

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1138 of 2016

Arising Out of PS. Case No.-149 Year-2012 Thana- PANDAUL District- Madhubani

1. Md. Suleman S/O Md. Sanichar R/O Village- Gangali, P.S- Pandaul, Distt.- Madhubani.
2. Md. Jahagir @ Jahangir Son of Sulemwan R/O Village- Gangali, P.S- Pandaul, Distt.- Madhubani.
3. Md. Misrul Son of Md. Azij R/O Village- Gangali, P.S- Pandaul, Distt.- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1076 of 2016

Arising Out of PS. Case No.-149 Year-2012 Thana- PANDAUL District- Madhubani

1. MD. Firoz S/O Md. Shamshul R/O Village- Gangoli, P.S- Pandaul, Distt.- Madhubani.
2. Md. Islam S/O Md. Shamshul R/O Village- Gangoli, P.S- Pandaul, Distt.- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1137 of 2016

Arising Out of PS. Case No.-149 Year-2012 Thana- PANDAUL District- Madhubani

Md. Abid @ Sultan @ Abid S/O Late Md. Yunus R/O Village- Bansuara, P.S- Madhubani, Distt.- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1220 of 2016



Arising Out of PS. Case No.-149 Year-2012 Thana- PANDAUL District- Madhubani

Md. Hanif @ Md. Hanif Mansoori @ Hanif Mansoori S/O Late Faudar Mansuri R/O Village- Kanhauli, P.S- Jhanjharpur, Distt.- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 64 of 2017

Arising Out of PS. Case No.-149 Year-2012 Thana- PANDAUL District- Madhubani

Md. Rahman @ Rahman Son of Late Mian Jan Resident of village - Gangauli, P.S. - Pandaul, District - Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 67 of 2017

Arising Out of PS. Case No.-149 Year-2012 Thana- PANDAUL District- Madhubani

1. Md. Karim @ Karim S/O Md. Rahman @ Rahman R/O Village- Gangauli, P.s- Pandaul, Distt.- Madhubani.
2. Md. Islam @ Islam Son of Md. Rahman @ Rahman R/O Village- Gangauli, P.s- Pandaul, Distt.- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 445 of 2017

Arising Out of PS. Case No.-149 Year-2012 Thana- PANDAUL District- Madhubani

Majnu Nadaf @ Majlum Nadaf @ Majnu S/O Late Madan Nadaf Resident of Village- Ganguli, P.S.- Pandaul, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar



... .. Respondent/s

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Appearance :
(In CRIMINAL APPEAL (DB) No. 1138 of 2016)
For the Appellant/s : Mr. D.K. Sinha, Sr. Advocate
Mr. G.C. Jha, Advocate
Mr. Alexander Ashok, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Gopal Jha, Advocate
Mr. Shreepal Jha, Advocate
(In CRIMINAL APPEAL (DB) No. 1076 of 2016)
For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rabindra Kumar, Advocate
Mr. L.K. Sharma, Advocate
For the State : Mr. Dilip Kr. Sinha, APP
For the Informant : Mr. Gopal Jha, Advocate
Mr. Shreepal Jha, Advocate
(In CRIMINAL APPEAL (DB) No. 1137 of 2016)
For the Appellant/s : Mr. Sunil Kumar Pathak, Advocate
For the State : Mr. Sri Shivesh Chandra Mishra, Advocate
For the Informant : Mr. Gopal Jha, Advocate
Mr. Shreepal Jha, Advocate
(In CRIMINAL APPEAL (DB) No. 1220 of 2016)
For the Appellant/s : Mr. D.K. Sinha, Sr. Advocate
Mr. G.C. Jha, Advocate
Mr. Subhash Kr. Jha, Advocate
Mr. Alexander Ashok, Advocate
Mr. Shivnandan Sah, Advocate
For the State : Mr. Dilip Kr. Sinha, APP
For the Informant : Mr. Gopal Jha, Advocate
Mr. Shreepal Jha, Advocate
(In CRIMINAL APPEAL (DB) No. 64 of 2017)
For the Appellant/s : Mr. Bimal Kumar, Advocate
For the State : Mr. Sri Ashwani Kumar Sinha, APP
For the Informant : Mr. Gopal Jha, Advocate
Mr. Shreepal Jha, Advocate
(In CRIMINAL APPEAL (DB) No. 67 of 2017)
For the Appellant/s : Mr. Bimal Kumar, Advocate
For the State : Mr. Sri Dilip Kumar Sinha, APP
For the Informant : Mr. Gopal Jha, Advocate
Mr. Shreepal Jha, Advocate
(In CRIMINAL APPEAL (DB) No. 445 of 2017)
For the Appellant/s : Mr. Manish Kumar No 13, Advocate
For the State : Mr. Sri Dilip Kumar Sinha, APP
For the Informant : Mr. Gopal Jha, Advocate
Mr. Shreepal Jha, Advocate
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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 30-08-2024



All these appeals have been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Code') challenging the common judgment of conviction dated 16.09.2016 and order of sentence dated 20.09.2016 passed by learned Sessions Judge, Madhubani in Session Trial No. 90/2013 (2847/2013 C.F.), Session Trial No. 155/2013 (1446/2013 C.F.), Session Trial No. 1/2014 (4276/2014 C.F.) arising out of Pandaul P.S. Case No. 149/2022 (G.R. No. 1890/2012). However, all three aforementioned Session Trial Cases were amalgamated and tried with Sessions Trial No. 90/2013, whereby all the appellants were sentenced to undergo imprisonment for life and they are also liable for fine of ₹ 5,000/- (Rupees Five Thousand) each for having committed the offence punishable under Section 302 read with Section 149 of the I.P.C. and are sentenced to undergo R.I. for five years and they are held liable for fine of ₹ 5,000/- each for the offence punishable under Section 307 read with Section 149 of the I.P.C. and further sentence to undergo R.I. for two years for the offences punishable under Section 148 of the I.P.C., the appellants and five others also sentence to undergo R.I. for three years and fine of Rupees One Thousand each for the offences punishable under Section 27 of the Arms Act. They were further sentenced to undergo R.I. for ten years and are also held liable for fine of



Rupees Two Thousand each for the offence punishable under Section 3 of the Explosive Substance Act and further ordered that the aforesaid amount of fine is realized the half of the same will be paid to Sabida Khatoon, wife of Late Md. Ali or her son Jasim, and half will be deposited in the treasury of State Government Accounts. In case of default regarding the payment of fine, the convicts will further undergo S.I. for three months in addition to their substantive punishment. However, all the sentences were ordered to run concurrently.

FACTUAL MATRIX:-

2. “The *fardbeyan* of Md. Jasim s/o Late Md. Ali Nadaf R/o Village-Gangauli, P.S. Pandaul, District- Madhubani was recorded by S.I. Kumar Brajesh S.H.O. Pandaul P.S., District- Madhubani at 05:05 a.m. on 30.06.2012 at the door of the complainant, wherein he has stated that on 29.06.2012, at about 02:00 p.m, the informant was sleeping in his house. He came out of the house on hearing the sound of firing and explosion of bomb in the courtyard where he heard the voice of Md. Kalam asking others to search out Md. Jasim (informant) as Jasim was not at the roof of the house. Then, the informant fled away from the courtyard and hid himself. He then saw that Md. Kalam, Misrul, Md. Jahangir, Md. Suleman, Md. Karim, Md. Islam, all armed,



were present along with 30-40 persons and some of them were fleeing away towards West and some towards South. Thereafter, he (informant) came at his house and found that his father Md. Ali died by sustaining gunshot injury and his mother Safida Khatoon sustained injury in her leg and when he went at the roof of his house, he found that his brother Hakim, Rasid and Md. Nasim had also sustained gunshot injury. Out of them, Md. Nasim was dead. There had been a long standing enmity with the family of Md. Shamshul and, during the said period, there had been dispute of land in between Md. Shamshul and Sonelal Chaupal and Md. Shamshul was under the impression that the family of the informant was helping Sonelal Choupal and due to that, Md. Shamshul, under a conspiracy, got a case lodged against him and his other family members from his daughter-in-law and he (Shamshul) along with his son Md. Firoz and Islam went to jail where he (Shamshul) and his sons made conspiracy with the help of Md. Hanif and local *chowkidaar* Md. Rahman and his son Md. Islam and Karim committed the occurrence. Under a conspiracy, Md. Shamshul along with his son Md. Firoz and Islam and one Majnu Nadaf went to jail and from there committed the occurrence with the help of his son Md. Kalam and Md. Chhedi,



Md. Misrul, Md. Jahangir, Md. Suleman, Md. Karim, Md. Islam and other local *chowkidaars* and unknown persons.

2.1. After registration of the F.I.R., the Investigating Officer started the investigation and during the course of the investigation, he had recorded the statement of the witnesses and thereafter filed the charge-sheet against the appellant/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court where the same was registered as Session Trial No. 90/2013 (2847/2013 C.F.), Session Trial No. 155/2013 (1446/2013 C.F.), Session Trial No. 1/2014 (4276/2014 C.F.).

2.2. Before the Trial Court, the prosecution had examined 17 witnesses and also produced the documentary evidence. Thereafter, further statement of the accused under Section 313 of Code came to be recorded. After conclusion of the trial, the Trial Court passed the impugned judgment and order of conviction and sentence against which the appellants have preferred the present appeals.

3. In Criminal Appeal (DB) No. 1138 of 2016, we have heard learned counsel Mr. D.K. Sinha assisted by Mr. G.C. Jha and Mr. Alexander Ashok for the appellant, Mr. Sujit Kumar for the



Respondent-State and Mr. Gopal Jha assisted by Mr. Shreepal Jha for the Informant.

3.1. In Criminal Appeal (DB) No. 1076 of 2016, we have heard learned senior counsel Mr. Ramakant Sharma assisted by Mr. Rabindra Kumar and Mr. L.K. Sharma for the appellant, Mr. Dilip Kumar Sinha for the Respondent-State and Mr. Gopal Jha assisted by Mr. Shreepal Jha for the Informant.

3.2. In Criminal Appeal (DB) No. 1137 of 2016, we have heard learned counsel Mr. Sunil Kumar Pathak for the appellant, Mr. Shivesh Chandra Mishra for the Respondent-State and Mr. Gopal Jha assisted by Mr. Shreepal Jha for the Informant.

3.3. In Criminal Appeal (DB) No. 1220 of 2016, we have heard learned counsel Mr. D.K. Sinha assisted by Mr. G.C. Jha, Mr. Subhash Kr. Jha, Mr. Alexander Ashok and Mr. Shivnandan Sah for the appellant, Mr. Dilip Kr. Sinha for the Respondent-State and Mr. Gopal Jha assisted by Mr. Shreepal Jha for the Informant.

3.4. In Criminal Appeal (DB) No. 64 of 2017, we have heard learned counsel Mr. Bimal Kumar for the appellant, Mr. Ashwani Kumar Sinha for the Respondent-State and Mr. Gopal Jha assisted by Mr. Shreepal Jha for the Informant.



3.5. In Criminal Appeal (DB) No. 67 of 2017, we have heard learned counsel Mr. Bimal Kumar for the appellant, Mr. Dilip Kumar Sinha for the Respondent-State and Mr. Gopal Jha assisted by Mr. Shreepal Jha for the Informant.

3.6. In Criminal Appeal (DB) No. 445 of 2017, we have heard learned counsel Mr. Manish Kumar No. 13 for the appellant, Mr. Dilip Kumar Sinha for the Respondent-State and Mr. Gopal Jha assisted by Mr. Shreepal Jha for the Informant.

SUBMISSIONS ON BEHALF OF THE APPELLANTS:-

4. Learned senior counsel Mr. D.K. Sinha appearing for the appellants in Criminal Appeal (DB) No. 1138 of 2016 mainly contended that though the prosecution has placed reliance upon the so called eye-witnesses, all the eye-witnesses are near relatives of the deceased and there are major contradictions, inconsistencies and discrepancies in their deposition. Therefore, the deposition of the said witnesses may not be relied upon. Learned senior counsel referred the deposition of the prosecution witnesses and thereafter contended that PW-9 was the only witness who was present in the courtyard and, therefore, she claimed herself as the only eye-witness to the entire incident. However, as per case of PW-9, she along with her husband Md. Ali were sleeping in the courtyard.



PW-9 claimed that Kalam shot her husband after Hanif. Thus, as per the case of the said witness, her husband was shot at twice, first by Md. Hanif and then by Kalam. However, the *post mortem* report of the deceased Md. Ali indicates that only one bullet was recovered from his body. PW-9 further testified that she did not know who shot her husband first. Contradicting her previous statement, it is further submitted that, as per PW-9, 10 people surrounded her and her husband at the time of shooting. After her husband was shot, all the alleged assailants went to the roof where her three sons were sleeping and they returned after 10 minutes. At this stage, learned senior counsel referred the deposition given by PW-15 i.e. Kumar Brajesh (S.I.) and thereafter contended that, from the deposition of PW-15, it can be said that PW-9, who claims to be an eye-witness, could not have been in a position to see individuals using the staircase. At this stage, it is also contended that none of the witnesses, including PW-9, were present on the roof where Md. Abdul Hakim, Md. Shamim and Md. Nasim were sleeping when they were attacked by the accused person.

4.1. Learned senior counsel would further contend that the prosecution has projected PW-9 as an injured eye-witness. She sustained injuries. However, according to the medical opinion of



Doctor who had examined her and who has deposed as PW-17 before the Court, the injuries No. 1, 2 & 3 sustained by PW-9 were simple in nature. Further, the Doctor stated that he could not determine whether the injuries found on PW-9 were caused 10-12 hours prior. Further, the said injury report was prepared on 29.09.2012 while he had examined injured on 30th June, 2012, based on the injury register. It is also contended that though PW-9 identified ten individuals, she did not recognize the person who threw the bomb at her. It is also contended that the conduct of PW-9 was also unnatural as she did not shout immediately but she shouted after the accused left the place of incident after 10 minutes. Learned senior counsel, therefore, urged that this Court may not rely upon the deposition of the said witness.

5. Learned senior counsel further submits that the prosecution has also failed to establish *actus reus* and *mens rea* against the appellants. There was no dispute or any kind of enmity with Md. Suleman and Md. Misrul as per the deposition of PW-9. It is contended that, as per the deposition given by the prosecution witnesses, there was a dispute between Md. Ali and Md. Shamshul over a shop. Thus, the dispute was only between the families of Md. Shamshul and Md. Ali. The other accused persons have nothing to do with the said dispute. In fact, all the other accused



persons are neighbors of PW-9 and, therefore, there was no reason for the neighbors to kill four persons of the family of PW-9 and the informant. Learned senior counsel, therefore, urged that the appeal filed by these three persons, namely appellants Md. Misrul, Md. Suleman and Md. Jahangir be allowed and the impugned judgment and order rendered by the Trial Court *qua* these appellants be quashed and set aside.

6. Learned counsel Mr. Bimal Kumar appearing for the appellant Md. Rahman @ Rahman in Criminal Appeal (DB) No. 64 of 2017 and Md. Karim @ Karim and Md. Islam @ Islam in Criminal Appeal (DB) No. 67 of 2017 has adopted the submission canvassed by the learned senior counsel appearing in Criminal Appeal (DB) No. 1138 of 2016. However, it has been further contended that PW-9 did not name the appellant Md. Rahman @ Rahman in her statement given under Section 161 of the Code before the Police. However, during the course of the trial, she developed her story and named this appellant. In fact, the said appellant is the *choukidaar* and, in the F.I.R. also, his name is mentioned in the last portion of the F.I.R. that he also, in collusion with Md. Shamsul, committed the alleged offences. Therefore, it is submitted that conviction of the said appellant Md. Rahman



with the aid of Section 149 of I.P.C. is not sustainable in the eye of law.

6.1. Learned counsel would further submit that so far as the appellant Md. Karim @ Karim is concerned, he has been implicated because he is the son of *choukidaar* i.e. Md. Rahman and except that there is no specific role attributed against them. It is pointed out that PW-7 Gulshan Khatoon (wife of the informant) herself deposed, in Para-8, that they were standing by the side of her asbestos house and being a co-villager, it is common that they had assembled on the sound of firing and explosion of bomb. However, the informant and his mother, because of old enmity, implicated them in the incident in question. Learned counsel, therefore, urged that the appeals filed by these appellants be allowed and the impugned judgment and order be quashed and set aside *qua* them.

7. Learned counsel Mr. Sunil Kumar Pathak appearing for the appellant Md. Abid @ Sultan in Criminal Appeal (DB) No. 1137 of 2016 has mainly contended that the said appellant is not named in the F.I.R. However, during the course of investigation, the witness gave the name of the said appellant. It is submitted that except PW-9 and PW-10, none of the prosecution witnesses has attributed any role to the present appellant. Even PW-9 has stated



that the appellant Md. Abid @ Sultan along with the other accused went on the roof and after 10 minutes, they returned and fled away. Further, PW-10 (informant) has stated that, in the solar light, he identified Md. Kalam, Md. Suleman, Md. Islam, Md. Jahangir, Md. Misrul, Md. Rahman, Md. Islam, Md. Karim and Md. Hanif armed with weapons. However, he did not give the name of the appellant. It is submitted that, except the allegation of conspiracy, no other allegation is levelled against the appellant herein. Learned counsel, therefore, contended that the impugned judgment and order be set aside *qua* the appellant/accused Md. Abid @ Sultan.

8. Learned senior counsel Mr. Ramakant Sharma appearing for the appellants Md. Shamshul Nadaf, Md. Firoz and Md. Islam in Criminal Appeal (DB) No. 1076 of 2016 has mainly contended that the appellant No. 1, i.e. Md. Shamshul Nadaf has expired on 31.05.2019 during the pendency of the present appeal and, therefore, it is requested that this appeal be abated *qua* appellant No. 1 Md. Shamshul Nadaf. Learned counsel argued the case *qua* appellants No. 2 and 3 i.e. Md. Firoz and Md. Islam. It has been mainly contended that even as per the case of the prosecution, the said appellants were not present at the place of occurrence and, in fact, they were in jail at the relevant point of time. However, the only allegation against the said appellants is



that, because of the dispute between the two families, the conspiracy was hatched by the family members of Md. Shamshul Nadaf, including the present appellants, with the other co-accused. In pursuance of the said conspiracy, the other co-accused went at the house of the deceased and killed four family members of the informant and PW-9. It is submitted that there is no evidence led by the prosecution connecting the appellants of the said appeal with the other co-accused. Learned senior counsel, therefore, urged that the Criminal Appeal (DB) No. 1076 of 2016 be allowed and the impugned judgment and order be set aside *qua* the said appellants.

9. Learned counsel Mr. Manish Kumar No. 13 appearing for the appellant in Criminal Appeal (DB) No. 445 of 2017 has adopted the submission canvassed by the learned senior counsel appearing in Criminal Appeal (DB) No. 1076 of 2016. It is submitted that the appellant Majnu Nadaf @ Majlum Nadaf @ Majnu is the brother of Md. Shamshul Nadaf and, merely because he is the brother of the said accused, he has been implicated. It is submitted that the appellant Majnu Nadaf is not named in the F.I.R. However, during the course of investigation, he has been implicated by alleging that conspiracy was hatched to kill the deceased. The appellant has been convicted with the aid of Section



120B of the I.P.C. However, there is no evidence led by the prosecution that the present appellant hatched conspiracy with the other co-accused with a view to kill the family members of the informant and PW-9. It is contended that there is no evidence that the said appellant was present at the place of incident at the time of occurrence. In fact, as per the case of prosecution, the said appellant was in jail at the time of incident. Thus, despite the fact that the said appellant was not present at the place of occurrence, he has been convicted by the Trial Court. Learned counsel, therefore, urged that the impugned judgment and order *qua* the appellant be quashed and set aside.

SUBMISSIONS ON BEHALF OF STATE AND INFORMANT:-

10. On the other hand, learned A.P.P. and learned counsel for the informant have vehemently opposed the present appeals. Learned counsels mainly contended that the present is a serious case wherein it is alleged that the concerned accused have killed four persons of one family. It is submitted that the informant and his family members have seen the incident in question and they have corroborated the version given by PW-9. It is submitted that PW-9 is the injured witness whose husband and 3 sons died in the said incident. PW-9 also sustained injury. It is submitted that



PW-9 has specifically given the name of 10 persons who were present at the place of incident and the role played by the concerned accused is also narrated by her. The medical evidence also supports the version given by the injured eye-witness i.e. PW-9. Even the Doctor, who had examined PW-9, has also given deposition before the Court. Injury certificate has been issued by the said Doctor. It is submitted that there was no reason for PW-9 to falsely implicate the appellants herein. It is also contended that the prosecution has also pointed out the motive on the part of the accused to commit the alleged crime. It is further submitted that the 10 accused named by PW-9 were present at the place of incident and, therefore, all the 10 accused persons were the members of unlawful assembly. Therefore, the Trial Court has rightly convicted all the accused persons for the commission of the alleged offences. It is further submitted that, so far as family members of Md. Shamshul Nadaf i.e. the appellants of Criminal Appeal (DB) No. 1076 of 2016 and Criminal Appeal (DB) No. 445 of 2017 are concerned, it has been specifically alleged that though the said accused persons were in jail, they went inside the jail because of the systematic planning and as a part of the conspiracy hatched by the said accused. Learned counsel, therefore, urged that the said accused have been rightly convicted with the aid of



Section 120B of I.P.C. Learned counsel for the respondent, therefore, urged that when the prosecution has proved the case against all the accused beyond reasonable doubt, no error has been committed by the Trial Court while passing the impugned judgment and order.

ANALYSIS OF ORAL EVIDENCE:-

11. 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.

12. Evidence of PW-1 Kapal Mandal and PW-2 Ram Dhani Chaupal need not be gone into as they have not supported the case of the prosecution and they have been declared hostile.

13. PW-3 Sona Lal Chaupal has stated, in his examination-in-chief, that the incident occurred at around 02:30-03:00 in the night. When he went in the morning, he saw that Md. Ali, his eldest son and two other persons whose names were not known to him, all had died and Md. Ali's wife was injured.

13.1. In his cross-examination, he has stated that Shamshul built a house of asbestos there and started living with his family. Even at the time of the incident, his family lived there. After the incident, people looted their house and now it is lying



vacant. He does not know as to who had looted the house. He has stated that he had ancestral friendship with Ali's family. They used to come and go to his house. He had sought Ali's help in the land dispute. He has further stated that his house is two *bighas* (local unit of distance) away from the place of incident. There are two houses in between. He used to come and go to the place where the incident took place.

14. PW-4 Md. Jumarati has stated, in his examination-in-chief, that the incident occurred on the night of Thursday on 29th June, 2012. The time was around 02:00 in the night. He was in his house and came out after hearing the bomb explosion. He found that Suleman, Jahangir and Nisrul armed with weapons were at the door of Nasim and Jasim. They had knife, pistol and bombs in the bags. Islam, Karim and Rahman were also there. Kalam was also there. There were 25-30 unknown persons there. Kalam had a pistol in his hand. Kalam threatened him that he would shoot him if he comes out. After noise and bombings subsided, he came to Md. Ali's door and saw that Kalam was leaving his house with a pistol in his hand. Md. Ali was lying dead on the verandah. Ali's wife was hit by a bomb. When he went to the roof, he found that Nasim's head was chopped off and he was lying dead. Rashid and Hakim were writhing in pain. At that time, the vehicle of Police



arrived on the spot and took Rashid and Hakim to D.M.C.H. They died on their way to D.M.C.H. The reason for the said incident is a land dispute.

14.1. In his cross-examination, he has stated that the bombing site is at a distance of four *laggi* (local unit of length) south of his house. His house and Md. Ali's house is in between. He was in the house when he heard the sound of bomb explosion. He got out of the house immediately after the bombing subsided. At that time, there were 20-25 people. These people were at the door of Md. Ali. There were people from outside the village. It is stated that only he came out of the house on hearing *hulla*. The people living nearby did not come out of their house. He has further stated that, after the people left, he entered into Ali's house first to the verandah, then to the roof and came down from there and took the injured persons to the Hospital. The injured were sent to D.M.C.H. on Police vehicle. He also went with them. Only he went from the village. The injured persons i.e. Md. Hakim, Md. Rashid and Md. Ali's wife were laid in the vehicle and taken to Hospital. He remained in D.M.C.H. for a week and returned to the village along with those who were treated. He gave the statement to the Inspector at his home a month after the incident. He has further stated that there was a land dispute between Sonelal and



Shamshul. The accused persons had no land dispute with Jasim and Ali. When the accused persons were at the door, he did not go there but saw the incident. After the accused left, he went to the place of occurrence. When he reached at the place of occurrence, many people had gathered there. He can tell the name of few men amongst them. He identified Mahiuddin, Chirag Ali, Saiul, Bhujai, Jalesar and many other people who were not acquaintances to him. This incident occurred on the roof and door of the house. He went to the roof where the incident was occurred. He don't know as to why the incident occurred. The accused Suleman and Rahim have no land dispute with the family of the informant-Jasim. Jasim is his cousin (father's brother's son). There are 30-40 houses between *Chowkidar* Rahman's house and Jasim's house. There is the house of accused Suleman to the east in front of his house.

15. PW-5 Chirag Ali has stated, in his examination-in-chief, that the incident occurred at 02:00 a.m. on 29.06.2012. He was at his home at that time. He woke up after hearing the sound of firing and when he went to the door, he saw that 25- 30 miscreants were firing bullets and exploding the bombs at Md. Ali's door. A solar light was lighting there, in which he identified Rahman Nadaf, Islam Nadaf, Karim Nadaf, Suleman and Jahangir but could not identify others. When he was going to place of



occurrence, the miscreants said that if he comes there, they would shoot him. After committing the crime, the miscreants went towards the west and later when he went to place of occurrence, he saw that Md. Ali had sustained gunshot injury. His wife had also sustained gunshot injury. Both of them were on the verandah. Md. Ali was dead. After that, he went to the roof of the house and saw that Hakim, Chhotu, Rashid (all three brothers) were lying injured on the roof and were unconscious. The female members of the house were screaming. After that, Police came and took Hakim, Rashid and his mother to Darbhanga for treatment. Rashid and Hakim died on the way.

15.1. In his cross-examination, he has stated that among those who died, the deceased Md. Ali is his brother and deceased Hakim is his nephew (brother's son) and deceased Rashid and Chhotu are also his nephews (brother's sons). He does not know as to how many accused persons in the name of Islam, is involved in this case. The informant of this case, Md. Jasim is the son of his younger brother. There was a case regarding scuffle going on between his brother/ nephew and the accused. The cases were going on from both sides. There was a dispute between the two parties regarding the running of the cotton ginning machine. In both the cases which were already going on, he was neither an



accused nor a witness in any of those cases. The case was going on in Madhubani. After the incident, he was constantly living at his home. This statement was given to the Inspector one month after the incident. There is an unpaved road between the two houses of Md. Ali. Md. Ali's family members live in both the houses. At the time of incident, Rashid lived in the house which lies in the west and Hakim lived in the house which lies in the east. Solar light was installed at Md. Ali's door which is to the north of his door. When he woke up, other members of his family woke up and everyone came out of the room. He did not see whether the people in the neighborhood had come out of their house or not. At a distance of 10 *laggi* (local unit of distance) north of his house, miscreants were exploding bombs and firing bullets. They created an uproar upon hearing the sound of bombing. When the *hulla* was made, no people from the neighbourhood came out of their houses. By the time the miscreants were at the place of occurrence, he was at the door. His family members were also there with him. No one had come at Md. Ali's door before him. There are two houses in between his house and the place where the accused persons were shooting. The explosion of 25-30 bombs and bullets were heard. All these sounds happened within 10-15 minutes. There was a cemented staircase and the way to stairs from inside the house and



there was no door inside the boundary of the staircase. He stayed on the roof for 5 minutes. After he went on the roof, 5-6 people went there. When he was on the roof, those people came and went down here and there. There was blood spilled over on that roof. Those who died at place of occurrence, were not taken and the other four injured persons were taken to Darbhanga Hospital. Md. Ali and Chhotu were not taken. He cannot tell the address of 25-30 men who were miscreants. There was no one from his village except the person whose name was told by him.

16. PW-6 Sairul Khatoon has stated that, on the day of occurrence at 02:00 a.m., she was sleeping in her house. When she woke up after hearing the explosion of bombs and bullets, she came to the door and looked around. She saw that Kalam was roaming around her brother Md. Ali's door with a pistol. He told them to move aside or he would shoot them. There were 20-25 men at Ali's door. Among them, she saw Rehman Nadaf, Jahangir, Suleman Nadaf, Misrul Nadaf, Karim Nadaf and Islam. These people were firing bullets and throwing bombs. After firing the bullets and throwing bombs, they left towards the south-west direction. Then she went to place of occurrence and saw that Md. Ali was lying dead and her sister-in-law Safida was lying in an injured condition due to the bomb blast. When she went to the



roof, she saw that her younger nephew Naseem was lying dead after being injured. Rashid was also injured and was sobbing. Her nephew Hakim was also in his last stage after being injured. After the criminals left, both daughters-in-law of Samshul and Chhedhi came to Md. Ali's house looked for them and went away. After that, a Police vehicle came there and took the injured persons to the hospital. Hakim and Rashid died on the way.

16.1. In her cross-examination, she has stated that her in-law's house is in the same village as her maternal house. She had stated all the above mentioned things to the Police after one and a half months. She was at her home after the occurrence. She has further stated that the Police arrived at the place of occurrence, ten minutes after the criminals had fled the spot. After the accused persons fled away, no one picked up the injured till the arrival of the Police. The injured persons were brought down from the roof by the Police only. The injured persons who were alive were taken to Darbhanga in a jeep and those who died on the spot were later taken by the Police. Those who died, died below.

17. PW-7 Gulshan Khatoon has stated that on the day of incident at 02:00 a.m. on hearing the sound of bomb explosion, she woke up. Her husband also woke up and went away from the house. When she peeked through the window, she saw that Kalam



was holding a pistol in his hand and saying that Jasim was not on the roof and to search for him. After that, she saw that there were 20-25 people with Md. Kalam. Among them, she identified Suleman, Jahangir, Misrul, Rahman, Karim and Islam. They were standing adjacent to the place where she was sleeping. She identified them in the light of vapor light. She has further stated that the Police came and took the husband's elder brother and younger brothers who were injured in the jeep. Her husband's elder brother and younger brothers died on the way while her mother was admitted in Darbhanga Hospital.

18. PW-8 Rubana Khatoon has stated, in her examination-in-chief, that the informant Md. Jasim is her brother. She was sleeping in her house at the time of occurrence. She woke up upon hearing the firing of bullets and looked through the window that Kalam was holding a revolver in his hand and enquiring about Jasim. She looked in the vapor light that there were 20-25 men along with him. Her brother scaled the wall and ran off. Out of 20-25 men, she identified Suleman, Jahangir, Misrul, Rahman, Islam, Karim, Phooldan, Hanif and Islam. These people killed her family members and went away. After those people left, Shamshul's two daughters-in-law Firoza Khatoon and Dukhni Khatoon, Islam's wife Unnat Khatoon and Chhedi came at



the door and looked and after seeing everyone, returned back. After that, she came out of the house and reached at the door and saw that her father had died and mother had sustained injury caused by bomb in her left leg and she was writhing in pain. After that, she went to the roof and saw that Abdul Hakim and Shamim were writhing in pain. Nasim was dead. He had been hit by gunshot in the head. Shamshul was already having a dispute with her family regarding shopkeeping resulting in this incident. Due to this enmity, Shamshul got a false case filed against him by his daughter-in-law and he went to jail and got their family members killed by hatching a conspiracy. At the same time, the villagers and Police came there and took her two brothers and her mother to Darbhanga Hospital in a jeep. Her two brothers Hakim and Shamim died on the way and her mother was admitted to D.M.C.H.

18.1. In her cross-examination, she had stated that ten days prior to the said incident, Shamshul went to jail with some family members. He has been in jail ever since. She has further stated that 15 persons had reached at the spot of incident earlier. Those 15 persons were from her village. She also went to the roof along with other persons. She stayed on the roof. She stayed there for 5 minutes. When Police came, she accompanied them. It is



stated that, in this case, there are a total of three accused persons whose names are Islam. She says that the father's name of one person named Islam is Rehman. *Daroga* took her statement in the morning after the occurrence. She told *Daroga* that there had been dispute with Shamshul's family and, hence, this case has been filed. It is wrong to say that her statement was not recorded before the Police.

19. PW-9 Safida Khatoon is the mother of the informant-Jasim. On hearing the sound of bomb explosion, she saw that Md. Hanif from Jhanjharpur, Kanhauli was standing near her. He shot her husband, upon which she screamed. Then Kalam said "kill her too". Then a man threw a bomb on her which hit her leg. The shrapnels from the bomb explosion caused burns on other parts of her body. After that, Kalam shot at her husband. After that, Suleman, Jahangir, Misrul, Kalam, Rehman, Islam, Karim and Sultan went on the roof. After ten minutes they came down from the roof and passed by her. On her scream, all ran away towards west and south direction. She had further stated that they had prior enmity with Shamshul over shopkeeping, as a result of which, this occurrence took place.

19.1. In her cross-examination, she had stated that she went to Darbhanga Hospital in a Police jeep. No one from her



family went for her treatment, only the Police went. She was in Darbhanga Hospital for almost a month. She gave the statement on the hospital bed in front of the Inspector, eight days after the incident. She has further stated that the bomb hit her foot. She was standing when the bomb hit her. She did not see the person who fired first bullet at her husband. The second time, Kalam shot her husband at point blank range. Kalam shot her husband by sticking gun to his ribs. She was sitting there when her husband was shot. She has further stated that *Daroga* did not take the burnt clothes which she was wearing. When Kalam shot at her husband, at that time, her husband was already hit by the bullet and was writhing in pain. The weapon with which Kalam had fired the bullet was about 1.5 cms. (bitta) in length. It is stated that Islams' wife had filed a case in which Islam, his father, his uncle Mazloom, Islam and Firoz went to jail. She does not remember the name of the person who had filed the case. The woman's maternal house, who had filed the case, was at Sakri Kanhauli. Islam's wife had filed the case ten days before the said incident. Her husband had a dispute with Shamshul over a shop. Before the dispute, Shamshul used to work at her shop.

20. PW-10 Md. Jasim is the informant of the case. He has stated, in his examination-in-chief, that the incident took place



at 02:00 a.m. on 29.06.2012. He hid himself in the bushes adjacent to the house and saw in the flash of solar light that Md. Kalam, Md. Suleman, Md. Jahangir, Md. Misrul, local *chowkidar* Md. Rehman, his son Md. Islam, Md. Karim and Md. Hanif (resident of Jhanjharpur), were armed with weapons. Apart from them, there were 30-40 more people whom he also identifies. They were running towards south and west direction. After the said incident occurred, he informed Manigachhi Police Station. After ten minutes, the policemen of Manigachhi Police Station came there and then ten minutes later, the policemen of Pandaul Police Station came there. The incident happened between him and Shamshul due to an old dispute related to shopkeeping. Meanwhile, a land dispute also started between Shamshul and Sone Lal Chaupal. It is further stated that Shamshul hatched a conspiracy and got his younger daughter-in-law Ummat Khatoon register a false dowry act and then surrender himself and went to jail along with Md. Firoz, Islam and his brother Md. Majlum. Then, as per the pre-planning from the jail itself, he sent his two sons Md. Kalam and Md. Chhedi to commit the said incident in connivance with the local persons like Md. Rahman, Md. Karim, Md. Hanif of Jhanjharpur, Islam Mouahi, Chandeshwar Das and Md. Sultan. Even before this case, Shamshul's son led a fatal



attack on his father in which his father was badly injured, but somehow he survived.

20.1. In his cross-examination, he has stated that Ummat had lodged a case in Pandaul Police Station 10-12 days before the incident. Some days before the incident, he came to know that Islam, Firoz and his brother Md. Shamshul were in jail. On the day of incident, he came to know that Ummat had lodged a case against her father-in-law, husband and brother-in-law. In the morning of the incident, he came to know that Shamshul, his two sons and his brother were in jail. It is also stated that the accused Shamshul also worked in his shop making quilts. He was a worker in his shop for three months. Next season, Shamshul opened his shop in front of his shop. The enmity started after opening of the shop. On the day of the incident, no male member of the family slept in the clay-tiles house except him. He came out of the house on hearing the bomb explosion and bullet sound. Female members did not come out of the house. The hand-pump is 10 feet away from the bushes in which he was hiding and that hand-pump is private. He has further stated that, after the incident, when he went to the roof, there was Md. Jumarati who was the brother of Khalil. When he reached to the place of occurrence, he did not see Khalil and Ramzani there. Apart from his family, when he went to the



place of occurrence, there were 10-15 people there. He does not remember the names of those 10-15 people. It is not true that the local accused in this case have been falsely implicated by them due to dirty local politics and local factionalism. It has also been stated that there was a case going between him and Misrul's family in the past, but it was later reconciliated.

21. PW-11 Md. Shakil Nadaf has deposed that, on the day of incident, he woke up around 01:30-2:00 a.m. after hearing the explosion of bomb and bullet. He came out of his house and peeped in and saw that Md. Kalam was holding a pistol in his hand and was saying to shoot Jasim and shoot whoever else is there. Along with Kalam, Md. Rehman, Suleman, Md. Misrul, Jahangir, Karim, Islam, Hanif were also carrying bombs in their hands. Apart from them, there were 10-15 people whom he did not identify. After committing the crime, some went to the west and some went to the south direction. After this, Shamsul's wife, his two daughter-in-laws and his son Chhedi came out and looked into Jasim's house and returned. After 10 minutes, he also reached Ali's house where the incident occurred. He saw that Md. Ali was shot dead and his wife was hit by a bomb. The people who had reached the roof before him were saying that other persons had died on the roof too. Then he also went to the roof and saw that Chhotu @



Nasim was dead and Hakim and Rasheed were writhing after being shot. Then the police came there. The police took the injured Hakeem, Rasheed and Safida to Darbhanga for treatment. Around 7-8 o'clock in the morning, information was received that both Md. Raseed and Hakim died on the way.

22. PW-12 Dr. Sardanand Jha was posted as Civil Assistant Surgeon on 30.06.2012 at Sadar Hospital, Madhubani. He along with Dr. R.D. Chaudhary, M.O., Sadar Hospital, Madhubani conducted the *post mortem* examination of a dead body of a Muslim male aged about 60 years namely Md. Ali, son of late Md. Bulbul of village Gangauli, P.S. Pandaul, District-Madhubani. He found following *ante mortem* injuries:-

“(1) one circular wound 3/4” diameter with ragged inverted margine on the upper part of the right side of chest in the posterior auxiliary line-wound of entrance.

(2) lacerated wound 4” x 1/2” x 1/4” on the dorsal aspect of right hand with black burnt multiple spots on the dossel aspect of hand-pump

(3) black burnt multiple spot on the lateral aspect of right side of chest and lateral to nipple and lateral aspect of right arm.

On dissection:- noted the following:-

Fractured of third rib of right side of chest with laceration of right lung with blood and blood clot in thoracic cavity and one bullet was embedded in the thoracic vertebra at the level of diphram. Both chambers of heart empty, all the internal vescera namely, lungs, liver, spleen and kidneys pale. (4) Stomach containing digested food material. (5) Intestine



containing fecal matter and dashes. (6) Urinary bladder empty. (7) brain and meninges pale, one bullet recovered from body was handed over to Chowkidaar in a file level.

Time since death: within 24 hours.

Death in our opinion: was due to hemorrhage and shock caused by firearm.”

23. PW-13 Dr. R.D. Chaudhary, on 30.06.2012, along with Dr. S.N. Jha, M.O., Sadar Hospital, Madhubani conducted the *post mortem* of the dead body of a Muslim male aged about 22 years named Md. Chhotu, son of late Md. Ali of village- Gangauli, P.S. Pandaul, District-Madhubani, and found following *ante mortem* injuries:-

“(1) One circular wound 3/4” in diameter with ragged inverted margin on the left side of the occipito parietal region of the scalp-wound of entrance. (2) 1/2” abrasion on the left upper portion bracket of the abdomen on dissection.

Fracture of the left parietal and occipital bone of the skull and laceration of the blood and meninges with blood and blood clots in cavity. One bullet was lodged behind the routerf of nazel bone and right bone. (2) heart both chambers of the heart empty or internal vesras namely, lungs, liver, spleen, kidneys pale, stomach containing digested food materials. Intestine containing fecal material and gases. Urinary bladder empty. One bullet recovered from body and was handed over to the *Chowkidar* in label file.

Time since: within 24 hours.

Death in our opinion was due to hemorrhage and shock caused by firearm. This PM Report has been prepared by me which bears of my signature and also signature of Dr. S.N. Jha, PM Report marked Ext.-2/1.”



24. PW-14 Dr. Bedanand Jha was posted as a Teacher in the Department of F.M.T., DMCH, Darbhanga on 30.06.2012. On the same date, and in same capacity, he conducted the *post mortem* examination of Md. Hakim, son of late Md. Ali of village-Gangauli, P.S.-Pandaul, District- Madhubani at 01:00 p.m. The dead body was brought and identified by Md. Mustakim Khan, S.I., P.S.-Pandaul, District-Madhubani and the dead body of a Muslim male aged about 35 years of average body build with presence of rigor mortis all over the body. The following features were noted:-

“Blood and blood clots were found over mouth and both nostrils. One lacerated punctured wound with inverted margins and collar of abrasion measuring 1/3” in diameter i.e. wound of entry was found in the epigastrium in the median plane 1” below the Xyphoid process. This wound was communicating with a track going upwards and backwards towards right below inferior angle of scapula in 7th intercostal space. Here another lacerated punctured wound with everted margin measuring 3/4” in diameter leading outside the chest cavity i.e. wound of exits. The projectile had passed through the diaphragm the medial aspect of right lung and chest wall. The tissues in and around the track were grossly lacerated and infiltrated with blood and blood clots. The right lung was found collapsed with 500 ml fluid blood in the right chest cavity. Both sides of heart were empty. Left lung and all abdominal viscera i.e. liver, spleen and both kidneys were found pale. Stomach and urinary bladder were found empty. Brain and its meninges were found pale.



Opinion:- Above noted injuries were *ante mortem* in nature and were caused by fire-arm firing bullet. Death was due to hemorrhage and shock.

Time since death was within 8-12 hours from the time of *post mortem* examination in this department.”

24.1. On the same date i.e. on 30.06.2012 at 02:00 p.m., conducted the *post mortem* examination of Md. Shamim, son of late Md. Ali of village-Gangauli, P.S.-Pandaul, District-Madhubani. The dead body was brought and identified by Mustakim Khan, A.S.I., P.S.- Pandaul. The dead body was of a Muslim male aged about 30 years of average body with presence of rigor mortis all over the body. The following features were noted:-

“Blood and blood clots were found over mouth and both nostrils and left ear. One lacerated punctured wound measuring 1/3” diameter with inverted margins and collar of abrasion i.e. wound of entry was found over right side of temporal region of skull. This wound was found communicating through a track across the cranial cavity from right to left upto left parietal region, lacerating the meninges and both hemisphere of brain, which were completely disorganized. The tissue in and around the track were completely lacerated and infiltrated with blood and blood clots with multiple fractures of right temporal and left parietal bones. In the middle of left parietal region, another lacerated punctured wound of 1” diameter with everted margins i.e. wound of exits was found. This exit wound was leading outside the cranial cavity with oozing of blood and blood clots. Both sides of heart were empty. Both lungs and all



abdominal viscera i.e. liver, spleen and both kidneys were pale. Stomach and urinary bladder were empty.

Opinion:- Above noted injuries were *ante mortem* in nature and were caused by fire-arm, firing bullet. Death was due to laceration of brain.

Time since death was within 8-12 hours from the time of *post mortem* examination in this department.”

25. PW-15 Kumar Brajesh is the Investigation Officer.

On 30.06.2012, he was posted as S.H.O. at Pandaul Police Station. He was informed by the S.H.O. of Manigacchi Police Station informed him on the phone that there was an attack on Md. Ali's house located in Village-Gangauli by firing bullets and exploding bombs, as a result of which, some people died and some were injured. When he reached Gangauli at 02:05 a.m., the S.H.O. of Manigacchi Police Station was already present there. He recorded the statement of the informant Md. Jasim and inspected the place of occurrence. The boundary of the place of occurrence is the roofed house of the informant-Md. Jasim. Near the northern edge of the verandah, the dead body of Md. Ali was lying with its head towards the west and its feet towards the east. There, Md. Ali's wife Safida Khatoon was also found injured who was sent for treatment. To go inside from the verandah, there is a passage which has a room on the left and a room on the right. There is a door in the room on the left which is locked and the one room on



the right does not have a door. No incident happened in these rooms. He has further stated that the time of arrival of the members of F.S.L. team and the name of the members are not mentioned in the case diary. The members of the F.S.L. team had recovered bomb remnants, bullet shells and other items from various places. The seized items were sent to F.S.L., Patna on 14.09.2012 for examination. He recorded Safida's statement on 02.07.2012, witness Sone Lal's statement on 03.07.2012, Lakshmi Choupal's statement on 03.07.2012, witness Chirag Ali's statement on 16.08.2012, Sairul Khatoon's statement on 16.08.2012, witness Md. Jumarati's statement on 16.08.2012 and Shakil's statement on 23.09.2012. He has further stated that Chirag Ali had not said in his statement before him that when he heard the sound of bullets and bomb, he went to his door. The witness Rizwana said in her statement that there was enmity between the house of the deceased and the house of Shamshul, due to which, the conspiracy was hatched but she did not told that there was a tussle between both families because of which this incident occurred. In the *fardbeyan*, the informant has not written that he went to sleep on the roof after having dinner, but the said statement is mentioned in the re-statement of the informant. In the *fardbeyan*, the informant-Jasim did not mention that his elder brother Md. Hakim, Rashid and



Nasim slept on the roof and his mother and father slept in the verandah below. It is also not mentioned in the *fardbeyan* that he got up from the roof at 12:00 o'clock and went to sleep in the house in the clay-tiled house. The informant-Jasim has not stated, in the *fardbeyan*, that at 02:00 in the night, he lost his sleep due to the sound of bomb explosion and bullets coming from in front of his terraced house. This informant has not mentioned this fact, in his statement, that he hid in the bush and saw everyone in the flash of solar light. He has further stated that the witness Safida has not stated before him that she saw that Kalam shot her husband. He has not made a rough sketch of the place of occurrence. He does not know that Md. Ali is Chirag Ali's brother. The reason for such a big incident was the land dispute and shopkeeping dispute between the parties. Md. Rehman, Md. Islam and Md. Karim had no land related disputes with the deceased's family. He had not mentioned in the diary about the bushes lying in the east of the informant's clay-tiles house and whether there were any bushes to the north of the informant's clay-tiled house. It is not mentioned in the diary about the bushes or forest lying in any part of the clay-tiles house. The houses of the accused Md. Rehman, Suleman and Misrul were searched, but no suspicious item was recovered from their houses.



26. PW-16 Dr. Rajeev Ranjan was posted as Associate Professor and Head of Department in Radiology at D.M.C.H., Laheriasarai. He had no knowledge according to paper available in the case record.

27. PW-17 Dr. Rajeev Ranjan was posted in Surgery Department in D.M.C.H. on 30.06.2012. On that date, he examined Sakina Khatoon, wife of Md. Ali aged about 55 years of Gangauli, Madhubani and found following injuries:-

“(1) Lacerated wound in left lower leg over scene tivior 5cm. X 2 cm. with blackening around.

(2) Tatooing with multiple small burns in left side of the body, neck, chest, abdomen and hand.

(3) Very small lacerated wound in right arm associated with tackoing investigation done;-

1. X-ray left lower let, AP and lateral view.

2. X-ray right upper arm AP and lateral view.

3. X-ray neck AP view.

According to radiologist of DMCH vide plate No. 5382 and 5404 four plates. No bony injunsing but sprintals like shadow seen in all 3 X-rays.

Opinion:- Injury No. 1, 2 and 3 are simple caused by firearm weapon. These injuries may be caused by sprintals of bomb. The injury report has been prepared by me and bears my signature and it has been marked Ext.-1.”

27.1. In his cross-examination, he has stated that the injuries No. 1, 2, 3 may be caused by firearm by firing cartridges. He prepared the injury report on 28.09.2012 while he examined



the injured on 30.06.2012. On the basis of injury register, he prepared this injury report, but injury register is not before him.

DISCUSSION AND FINDINGS:-

28. From the evidence led by prosecution, it would emerge that Md. Jasim (PW-10) is the informant who lodged the F.I.R. on 30th June, 2012 at 05:05 a.m. for the incident which took place at 02:00 a.m. Thus, within three hours from the time of incident, F.I.R. was immediately lodged in which the informant gave name of 12 persons. Thus, in the present case, F.I.R. was immediately lodged. It is pertinent to note that, in the incident in question, father of the informant and three brothers of the informant i.e. total 4 persons lost their lives and, during the night hours, mother of the informant, i.e. PW-9, who is also an injured witness, has seen the incident in question whereas other family members have also seen the incident from outside the house. It transpires from the record that prosecution had examined 17 witnesses out of which PW-1 and PW-2 have been declared hostile. At this stage, we would like to examine the deposition given by PW-9 who is the injured witness. PW-9 Safida Khatoon is the mother of the informant. The said witness was sleeping with her husband in the courtyard and her 3 sons were sleeping on the roof of the house. On hearing the sound of bomb explosion, she



woke up. At that time, she saw that Md. Hanif was standing near her. He shot her husband upon which she screamed and thereafter accused Kalam said “*Kill her too*”. Then, a man threw a bomb on her which hit her leg. Thereafter, Kalam shot at her husband. After that, Suleman, Jahangir, Misrul, Kalam, Rahman, Islam and Karim went on the roof and after 10 minutes they came down from the roof and went away. On her scream, all ran away towards west and south direction. Thus, from the deposition of the said witness, it is revealed that PW-9 sustained injury in the incident in question and she is the eye-witness. At this stage, it is pertinent to note that PW-12 Dr. Sardanand Jha conducted the *post mortem* examination of the dead body of Md. Ali (husband of PW-9). The said Doctor specifically opined that the deceased died due to hemorrhage and shock caused by firearm injury. Thus, the medical evidence supports the version given by PW-9.

29. PW-17 Doctor Rajeev Ranjan had examined PW-9 and issued an injury certificate. The said witness opined that three injuries are simple but caused by firearm weapon and the said injuries may be caused by splinters of bomb. Learned counsel appearing for the concerned appellants/accused have though raised contention that the injury sustained by the said witness was simple in nature and PW-17 prepared the injury report on 28.09.2012 i.e.



after a period of 3 months, the deposition given by the said witness cannot be discarded on this ground. The fact remains that PW-9 sustained injury in the incident in question and her presence at the place of incident during night hours at about 02:00 a.m. was natural. There is no reason for the said witness to falsely implicate and give the name of 10 persons who were present at the place. On the contrary, the said witness did not give the name of the person who threw the bomb on her which hit her leg. Thus, we are of the view that the deposition given by the said witness was natural, otherwise she could have implicated some person by giving his name as the person who threw bomb on her. It is further revealed from the deposition of the said witness that all the 10 persons named by her were present and they all went at the roof and after 10 minutes all 10 persons came down from the roof and fled away from the spot. When she screamed, the other persons, who witnessed the occurrence from outside, also gathered and it was found that 3 brothers of the informant (3 sons of PW-9) were found dead on the roof. At this stage, it is also relevant to note that the other prosecution witnesses have specifically deposed that PW-9 sustained injuries and she was taken to D.M.C.H., Darbhanga. Thus, with regard to the injury sustained by PW-9, there is ample evidence which corroborate the version given by PW-9.



30. At this stage, we would like to refer latest decision rendered by the Hon'ble Supreme Court in the case of **Neeraj Sharma Vs. State of Chhattisgarh**, reported in **(2024) 3 SCC 125**, wherein the Hon'ble Supreme Court has observed in **Para-23** as under:-

“23. In Balu Sudam Khalde v. State of Maharashtra [Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365 : 2023 SCC OnLine SC 355] this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eyewitness. This Court held as follows : (SCC para 26)

“26. When the evidence of an injured eyewitness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.



26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

(emphasis supplied)”

31. From the aforesaid decision, it is revealed that the Hon'ble Supreme Court has laid down principles which are to be kept in mind while appreciating the evidence of an injured eye-witness. From the aforesaid principle, it can be said that unless it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. The evidence of such witness cannot be doubted because of minor contradictions.

32. Keeping in view the aforesaid principle, if the evidence of PW-9 (injured eye-witness) is examined, we are of the view that PW-9 is trustworthy and her deposition cannot be discarded and more particularly, when the same was corroborated by the other prosecution witnesses including the medical evidence.

33. PW-10 (informant) has also deposed that he hid himself in the bushes adjacent to the house and saw in the flash of solar light that Md. Kalam, Md. Jahangir, Md. Misrul, local *choukidaar* Md. Rahman, his son Md. Karim and Md. Hanif were



armed with weapons. He identified all the accused persons. He, therefore, immediately informed Manigachhi Police Station and after 10 minutes, the policemen from the said Police Station came at the place of occurrence and thereafter 10 minutes later, policemen from Pandaul Police Station came at the said place.

34. PW-11 Md. Shakil Nadaf has also deposed, in examination-in-chief, that he woke up at around 01:30-02:00 a.m. after hearing the explosion of bomb and bullet. He came out of his house and peeped in and saw that Md. Kalam was holding a pistol in his hand and was saying to shoot Md. Jasim and shoot whoever else is there. The said witness also gave name of the other accused who were also carrying bombs in their hands. The said witness further deposed that, after committing the crime, some accused ran to the west and some went to the south direction. The said witness reached at the house of Md. Ali i.e. place of occurrence and found that 4 persons died in the incident and PW-9 sustained injuries.

35. We have also gone through the deposition given by PW-4 Md. Jumarati, PW-5 Chirag Ali, PW-6 Sairul Khatoon, PW-7 Gulshan Khatoon and PW-8 Rubana Khatoon. All the aforesaid witnesses have also given name of the assailants whom they have identified. Thus, the other witnesses have corroborated the version given by PW-9 (injured eye-witness).



36. The Doctors, who have conducted the *post mortem* examination of the dead body of the deceased, also deposed that all the 4 persons died because of firearm injuries. Thus, we are of the view that the medical evidence also supports the version given by PW-9 (injured eye-witness).

37. It has been contended by the learned counsels for the appellants/accused that there are major contradictions, inconsistencies and discrepancies in the deposition of the prosecution witnesses. However, we are of the view that the said contention is misconceived. Even if there are minor contradictions and minor discrepancies in the deposition of the prosecution witnesses, the case of the prosecution cannot be discarded simply on the said ground. We are of the view that PW-9, who is the injured eye-witness, has specifically named the accused persons who were present at the place and the role played by the concerned accused in committing the crime. When 4 persons died in the incident in question, who are family members of PW-9, there was no reason for PW-9 to falsely implicate her neighbours in the said incident.

37.1. However, at this stage, we would like to examine the case of the prosecution *qua* accused Md. Shamshul Nadaf, Md. Firoz, Md. Islam and Majnu Nadaf. From the evidence of the



prosecution witnesses, as discussed hereinabove, it is revealed that the prosecution witnesses have attributed the motive to the family of Md. Shamshul Nadaf to kill Md. Ali. There is no evidence led by the prosecution that the said accused have hatched the conspiracy and the said accused were in contact with the other accused who had committed crime at the place of incident. All the aforesaid four accused have been convicted with the aid of Section 120B of I.P.C. However, prosecution has failed to produce any evidence either in the form of telephonic conversation from the said accused from the jail or from outside the jail with the other co-accused and failed to produce any evidence that the said four accused met the other co-accused before they had gone to jail in connection with the dowry case registered by the daughter-in-law of Md. Shamshul against the said accused and other three male members of the family.

38. In view of the aforesaid discussion, we are of the view that the prosecution has proved the case against the appellants/accused Md. Suleman, Md. Jahangir @ Jahangir and Md. Misrul in Criminal Appeal (DB) No. 1138 of 2016, Md. Abid @ Sultan @ Abid in Criminal Appeal (DB) No. 1137 of 2016, Md. Rahman @ Rahman in Criminal Appeal (DB) No. 64 of 2017, Md. Karim @ Karim and Md. Islam @ Islam in Criminal Appeal (DB)



No. 67 of 2017 and Md. Hanif @ Md. Hanif Mansoori @ Hanif Mansoori in Criminal Appeal (DB) No. 1220 of 2016 beyond reasonable doubt and, therefore, no error has been committed by the Trial Court while passing the impugned judgment and order against them.

39. Further, in view of the aforesaid discussion, we are of the view that the prosecution has failed to prove the case against appellants Md. Firoz and Md. Islam in Criminal Appeal (DB) No. 1076 of 2016 and appellant Majnu Nadaf @ Majlum Nadaf in Criminal Appeal (DB) No. 445 of 2017. Thus, the impugned judgment and order of conviction and sentence are required to be quashed and set aside *qua* the aforesaid appellants.

CONCLUSION:-

40. Accordingly, Criminal Appeal (DB) No. 1137 of 2016, Criminal Appeal (DB) No. 1138 of 2016, Criminal Appeal (DB) No. 64 of 2017, Criminal Appeal (DB) No. 67 of 2017 and Criminal Appeal (DB) No. 1220 of 2016 stand dismissed.

41. Further, the judgment of conviction dated 16.09.2016 and order of sentence dated 20.09.2016 passed by learned Sessions Judge, Madhubani in Session Trial No. 90/2013 (2847/2013 C.F.), Session Trial No. 155/2013 (1446/2013 C.F.), Session Trial No. 1/2014 (4276/2014 C.F.) arising out of Pandaul



P.S. Case No. 149/2022 (G.R. No. 1890/2012) are hereby quashed and set aside qua appellant Majnu Nadaf @ Majlum Nadaf (in Criminal Appeal (DB) No. 445 of 2017) and appellants Md. Firoz and Md. Islam (in Criminal Appeal (DB) No. 1076 of 2016). The aforementioned 3 appellants are acquitted of the charges levelled against them by the learned Trial Court. They are in custody. They are directed to be released from jail custody forthwith, if their custody is not required in any other case.

42. Accordingly, Criminal Appeal (DB) No. 445 of 2017 and Criminal Appeal (DB) No. 1076 of 2016 are allowed.

43. Criminal Appeal (DB) No. 1076 of 2016 stands abated *qua* Md. Shamshul Nadaf.

(Vipul M. Pancholi, J)

Ramesh Chand Malviya, J: I agree

Sachin/-

(Ramesh Chand Malviya, J)

AFR/NAFR	A.F.R.
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