Shambhu Sharma, Manohar Sharma, Budhi Shah, Pramod Shah and two others were fleeing away after killing. From her examination-in-chief, it appears that she had seen eleven persons fleeing away whereas PW-5 has stated about seven persons only. In her cross-examination, PW-11 has stated that her house is situated at a

distance of *aadha 'kosh'* (one kosh is equal to 3 kilometer or 1.91 miles) and she had reached the place of occurrence half an hour after hearing the sound of firing. This Court finds that 'Kosh' is a Sanskrit word used in Ancient India as a measure for distance. It is not possible that this witness could have heard the sound of firing from 1.5 K.M.

33. She had not heard the sound of firing after leaving her house. She was suggested that in her statement before Police she had stated that she had heard about the accused fleeing away but she had not seen them personally. On this point I.O. (PW-19) has stated that none of the witnesses had claimed before him that they had seen the accused persons killing the deceased. The I.O. has stated that none of the witnesses told him that from how far they had seen the accused persons fleeing away.

34. When the son of the informant was examined as PW-1, he has stated that Shambhu Sharma had taken away his brother to the house of Bhumi Sharma and one person from the house of Bhumi Sharma had come to inform that firing has taken place, on which he, his mother, sister and people from *tola* had gone to see and found that the people who were involved in firing were fleeing away. He has named Ashok Yadav, Pappu Yadav, Pramod Shah, Budhi Shah, Narayan Shah, Shankar Shah, Manohar Sharma, Sakal Sharma and Shambhu Sharma. This witness has not named Bhumi

Sharma. In his cross-examination, he has stated that his house is situated at a distance of 3/4 kilometer, thus it is evident that the house of the informant is situated at a distance of more than half kilometer and little less than one kilometer from where she claims to have heard the sound of firing. In paragraph '3' of his cross-examination, he has stated that he had seen the accused persons fleeing away when they were at a distance of 3/4 kilometer from the place of occurrence, thus if the evidence of PW-1 is appreciated it would be found that he is claiming to have seen the accused persons fleeing away from the same distance at which his house is situated from the place of occurrence. In paragraph '4' of his cross-examination, PW-1 has stated that his mother had lodged case against seventeen persons, he had identified about nine persons. He identified three accused, namely, Manohar Sharma, Sakal Sharma and Pappu Yadav but PW-1 could not identify the other seven accused persons who were present in court including Bhumi Sharma.

35. The evidence of Sunil Ram @ Sulendra Ram (PW-12) who is son of the deceased Kedar Ram would show that in his examination-in-chief, he has stated that on 27.03.2015 at 9:00 AM he was engaged in harvesting the wheat crop, he had heard 8-10 round of firing. After the firing stopped, he stood up and found that firing had taken place from the side of house of Bhumi Sharma,

Kedar Sharma and Vikesh Chaudhary were lying in pool of blood at the house of Bhumi Sharma. He had seen Ashok Yadav, Pappu Yadav, Shambhu Sharma, Ram Sakal Sharma, Manohar Sharma, Budhi Sharma, Pramod Shah and Shankar Shah fleeing away. In his cross-examination when he was asked to say that in which plot he was harvesting the crop, he claimed that he was harvesting the crop in his own plot but he could not say the area of the plot, he changed his statement and said that he had taken the land on *batai* from Ram Raj Shah (not examined). He has stated that he has no paper of *batai*. He has stated that nobody else in the neighboring plots was engaged in harvesting the crop. In his cross-examination, PW-12 has stated that he had not seen the accused persons fleeing away from the wheat plot to the house of Bhumi Sharma, when he reached Kedar and Vikesh were lying dead and blood was there, he had not seen the accused persons killing. He has stated that the distance from the wheat plot to the house of Bhumi would be at a distance of 8-10 minutes. Nobody else from his family had come after reaching him, they reached two minutes after this witness reached there and the family members of Vikesh came five minutes after he reached there. In a village, a distance covered by a normal villager in 8-10 minutes would not be less than 1.5 K.M. If it took 8-10 minutes to this witness in reaching the place of occurrence, it

cannot be believed that he could have heard the sound of firing from the wheat plot.

36. This Court has dealt with the evidence of material witnesses hereinabove. It is evident from their evidence that these witnesses were not present at the place of occurrence when the firing took place. The distance at which they were in their house is ranging from $\frac{3}{4}$ th of a kilometer to 1.5 kilometer from the place of occurrence, therefore, the claim of these witnesses that they had gone to the place of occurrence and had seen the accused persons fleeing away from the place of occurrence would not be believable. PW-5 initially named seventeen persons in the FIR, later on she identified only seven persons even as no TIP was conducted and her son (PW-1) has stated that some of the accused persons were wrongly named in the FIR. PW-5 has herself stated that she had not seen seventeen persons fleeing away and had taken their names on suspicion. We find that the informant has implicated large number of persons on mere suspicion.

37. To this Court, it appears that these prosecution witnesses have not seen either the actual occurrence or the accused persons fleeing away from the place of occurrence.

38. The learned trial court has convicted these appellants by believing that the prosecution witnesses had rushed to the house of Bhumi Sharma and they had seen the accused persons fleeing

away. This Court finds that there is an admission of PW-5 and her son (PW-1) that some persons were wrongly implicated and named in the F.I.R.

39. We are afraid that the learned trial court has not appreciated the entire prosecution evidence in the broad spectrum of the materials available on the record. The material inconsistencies, false implication of the persons and naming them on mere suspicion are evident from the evidence of the prosecution witnesses. The presence of the prosecution witnesses even at the stage of fleeing away of the accused persons would be highly doubtful. The tendency to implicate as many as seventeen persons and then saying that some of them were wrongly named in the FIR are such conduct of the informant which will take away the credibility of their evidence and it would not be safe to convict the appellants on the basis of mere oral testimony that they had seen the accused fleeing away. Even if this is taken to be one of the circumstances, it would not complete the chain of criminological events and the prosecution cannot pass the test of 'why', 'where', 'when', 'how' and 'who'. The fact remains that what has been held by the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda (supra)** and **Dilavar Hussain (supra)** as the principles of *Panchseel* governing a case of circumstantial evidence is completely missing in this case.

40. In result, we set aside the judgment of the learned trial court and acquit the appellants of the charges giving them benefit of doubt. The appellants Sakal Sharma, Manohar Sharma and Bhumi Sharma are on bail, hence they are discharged from the liability of their bail bonds.

41. The appellant Pappu Yadav in Cr. Appeal (DB) No. 1464 of 2018 is in incarceration, hence he would be released forthwith, if not wanted in any other case.

42. The learned trial court records along with a copy of this judgment be sent to the learned court below.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

SUSHMA2/-

AFR/NAFR	
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