

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1118 of 2017**

Arising Out of PS. Case No.-63 Year-2008 Thana- MOTIHARI TOWN District- East
Champaran

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Mauje Lal Sahani, S/o Late Rijhan Sahani, resident of Village- Rahuwaman,
P.S.- Madhuban, District- East Champaran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant : Mr. Anil Singh, (Amicus Curiae)
Mr. Vinay Ranjan, Advocate

For the State : Mr. Ajay Mishra, Addl. PP

For the Informant : Mr. Ajay Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)**

Date : 30-09-2024

When the instant appeal was taken up for hearing on 27.08.2024, no one appeared on behalf of the appellant so considering this aspect we requested Mr. Anil Singh, learned Advocate to assist this Court as Amicus Curiae, though later on, during course of hearing, Mr Vinay Ranjan, learned counsel for the appellant appeared and he adopted and endorsed the submissions made by learned Amicus Curiae.

2. Mr. Ajay Mishra, learned Additional Public Prosecutor for the State and Mr. Ajay Kumar Singh, learned counsel for the informant were present and they were also heard.

3. The present appeal has been filed against the judgment of conviction dated 23.03.2017 and order of sentence dated 27.03.2017 passed by the learned 14th Additional District & Sessions Judge, East Champaran at Motihari, in Sessions Trial Case No. 494 of 2011 arising out of Motihari Town P.S. Case No. 63 of 2008, whereby and whereunder the learned trial court has convicted the appellant along with other three co-accused for the offences under Sections 302 and 307 both read with Section 34 of the Indian Penal Code (in short 'IPC') and also convicted for the offence under Section 27 of the Arms Act and under Sections 3 and 4 of the Explosive Substances Act (in short 'Explosive Act'). The appellant has been sentenced to undergo life imprisonment with a fine of Rs. 25,000/- for the offence under Section 302/34 of IPC and in default of payment of fine, he has been directed to further undergo simple imprisonment for three years. He has been further sentenced to suffer rigorous imprisonment of ten years with a fine of Rs. 10,000/- for the offence under Section 307/34 IPC and in default of payment of fine, he has been directed to undergo simple imprisonment for one year. He has been sentenced to suffer rigorous imprisonment of four years for the offence under Section 27 of the Arms Act. He has been further sentenced to

suffer rigorous imprisonment of ten years and seven years respectively along with a fine of Rs. 5,000/- for each offence under Sections 3 and 4 of the Explosive Act and in default of payment of fine, he has been directed to undergo simple imprisonment of one year for each offence. All the sentences have been directed to run concurrently.

Prosecution Story :-

4. The substance of the prosecution story is that : -

As per the informant, namely, Surendra Narayan Singh @ Raju Singh Rathor (P.W.-9), who recorded his fardbeyan on 15.03.2008, he and Munna Singh (deceased) went to Motihari court to attend their cases and he was waiting for Munna (hereinafter referred to as 'victim') at the gate of jail. At around 4:15 P.M., the victim reached at the gate and he first entered into the gate of jail and thereafter he (informant) entered into the jail. The victim was twenty steps ahead from him and then suddenly the appellant, namely, Maujelal Sahani, co-accused Umesh Sahani and Muslim Miya came running from behind of the barrack No. 10 and at that time, both the co-accused were carrying bomb with them and the appellant was carrying a pistol with him then the informant alerted the victim to save himself but in the meantime, the co-accused Muslim

Miya and Umesh Sahani hurled a bomb and the appellant fired a shot at the victim, as a result of which, the victim sustained injuries and fell down and thereafter, the other two co-accused Sujay Pandey and Krishna Giri caused firearm injury at the back portion of the head of the victim and thereafter all of them chased the informant with an intention to kill him and also fired on him but he managed to escape by running and entered into his cell where the other prisoners Yogendra Singh, Pradeep Srivastava, Suraj Paswan, Laldeo Paswan, etc. saved him and during that course, the door of his cell was broken by the accused.

5. The informant recorded his fardbeyan on the alleged day of occurrence at 20:05 P.M. in Motihari central jail which was recorded by Sub-Inspector Raushan Kumar. On that basis, the formal FIR bearing registration No. 63/2008 was registered at Nagar Town police station under section 302/34 of IPC, under section 27 of the Arms Act and section 3/4 of Explosive Act which set the criminal law in motion.

Proceedings before the trial court : -

6. Here it is important to mention that the Sessions Trial Case No. 494/2011 relating to co-accused Muslim Miya, Sessions Trial Case No.732/2011 relating to the co-accused

persons, namely, Sujay Pandey, Krishna Giri and Umesh Sahani and Sessions Trial Case No. 101/2012 related to the present appellant were initially separate but later on, they were amalgamated by the trial court but the case of the co-accused Sujay pandey was separated on 23.01.2016. Accordingly, the appellant and co-accused persons Muslim Miya, Krishna Giri and Umesh Sahani faced trial jointly. The appellant and co-accused stood charged for the offences under sections 302/34, 307/34 of IPC and under section 27 of the Arms Act and also stood charged for the offences under sections 3 and 5 of the Explosive Act. The charges were read over and explained in Hindi to the appellant to which he denied and claimed to be tried for the charged offences.

7. During the trial, the prosecution examined altogether 13 witnesses who are as under : -

	Name	
P.W.-1	Munna Singh	Prisoner/jail inmate
P.W.-2	Nishant Kumar Singh	Prisoner/jail inmate
P.W.-3	Sanjay Singh	Seizure list witness
P.W.-4	Pratap Narayan Singh	jail Superintendent
P.W.-5	Sudarshan Singh	Warden of Motihari jail
P.W.-6	Vishwanath Singh	Father of the deceased
P.W.-7	Raju Singh	Seizure list witness
P.W.-8	Sheo Shankar Chaudhary	jailor
P.W.-9	Surendra Narayan Singh @ Raju Singh Rathor	Informant
P.W.-10	Ashok Raj	J.M. 1 st class, Motihari

P.W.-11	Dr. Rajendra Prasad Singh	The Doctor who conducted postmortem
P.W.-12	Ashok Kumar Sinha	The Investigating Officer
P.W.-13	Ranjan Verma	Formal witness

8. In documentary evidence, the prosecution produced and proved the following documents and got them marked as Exhibits which are as under : -

Ext. -1	The signature of P.W.-1 on the statement u/s 164 of Cr.P.C.
Ext. -X	The signature of P.W.-2 on the fardbeyan of informant (certified copy of FIR)
Ext. -2	The signature of P.W.-3 Sanjay Singh on seizure list
Ext. -2/1	The signature of P.W.-7 on the seizure list
Ext. -3	The signature of the informant P.W.-9 on the FIR (certified copy)
Ext. -4	The statement of P.W.-1 Munna Singh u/s 164 of Cr.P.C.
Ext. -4/1	The statement of Janab Singh u/s 164 of Cr.P.C.
Ext. -4/2	The statement of P.W.-9 Surendra Narayan Singh (informant) u/s 164 of Cr.P.C.
Ext. -4/3	The statement of Nishant Kumar Singh u/s 164 of Cr.P.C.
Ext. -4/4	The statement of Ranjay Singh u/s 164 of Cr.P.C.
Ext. -4/5	The statement of Raju Singh u/s 164 of Cr.P.C.
Ext. -4/6	The statement of Sanjay Singh u/s 164 of Cr.P.C.
Ext. -4/7	The statement of Sudhir Singh u/s 164 of Cr.P.C.
Ext. -4/8	The statement of Horil Singh u/s 164 of Cr.P.C.
Ext. -5	Post-mortem report by P.W.-11, Dr. R.P. Singh
Ext. -6	Fardbeyan of informant recorded by S.I. Raushan Kumar
Ext. -7	Registration of FIR on fardbeyan
Ext. -8	Formal FIR
Ext. -9	Seizure list
Ext. -10	Inquest report incorporated in para 5 of the case diary with objection
Ext. -11	C.C. of cognizance order of Town P.S. Case No. 64/08
Ext. -12	C.C. of FIR of Town P.S. Case No. 64/08
Ext. -13	Seizure list of Town P.S. Case No. 64/08
Ext. -14	Chargesheet in Town P.S. Case No. 64/08

Ext. -15	Original inquest report made by P.W.-10, Ashok Raj, J.M. 1 st class, Motihari
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9. After completion of the prosecution evidence, the statement of the appellant was recorded under section 313 of the Code of Criminal Procedure (in short 'Cr. P.C.') in which he denied the main circumstances appearing against him from the prosecution's evidences and claimed himself to be an innocent person. The appellant did not take any specific defence in his statement.

10. The appellant did not give any evidence in his defence.

Submissions on behalf of the Appellant : -

11. Mr. Anil Singh, learned *Amicus Curiae* has argued that in the present matter, there are serious contradictions in between the testimony of P.W.9, who is the informant and the testimonies of other prosecution witnesses P.W.-1, P.W.-2, P.W.-3 who also claimed themselves to have witnessed the entire occurrence. The seizure of the firearms from the possession of the appellant as mentioned in the seizure memo Ext.-13 is suspicious and the same was not proved in proper manner and PW. -8, who is said to have conducted the search and seizure, did not say anything about the search and seizure as mentioned

in Ext.-13 before the trial court when he recorded his evidence and P.W.-5 whose name is mentioned in the seizure memo as a witness also said nothing regarding the search in the barrack of the appellant and the recovery of the incriminating firearms from his possession and further, the investigating officer P.W.-12 contradicted the alleged recovery of firearms from the possession of the appellant as he stated that he did not find anything from the barrack of the appellant when he searched the same. Learned *Amicus Curiae* has further submitted that there is serious contradiction with regard to the role of the appellant as alleged by the informant (P.W.-9) in his *fardbeyan* as according to the informant, the appellant and co-accused Muslim Miya and Umesh Sahani attacked at the victim simultaneously and it was not the case of the prosecution as to causing firearms injury to the victim by the appellant when the victim was trying to get up after sustaining the injuries in the bomb explosion. But before the trial court, P.W.-9 including some other material witnesses deposed that the appellant fired at the victim when he was trying to get up after sustaining the injuries. Learned *Amicus Curiae* has further submitted that there is some suspicion regarding the place of occurrence which has been claimed in the FIR as there is a contradiction with regard to the distance of the place of

occurrence (P.O.) among the statements of the prosecution witnesses, particularly, in between the evidence of PW.9 and P.W10, who prepared the inquest report, as according to P.W.-10 the distance of the P.O. from the inside gate of the jail was about 50 *Gaj* while as per P.W.9 the alleged occurrence took place at the distance of 20 steps away from the inside jail gate. Learned *Amicus Curiae* has further submitted that admittedly the alleged occurrence took place inside the jail premises in day time where several jail officials and other government officials always remain present but none of them came forward to lodge the FIR and none of them was made as an eye-witness of alleged occurrence by the I.O. which creates a suspicion in the prosecution's allegations as admittedly, there was rivalry between the two groups of prisoners and it came out in the evidence of some prosecution witnesses that some senior jail officials were assaulted by the prisoners a few days prior to the commission of the alleged occurrence.

12. Learned *Amicus Curiae* further submitted that the conviction of the appellant under sections 3 and 4 of the Explosive Act is completely bad as the required mandatory sanction from the District Magistrate had not been taken by the concerned police officer before putting the appellant to the trial

under the provisions of section 7 of the Explosive act and further, the appellant has been convicted for the offence under section 4 of the Explosive Act while he was not charged for the said offence.

13. Mr. Vinay Ranjan, learned counsel appearing for the appellant has adopted and endorsed the above submissions made by learned *Amicus Curiae*.

Submissions on behalf of the Prosecution :-

14. Mr. Ajay Mishra, learned Additional Public Prosecutor for the state has vehemently opposed this appeal and submitted that in order to prove the allegation levelled against the appellant in the FIR, the evidence of P.W.-9 is sufficient and the witness remained consistent before the trial court as well as during the investigation while recording his statement under section 164 of Cr.P.C. and he was cross-examined at length but even then, no serious contradiction came out in his cross-examination. The medical evidence given by P.W.-11 is completely corroborative to the allegation levelled against this appellant in the FIR and further, the place of occurrence stood proved in view of the evidence of the investigating officer and the inquest report was prepared on the place of occurrence by the learned Magistrate Ashok Raj (P.W.-10) with regard to the

dead body of the deceased. It has been further argued that just three hours after the occurrence, the barrack of the appellant was searched and from his possession a pistol loaded with magazine containing one live bullet of 7.65 mm was recovered and in this regard, Ext.- 13 is very relevant and the same was exhibited and during the trial the appellant did not choose to cross-examine any of the prosecution witnesses regarding the contents of the Ext.-13 and further, in respect of the recovery of the firearms another police case bearing Sadar Town P.S. Case No. 64/08 was registered in which the appellant was chargesheeted by way of Ext.-14. It has been further submitted that the co-convicts Umesh Sahani, Krishna Giri and Muslim Miyan preferred Cr. APP (DB) Nos. 616/2017, 460/2017, 513/2017 which were dismissed by the then Hon'ble co-ordinate Division Bench of this Court and that judgment was also challenged before the Hon'ble Supreme Court by way of Special Leave Petition (Criminal) No. 7965/2018 and the same was dismissed vide order dated 03.04.2018.

15. Mr. Ajay Kumar Singh, learned counsel appearing for the informant has endorsed and adopted the above submissions made by learned Additional Public Prosecutor for the State.

Consideration and Analysis: -

16. We have heard learned counsel as well as learned *Amicus Curiae* for the appellant, learned Additional PP for the State and learned counsel for the informant and also gone through the evidences available on the case record of the trial court and perused the statement of the appellant recorded under section 313 Cr.P.C.

17. The instant matter relates to the murder of a prisoner happened inside the premises of Motihari central jail and the allegation of committing the murder of the victim is against the appellant and other co-prisoners who caused injuries to the victim by hurling a bomb upon him and causing firearm injuries to him. The relevant facts which have emerged from the prosecution story are that : -

(i) On the alleged day of occurrence the informant and the victim went to Motihari civil court to attend their respective cases.

(ii) After returning from the court, the informant was waiting for the victim at the gate of the jail who had not arrived till that time from the court.

(iii) At around 4:15 P.M., the victim reached and entered into the gate of the jail and thereafter, the informant

entered into the gate.

(iv) After entering into the gate of jail, the victim started moving towards his barrack and at that time the informant was behind him at the distance of about 20 steps.

(v) When the victim was moving towards his barrack then suddenly the appellant and co-accused Umesh Sahani and Muslim Miya came running from behind of barrack no. 10 with carrying a bomb and at that time the appellant was carrying a pistol with him.

(vi) The informant noticed the activity of the accused including the appellant and then alerted the victim but in the meantime, co-accused Muslim Miya and Umesh Sahani hurled a bomb on the victim and the appellant fired a shot at the victim by using a pistol.

(vii) On account of sustaining injuries owing to bomb explosion and firearm shot, the victim fell down and thereafter, two other co-accused Sujay Pandey and Krishna Giri, who had also arrived at the place of occurrence by that time, caused firearm injury at the back portion of the head of the victim by using firearms.

(viii) The accused including the appellant chased the informant with an intention to kill him and also fired at him but

he managed to escape by entering into his barrack where some other prisoners, who were also kept in the same barrack, and one jail security guard saved him from the attack of the accused and in that course, the door of the informant's barrack was also broken by the accused.

18. Amongst the prosecution witnesses, P.W.-1, P.W.-2, P.W.-3, P.W.-7 and P.W.-9 are the witnesses of the facts and circumstances and they claimed to have seen the alleged occurrence. Among these witnesses, the most important witness is the informant who was examined as P.W.-9. At first, we would like to discuss the evidence of P.W.-9. He deposed in the examination-in-chief that on 15.03.2008, he was in Motihari jail as a prisoner, on that day, he and the deceased Munna Singh (victim) went to the court and he returned back at 3:30 P.M. and was waiting for the victim at the gate of the jail then the victim also arrived by another vehicle and then the gate of the jail was opened and both entered into the jail and the victim was 20 steps ahead from him and then suddenly the accused including the appellant came rushing from behind side of the barrack no. 10. The accused Umesh Sahani and Muslim Miya were carrying a bomb with them and the appellant was carrying a pistol with him and when they rushed towards the victim then he alerted the

victim but in the meantime, the accused Umesh Sahani and Muslim Miya hurled a bomb at the victim of which explosion resulted in injuries to the victim and consequently, he fell down and when he tried to get up then the appellant fired one shot at the head of the victim by using a pistol and thereafter, two other co-accused Krishna Giri and Sujay Pandey also fired one shot each by using a pistol at the head of the victim and on account of sustaining injuries, the victim died on the spot. The witness further described the subsequent event of his escaping from the attack of the accused by entering into his barrack as stated by him in his *fardbeyan*. The witness recorded his statement under section 164 of Cr.P.C. during investigation which was marked as Ext.- '4/2'. The facts revealed and stated by him in his statement under section 164 of Cr.P.C. are fully in conformity with his evidence regarding the prosecution story described by him in his examination-in-chief before the trial court. If we compare the informant's *fardbeyan*, the facts stated by him in examination-in-chief, his statement recorded under section 164 of Cr.P.C. then no any serious contradiction appears in between them and the witness remained consistent to the allegations levelled against the appellant. So far as the cross-examination of this witness is concerned, he was cross-examined at length by all the

accused including the appellant. In order to impeach the credibility of this witness with regard to the truthfulness of his allegations concerned to all the accused, he was cross-examined on the several points such as the identification of the accused including the appellant, the relationship or closeness between him and the victim, regarding the enmity between the victim and the appellant on account of the murder of one namely Chhotelal Sahani who was also a prisoner and had been murdered prior to the occurrence of present matter when he was returning from the court *hajat* and getting down from the jail vehicle, regarding the manner of occurrence etc. We would like to discuss the statements made by this witness on these points when he was cross-examined. He deposed in the paragraph No. 3 of his examination-in-chief and paragraph Nos. 5, 6, 7 and 8 of his cross-examination that he identified the accused including the appellant, he had no relation or connection with the deceased (Munna Singh) and also had no connection with the co-accused Umesh Sahani and Krishna Giri, he and the victim had not gone to the court by the same vehicle and he did not reside with the victim in the same barrack and they used to take their food separately and he had not seen the victim talking with co-accused Umesh Sahani and Krishna Giri inside the premises of

the jail. He further deposed in paragraph Nos. 19, 23, and 24 of his cross-examination that against him a case related to the murder of one Chhotelal Sahani was running at the time of occurrence, the appellant, co-accused Umesh Sahani and Muslim Miya came at the place of occurrence from Southern side and the co-accused Sujay Pandey and Krishna Giri came from the Northern side and when the alleged occurrence was being committed, he was at the distance of 15-20 steps from the victim. He further stated in paragraph No. '25' of his cross-examination that after committing the occurrence with the victim, the accused made an attempt to attack upon him but he managed to flee away into his barrack and was saved and protected by other co-prisoners, namely, Suraj Paswan, Pradeep Srivastava, Yogendra Singh, Laldeo Paswan and one barrack constable and during that course, the accused tried to enter into his barrack by breaking the wooden door but on account of facing protest from other co-prisoners and barrack security guard, they had to flee away and during that course, they did not open fire or hurl any bomb in his barrack. He further stated in paragraph No. '32' of his cross-examination that he was waiting for the victim at the jail gate after returning from the court as he wanted to discuss with the victim in respect of his case and at

that time, the Jailor and Jail Superintendent were not present there. He further stated in paragraph No. '56' of his cross-examination that whenever a prisoner got down from the Van (Jail vehicle) then the armed guards remained present there and surrounded them for the purpose of their security. He further stated in paragraph Nos. '63', '65', '66' and '69' of his cross-examination that the bomb exploded after it had hit the victim, he was standing 2-3 steps away from the inner gate of the jail when the bomb exploded and on that day, he and the victim separately returned from the court to the jail by different vehicles and the entire occurrence happened within 30 seconds. He further stated in the subsequent paragraphs that he got scared upon seeing the victim falling down on the ground and when the accused chased him, he ran away towards his barrack. He further stated that the entire occurrence took place before him and at that time, no one was present near him, though 2 or 3 persons were seen in the Southern side from the place of occurrence who stood in the Northern side from the jail kitchen. He further stated that he made his signature upon his fardbeyan at 8:05 P.M. and he himself did not tell to any co-prisoner about the occurrence. He further deposed that the bomb was hurled on the victim from the distance of 5-7 feet and the shot was fired

from the distance of one feet and the victim was shot when he was trying to get up. He further stated in paragraph Nos. 108, 112 and 124 of his cross-examination that at the time of occurrence, the victim was moving ahead of him and no one was behind him at that time and he had no enmity with co-accused Muslim Miya and when he was asked by the police about the occurrence, he told them that the alleged occurrence had taken place with the victim Munna Singh and him and when he was asked whether he wanted to be the informant of the present case then he agreed as he had seen the entire occurrence and some part of it had also happened with him.

From the above discussed facts which were revealed by PW-9 in his cross-examination, it appears that the witness had no any kind of closeness or relation with the victim and he and the victim had gone to the court on the alleged day but they returned back by different vehicles to jail and the witness had also no dispute or enmity with the appellant and when the occurrence was being committed, the said witness was only present near the place of occurrence just 15 to 20 steps away. As he and the victim returned from the court simultaneously within a gap of half an hour so, they had reason to move together towards their barrack. It also appears that at the time of

occurrence, no any security personnel or other official of the jail was present at or near the place of occurrence and the entire occurrence took place within thirty seconds. Regarding these facts, the evidence of this witness appears to be credible and the appellant could not succeed to impeach or shake his credibility in respect of the above stated facts. Accordingly, this Court finds no reason to disbelieve the evidence of this witness who alone seems to be a reliable witness to substantiate the allegations made in the FIR against the appellant as the manner of occurrence, the presence and role of the appellant, the weapons which were used in causing injuries to the victim, the time and the place of occurrence as appears from the prosecution story have been fully established by his evidence.

19. Though PW-1, PW-2, PW-3 and PW-7 claimed themselves to have witnessed the commission of the alleged occurrence but they do not seem to be eye-witnesses of the occurrence as P.W.-2 deposed in paragraph No. '46' of his cross-examination that before hearing the sound of firing and bomb explosion, he was standing in front of the barrack no. 3 near a handpump and he heard the sound of 9 to 10 gunshots and he remained stood at that place and a time of 20-35 seconds took place in happening of all those gunshots and when the sound of

firing and bomb explosion stopped then P.W.-1, PW-3, PW-7 and other prisoners, namely, Sudhir Singh, Janab Singh, Horil Singh, etc. came out of the barrack no. 3. From the evidence of this witness, one thing is quite clear that at the time of commission of the firing and explosion of bomb, P.W.-1, P.W.-3 and P.W.-7 were not present near the place of occurrence rather they were in their barrack and P.W.-2 was in front of his barrack No.-3. Learned *Amicus Curiae* has pointed out several contradictions among the statements of these witnesses. No doubt, there are several contradictions in the testimonies of these witnesses but the same happened due to the claim of these witnesses as they being eye-witnesses of the occurrence. Though, in view of the contradictions pointed out by learned *Amicus Curiae* as well as in view of the statement made by PW-2 in paragraph No. '46' of his cross-examination, these witnesses can not be deemed to be the eye-witnesses of the occurrence but merely by this fact, the credence of P.W.-9 cannot be discarded and however, with regard to other relevant facts such as the place of occurrence, the motive of the appellant to kill the victim and the absence of the jail officials at the place of occurrence at the time of commission of the alleged offences, the evidence of all these witnesses is relevant and helpful to the

prosecution.

20. P.W.-2 (Nishant Kumar Singh) stated that on the day of occurrence, a police official of Town police station recorded the *fardbeyan* of Surendra Narayan Singh @ Raju Singh Rathor (PW-9) and in the evening of the same day of occurrence, the inquest report of the deceased was prepared by the Judicial Magistrate (P.W.-10) at the place of occurrence upon which he also made his signature. He stated in the paragraph No. '5' of his cross-examination that at the time of alleged occurrence, there was no security guard within the boundary wall of his barrack and he and the deceased (victim) resided in the same barrack No. 3. He further stated in the paragraph No. '8' of his cross-examination that previously an incident of *marpit* had taken place in between the two groups of prisoners and against him and others, there was an allegation of having assaulted the Jailor. He further stated in the paragraph Nos. 10, 13, 14 and 15 of his cross-examination that during the relevant period, there was some dispute between the two groups, one belonged to the victim and other was Shahni Group. He heard 8 to 10 sounds, in which two sounds were of bomb explosion and rest related to gunshot firing and at the place of occurrence Munna Singh, Sanjay Singh, Horil Singh and 4-5 others persons

arrived first and then he arrived behind them but no jail security guard had arrived before their arrival and the officials of the jail administration arrived after five to ten minutes from their arrival. He further stated that there was blood at the place of occurrence and the same was in the stretch of two to three hands. He further stated in the paragraph No. '55' of his cross-examination that on the day of occurrence, the victim and the informant went to the court together.

21. P.W.-3 (Sanjay Singh) stated in the paragraph No. '10' of his cross-examination that there was some dispute and rivalry between the prisoners of barrack No.3 and the prisoners of barrack no.10 and before the alleged occurrence, an incident of *marpit* had taken place in between them. He further deposed in the paragraph No. '17' of his cross-examination that the deceased (victim) sustained three firearm injuries. The witness stated in the paragraph No. '45' of his cross-examination that he had no good relation with the victim Munna Singh which shows that the witness deposed the actual facts and reliance can be placed upon his evidence as despite having no good relation with the victim, he revealed such facts which are helpful to the prosecution in order to prove the commission of the murder of the victim. He further stated in the paragraph No. '70' of his

cross-examination that the deceased (victim) had no good relation with the accused and there was prior enmity in between them.

22. P.W.-7 (Raju Singh) deposed in the paragraph No. '32' of his cross-examination that he stated before the Judicial Magistrate in his statement that from the place of occurrence, four empty cartridges, two live cartridges, fifteen pieces of Chinese nails and other articles, relevant to bomb explosion, were recovered.

23. Accordingly, the evidence of P.W.-2, P.W.-3 and PW-7 proves the place of occurrence and also shows the animosity in between the deceased (victim) and the other group of prisoners to which the appellant and other accused belonged and prior to the alleged occurrence, an incident of *marpit* had taken place in between them and the inimical relation can be deemed to be a strong reason for rising the motive to kill the victim, in the mind of the co-accused and appellant and the evidence of these witnesses is also relevant to substantiate the alleged use of the firearms and explosive substance in the commission of the alleged occurrence. It has been argued by learned *Amicus Curiae* that admittedly the occurrence of murder of the victim took place inside the jail premises in day time but

none of the jail officials came forward to become a witness and none of them claimed to have seen the occurrence which raises a serious doubt in the reliability of the prosecution story. We find no force in the said submission, though none of the jail officials came forward as a witness but in view of the evidence of the above witnesses, it is evident that any jail official was not present at or near the place of occurrence when the occurrence was being committed and the jail officials arrived at the place of occurrence 5 to 10 minutes after its commission. Accordingly, the evidence of P.W.-1, P.W.-2, P.W.-3 and P.W.-7 is also helpful to the prosecution with regard to the above-mentioned relevant facts.

24. Now, we come to the evidence of P.W.-11, Dr. Rajendra Prasad Singh, who was one of the members of the Board of three Doctors who conducted the postmortem examination on the dead body of the victim. The medical board found the following five external injuries on the body of the deceased :-

(i) Extensive lacerated wound of 8” x 4” soft tissue upper part of back bone deep with blackening and irregular margin and there was blackening of skin around the wound 8” in diameter. Foreign body was recovered

embedded in soft tissue on the Spine.

(ii) Lacerated wound on left pinna 1½” x ¼” x cartilage deep with margin blackened.

(iii) Wound of entry- lacerated wound of ¼” x ¼” x cavity deep over the left side of back of parietal region of the Scalp, margin was blackened and inverted.

(iv) Wound of exit – Lacerated wound of 1/3” x 1/3” x cavity deep over right temporal region of the Scalp above and behind right ear. Both the wounds were communicating with each other [(iii) and (iv)].

(v) Lacerated wound of 1/3” x 1/4” x Scalp deep on left side of occipital region of Scalp.

25. As per the evidence and medical opinion given by P.W.-11, the injury No. 1 was caused by explosive material and the rest injuries nos. 2, 3, 4 and 5 were caused by firearms and the injuries no. 3 and 4 were communicating with each other. The medical evidence shows that the deceased sustained four firearm injuries to his body from three shots and sustained one injury by explosive material. These injuries are clearly supportive to the allegations levelled against the appellant in the FIR. Though learned *Amicus Curiae* has argued that the injuries no. 2 and 5 were the result of one gunshot as among them, one

was found at left Pinna and the second one was found at the left side of *occipital* region of the skull. But there is nothing in the medical expert's opinion to support the above submission of learned *Amicus Curiae* though both the said injuries were found near to each other and also on the same part of the body of the deceased but merely by this fact both the injuries cannot be deemed to be the result of one gunshot and further on the said point, the medical expert P.W.-11 was not cross-examined. If he had been cross-examined then he would have explained the reason of both the injuries either due to one shot or two shots, so, at this stage the appellant is not entitled to get a benefit from the above contention of learned *Amicus Curiae*.

26. The case of the prosecution is that, firstly, the co-accused Muslim Miya and Umesh Sahani hurled bomb at the victim and then the appellant fired a shot at the victim which resulted in falling down of the victim and thereafter, two co-accused Sujay Pandey and Krishna Giri also fired on the back portion of the head of the victim. The allegation shows that three firearm injuries were caused to the victim by three shots by the accused including the appellant and in this regard, the medical opinion given by P.W.-11 with regard to external injuries of the victim is relevant and the same is also supportive to the said

allegation. Although with regard to the position of the victim when the appellant fired at him, a contradiction has been pointed out by the learned *Amicus Curiae* as according to the *fardbeyan* of the informant, the co-accused Muslim Miya and Umesh Sahani hurled the bomb and the appellant fired a shot at the victim simultaneously while as per the evidence of P.W.-9, the victim fell down after sustaining injuries from the bomb explosion and was trying to get up and then the appellant fired a shot at the head of the victim by using his pistol. We find no force in the said submission of the learned *Amicus Curiae*, as firstly, in the *fardbeyan* it is not disclosed about the position of the victim when the appellant fired at him and secondly, if the said contradiction is taken into account even then, the same appears to be a minor contradiction which is not sufficient to discredit the evidence of P.W.-9 and thirdly, the number of shots which were revealed by the informant in his *fardbeyan* as well as in his court evidence gets support from the medical expert's opinion given in the postmortem report of the deceased as discussed above. Accordingly, we find the medical opinion with regard to the external injuries found on the body of the deceased to be corroborative to the allegation and also to be relevant to prove the weapons which were allegedly used by the appellant

and others in inflicting injuries to the deceased (victim) as well as the manner in which the said injuries were inflicted to the deceased by the accused, thus, the evidence of P.W.-11 is also supportive to the prosecution.

27. Now, we come to the evidence of the Investigating Officer, namely, Ashok Kumar Sinha who was examined as P.W.-12. He deposed in the examination-in-chief that the place of occurrence was situated inside the premises of Motihari jail and there was a big iron gate at the entrance, after entering into the said gate there was a big hall where two rooms were situated in the Eastern and Western side and after crossing the hall, there was also one more big iron gate in the Southern side and after crossing the gate, he found a pucca way through which one could go towards *Bhansar* and on the said pucca way at the distance of 10-15 feet from the *Bhansar*, when the victim was being taken to his barrack by *Kakshapal* and other prisoners then the FIR named accused persons came from behind and committed the alleged occurrence. He further stated that at the place of occurrence, he found the blood spreading and the articles which were found at the place of occurrence were seized by him. He further stated that there was a wall of four feet height adjacent to the place of occurrence and he found the signs

of bomb explosion on the said wall and he also found the wall of the informant's barrack being damaged. The evidence of this witness clearly supports the place of occurrence as described by the informant. He stated in the cross-examination that he recorded the *fardbeyan* of the informant four hours after the commission of the alleged occurrence. The statement is corroborative to the time when the informant claimed to have recorded his *fardbeyan*.

28. On the case record of the trial court, there is a seizure list (Exhibit- '2') which shows that near the dead body of the victim, four empty cartridges, Chinese nails and other articles which can be deemed to be relevant in manufacturing of a local bomb and blood stained soil were found and the same were seized by the P.W.-12 who proved it also. The evidence of this witness (P.W.-12) as well as Exhibit- '2' is sufficient to establish the place of occurrence and also the use of firearms and explosive material in causing injuries to the victim. In this regard, the inquest report (Exhibit- '10') is also relevant and the same goes to show that the dead body was lying on the road connecting the main gate to the barracks and the body was lying at the distance of 50 *Gaj* in the Southern side from the gate.

29. Learned *Amicus curiae* has vehemently argued

that the details of distance with regard to the place at where the dead body was lying as per the Inquest report is contradictory to the distance stated by P.W.-9 in his evidence and *fardbeyan*. Though there is a contradiction regarding the said distance but it does not appear to be material as the Inquest report was prepared in the late evening and the said distance was approximate only mentioned by the learned Magistrate in the Inquest memo and the said contradiction does not create any doubt in the commission of the alleged occurrence and the location of the place of occurrence as revealed by P.W.-9.

30. Learned *Amicus Curiae* has vehemently argued that the evidence of Investigating Officer (P.W.-12) contradicts the statement of P.W.-9 in respect of the manner of firing by the appellant at the victim as the Investigating Officer stated in the paragraph Nos. '31' and '32' of his cross-examination that P.W.-'9' did not state before him that the appellant fired a shot at the head of the victim by using a pistol when the victim was trying to get up after falling down owing to sustaining injuries from bomb explosion and such statement was also not made by P.W.-9 in his *fardbeyan*. In the light of this contention, we have perused the *fardbeyan* and found that it was not the case of the prosecution that the appellant fired at the victim when the victim

was trying to get up after sustaining injuries rather the prosecution's case is that when the victim was going towards his barrack then the co-accused Muslim Miya, Umesh Sahani and the appellant came from behind the barrack No. 10 and the said co-accused firstly hurled a bomb at the victim and then the appellant fired a shot at the victim.

31. Though, P.W.-9 stated in the paragraph Nos. '89' and '90' of his cross-examination that it is not correct to say that he did not say the fact before the police that when the victim was trying to get up after sustaining the injuries then the appellant fired on his head by using a pistol. The said statement cannot be used to contradict P.W.-9, as firstly, it does not appear that the attention of this witness was drawn to his previous statement that was recorded under Section 161 of Cr.P.C. and secondly, the witness was cross-examined regarding his previous statement in double negative sense which was completely confusing.

32. Further it is a well established position of law that when a statement of a witness recorded during the investigation is intended by the accused to contradict him in respect of his evidence which is given by him in the court during the trial then it would be mandatory for the defence to draw the attention of

such witness to the part of his prior statement which is intended to contradict him and if he denies the said part of his previous statement then it must have to be proved by the defence and in this regard, the Investigating Officer can be cross-examined but such procedure has not been adopted by the defence while cross-examining P.W.-9 in respect of his previous statement made by him during investigation. In this regard, the principle laid down by the Hon'ble Constitution Bench of the Apex Court in the case of **Tahsildar Singh & Another vs. State of U.P.** reported in **AIR 1959 SC 1012** is relevant and the same is being reproduced as under : -

“The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate: A says in the witness box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; If he does not admit, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus: If the witness is asked "did you say before the police officer that you saw a gas light?" and he answers "yes", then the statement which

does not contain such recital is put to him as contradiction. This procedure involves two fallacies one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants there is no self-contradiction of the primary statement made in the witness box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him.”

The above principle was also endorsed and reiterated by the Hon’ble Apex Court in the recent case of **Alauddin and Others vs. State of Assam and Another** reported in **2024 SCC Online SC 760** and the relevant paragraph of this judgment is

being reproduced as under for ready reference :

“8. As stated in the proviso to sub-Section (1) of section 162, the witness has to be contradicted in the manner provided under Section 145 of the Evidence Act. Section 145 reads thus:

"145. Cross-examination as to previous statements in writing -

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's

attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved the contradictions can be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States, In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross- examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even

before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As Indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

Accordingly, we find no force in the above contention of learned *Amicus Curiae* and the evidence of the Investigating Officer is also supportive to the prosecution case.

33. In this matter, the Exhibits Nos.- '12' and '13' are very relevant which show that on 15.03.2008, the date on which the alleged occurrence concerned to the present matter took place, the appellant's barrack No.11 was searched by warden (*Karapaal*) Sheo Shankar Chaudhary (P.W.-8) after the commission of the alleged occurrence and on search, a pistol loaded with magazine was found from the waist of the appellant and in the magazine one live 7.65 mm bullet was found and as per the seizure memo, four empty shell of used bullets of 7.65 mm that was visible at the bottom of the used bullet's shell were

found and the same is completely matching with the live bullet which was found in the magazine that was recovered from the physical possession of the appellant. With regard to the recovery of the firearms, another Case bearing Town (Nagar) P.S. Case No. 64 of 2008 under the Arms Act and the Prisoners Act, 1894 was lodged against the appellant and others in which chargesheet was submitted against them and the seizure of the firearms (Exhibit-13) is relevant in this regard. The recovery of all these firearms goes in favour of the prosecution and the same makes the allegation levelled against the appellant to be more strong.

34. Learned *Amicus Curiae* has argued that in respect of the offences punishable under the Explosive Act, the appellant was charged for the offences under sections 3 and 5 of the Explosive Act but the trial court convicted him for the offences under sections 3 and 4 of the Explosive Act. As such, the conviction under section 4 of the Explosive Act is bad and also not legal as both the offences are quite distinct and separate and moreover, regarding the incriminating circumstance concerned to the offence under section 4 of the Explosive Act, no opportunity was given to the appellant under section 313 of Cr.P.C. to explain the alleged circumstance and further no

required mandatory sanction from the District Magistrate under the provisions of section 7 of the Explosive Act was taken before placing the appellant to trial for the offences under sections 3 and 4 of the Explosive Act.

35. We find force in the above contention made by the learned Amicus Curiae as firstly, no opportunity was given to the appellant under section 313 of Cr.P.C. to explain the circumstances relevant to the alleged offences punishable under sections 3 and 4 of the Explosive Act and secondly, without altering the charge under section 5 of the Explosive Act, the appellant has been convicted for the offence under section 4 of the Explosive Act for which he was not charged and thirdly, the required mandatory sanction was not taken from the District Magistrate under the provisions of section 7 of the Explosive Act before placing the appellant to trial in respect of the offences of section 3 and 4 of the Explosive Act.

Here, it is important to mention that the co-convicts Umesh Sahani, Krishna Giri and Muslim Miyan preferred Cr. APP (DB) Nos. 616/2017, 460/2017 and 513/2017 respectively which were allowed in part by then learned co-ordinate Bench of this Court upholding the conviction of the said co-convicts for the offences under section 302/34 of IPC, section 27 of the

Arms Act and section 3/4 of the Explosive Act and their conviction under section 307/34 of IPC was set aside. It is brought in our knowledge that the factum of violation of section 7 of the Explosive Act in regard to not getting sanction from the District Magistrate before putting the said co-convicts to the trial was not brought into the knowledge of the then learned co-ordinate Bench of this Court but in the present appeal, the said violation has been brought into our knowledge so in view of this fact, we have taken into consideration the non-compliance of the mandatory provision of section 7 of the Explosive Act against the prosecution.

36. Learned *Amicus Curiae* has further argued that there was a delay of five hours and fifteen minutes in registering the formal FIR while the jail officials had received the information of the commission of the offences within five minutes from its happening and the said delay creates a suspicion in the prosecution story.

In view of the evidence of the Investigating Officer, we do not find substance in the said contention as the *fardbeyan* of the informant was recorded within five hours of the occurrence i.e. at 8:05 P.M. and on account of the occurrence having happened inside the jail premises, there was great disturbance

and the Senior Administrative officers were called in and the barracks of the prisoners were searched at 7:00 P.M. and from the barrack of the appellant and his person, the firearm which was allegedly used in the commission of the occurrence was recovered and the said steps were taken by the jail officials and the situation of that time in itself is justifiable circumstance to explain the delay of four hours in registering the formal FIR. Accordingly, we find no force in the above contention of learned *Amicus Curiae*.

37. We have noticed the fact that though in the present matter, the first information report of the occurrence was not lodged by any of the jail employees but the same is not material as P.W.-9 was the most reliable person to have witnessed the entire occurrence from the beginning to end and also one victim with regard to the alleged offence under section 307/34 of IPC which was allegedly committed with him, so he was the best person to record his *fardbeyan* which was the basis of the FIR and further, there was a deep rivalry in between the two groups of prisoners and the accused and the deceased were involved in serious crimes and several prisoners including the deceased were having several criminal antecedents and an incident of *marpit* had earlier taken place in the jail premises with one of

the jail officers so, in such a situation, it was not easy for a jail official to become the informant of the alleged occurrence. Learned *Amicus Curiae* has submitted that in view of the lapses on the part of the jail officers, there was a possibility of false implication of the appellant and others and the deceased might have been killed in furtherance of high level conspiracy with the support of the jail and district administration. We find no force in this submission as there is no material or evidence to substantiate the possibility of the involvement of the district administration and jail administration in killing the victim and further, the evidence of the sole eye-witness P.W.-9 negates all such possibilities.

38. Learned *Amicus Curiae* has raised a question regarding the reliability of the seizure list (Exhibit-13) concerned to the recovery of pistol loaded with a magazine from the possession of the appellant during the search of his barrack on three grounds, firstly, Sheo Shankar Chaudhary (P.W.-8), who is said to have recovered and seized the said firearms, did not say anything about the recovery in his entire deposition before the trial court, secondly, two persons namely, Sudarshan Singh and Shivji Rai (both *kakshapal* of Motihari jail) were made witnesses of the search and seizure but among them, only

Sudarshan Singh was produced before the trial court who also said nothing regarding the recovery of the firearms from the possession of the appellant and thirdly, the Investigating Officer (PW.-12), who also searched the barrack of the appellant, did not find any incriminating material from the possession of the appellant when the appellant and his barrack were searched by him on the same day.

In the light of above contention, we have perused the evidence of P.W.-5, P.W.-8 and P.W.-12. Though P.W.-5 and P.W.-8 said nothing about the recovery of the articles mentioned in the Ext.-13 but in the chief-examination they completely remained mum on this aspect and they focused on other aspects of the occurrence and in this regard, the role of the concerned Public Prosecutor remained some suspicious as he did not put any question regarding the incriminating materials recovered before them when their examination-in-chief was being recorded and in their cross-examination, the defence did not choose to cross-examine them on the contents concerned to the recovery detailed in the Ext.- '13'. Though the ocular evidence of both the witnesses is not sufficient to prove the recovery of the alleged firearms but during the trial, the FIR of Sadar Town P.S. Case No. 64/2008 (Ext.-12) concerned to the recovery of the

alleged firearms, the seizure memo (Ext.-13) of the said recovery and the chargesheet (Ext.-14) submitted in the Sadar Town P.S. No. 64/2008 against the appellant and others were exhibited before the trial court in the present matter without any objection and the defence did not take any attempt to cross-examine the Investigating Officer and P.W.-5, P.W.-8 and P.W.-12 on these documentary evidence. So, merely by this fact that P.W. 5 and P.W.-8 remained mum in their examination-in-chief regarding the search and seizure of the alleged recovered firearms, it can not be deemed that the alleged recovery stood not proved. So far as the evidence of the Investigating Officer (P.W.-12) is concerned, though according to his evidence, he himself searched the barracks of the prisoners including the appellant's barrack and he did not find any incriminating material from the appellant's barrack but the search and seizure mentioned in the Ext. -13 had been conducted at 7:00 P.M. and the investigation was entrusted to P.W.-12 after recording of the fardbeyan at 8:05 P.M. on that very day and only thereafter, the Investigating Officer inspected the place of occurrence and also did investigation on other aspects, so, in such a situation, it can be deemed that he searched the barracks of the prisoners including the appellant's barrack after 8:00 P.M. on the day of

occurrence while as per the Ext.-13, the search and seizure detailed in the said Exhibit had been conducted at least before one hour from the search made by P.W.-12. Hence, we are of the view that reliance can be placed upon the Ext.-13, on that basis, the appellant was also chargesheeted in connection with Sadar Town P.S. Case No. 64/2008 and as such there is no force in the above contention of learned *Amicus Curiae*.

39. Learned *Amicus Curiae* has argued that in the present matter there are several flaws in the investigation. Firstly, none of the jail employees/officials posted inside the jail campus was examined, secondly, the seized blood stained soil as well as other recovered articles which are detailed in the seizure list (Ext-9) were not sent for forensic examination, thirdly, the firearms which are alleged to have been recovered from the possession of the appellant were not sent to Ballistic expert for examination, fourthly, no sanction was taken from the District Magistrate to prosecute the appellant for the offences under the Explosive Substance Act.

Though the Investigating Officer or prosecution agency did not take any sanction from the concerned District Magistrate before putting the appellant to the trial, so, to this extent, this Court finds substance in the above submission of learned

Amicus Curiae. So far as the other flaws as pointed out are concerned, the non-examination of the jail officials by the Investigating Officer is not fatal to the prosecution as it is not a case of the prosecution that any jail employee or official claimed to have witnessed the main occurrence and further, on account of the criminal background of the prisoners involved in the alleged crime, no jail employee or official would have dared to come before the Investigating Officer as a witness and other flaws on the part of the Investigating Officer are not of such a nature to render the prosecution's case doubtful or unworthy to believe and further in the present matter, the prosecution's case has been fully established by the direct testimony of P.W.-9 which is corroborated by the medical evidence. In this regard, the observation made by Hon'ble Supreme Court in the paragraph No. 15 of the Judgment passed in the case of **Amar Singh vs. Balwinder Singh and Others** reported in **AIR 2003 SC 1164** is relevant and the same is reproduced as under : -

“15. The failure of the investigating officer in sending the firearms and the empties for comparison cannot completely throw out the prosecution case when the same is fully established from the testimony of eyewitnesses whose presence on the spot cannot be doubted as they all received gunshot injuries in the incident. In

Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977] it was held that in cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect and to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. In *Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104]* while commenting upon certain omissions of the investigating agency, it was held that it may be that such lapse is committed designedly or because of negligence and hence the prosecution evidence is required to be examined *dehors* such omissions to find out whether the said evidence is reliable or not. Similar view was taken in *Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085]* when this Court observed that in such cases the story of the prosecution will have to be examined *dehors* such omissions and contaminated conduct of the officials, otherwise, the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice. In our opinion the circumstances relied upon by the High Court in holding that the investigation was tainted are not of any substance

on which such an inference could be drawn and in a case like the present one where the prosecution case is fully established by the direct testimony of the eyewitnesses, which is corroborated by the medical evidence, any failure or omission of the investigating officer cannot render the prosecution case doubtful or unworthy of belief.”

Accordingly, we find no force in the above submission of learned Amicus Curiae.

Conclusion :-

40. After having discussed the evidences available on the case record of the trial court and also having taken into account the contentions/submissions made by learned *Amicus Curiae*, we find that on account of group rivalry running in between the prisoners of two groups, the victim was attacked by the appellant and other accused with firearms and explosive material causing him serious injuries which gets support from the external injuries found on the body of the victim (deceased) and in respect of the involvement of the appellant in the commission of the alleged occurrence, the evidence of P.W.-9 is sufficient to prove his role in the occurrence as alleged in the FIR and the medical evidence also corroborates the allegation levelled against him and the evidence of the informant (P.W.- 9),

Investigating Officer (P.W.-12) and medical expert (P.W.-11) is reliable and these witnesses appear to be trustworthy. As such, we find no reason to interfere in the conviction of the appellant for the charged offences under sections 302/34 and 307/34 of the Indian Penal Code and under section 27 of the Arms Act and to this extent, the instant appeal stands dismissed. So far as the appellant's conviction for the offences under sections 3 and 4 of the Explosive Act is concerned, we find force in the above contention made by learned *Amicus Curiae* as to not getting sanction from the District Magistrate concerned before putting the appellant to trial for both the said offences which is completely violation of the mandatory provisions of section 7 of the Explosive Act, so, on this technical ground, the appellant is entitled to be acquitted of both the offences under the Explosive Substances Act. Accordingly, the appellant is hereby acquitted of the offences under sections 3 and 4 of the Explosive Substances Act for which he was convicted and sentenced by the learned trial court.

41. In result, the instant appeal stands partly allowed to the extent of acquitting the appellant for the offences under sections 3 and 4 of the Explosive Substances Act and partly dismissed in respect of other offences of the Indian Penal Code

and the Arms Act for which he has been convicted and sentenced.

42. Let the judgment's copy be sent immediately to the trial court as well as the jail authority concerned for information and needful compliance.

43. Let the LCR be sent back to the trial court forthwith.

44. We acknowledge the assistance rendered by Mr. Anil Singh, learned Advocate as *Amicus Curiae*. A consolidated sum of Rs. 15,000/- (Rs. Fifteen thousand only) shall be paid to the learned *Amicus Curiae* by the Patna High Court Legal Services Authority within one month from the date of receipt of a copy of this judgment.

(Shailendra Singh, J)

I agree.

(Rajeev Ranjan Prasad, J)

annu/-

AFR/NAFR	AFR
CAV DATE	10.09.2024
Uploading Date	30.09.2024
Transmission Date	30.09.2024