

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1385 of 2018

Arising Out of PS. Case No.-118 Year-2016 Thana- CHIKSAUR District- Nalanda

Kishor Mahto, S/o Nar Singh Mahto, R/o Village- Amat, P.S. Chiksaura, District- Nalanda.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1208 of 2018

Arising Out of PS. Case No.-118 Year-2016 Thana- CHIKSAUR District- Nalanda

1. Raj Kumar Mahto
2. Kameshwar Mahto @ Kameshwar Prasad
Both Sons of Narsingh Mahto, Resident of Village-Amat, P.S. Chiksaura, Distt.-Nalanda

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1221 of 2018

Arising Out of PS. Case No.-118 Year-2016 Thana- CHIKSAUR District- Nalanda

Parmeshwar Mahto @ Parmeshwar Singh Son of Late Brahmdeo Singh @ Brahmdeo Mahto Resident of Village-Amat, P.S. Chiksaura, Distt.-Nalanda

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1233 of 2018

Arising Out of PS. Case No.-118 Year-2016 Thana- CHIKSAUR District- Nalanda

Ajay Singh @ Ajay Mahto son of Late Manogi Singh resident of village-Shahwajpur (Amat), P.S. Chiksaura, Distt.-Nalanda.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 1385 of 2018)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Advocate



Mr. Bhashkar Shankar, Advocate
Ms. Meena Singh, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, Addl.PP
(In CRIMINAL APPEAL (DB) No. 1208 of 2018)
For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Advocate
Mr. Bhashkar Shankar, Advocate
Ms. Meena Singh, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, Addl.PP
(In CRIMINAL APPEAL (DB) No. 1221 of 2018)
For the Appellant/s : Mr. Rewati Kant Raman, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, Addl.PP
(In CRIMINAL APPEAL (DB) No. 1233 of 2018)
For the Appellant/s : Mr. Rajeev Kumar, Advocate
Mr. Gautam Shah, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 16-04-2024

These four criminal appeals are arising out of the judgment of conviction dated 17.09.2018 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 22.09.2018 passed by learned 1st Additional Sessions Judge, Hilsa (Nalanda) in Session Trial No. 185 of 2017 (Registration No. 113 of 2017) arising out of Chiksaura P.S. Case No. 118 of 2016 lodged under Sections 147, 148, 149 and 302 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act.

2. The informant Chhote Yadav who has been examined as PW-5 submitted a written application giving rise to Chiksaura P.S. Case No. 118 of 2016 wherein the prosecution case is as under:-



“On 16.11.2016 at about 02:30 PM (afternoon), while the informant (PW-5) and his brother Faujdari Yadav were coming at their door after carrying soil from the bank of the ‘Bhutahi’ river for repairing the road which was damaged due to last year flood, in the meantime, all the accused persons, namely, (1) Kishor Mahto, (2) Raj Kumar Mahto, (3) Kameshar Mahto, (4) Shankar Mahto, (5) Rameshar Mahto, (6) Prameshwar Mahto, (7) Ajay Singh, (8) Mantu Singh, (9) Raju Singh and (10) Santu Kumar armed with weapons attacked the brother of the informant Faujdari Yadav who was bringing the soil and with an intention to kill him, they started firing. Thereafter, his brother Faujdari Yadav started fleeing towards his house, the informant started shouting “*Bachao Bachao*” but accused nos. 1 to 6 continued firing. In the meantime, accused nos. 7 to 10 started firing from the side of village-Shahbajpur and shouted that “Faujdari Yadav should not be spared today”. On this Kishor Mahto fired on Faujdari Yadav which hit left side of the ribcage (‘panjara’). Apart from the informant, his brothers Arbind and Sunil Yadav were also present at the place of occurrence. When the informant and his brothers went near Faujdari Yadav by shouting, then the accused persons after firing



fled away waving rifle. While the informant was taking his brother Faujdari Yadav for treatment, he died on the way to hospital.”

3. After registration of the formal FIR (Exhibit ‘4’), the police investigated the case and on finding sufficient material to proceed against the accused persons, a chargesheet was filed vide Chargesheet No. 02 of 2017 dated 12.02.2017. The learned Jurisdictional Magistrate vide his order dated 20.02.2017 took cognizance of the offence and upon finding that the offence punishable under Section 302/149 is triable by Court of Session, committed the records to the competent court for proceeding with the trial. On receipt of the records in the trial court, charges were explained to the accused persons in Hindi, they denied the charges and claimed to be tried. Accordingly, charges were framed under Sections 147, 148, 302/149 IPC and Section 27 of the Arms Act.

4. In course of trial, twelve witnesses were produced on behalf of the prosecution. The prosecution has also exhibited some documentary evidences through the prosecution witnesses. The name of the prosecution witnesses and the documents exhibited on behalf of the prosecution are as under:-

PW 1	Arbind Prasad
PW 2	Bindu Kumar
PW 3	Dukhi Prasad
PW 4	Ramjee Prasad
PW 5	Chhote Yadav



PW 6	Dr. Ram Mohan Sahay
PW 7	Rajesh Kumar
PW 8	Brajesh Singh
PW 9	Banke Lal
PW 10	Ajay Prasad
PW 11	Sunil Kumar
PW 12	Rajesh Malakar

Exhibit ‘1’	Hand writing and signature of Bindu Kumar (PW-2) on the fardbeyan.
Exhibit ‘2’	Hand writing and signature of Dr. Ram Mohan Sahay (PW-6) on the <i>post mortem</i> report.
Exhibit ‘3’	Signature of Ajay Kumar (PW-10) on the Inquest report of Faujdari Yadav (deceased).
Exhibit ‘4’	Formal FIR and hand writing and signature of the I.O. (PW-12) on the FIR
Exhibit ‘5’	Hand writing and signature of the I.O. (PW-12) on the carbon copy of the Inquest Report.

5. After closure of evidence on behalf of the prosecution, the statement of the accused persons were recorded under Section 313 of the Code of Criminal Procedure (in short ‘CrPC’). The accused claimed that they are innocent and have been falsely implicated in the case. The defence did not examine any witness but produced one document which was marked ‘X’ for identification.



Findings of the Learned Trial Court

6. Learned trial court discussed the evidences produced on behalf of the prosecution and held that all the prosecution witnesses have supported the date, time and place of occurrence. They have given evidences of the occurrence having taken place on 16.11.2016 in the afternoon at 02:30 PM near 'Bhutahi' river. The learned trial court has found that the prosecution witnesses have stated that while Faujdari Yadav deceased was taking away the soil, the accused persons named by him came from the side of Amat village armed with rifle and started firing at the place where the soil was being lifted, the witnesses said that the named accused persons from Shahbajpur came with rifle and gun and they had surrounded Faujdari Yadav. According to the witnesses, Kishor Mahto (appellant in Cr. Appeal (DB) No. 1385 of 2018) fired which hit Faujdari Yadav on his left side of ribcage ('Panjara').

7. Learned trial court further held that the Investigating Officer (I.O.) who has deposed as PW-12 has supported the prosecution case, he had inspected the place of occurrence which is in the East side of Bhutahi river of village Shahbajpur, at the embankment ("*bandh*") of Bhutahi river and he has given the boundary of the place of occurrence as in Eastern side there is a



‘Seesam’ tree, ditch and the field of Ramashish, in West, the Bhutahi river, in North, the embankment (“*bandh*”) of Bhutahi river and in South, embankment (“*bandh*”) of the river and field of Sitaram.

8. The learned trial court has found that the Doctor (PW-6) who conducted the *post mortem* (Exhibit ‘2’) has stated that the cause of death is the injuries caused by the firearm. In Exhibit ‘2’, the Doctor has found one injury on the waist and one injury near the left side of the chest with inverted margin. The second injury is in the oval shape and has been found in form of inverted margin on the backside of the body of the deceased from which it is confirmed that the deceased was shot at from the left side below the chest. The cause of occurrence is the extraction of soil by the deceased from Bhutahi river. The learned trial court rejected the submissions on behalf of the defence that all the prosecution witnesses who supported the prosecution case are related and interested witnesses as they are from the same and one family, there is no eye witness to the occurrence and from the evidences of the prosecution witnesses, it cannot be taken as true. The learned trial court held that in the present days, no person from outside would like to become a witness in a case so as to invite trouble for himself. It has further been held that all the prosecution witnesses



were present at the place of occurrence, therefore, their credibility cannot be doubted.

Submission on behalf of the Appellants

9. Mr. Krishna Prasad Singh, learned Senior Counsel assisted by Ms. Meena Singh, learned Advocate has led the argument on behalf of the appellants. It is submitted that PW-1, PW-2, PW-3, PW-4, PW-5, PW-7, PW-10 and PW-11 are close relatives of the deceased. In this case, PW-8 and PW-9 are the only two independent witnesses who have not supported the prosecution case but they have not been declared hostile. PW-6 is the Doctor and PW-12 is the Investigating Officer (I.O.) of the case.

10. Learned Senior Counsel further submits that on perusal of the evidences available on the record, it would appear that PW-1 to PW-5 and PW-11 are from village Shahbajpur, PW-1 and PW-5 both claim themselves as the informant. PW-1, PW-5 and PW-11 are brothers of the deceased. PW-8, PW-9 and PW-10 are from another village. It is stated that the appellant nos. 1 to 4 are from village Amat.

11. It is submitted that on a bare perusal of the evidences of the prosecution witnesses, it would appear that they are highly inconsistent, trying to make out a case for the prosecution from



their own side and in the process, they are contradicting each other which would create ground for a reasonable doubt about the prosecution case.

12. According to the informant (PW-5), while his deceased brother was carrying soil from Bhutahi river to his door for repairing of the road, the ten named accused persons armed with weapons and started firing upon Faujdari Yadav with an intention to kill him. In his written report, PW-5 has further stated that when his brother Faujdari Yadav, in order to save his life, started fleeing and was shouting '*bachao bachao*', the accused nos. 1 to 6 started indiscriminate firing. In the meantime, Kishor Mahto (appellant in Cr. Appeal (DB) No. 1385 of 2018 shot at his brother Faujdari Yadav which hit on the left ribcage/waist ('Panjara') of the deceased. It is stated by the informant that apart from him, Arbind and Sunil Yadav had also witnessed the occurrence. Faujdari Yadav died on way while being taken for treatment.

13. Learned Senior Counsel submits that from the evidences on the record, it would appear that a telephonic information had been given to the Officer-in-Charge of the Chiksaura Police Station on 16.11.2016 at about 02:30 P.M. from Karai Parsurai police station and this information has been entered



in the station diary of Chiksaura Police Station but the I.O. does not claim to have arrived at the spot immediately thereafter. The Officer-in-Charge of the Chiksaura Police Station who has been examined as PW-12 has stated that he had recorded *fardbeyan* of the occurrence at 06:00 P.M., took charge of the investigation at 06:30 P.M. and then proceeded to the place of occurrence. Learned Senior Counsel submits that according to PW-12, even before inspection of the place of occurrence by him, the dead body of the deceased had already been sent for *post mortem* but PW-12 claims that he had sent the dead body for *post mortem* which is in complete conflict with his own statement that prior to the inspection of the place of occurrence by him, the dead body had already been sent for *post mortem*.

14. Learned Senior Counsel submits that in course of trial, PW-1 who is the brother of the deceased had deposed that six persons came firing from the west side, he has named Kishor Mahto, Raj Kumar Mahto, Rameshar Mahto, Shankar Mahto, Kameshar Mahto and Parmeshar Mahto and he has stated that from village side, Ajay Singh, Mantu Singh, Raju Singh and Santu Singh came with rifle, firing started and Faujdari Yadav started fleeing away but he suffered a bullet on the left side of his ribcage/waist ('Panjara') and fell down whereafter the persons



who were firing fled away. Faujdari Yadav died on way while taking to Patna for the purpose of his treatment. In course of his cross-examination, PW-1 has categorically stated that his brother Chhote Yadav and Sunil Yadav both were in the village at the time of occurrence. His village is situated at a distance of 300-400 yards and PW-1 has again stated that after hearing the sound of firing, his second brother Chhote Yadav (informant) came at first, no other person from village had come.

15. Learned Senior Counsel, therefore, submits that on the face of the statement of PW-1, the claim of the informant (PW-5) that he is an eye witness to the occurrence is not believable.

16. Learned Senior Counsel further points out that Bindu Kumar (PW-2) is the scribe of the written report lodged under the signature of PW-5. According to PW-2, he was standing near the bridge of Bhutahi river at 02:30 P.M. on the date of occurrence, therefore, he claims himself an eye witness and has supported the prosecution case. According to PW-2, Faujdari Yadav was being taken to Patna for his treatment by tempo and on way, he died whereafter his dead body was brought back to the place of occurrence and he informed the police. This witness states that the police had brought the dead body to the police station. It is submitted that this witness has stated in paragraph '5' of his cross-



examination that in the last election for the post of Mukhiya, he was a candidate but he could not win. In the year 2011, he had lost the election but thereafter his wife won and she was the present Mukhiya. In paragraph '6' of his cross-examination, he has stated that he was getting the work of lifting soil from the river and he had deputed Faujdari Yadav in the said work. In paragraph '7' of his cross-examination, this witness stated that in the previous night, the accused persons had hot exchange of words with him and Faujdari Yadav. The hot exchange of words had taken place with the accused belonging to Shahbajpur village. The accused persons from Amat Village had no concern with the same. It is submitted that this witness being in influential position and involved in the local politics of the village has framed this case and has implicated the accused persons and appellants because of a money dispute. In paragraph '13' of his cross-examination, this witness was suggested about his enmity with Mantu. Mantu is the son of Ajay. In this case, Ajay Singh and his three sons, namely, Mantu Singh, Raju Singh and Santu Singh were made accused because of the said enmity.

17. It is submitted that from the evidences on the record, it is evident that the dead body had been brought to the police station much before lodging of the FIR and it was the prosecution



side who had brought the dead body to the police station even before visit of I.O. (PW-12) for inspection of the place of occurrence.

18. Learned Senior Counsel further submits that Dukhi Prasad (PW-3) has deposed that the occurrence took place on 16.11.2016 at 02:30 P.M. According to him, Kishor Mahto had fired from behind. PW-3 does not say that soil was being extracted and loaded. He says that at that time, sand was being loaded on the tractor. In his cross-examination, this witness has stated that he had heard the sound of firing in his field where he had gone at about 02:30 P.M. and stayed till 03:00 P.M. At a distance of 100 feet from his field, people known to him, namely, Bindu, Chhote, and Arbind etc. were there. At 03:00 P.M., he left for his house, on way to his house, nobody met him and he did not again go to the place of occurrence. In paragraph '3' of his cross-examination, he has stated that police had come to his village but he had not met police and in connection with this case, his statement was not recorded by the Investigating Officer. It is, thus, submitted that this witness has given a different version and his conduct in not going to the place of occurrence despite being a co-villager of the deceased and then not making any statement before the Investigating Officer (PW-12)



when PW-12 visited the village same day would impeach upon credibility of this witness.

19. It is submitted that Ramjee Prasad (PW-4) has stated that he was in his field at 02:30 P.M. on the date when 10-12 firing took place from the side of Bhutahi River. He came to Bhutahi river and saw that Faujdari Yadav was fleeing away from the side of river. This witness states that all the accused persons surrounded Faujdari Yadav at the embankment (“*bandh*”) of the river (“*bandh*”) and Kishor fired at Faujdari Yadav as a result of which he fell down at the embankment (“*bandh*”) of the river itself. Learned Senior Counsel submits that PW-4 talks of a different place of occurrence. According to him, the occurrence took place at the embankment (“*bandh*”) of the river. This witness is the cousin brother of the deceased and both were married in the same village. In his cross-examination, he has stated that after hearing the firing, it took him five minutes in reaching from his field to the bridge. He had seen Mukhiya Jee, Arbind and Chhote. He does not say about presence of Sunil (PW-11) and Dukhi (PW-3). He has stated that he stayed there for about one minute and during that period, villager from Shahbajpur came but he could not say the name of those persons. In paragraph ‘5’ of his cross-examination, he states that he had not seen the dead body of Faujdari Yadav. The



name of Mukhiya Jee has been clarified as Bindu Kumar (PW-2). It is stated that the two brothers of the deceased, namely, Chhote and Arbind together with Mukhiya Jee (Bindu Kumar) had taken away Faujdari Yadav on tempo for hospital.

20. Learned Senior Counsel submits that it is evident from the statement of PW-4 that he had not seen the dead body. Arbind (PW-1) is very categorical in saying that after hearing the sound of firing, first of all, his brother Chhote Yadav came to the place of occurrence but no other person from the village had come. Thus, the presence of PW-2, PW-3 and PW-4 as well as PW-5 and PW-11 at the time of occurrence is not supported by PW-1, the claim of these witnesses that they had been present and saw the occurrence is highly doubtful and materially inconsistent and contradictory to the evidence of PW-1.

21. It is submitted that Chote Yadav (PW-5) is the informant of the case. He seems to be an illiterate person. He has put his left thumb impression on the written report submitted to the Station House Officer of Chiksaura Police Station, Nalanda. It has come in evidence that the written report giving information about the occurrence has been written in the pen of Bindu Kumar (PW-2). In his written report, the informant has not stated about the place where he was present at the time of occurrence but he claims



himself an eye witness. In paragraph '6' of his examination-in-chief, he is showing presence of all his brothers and witnesses, his this statement is completely in contrast with the statement of PW-1. It is submitted that PW-5 seems to have lodged the case with the aid and advice of PW-2 who is the scribe of the written complaint.

22. Learned Senior Counsel submits that PW-5 has stated that Faujdari Yadav was being taken to Patna for treatment by a tempo but he died on way on reaching Patheri Mor. The dead body of Faujdari Yadav was brought back to the place of occurrence and information was given to police. Bindu Kumar (PW-2) had written the application on which he had put his thumb impression. He has identified the written application. In his examination-in-chief, he has stated that at about 02:30 P.M., when the occurrence took place, he was washing his she-buffalo and Faujdari Yadav was loading soil on tractor. This witness has stated in course of cross-examination that his brother had prior dispute with the accused persons on Shahbajpur village. He left his house at 02:00 P.M. and at that time, only female members of the family were in the house. Learned Senior Counsel submits that contrary to this statement of PW-5, PW-1 has stated that at the time of occurrence, his brothers, namely, Chhote Yadav and Sunil Yadav



were in the village and they reached at the place of occurrence after ten minutes. According to this witness, he was standing at the Eastern bank of the river and extraction of sand work was being done at the Western bank of the river. There were two tractors out of which one tractor was of his co-villager Ramjee. It is pointed out that Ramjee has deposed as PW-4 in this case and he has stated in his evidence that on the date of occurrence, his tractor was standing at his house, therefore, the statement of PW-5 on this point does not get corroborated from the evidence of PW-3.

23. It is submitted that PW-5 has claimed that he reached near Faujdari Yadav within one-two minutes and he was the first person to reach there, he found that his brother had fallen in the North side of the road. Learned Senior Counsel points out that while PW-5 has stated that his deceased brother had fallen down in injured condition at the North side of the road, PW-4 has stated that Faujdari Yadav had fallen after receiving the bullet on the embankment (“*bandh*”) of the river. Thus, on this account also, the prosecution witnesses are quite inconsistent which would raise a doubt about the actual place of occurrence and as to their presence at the place of occurrence.

24. Learned Senior Counsel submits that in paragraph ‘12’ of his deposition, PW-5 has stated that at 04:30 P.M., police



reached at the place of occurrence. He has given the description of the place where the dead body was kept. In North, there is an 'Alang', in the South there is a road, in the East it is the land of Sitaram and in West, there is land of Baldeo. His brother had fallen at a distance of one *bans* (bamboo) from the *pakki* road. In paragraph '13', this witness states that police came and took away the dead body by tempo to the police station. About half an hour police had stayed there at the place of occurrence but police had not taken his statement there. This witness states that police took his statement at the police station and all writing work were done by police at the police station. It is submitted that the statement to the effect that police came and took away the dead body is not believable as PW-12 has himself said that he reached the place of occurrence after 06:30 PM to inspect the place of occurrence. If police had already arrived at 04:30 PM, there was no reason for PW-12 to say that he proceeded for place of occurrence to inspect after 06:30 PM. Learned Senior Counsel submits that if this statement of PW-5 is considered keeping in view the deposition of the I.O. (PW-12) and own brother of the informant who has deposed as PW-1, it would be found that these witnesses are making completely different statements which are creating huge doubt on the credibility of the prosecution witnesses. PW-12 has



stated that he recorded the *fardbeyan* of the occurrence at 06:00 P.M. and after taking charge of the investigation proceeded towards the place of occurrence at 06:30 P.M. Regarding the occurrence, information was received in the police station over telephone but he cannot say name of the person. He has stated that this information was received on 16.11.2016 at 02:30 P.M. from Karai-Parsurai Police Station and this has been entered in the station diary of Chiksaura Police Station. In paragraph '8', he has stated that when he reached the place of occurrence, darkness had started prevailing and at the time of inspection of the place of occurrence, dead body of Faujdari Yadav was not present at the place of occurrence. He did not remember whether any blood mark or marks of violence was present at the place of occurrence. He had not recovered any empty cartridge at the place of occurrence. PW-12 has stated that he did not find any sign at the place of occurrence from which it could have appeared that a murder had taken place. In paragraph '9' of his evidence, this witness has stated that the dead body had already been sent for *post mortem* prior to the inspection of the place of occurrence. PW-12 has stated that at the place of occurrence, he had taken statement of Dhananjay (not examined) and Dukhi Prasad (PW-3) but the time and place of recording of the statement of these witnesses are not



mentioned in the case diary. PW-12 had gone to village Shahbajpur after recording of the statement of these two witnesses but he had not recorded the statement of any villager, the wife of the deceased or the children.

25. Learned Senior Counsel submits that it is evident from the evidence of PW-12 that police had not reached the place of occurrence or the place where the dead body was brought back and placed near the road at 04:30 P.M. PW-12 reached for verification of the place of occurrence only after 06:30 P.M. when darkness had started prevailing and considering that it was the middle of the month of November and it has come in evidence of PW-2 that there was a fog also that day, it is evident that police had not visited the place of occurrence either at 04:30 PM or after 06:30 PM and PW-12 had not conducted actual inspection of the place of occurrence and in this regard, the statement of PW-5 that all writing work were done in the police station would further prove that PW-12 had only done formalities by completing the paper work in the police station.

26. Learned Senior Counsel submits that PW-12 states that the dead body had already been sent for *post mortem* prior to his reaching to the place of occurrence by tempo, but he does not say that who was the police officer who had earlier visited the



place of occurrence and had taken away the dead body. It is pointed out from the inquest report (Exhibit '5') that it has been prepared by none else than PW-12 in his own pen under his signature on 16.11.2016 but the time is not mentioned thereon. The inquest report does not mention the police case number and PW-12 could notice only one wound on the left side of the waist. Non-mentioning of the case number and the time of preparation of the inquest report would go a long way to show that at the time of preparation of the inquest report, the prosecution story was not known. Reliance in this regard is made on the judgment of the Hon'ble Supreme Court in the case of **Meharaj Singh versus State of U.P.** reported in **(1994) 5 SCC 188** to submit that it will create doubt on the authenticity of the prosecution story.

27. PW-5 is one of the attesting witness to the inquest report, therefore, his presence at the time of preparation of the inquest report is an admitted fact. He has stated that police came at about 04:30 P.M. PW-1 has stated that he was present when police came, he did not remember the time but has stated that at the time when the police was taking away the dead body to the police station from the place of occurrence, there was no other member of his family present there. Therefore, a cumulative reading of the evidences of PW-1, PW-5 and PW-12 would lead to a conclusion



that the inquest report was prepared in the police station only at a belated stage and till that time, the FIR had not been registered, therefore, the police case number could not be mentioned on the inquest report. Learned Senior Counsel submits that it is a case of blind murder, the prosecution is not consistent about the place of occurrence and the manner of occurrence. In course of evidence, the defence has suggested to the prosecution witnesses that murder had taken place at some other place, Bindu Kumar had dispute with the accused of Shahbajpur and that is the reason he has falsely implicated.

28. Learned Senior Counsel submits that PW-6 is the doctor who found two injuries on the dead body and in course of his evidence, he has opined in paragraph '5' that he did not find any charring wound and cannot say with precision as to from which firearm the injury was caused. He has stated that 'inverted injury' may be caused by a spear. In paragraph '7', he has stated that he cannot clearly say that the injuries found on the body of the deceased were caused by firearm. One injury had been caused in the right side whereas another was caused in the left side. Learned Senior Counsel, therefore, submits that while the inquest report refers only one injury, the *post mortem* report has mentioned two injuries on the body of the deceased which would further indicate



that the prosecution witnesses had not given a reliable narration of the manner of occurrence and because the inquest report was prepared by way of a paperwork only in the police station, the I.O. (PW-12) did not observe that there were two injuries on the dead body. This lacuna in the prosecution case would prove fatal to the prosecution.

29. Learned Senior Counsel further submits that PW-7 is the nephew of the deceased. This witness has given a different place where the deceased was loading the soil on the tractor. In his cross-examination, this witness has stated that Faujdari Yadav had run to a distance of 50-60 feet from the place where loading of soil was taking place when he suffered the bullet. This witness has stated in paragraph '7' that he was present at the place of occurrence for half an hour and during this period Faujdari Yadav was alive but due to lack of transportation facility Faujdari Yadav could not be moved from the place of occurrence for half an hour. The tempo by which Faujdari Yadav was being taken to Patna belonged to Ajay Yadav of Village Jahanpur who is known to Chhote Yadav (PW-5). This witness stayed at the place of occurrence for one and half hour and he got information about death of Faujdari Yadav there itself. It is submitted that in the kind of injuries stated to have been suffered by Faujdari the conduct of



the prosecution in taking him to Patna by a 'Tempo' instead of a fast moving vehicle would create doubt on the prosecution story that Faujdari was alive at 02:30 P.M. and thereafter for half an hour. This circumstance needs to be examined keeping in view the testimony of PW-8 and PW-9 who are independent witnesses. In paragraph '7', this witness has stated that when the dead body was brought again to the place of occurrence, at that time apart from him, Dukhi Prasad and Sunil Yadav were present on the bridge. Police had reached at the place of occurrence during his presence and that was day time, the Sun had not set down. Police had inquired from Sunil Yadav, Arbind and this witness. Police had taken away the dead body by the same tempo to the police station. This witness has stated that the police did not come again to the place of occurrence and he did not meet the I.O. for second time. Learned Senior Counsel, therefore, submits that according to this witness, when police reached the place of occurrence, it was not dark and this witness does not talk of presence of PW-2 and PW-5 when the police took away the dead body to the police station. It is submitted that in this case, police has delayed the lodging of the FIR only to give the prosecution side time to think over the names of the persons who were to be implicated in the case and it is for this reason, the FIR has been shown to have been registered at



06:00 P.M. and PW-12 has stated that he moved to inspect the place of occurrence after 06:30 P.M. The falsity of his statement may be found from the fact that he himself claims in course of cross-examination that prior to his visiting the place of occurrence, the dead body had already been sent for *post mortem*.

30. Learned Senior Counsel has submitted that PW-8 and PW-9 are the real independent witnesses of this case. On perusal of the evidence of PW-8, it would appear that on 16.11.2016, at 02:30 P.M. when he was engaged in his agriculture field near Bhutahi river, he heard the sound of weeping, he went to the bridge and found that some people were carrying one person. This witness identified Sunil Yadav and Arbind Yadav who were carrying Faujdari Yadav on a cot. They kept the cot on the Eastern side of the bridge. At that time, Faujdari Yadav had already died. People from Shahbajpur village started coming whereafter this witness went away. In his cross-examination, this witness has stated that he was present in his field from 10:30 A.M. but during this period, he did not hear any sound of firing. He has stated that when Faujdari Yadav was being brought on the bridge, there was no vehicle, tractor present in the river and he had not seen any injury on the body of Faujdari Yadav. He was not told by any



person as to how Faujdari Yadav died. Similarly, PW-9 has also deposed on the line of PW-8.

31. Learned Senior Counsel submits that PW-9 has deposed that at about 04:00 P.M. police came and took away the dead body. These two witnesses have not been declared hostile by the prosecution, therefore, it is submitted by learned Senior Counsel for the appellants that the evidences of PW-8 and PW-9 would carry much weight. It is submitted that PW-10 has stated that when he was going to village Shahbajpur for *vidai* of his wife and he was on his half way, the daughter of Faujdari Yadav informed him over telephone that his father has been killed. This information was received by him on 16.11.2016 at 02:30 P.M. This witness claims that he reached to Bhutahi river where he found that Faujdari Yadav had fallen down. This witness came to know later about the name of the persons who had killed Faujdari Yadav.

32. PW-10 is one of the witnesses to the inquest report. Learned Senior Counsel submits that PW-10 has stated in his cross-examination that he stays in the State of Gujarat for last twenty years. He states that at the place of occurrence in his presence, the brothers of Faujdari Yadav, his wife and daughter came but he had no talk with them. It is submitted that the presence of this witness is highly doubtful as there was no reason



for the daughter of Faujdari Yadav to give him a telephone call instead of giving a call to the police station or any other close relatives. Contrary to the statement of PW-5, PW-10 has stated that at the place of occurrence, police had done writing work and had obtained signature and thumb impression on papers, he had not read the paper on which he had put his signature because he was not in his complete sense. He had not gone to the police station and had returned to his house from the place of occurrence. It is submitted that this witness is one of the witnesses of the inquest report. He has claimed that he had put his signature on a paper at the place of occurrence but he had not done so in his complete sense and could not see the contents of the paper. From his one statement, once again it is evident that the inquest report was prepared by PW-12 much before lodging of the first information report and the dead body had been taken away from the place of occurrence at about 04:30 P.M. itself, signature and thumb impression of the inquest report paper were taken but the same was prepared in the police station. It is for this reason, the inquest report did not mention the police case number.

33. It is submitted that PW-11 is another brother of the deceased who has also deposed that Faujdari Yadav was extracting soil and loading it on the tractor at the time of occurrence and at



this time, the accused persons came firing. He has stated that Kishor Mahto had fired upon Faujdari Yadav from behind which hit on the left waist of Faujdari Yadav and he fell down. This witness has revealed in paragraph '6' of his evidence that Faujdari Yadav had taken work of soil cutting on contract basis and this contract was awarded to him by Bindu Mukhiya. According to this witness, 10-12 round of firing were heard, Faujdari Yadav started fleeing away towards East side and suffered the bullet injury from a distance of ten hands. He had fallen in the field/land of Sitaram Yadav. In the said field, mustard crops were grown. This witness states that he reached near his brother after two minutes. He has stated that in the field of Sitaram Yadav, his brother was lying towards West side and the blood oozing out from the injury of Faujdari Yadav had spread. He did not remember as to who from his village had reached there but according to him, 400-500 people had reached at the place of occurrence. On hulla, Chhote, Bindu, Rajesh and several other persons had come. It is submitted that from the evidence of PW-11 also, it is evident that Chhote (PW-5), Bindu (PW-2) and Rajesh (PW-7) were not present at the place of occurrence when the occurrence allegedly took place and they came there only after hulla. This witness has stated that 10 minutes after Faujdari was shot at in the field, his brother-in-law Ajay



Kumar came there with his vehicle. Arbind, Chhote, Bindu and Ajay took Faujdari in the tempo for Patna. This witness returned home and again went there where the dead body of his brother was kept. This witness has stated that he cannot say as to after how many days he got his statement recorded with the police. This witness was suggested by the defence that Faujdari had died at some other place and the accused persons were falsely implicated by bringing the dead body.

34. Learned Senior Counsel has further submitted that from the statement of the witnesses recorded in accordance with Section 313 CrPC, it would appear that all the incriminating circumstances brought by the prosecution were not put to the accused.

Submissions on behalf of the State

35. On the other hand, Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State has opposed the submissions of learned Senior Counsel for the appellants. It is submitted that all the prosecution witnesses have supported the prosecution case. The date, time and place of occurrence have been duly proved by the prosecution witnesses. It is submitted that only because most of the prosecution witnesses are related to the deceased and they are family members, their evidences cannot be



discarded. It is submitted that all the accused persons in this case got in furtherance of their common object, they came firing and accused Kishor Mahto shot at Faujdari Yadav which resulted in his killing. It is, thus, submitted that the judgment of the learned trial court does not suffer from any infirmity, hence, no interference is required.

Consideration

36. We have heard learned Senior Counsel for the appellants and learned Additional Public Prosecutor for the State. We have also perused the evidences available on the record in the light of the submissions of learned Senior Counsel for the appellants. We would briefly take note of the material inconsistencies and contradictions which have been found in the prosecution case on various aspects of the matter.

37. As regards the place of occurrence, some of the prosecution witnesses have stated that on the given date and time of occurrence Faujdari Yadav (the deceased) was extracting soil from the river when six persons came firing from their gun from the Western side. Those six persons are (1) Kishor Mahto, (2) Raj Kumar Mahto, (3) Kameshar Mahto, (4) Shankar Mahto, (5) Rameshar Mahto, (6) Prameshwar Mahto. The villagers of Shahbajpur namely Ajay Singh, Mantu Singh, Raju Singh and



Santu Singh came with rifle. Faujdari Yadav started fleeing away whereupon in the firing, Faujdari Yadav received a bullet in his left side of ribcage ('Panjara') and he fell down. Thus, the place of occurrence is said to be the river where the deceased was engaged in extracting soil. PW-2 has stated that Faujdari Yadav was fleeing towards West when he received the bullet and he had reached to a distance of one *Bans* (Bamboo) when he fell down. While PW- 1 and PW-2 have stated that Faujdari Yadav was engaged in extracting soil, PW-3 has stated that Faujdari was loading sand on the tractor from the river. He has given a different manner of occurrence saying that when Faujdari Yadav started fleeing away towards East then the accused persons who came from village Shahbajpur surrounded him and Kishor shot at him from behind. These witnesses have stated that the accused persons came firing. PW-4 has stated that 10-12 firing took place from the side of river. PW-4 had given a different place of occurrence. He has stated that Faujdari Yadav fell on the embankment ("*bandh*") of river . PW-5 has stated that when Faujdari Yadav was fleeing away towards his house then he was surrounded by the accused persons and shot at. PW-11 who is full brother of the deceased and claims himself an eye witness has stated that Faujdari had fallen down at a distance of 20 hands in East side from the bridge and the land in which he



had fallen down belonged to a co-villager, namely, Sitaram Yadav. Thus, to this Court, it appears that the prosecution witnesses materially differs from each other as regards the place of occurrence.

38. The manner of occurrence as narrated by the prosecution witnesses are also differing with each other creating more than reasonable doubt as to the prosecution story. According to the prosecution witnesses, the accused persons came to the place of occurrence firing by their gun. The witnesses have claimed that 10-12 rounds of firing were heard by them but the I.O. (PW-12) has deposed in paragraph '8' of his evidence that he had not found any empty cartridge at the place of the occurrence. The evidence of PW-12 is that he had not found any sign on the place of occurrence which could have shown that a murder had taken place. The I.O. has stated that he did not remember that there was any mark of violence at the place of occurrence. The evidence of I.O., therefore, shows that the prosecution story as to the place as well as manner of occurrence is not reliable.

39. In this case, some of the prosecution witnesses have claimed in course of trial that they are the eye witnesses to the occurrence which took place on 16.11.2016 at 02:30 pm but it would not be safe to rely upon their statement for the reason that



they are themselves highly inconsistent and have come out with certain statements which instead of corroborating them with each other are enough to doubt the correctness of their claim as eye witnesses to the occurrence. In this regard, the evidence of PW-1, who is the brother of the deceased, would show that this witness does not say that the accused persons who came from the side of village Shahbajpur surrounded Faujdari Yadav. He has also not said as to who fired upon Faujdari Yadav. In his cross-examination, PW-1 has stated that his brother Chhote Yadav (PW-5) and Sunil Yadav (PW-11) are the witnesses in this case, both the brothers were in the village at the time of occurrence. Thus, PW-1 rules out the presence of PW-5 and PW-10 at the place of occurrence when the firing took place. According to PW-1, villagers came ten minutes after the firing, but he has stated that after hearing the sound of firing, his brother Chhote Yadav had come first of all. This witness has stated in paragraph '5' of his deposition that at the time he heard the sound of firing, he was washing his she-buffalo in the river and after hearing the sound, he went towards the South. He did not remember the name of the persons who were in the vicinity. PW-1 concealed himself near the East side "*Alang*" of the river and kept himself concealed for ten minutes. Till that time, nobody had come from the village. He



went near his injured brother after 1-2 minutes. He claims that after *hulla*, 100-200 villagers assembled but he did not remember the name of his co-villagers. From the evidence of PW-1, two things are appearing, firstly, that he is himself not an eyewitness to the firing upon the deceased Faujdari Yadav. He had concealed himself in the Eastern side of the “*Alang*” of the river and had kept himself concealed for ten minutes. He, therefore, does not corroborate the statement of other witnesses who have claimed that Kishor Mahto had fired upon the deceased. It is also evident that there was no other person from the family of the deceased when police came at the place of occurrence and had taken away the dead body after recording his statement. According to this witness in paragraph ‘7’ of his deposition, when police came, no other member of his family was present there and police had taken away the dead body after recording his statement. Therefore, PW-1 should have been the informant of this case and his statement before police would have been the *fardbeyan* but that has not been done. The first version of the prosecution case as reported to Karai-Parsurai Police station on 16.11.2016 at 02:30 PM and then the statement of PW-1 recorded by police at the time of taking away the dead body has been suppressed.



40. This Court finds from the evidence of PW-2 Bindu Kumar that he was the former Mukhiya who had lost election in the year 2011. His wife happens to be the present Mukhiya of the panchayat. He had given contract work to Faujdari Yadav. The conduct of this witness may be seen from his own statement in paragraph '10' of his deposition where he has stated that he had given information to police about the occurrence, but he had not disclosed the name of the accused persons to police. Thus, this Court finds that till information given to police around 4-4:30 PM, the prosecution side was not sure about the names of the assailants. PW-2 had gone to his house after the dead body reached again to the place of occurrence by tempo and claims to have returned again only after five minutes but by that time, police had arrived at the place of occurrence. He has stated that when he reached the place of occurrence, again he did not find the dead body there. Darogaji had come to the place of occurrence and had returned immediately taking away the dead body. According to this witness, no writing work had taken place at the place of occurrence. He had gone to the police station, but in his presence, the papers were not prepared. He has stated in paragraph '12' that the place of occurrence where Faujdari Yadav had fallen down, no blood had fallen on the earth. He has admitted in paragraph '13' of his



evidence that he was engaged in business of purchase and sale of land with accused Mantu. This witness has denied this suggestion that there was any difference between them on account of money. The defence produced a photocopy of a paper and after looking at the same, this witness identified his writing. The said document was marked Exhibit 'X' for identification. PW-3 has admitted in his cross-examination that he had not made payment of Rs. 3 lakhs to Mantu. From the evidence of PW-2, it may be found that he, though claims to be an eye witness to the occurrence, but in fact he was not present there, this witness has written the FIR in his own pen, but has stated that he did not remember that after how many days his statement was recorded by police. His dispute with Mantu, who is one of the accused, is evident from paragraph '13' of his deposition. PW-2 is, thus, not a reliable witness. He would fall in the category of wholly unreliable witness.

41. In this case, the evidence of PWs 8 and 9 have been completely ignored by the learned trial court. They are said to be the independent witnesses. These two witnesses have given completely different story and they have not supported the prosecution case, still the prosecution has not declared them hostile. According to these two witnesses, on 16.11.2016 at 02:30 PM, they saw that from the Western side of the bridge Sunil Yadav



and Arbind Yadav were carrying a person on a cot (Khat) and they put the said person in the East side of the bridge. These witnesses went there and identified the said person as Faujdari Yadav who had already died. Both the witnesses have stated that when Faujdari Yadav was being brought, there was no vehicle, tractor in the river and nobody told him as to how Faujdari Yadav died. They had not heard the sound of firing. The evidence of PW-8 and PW-9 are suggesting that Faujdari Yadav had died somewhere else and his dead body was brought by his brothers on cot and the same was kept near the bridge. At this stage, if the statement of PW-2 is also noticed that he had informed the police but had not disclosed the name of the accused persons, it would be evident that till the time the dead body was taken to the police station, the prosecution story had not been formulated. The entire prosecution story has been concocted within next four hours and then the FIR was lodged. There is no reason as to why the evidence of PW-8 and PW-9 be disbelieved that too when they have not been declared hostile by the prosecution.

42. In this connection, reference may be made to the judgment of the Hon'ble Supreme Court in the case of **Raja Ram versus The State of Rajasthan** reported in **(2005) 5 SCC 272**, **Mukhtiar Ahmed Ansari versus State (NCT of Delhi)** reported



in **(2005) 5 SCC 258** and **Javed Masood and Another versus State of Rajasthan** reported in **AIR 2010 SC 979**. Paragraph ‘13’ of the judgment of the Hon’ble Supreme Court in the case of **Javed Masood** (supra) is being reproduced hereunder for a ready reference:-

“13. In the present case the prosecution never declared PWs 6, 18, 29 and 30 “hostile”. Their evidence did not support the prosecution. Instead, it supported the defence. There is nothing in law that precludes the defence to rely on their evidence. This Court in *Mukhtiar Ahmed Ansari v. State (NCT of Delhi)*¹ observed:

“30. A similar question came up for consideration before this Court in *Raja Ram v. State of Rajasthan*, (2005) 5 SCC 272. In that case, the evidence of the Doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The Doctor was not declared “hostile”. The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the Doctor and it was binding on the prosecution.

31. In the present case, evidence of PW 1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to police in which police had gone to Bahai Temple and apprehended the accused. When Goel did not support that case, accused can rely on that evidence.”

1. [(2005) 5 SCC 258 : 2005 SCC (Cri) 1037]



43. From the evidence of the I.O. (PW-12), it appears to this Court that he is not a fully trustworthy witness. PW-12 has stated that on 16.11.2016, he got information about the occurrence by Chhote Yadav (PW-5) at the police station and on that basis, he lodged Chiksaura P.S. Case No. 118 of 2016. The formal FIR which has been marked Exhibit '4' would show that the information was received in the police station at 06:00 PM but this very witness has stated that about the occurrence information was received in the police station over telephone on 16.11.2016 at 02:30 PM from Karai Parsurai police station and this has been entered in the station diary of Chiksaura Police Station. This witness has stated that after lodging of the FIR, he took charge of the investigation at 06:30 PM and thereafter proceeded to the place of occurrence but in his own deposition, he has stated that when he reached the place of occurrence for inspection, darkness had started prevailing and the dead body was not present at the place of occurrence. In paragraph '9', he has stated that the dead body had already been sent for *post mortem* prior to his visit for inspection of the place of occurrence. This statement of PW-12 creates huge doubt in the prosecution story. According to PW-2, he informed police about the occurrence when he returned with the dead body to the place of occurrence at about 04:00 PM but PW-12 states that



information of the occurrence had already been received from Karai Parsurai police station on 16.11.2016 at 02:30 PM. It means Faujdari Yadav had died prior to 02:30 P.M. and this information had already reached to the Karai Parsurai at 02:30 PM. This finding would be consistent with the statement of PW-8 and PW-9 who had seen on 16.11.2016 at 02:30 PM the dead body of Faujdari Yadav.

44. This Court further finds from the *post mortem* report (Exhibit '2') that it does not mention the Police Case Number and the name of the Police Station or the station diary entry number. The dead body was received by the hospital authorities at 9:25 pm on 16.11.2016 and autopsy was conducted on the dead body by the Doctor (PW-6) at 9:45 pm. According to the prosecution witnesses, Police had reached at the place of occurrence around 4-4:30 pm and had taken away the dead body to the Police Station. Prosecution witnesses have not stated that police went to the place of occurrence for second time. The I.O. (PW-12) has stated when he reached the place of occurrence after 6:30 pm, he found that the dead body was not there. He has stated that he had already sent the dead body for *post mortem* but the informant and his companions had again brought the dead body at the Police Station because they wanted arrest of the accused persons. This statement of PW-12 is



nothing but to suppress his own inaction. He has not stated that he had visited the place of occurrence earlier at 04:30 PM, he has not stated that his visit to the place of occurrence after 06:30 PM was a second visit. Thus, it appears that the prosecution side had themselves brought the dead body to police station earlier but they tried to show that police had arrived at 04:30 PM and had taken away the dead body. PW-12 has only half heartedly made a statement that he had already sent the dead body for post-mortem without saying that he had visited the place of occurrence at 04:30 PM and had brought the dead body to the police station. It is evident from the evidence of the I.O. (PW-12) and the *post mortem* report (Exhibit '2') that the dead body was sent for *post mortem* from the Police Station with the *Chowkidar* much after 6:30 pm and the dead body reached the hospital at 9:25 pm, still police had not made available the case number to the hospital authorities. Non-mentioning of the case number on the inquest report as well as the *post mortem* report, in the present case are only adding to the doubts about the prosecution story. This is further strengthening the belief of this Court that the prosecution has been suppressing the earliest version of the case, lodging of FIR was delayed for a significant period and only after much



deliberations and thoughts the case was registered showing the time of registration as 6:00 pm.

45. The Hon'ble Supreme Court in the case of **Meharaj Singh** (supra) has observed as under:-

“12.Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected I the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-times and had not been recorded till the inquest proceedings were over at the spot by PW 8.”

46. The role of PW-2 and his dispute with one of the accused, namely, Mantu on account of money transactions in course of business and for that reason, his implication in the present case with his other family members as has been suggested by the defence seems believable.

47. This Court further finds that in the Inquest Report (Exhibit '5') only one injury has been mentioned by PW-12. All the prosecution witnesses who claimed themselves eye witnesses



to the occurrence have stated about only one shot which hit the deceased in the left side of his ribcage ('Panjara'). But in the *post mortem*, the Doctor has recorded the injuries as follows:-

“..... Rigor mortis present in all four limbs. Two lacerated wounds were found on the body. One wound about approximately $\frac{3}{4}$ ” $\times$ $\frac{1}{4}$ ” with inverted margin over it. Side of chest near midaxillary line over about 6th lower intercostals space of chest. Another wound was circular about $\frac{1}{4}$ ” diameter with inverted margin over back area right to spine. The Doctor has further opined that the cause of death is due to Haemorrhagic shock following probably firearm injury.”

48. In the *post mortem* (Exhibit '2'), Doctor has noted time lapse since death within 24 hours. PW-6 is the Doctor who has stated in his cross-examination that he had seen the inquest report prior to starting the autopsy on the dead body. He has stated that “inverted injury” may be caused by a blow of a spear. In paragraph '6' of his cross-examination, he has stated that he cannot say with clarity that the injuries found on the body of the deceased were caused by firearm. In paragraph '7' of the cross-examination, he has stated that on the body of the deceased one injury was in the right side and the another injury was in the left side. From the *post mortem* report (Exhibit '2'), two things are evident, firstly that the



inquest report was prepared by PW-12 only by way of paper transaction and neither the prosecution witnesses nor PW-12 had seen the injuries on the body of the deceased, secondly, the time lapse since death was 24 hours whereas the prosecution case is that the death had taken place by firing at about 02:30-03:00 PM. In such circumstance, the *post mortem* report could have indicated time lapse since death within 8-10 hours. Thus, this is another material to connect with the evidence of PW-8 and PW-9 who are independent witnesses and have stated that at 02:30 PM, they had seen Arbind and Sunil bringing the body of Faujdari Yadav (the deceased) on a cot and these witnesses have stated that Faujdari Yadav had already died and his dead body had been brought on the cot.

49. In the given kind of materials on the principles regarding appreciation of evidence and presumption of innocence are looked into, the observations of the Hon'ble Supreme Court in the case of **State of Punjab v. Jagir Singh, Baljit Singh and Karam Singh** reported in (1974) 3 SCC 277 are worth taking note of as under:-

“23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the



product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses.”

50. In Kali Ram versus State of H.P. reported in (1973)

2 SCC 808, the Hon’ble Supreme Court has observed in paragraph ‘25’ as follows:-

“**25.** Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.”

51. In the light of the aforementioned discussions, this Court is of the considered opinion that the prosecution case suffers from inherent infirmities, inconsistencies and the contradictions in the evidence brought on the record. The judgment of the learned trial court is, therefore set aside and the appellants are acquitted of the charges under Sections 147, 148, 302/149 of the IPC and Section 27 of the Arms Act giving them benefit of doubt.

52. The accused, namely, Raj Kumar Mahto (appellant no. 1 in Cr. Appeal (DB) No. 1208 of 2018, Kameshwar Mahto (appellant no. 2 in Cr. Appeal (DB) No. 1208 of 2018), Parmeshwar Mahto (appellant in Cr. Appeal (DB) No. 1221 of



2018) and Ajay Singh (appellant in Cr. Appeal (DB) No. 1233 of 2018) are on bail, they are discharged from their liability of bail bonds.

53. The accused, namely, Kishor Mahto (appellant in Criminal Appeal (DB) No. 1385 of 2018) is said to be in custody. He shall be released forthwith if not wanted in any other case.

54. These appeals are allowed.

(Rajeev Ranjan Prasad, J)

(Jitendra Kumar, J)

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