

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.407 of 2021

Arising Out of PS. Case No.-291 Year-2015 Thana- BARHARA District- Bhojpur

AWADHESH BIND S/O LATE PAROJAN BIND @ PAROJAN
CHAUDHARY R/O VILLAGE-MAHUDHI, BIND TOLI, P.S-BARHARA,
DISTRICT-BHOJPUR.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 395 of 2021

Arising Out of PS. Case No.-291 Year-2015 Thana- BARHARA District- Bhojpur

1. JAI RAM BIND SON OF SRI BHUKHAN BIND @ SRI RAM
BHUKHAN BIND R/O VILLAGE- MAHADHI, BIND TOLI, P.S.-
BARAHARA, DISTRICT- BHOJPUR.
2. BINDAR BIND @ BINDAR BIN SON OF RAM BHAJAN BIND R/O
VILLAGE- MAHADHI, BIND TOLI, P.S.- BARAHARA, DISTRICT-
BHOJPUR

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 407 of 2021)

For the Appellant/s : Mr. Ravindra Kumar, Advocate

For the Respondent/s : Mr. Ajay Kumar Mishra, APP

(In CRIMINAL APPEAL (DB) No. 395 of 2021)

For the Appellant/s : Mr. Satish Kumar Sinha, Advocate

Mr. Dharmesh Kumar Shrivastava, Advocate

For the Respondent/s : Mr. Ajay Kumar Mishra, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 21-06-2024

The present appeals have been filed under Section-



374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the impugned judgment of conviction dated 25.02.2021 and order of sentence dated 03.03.2021, passed by the learned Additional District and Sessions Judge-VIII, Bhojpur at Arrah, in connection with Sessions Trial No. 268 of 2016 (arising out of Barhara P.S. Case No. 291 of 2015) whereby the appellants namely Awadhesh Bind, Jai Ram Bind and Bindar Bind @ Bindar Bin have been convicted for the offence punishable under Sections- 302/34 of I.P.C. and have been sentenced to undergo life imprisonment with a fine of Rs.10,000/- each. In the event of default in payment of fine, they have been sentenced to undergo further 3 months imprisonment. The period of custody has been ordered to be treated as sentence undergone.

2. Heard Mr. Ravindra Kumar, learned counsel for the appellant (in Cr. Appeal (D.B.) No.407 of 2021) and Mr. Satish Kumar Sinha and Mr. Dharmesh Kumar Shrivastava, learned counsels for the appellants (in Cr. Appeal (D.B.) No. 395 of 2021) and Mr. Ajay Kumar Mishra, learned Additional Public Prosecutor for the respondent State in both the appeals.

3. The prosecution story, in brief, is as under:-

On 17.09.2015, at about 19:00 hours Awadhesh



Bind (aged about 40 years), son of Parojan Bind of village- Mahudahi, Bind Toli came to the informant's house and said that the informant has damaged the eye-sight of his mother by doing witchcraft. When she protested against this, he threatened her and said that he would come to her door next day and shoot her son dead. Thereafter he left. On 18.9.2015, at about 19.00 hrs her son Parmeshwar @ Dugu Bind and she were guarding their vegetable field. Her son felt thirsty and requested her to fetch water to drink. When she was going to her house to bring water, she saw on the way (1) Awadhesh Bind, S/o Parojan Bind (2) Jay Ram Bind, S/o Late Ram Bhukhan Bind and (3) Bindar Bind, S/o Bhajan Bind, all from village- Mahudahi (Bind Toli), P.S.- Barhara, District- Bhojpur of her village going towards her vegetable field. On return, when she reached Rameshar Singh's garden near her vegetable field, she saw that Jay Ram Bind and Bindar Bind had laid her son on the ground and caught hold of his hands and legs and Awadhesh Bind was stabbing her son Parmeshwar Bind with a knife. Her son was saying in a blood soaked condition that Awadhesh Bind, S/o Parojan Bind, Jay Ram Bind, S/o Late Rambhukhan Bind and Bindar Bind, S/o Bhajan Bind had all together attacked him with a sharp edged weapon and injured him. When she started crying and



screaming loudly, these people ran away from there. On hearing her cries and screams, people from the nearby locality gathered. By then, her son had died.

4. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 268 of 2016.

5. Learned advocates for the appellants submit that the F.I.R. is antedated and there is a delay in sending the F.I.R. to the Magistrate Court. It is pointed out from the record that, as per the case of the prosecution, the F.I.R. came to be lodged on 18.09.2015 at 20:30 hours. However, the learned Magistrate Court received the same only on 21.09.2015. It is further submitted that even F.I.R. is not exhibited and the same is not duly proved and, therefore, in absence of the same, prosecution has failed to prove the case against the accused persons beyond reasonable doubt and, therefore, the Trial Court ought to have acquitted the appellants. Learned advocates placed reliance



upon the order dated 17.01.2013, passed by this Court in Cr. Appeal (D.B.) No. 1308 of 2018 (Rajjak Miyan Vs. The State of Bihar) in a similar type of matter.

5.1. It is further submitted that, in fact, there are no eye-witness to the occurrence in question, despite which the prosecution has projected only family members of the deceased as eye-witnesses. Even in their depositions, there are major contradictions and improvements. At this stage, it is submitted that P.W. Nos. 7, 8 and 9 have turned hostile and they have not supported the case of the prosecution.

5.2. Learned advocates would further submit that even the version given by the informant in the *fardbeyan* is not supported by the medical evidence. Learned advocates have referred to the deposition of the doctor who had performed the *post mortem* of the dead body of the deceased.

5.3. At this stage, it is contended that, as per the prosecution case, *fardbeyan* was recorded in the orchard of Rameshwar Singh where the dead body of the deceased was lying. However, from the evidence led by the prosecution, it is revealed that the place of occurrence is an agricultural field. Thus, the prosecution has failed to prove the place of occurrence and the manner of occurrence. Even the prosecution has not



proved the motive on the part of the appellants to kill the deceased.

5.4. It is pointed out by the learned advocates appearing on behalf of the appellants that P.W. 5 has deposed before the Court that the case was registered after due deliberation. Even P.W. 4, the informant, has given names of only two persons while giving deposition before the Court. It is pointed out that P.W. 1 and P.W. 2, who are claiming to be eye-witnesses, have stated that accused gave blows with *Rama* whereas P.W. 4 deposed before the Court that the assault was made with *Rama* and knife. It is further stated that in the *fardbeyan*, the informant has stated that knife was used by the accused for killing the deceased. Learned advocates, therefore, urged that though the prosecution has failed to prove the case against the appellants beyond reasonable doubt, the trial Court has passed the impugned judgment of conviction and order of sentence and, therefore, the same be quashed and set aside.

6. On the other hand, learned A.P.P. Mr. Ajay Kumar Mishra has opposed the present appeals. It is contended by the learned A.P.P. that there are eye-witnesses to the incident in question and merely because they are near relatives or interested witnesses, their version cannot be discarded. Presence



of the eye-witnesses at the place of occurrence was quite natural. It is further stated that the medical evidence supports the version given by the informant and, therefore, no error is committed by the Trial Court while passing the impugned judgment and order as the prosecution has proved the case against the appellants beyond reasonable doubt. Learned A.P.P., therefore, urged that both these appeals be dismissed.

7. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

8. At this stage, we would like to appreciate the entire relevant evidence led by the prosecution before the Trial Court.

9. Before the Trial Court, prosecution examined 10 witnesses.

10. P.W. 1 Chinta Kumari is the daughter of the deceased. In her examination-in-chief, she has, *inter alia*, stated that her father was lying in the vegetable field. She and her sister went to the field at 07:00 p.m. in the evening carrying meal for their father. Having reached there, she saw that Jai Ram and Bindar had caught hold of her father and Awadhesh



assaulted her father with *Rama*. After assaulting him, all the three left the place. Holding the body of her father, she started crying. Her father had died by then. On hearing her cry, the wife of Bhushan Bind as also Garib Bind arrived there to whom she disclosed the names of the accused who had killed her father. She has further stated that Darogaji had taken her statement. She identifies accused Jai Ram, Bindar and Awadhesh present in the dock.

10.1. In her cross-examination on behalf of accused Jai Ram and Bindar, she has given the description of the place of occurrence and then stated that before the incident took place, her mother, her sister Rekha and she herself were at home. She did not take meal to the field daily. She had heard the voice of her father when she had crossed 100 yards from her house. She got frightened. Many people had gathered at the place of occurrence. She had gone to the field only with her sister and none else. She found her father dead. No villager was present there. It was dark at that time. She has further stated that Chowkidar had come next morning. She had not disclosed the names of the accused persons to the Chowkidar in the morning. Thereafter Chowkidar returned to the police station. Darogaji came after a day in the evening. At that time her grandmother



and they disclosed the names of the accused persons. She has denied the suggestion that she was giving false deposition and no such incident, as described by her, had actually taken place. In her cross-examination on behalf of accused Awadhesh Bind, she has just given the description of the place of occurrence.

11. P.W. 2 Rekha Kumari is another daughter of the deceased. In her examination-in-chief, she has mainly stated that the incident took place one and a half years ago in which her father Parmeshwar Bind was murdered. Her father was lying in the vegetable field. When she went to the field with meal, it was 07:00 p.m. in the evening and she saw that Awadhesh was assaulting her father with a *Rama*. Jai Ram and Bindar were also with him who were catching hold of her father. On seeing her and her sister, all the three fled away. By the time they reached near their father, he had died. She does not know as to why the accused persons killed her father. She identifies the accused namely Jai Ram and Bindar present in the dock as also accused Awadhesh.

11.1. In her cross-examination, she has detailed the place of occurrence and stated that she started for the agricultural field on foot at 07:00 p.m. in the evening and it took her 20 minutes to reach the place of occurrence. She reached the



place of occurrence first and thereafter 100-150 persons arrived there, including the wife of Kusan and Gariva Bind etc. She has further stated that when she reached the place of occurrence, she saw her father in lying condition soaked with blood. She has stated that there is no other witness except the family members. Police and Chowkidar had come the next day of the occurrence. Thereafter the case was lodged. The case was lodged by her grandmother. It was a full moonlit night. Nobody had informed her about the accused persons coming to the place of occurrence and returning from there. She has denied the suggestion of giving false deposition due to previous enmity.

12. P.W. 3 Baldeo Bind has stated in his examination-in-chief that the deceased, who has been murdered by Awadhesh Bind, Jai Ram and Bindar, was his son. He has not witnessed any of the accused persons assaulting. He does not even know as to why all the three killed his son. However, the witness identifies accused Awadhesh Bind, Jai Ram and Bindar.

12.1. In his cross-examination on behalf of accused Jai Ram and Bindar, he has stated that his son was killed at 07:00 p.m. The place of occurrence is a field, half k.m. away from his house towards north. He was sitting at his door. His wife Lachhiya Devi and his daughters Ramrekha and Chinta



were inside the house. Darogaji had come the very same night at 09:00 p.m. The witness had sent the village Chowkidar to Darogaji. He had also disclosed the names of the assailants to the Chowkidar. His statement was recorded by the police. He had stated in that statement that his grand-daughter (Natini) had told him the names of the assailants. He has denied the suggestion of giving false deposition.

12.2. In his cross-examination on behalf of accused Awadhesh Bind, he has stated that he had gone to the place of occurrence after half an hour of the incident with his wife, his grand-daughters Chinta Kumari and Rekha Kumari and grandson Aditya. Aditya is not a witness. Before he and his family members reached the place of occurrence, about 200-400 persons had gathered there. However, he cannot give their names. He has denied the suggestion of giving false deposition and falsely implicating the accused persons to harass them.

13. P.W. 4 Lachhiya Devi has stated in her examination-in-chief that Parmeshwar is his son who was killed at 07:00 p.m. in the evening in the vegetable field about two years and two months ago. She had gone to take a cot for him. She had seen Jai Ram and Awadhesh killing him. Jai Ram had caught hold of Parmeshwar and Awadhesh killed him by means



of a *Rama* and a knife. In the evening of the day of incident, Awadhesh had come to her house and threatened to kill her son alleging that she was a witch. Darogaji had come and taken her statement and read over the same to her. She claims to identify all the accused persons.

13.1. In her cross-examination on behalf of accused Jai Ram and Bindar, she has stated that at the time of incident, she, her granddaughters Rekha and Chinta and her daughter-in-law were at home. Her granddaughters were going to the field taking meal. While on way, they raised alarm. Nearby people gathered on the alarm. By the time she reached the field, her son had breathed his last. Chowkidar had come the same day and she had stated before him about the occurrence to the best of her knowledge. She also disclosed the name of the assailants. Almost in the midnight, Darogaji came and she went to the police station where the case was lodged. No witness had gone with her.

13.2. In her cross-examination on behalf of accused Awadhesh Bind, she has stated that the *Rama* was recovered by the police from the house of the accused. She has also stated that though the owners of nearby plots were guarding their field, none of them is a witness in the case. She has further



stated that first of all she had reached the place of occurrence. She has denied the suggestion of falsely implicating the accused persons due to ill will based on suspicion.

14. P.W. 5 Mangri Devi @ Savitri Devi, wife of the deceased, is a hearsay witness. She has stated in her examination-in-chief that a day before the day of incident accused Awadhesh had come to her house, abused her mother-in-law for allegedly damaging the eye-sight of his mother through witchcraft and had threatened to kill Parmeshwar Bind. She heard the commotion that Awadhesh and Jai Ram Bind had together killed her husband Parmeshwar Bind. Hearing the commotion, she also went to the place of occurrence and found her husband dead. He was soaked in blood. Assault was made on his chest with a *Rama*. Police took the dead-body of her husband to the police station. She identifies all the three accused persons.

14.1. In her cross-examination on behalf of accused Bindar and Jai Ram, she has stated that she had seen the accused persons fleeing away after committing the crime. Her daughters were already on way with the meal and on hearing the commotion she also went to the place of occurrence. Though it was dark, there was enough visibility at that time. Though there



was a rumour spread in the village that her mother-in-law was a witch, but no written complaint was filed against that. Chowkidar was informed about the incident that very day and he apprehended the culprits. At about 10:00 p.m. she had gone to the police station on the date of incident. She has denied the suggestion of false implication of the accused persons Jai Ram Bind and Bindar Bind merely on suspicion.

14.2. In her cross-examination on behalf of accused Awadhesh Bind, she has stated that the matter of accused Awadhesh calling her mother-in-law was compromised the very next day in presence of 10 persons. None of them has been made a witness. The present case was lodged after due deliberation. Her family has no cordial terms with the accused persons for years. She has denied the suggestion of implicating the accused persons due to previous enmity, merely on suspicion.

15. P.W. 6 Dr. M.H. Ansari, the Medical Officer who had performed *post mortem* on the dead body of the deceased, has stated in his examination-in-chief that:-

(i) On 19.9.2015, he was posted at Sadar Hospital as Medical Officer and on that very date he conducted *post mortem* on the dead body of Parmeshwar Bind Alias Guddu



Bind S/o Sri Baldeo Bind, Resident of Bind Tola, Barhara, P.S. Barhara, District Bhojpur, Aged about 40 years male brought and identified by Chowkidar 111/5 Birendra Prasad of Barhara P.S. and found following *ante mortem* injuries:-

(i) sharp cutting wound over right upper chest 5"x3"x Vertebral depth.

(ii) Sharp cutting wound left dorsal palm 5"x3"x bone deep.

(iii) skull bone intact meninges intact, Chest lacerated right upper lung. Lacerated aorta great vessel, chest cavity was full of blood right side- Left lung intact, heart intact and pale. Abdominal organ pale and intact. Bladder contains 25 ml. of urine.

Time elapsed since death 6 to 36 years.

Cause of death:- shock and Haemorrhage. Due to above vital injury to vital organ lung and aorta leading to death. Weapon- hard, heavy, sharp cutting weapon.

(On identification of witness post mortem report has been marked Ext-1.)

2. In his Cross examination by the Defence counsel on behalf of Awadheal Bind, he has stated that he has seen weapon like *Rama*. The injuries he has mentioned in the post mortem have been caused by sharp and heavy weapon. He could not say whether *Rama* is a circular sharp weapon or not. He did not find any injury caused by the circular weapon. He could say that the injury mentioned in the post mortem have not been caused by knife and dagger. Rigor mortis was present in the dead body at the time of post mortem. Rigor mortis starts soon after the death and continues for 36 hours in progressive manner. He has studied the book of Modi on Medical Jurisprudence. It is not correct to say that in the book of Modi, he had mentioned that rigor mortis does not start soon after the death. Rather it starts appearing after 4-5 hours. Rigor Mortis depends upon the weather and other conditions. He



has mentioned the weather condition in the post mortem report. It is wrong to suggest that he conducted the postmortem examination without properly following the procedure in perfunctory manner.

3. In his cross examination by defence counsel on behalf of Jairam and Bindar, he has stated that time elapsed since death would even be 12-36 hours. From the injuries, death appears could be instantaneous. He found urine in the bladder of the deceased.

16. P.W. 7 Kallu Bind, P.W. 8 Subash Bind and P.W. 9 Ramesh Bind have not supported the case of the prosecution and they have been declared 'hostile' by the prosecution. As such, their depositions need not been gone into.

17. P.W.10 Jagannath Singh has stated in his examination-in-chief that on 18.09.2015 he was posted as an A.S.I. at Barhara Police Station. On the *Fardbeyan* of Lachhiya Devi, Barhara P.S. Case No. 291/15 was lodged on 18.09.2015. A.S.I. Shardanand Thakur had given him the charge of investigation of the case. In course of investigation, he had recorded the *fardbeyan* in the case diary and had prepared the inquest report of the deceased Parmeshwar Bind. Thereafter he again recorded the statement of Lachhiya Devi, took the statement of witness Baldeo Bind and visited the place of occurrence. He also took the statements of witnesses Chinta Kumari, Rekha Kumar, Ramesh Bind, Bhaghi Devi, Kallu Bind and Subhash Bind. He recorded the *post mortem* report of the



deceased Parmeshwar Bind in the case diary. In course of investigation, final form was submitted against the accused Awadhesh Bind under Section-302/34 I.P.C. on 21.12.2015 and he submitted charge-sheet against accused Jai Ram Bind and Bindar Bind under Section-302/34 I.P.C. on 31.01.2016.

17.1. In his cross-examination on behalf the accused persons, he has stated the distance between Barhara to Arrah Court is approximately 14 k.ms. The F.I.R. was lodged on 18.09.2015. However, he has not recorded the date of transmission of the same to the Court in the case diary. He has denied the suggestion that the F.I.R. was ante dated and sent to the Court on 21.09.2015. In para-8 of the case diary, in which the date of incident is mentioned as 18.09.2015, there is overwriting on No. 8. He has admitted that he had not collected the blood stained clothes of the deceased nor had he collected the blood sample from the blood stained soil. He has not recorded in the case diary whether copy of the F.I.R. was handed over to the informant or not. He further states that the F.I.R. was lodged based on the *fardbeyan*, but the said fact was not mentioned in the F.I.R. form. He has not recorded the time of recording the statement of any of the witnesses.

18. We have considered the submissions canvassed



by the learned counsels for the parties. We have re-appreciated the entire evidence led by the prosecution. We have also perused the material placed on record.

19. From the aforesaid evidence led by the prosecution, it would emerge that the *Fardbeyan* was given by the informant on 18.09.2015 at 20:30 hours with regard to the occurrence which took place on the same day at 19:00 hours. As per the case of the informant, all the three accused came at the place of occurrence i.e. orchard of Rameshwar Singh and Jai Ram and Bindar caught hold of the hands of the deceased and thereafter accused Awadhesh gave multiple blows with knife on the son of the informant. It is further stated that she shouted and she was crying and, therefore, the nearby people came at the place of occurrence. However, by that time the son of the informant had died. It is pertinent to note that though the F.I.R. was lodged on 18.09.2015, the Magistrate Court received copy of the same only on 21.09.2015. It is the specific case of the defence that the F.I.R. is ante dated and there is a delay in sending the F.I.R. to the Magistrate Court. It further transpires that the *fardbeyan*/F.I.R. lodged by the informant is not duly proved and the same is not exhibited.

20. At this stage, if the depositions given by P.W.



1 Chinta Kumari and P.W. 2 Rekha Kumari are carefully examined, it would reveal that, as per the case of the said witnesses, when they reached to the agricultural field, they saw Jai Ram and Bindar had caught hold of their father and Awadhesh was giving blows with *Rama* to him, i.e. deceased. There is no reference in their deposition that the informant, who is grandmother of the said witnesses, was present at the said place. At this stage, if the version given by the informant is carefully seen, it is revealed that in the *fardbeyan* there is no reference of presence of P.W. 1 and P.W. 2 at the place of occurrence. It is further revealed from the cross-examination of P.W. 1 that it was dark when the incident took place. It is specifically stated that one Chowkidar came in the morning and at that time they did not disclose the names of the assailants to him. Thereafter, the Chowkidar returned to the police station and on the next day evening Darogaji came in the village. At that time her grandmother and they gave the names of the assailants. Thus, from the aforesaid evidence it would reveal that the F.I.R. was not immediately lodged, as projected by the prosecution.

20.1. Even P.W. 2, who is claiming herself to be an eye-witness, has also admitted during cross-examination that



police and Chowkidar came on the next day and thereafter the case was lodged.

20.2. At this stage, if the deposition given by P.W. 3 is examined, it is revealed that the said witness is the father of the deceased. However, he has deposed that he has not seen the incident. During cross-examination, the said witness has specifically admitted that the place of occurrence is half kilometer away from his house and at the time of incident, he was in his house with his wife Lachhiya Devi and his two daughters. He has also admitted during cross-examination that before he along with his family members reached at the place of incident, more than 200-400 people had gathered around the place of occurrence.

20.3. Even P.W. 4, who is the informant and mother of the deceased, has changed her version before the Court and she has deposed that she had seen Jai Ram and Awadhesh killing her son. She has deposed that Jai Ram had caught hold of the deceased and Awadhesh gave blows with *Rama* and knife. Thus, it appears that P.W. 4 has given names of only two accused and now she has put forward a different story that Awadhesh used two weapons i.e. *Rama* and knife. During cross-examination, she has specifically stated that she alone



reached the place of occurrence first of all.

20.4. P.W. 5 is not an eye-witness to the occurrence and she reached at the place of occurrence after the incident was over. The said witness has admitted in para-5 of the cross-examination that the case was filed after due deliberation among the family members. P.W. 6 is the doctor who has performed the *post mortem* of the dead body of the deceased. The said witness has found 3 injuries, including the injury on the palm of the deceased. The said witness has admitted during cross-examination that the injuries mentioned in the *post mortem* report have not been caused by knife and dagger.

20.5. Thus, from the aforesaid evidence, it is revealed that the story put forward by the informant in the *fardbeyan* that the accused gave blows with knife is not supported by the medical evidence. Thus, it appears that P.W. 1 and P.W. 2 as also P.W. 4 while giving deposition before the Court have introduced weapon *Rama*.

20.6. P.W. 10 is the Investigating Officer. From his cross-examination, it is revealed that he did not collect blood stains from the place of incident. He has also not collected the blood-stained clothes of the deceased. It is also relevant to note that the murder weapon i.e. knife and/or *Rama* has not been



recovered or discovered.

21. Thus, from the aforesaid evidence it can be said that the prosecution had examined only near relatives of the deceased who are interested witnesses. There are major contradictions and inconsistencies in the depositions given by the so-called witnesses i.e. P.W.1, P.W. 2 and P.W. 4. Thus, we are of the view that the prosecution has failed to prove the manner of occurrence and even the place of occurrence. The F.I.R. is not duly exhibited. Even the motive on the part of the appellants to kill the deceased is not duly proved. Further, P.W.7, P.W. 8 and P.W. 9 have also not supported the case of the prosecution.

22. It is well settled that merely because the witnesses are interested witnesses or near relatives of the deceased, their deposition cannot be discarded only on this ground if their deposition is trustworthy. However, in the present case, we are of the view that the deposition given by the so-called projected eye-witnesses is not trustworthy. Medical evidence also does not support the version given by the eye-witnesses. Even the F.I.R. was sent to the Magistrate Court after a gap of 3 days and it is the specific defence taken by the appellants that the same is ante dated. Even otherwise, the F.I.R.



is not duly proved and exhibited.

23. Looking to the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has miserably failed to prove the case against the appellants beyond reasonable doubt, despite which the Trial Court has recorded the impugned judgment of conviction and order of sentence. Hence, the same are required to be quashed and set aside and the appeals deserve to be allowed.

24. Accordingly, the impugned judgment of conviction dated 25.02.2021 and order of sentence dated 03.03.2021, passed by the learned Additional District and Sessions Judge-VIII, Bhojpur at Arrah, in connection with Sessions Trial No. 268 of 2016 (arising out of Barhara P.S. Case No. 291 of 2015) are quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

24.1 Since the appellant, namely Awadhesh Bind (in Cr. Appeal (D.B.) No. 407 of 2021) is in jail, he is directed to be released from jail custody forthwith, if his presence is not required in any other case.

24.2. Appellants, namely Jai Ram Bind and Bindar Bind @ Bindar Bin (in Cr. Appeal (D.B.) No. 395 of 2021) are



on bail. They are discharged from the liabilities of their bail-bonds.

25. Both the appeals stand allowed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	25.06.2024
Transmission Date	25.06.2024

