

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1473 of 2017

Arising Out of PS. Case No.-819 Year-1998 Thana- KADAMKUAN District- Patna

1. Manhar @ Manohar Ram
2. Sanjay Kumar @ Chhotu
Both S/o-Late Mahavir Ram, R/o-Mohalla-Kumhar Toli, P.S.-Kankarbagh,
District-Patna.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1315 of 2017

Arising Out of PS. Case No.-819 Year-1998 Thana- KADAMKUAN District- Patna

Manoj Kumar, S/o Kedar sao @ Kedar Prasad, Resident of Mohalla-Kumhrar
Toli, P.S.-Kankarabgh, District-Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1471 of 2017

Arising Out of PS. Case No.-819 Year-1998 Thana- KADAMKUAN District- Patna

Sunil Kumar, son of Late Lal Babu Prasad, Resident of Mohalla- Kumhar
Toli, Near Choudhary Petrol Pump, P.O. Lohia Nagar, Police Station
Kankarbagh, District- Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 1473 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Kiran Kumari, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, Addl.PP

(In CRIMINAL APPEAL (DB) No. 1315 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Kiran Kumari, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, Addl.PP

(In CRIMINAL APPEAL (DB) No. 1471 of 2017)

For the Appellant/s : Mr. Prafull Chandra Jha, Advocate
For the Respondent/s : Mrs. Shashi Bala Verma, Addl.PP

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

Date : 19-09-2024

Heard learned counsel for the appellants and learned Additional Public Prosecutor for the State in all the three appeals.

2. This appeal has been preferred for setting aside the judgment of conviction dated 18.10.2017 (hereinafter referred to as the ‘impugned judgment’) and the order of sentence dated 18.10.2017 (hereinafter referred to as the ‘impugned order’) passed by learned Fast Track Cour-I, Patna (hereinafter referred to as the ‘learned trial court’) in Sessions Trial No. 708 of 2000 arising out of Kadamkua P.S. Case No. 819 of 1998 registered for the offence punishable under Section 302/34 of the Indian Penal Code (in short ‘IPC’). By the impugned judgment, the appellants have been convicted for the offence punishable under Section 302/149 IPC and by the impugned order, they have been ordered to undergo rigorous imprisonment for life.

Prosecution case

3. The prosecution case is based on the *fardbeyan* of Dr. Kumar Raj Kishor Roshan (PW-3) recorded by Sitaram Singh,

Sub-Inspector of Kankarbagh Police Station on 22.12.1998 at 11:30 pm in the emergency ward of Patna Medical College and Hospital, Patna (in short 'PMCH'). In his *fardbeyan*, it is stated that today in the evening at about 07:30 pm, he along with his elder brother Dr. Naresh Kumar Sawantra, Rajan Kumar Swatantra and nephew Suraj Prakash @ Munna and Bhabhi Arti Devi and Asha Devi were involved in domestic talk, in the meanwhile, his elder brother Dr. Naresh Kumar Swatantra came out from the house for going to market and after two minutes, he heard the sound of crying of his elder brother Naresh Kumar Swatantra on which the informant, his elder brother Rajan Kumar Swatantra, Asha Devi, nephew Surya Prakash @ Munna and Bhabhi Arti Devi ran outside and saw that Sunil Kumar, Lal Babu, Sanjay Kumar @ Chotu, Manohar Ram, Radha @ Adhwa, Manoj Kumar of his mohalla and Nityanand @ Netaeya resident of Lalji Tola and Rajnarayan Singh renter of Lalji Saw had caught hold of his brother Dr. Naresh Kumar Swatantra and were taking him to the railway Line situated north to their house. On seeing this, all ran towards Dr. Naresh raising alarm then all the above named persons took away his brother towards railway line and in front of them, they stabbed his elder brother Dr. Naresh Kumar and thereafter, on seeing them, the accused persons fled away towards the North of

railway line. When the informant and others reached near Dr. Naresh, they saw two injuries on the right side of chest and one stab injury near the chin at that time, his elder brother had fallen down and blood was oozing out from his chest and chin and he was struggling. In course of struggling, his elder brother Dr. Naresh Kumar Swatantra taking names of the nine persons said that as soon as he came out from the house, all the nine accused persons were standing on the road and on seeing him, they caught hold of him and brought him on the railway line where they stabbed him and fled away. Thereafter, the informant brought his injured brother Dr. Naresh Kumar Swatantra near the house and brought him through a tempo to PMCH for treatment. It is stated that as soon as his treatment was started, he died due to grievous stabbed injury. It is stated that on the way to hospital on tempo up to Gandhi Maidan his brother was taking the names of nine accused persons.

The reason behind the occurrence is said to be the involvement of the accused persons in snatching and commission of theft and their criminal activities to which his elder brother Dr. Naresh Kumar Swatantra objected to by saying that they should not defame the name of the Mohalla. On which the accused persons had threatened him many times of dire consequences. It is alleged

that due the said reason and enmity, all accused persons today stabbed his elder brother Dr. Naresh Kumar by taking away him on railway line and due to the said injury, his brother died. This incident was seen by the informant, his nephew Surya Prakash @ Munna, his elder brother Rajan Kumar Swatantra, his bhabhi Asha Devi and Arti Devi and they identified all the nine accused persons. The time of occurrence is stated to be at 07:30 pm.

4. On the basis of the aforesaid *fardbeyan*, formal FIR was registered vide Kadamkuan (Kankarbagh) P.S. Case No. 819 of 1998 dated 23.12.1998 under Section 302/34 IPC against the nine accused persons. After investigation, police submitted chargesheet vide chargesheet no. 54 of 1999 dated 23.03.1999 under Section 302/34 against five accused persons, namely, Sunil Kumar, Lal Babu Prasad, Sanjay Kumar @ Chhotu, Manhar Ram @ Manohar Ram, Ranjit Kumar and the investigation was kept pending against Radha Kumar @ Adhwa, Manoj Kumar and Nityanand @ Nitaeya. Thereafter police submitted supplementary chargesheet vide chargesheet no. 105 of 1999 dated 05.07.1999 under Section 302/34 IPC against Radha Kumar @ Adhwa and learned Magistrate took cognizance on 06.07.1999 and committed the records to the court of sessions on the same day. On 30.11.1999, a supplementary chargesheet no. 242 of 1999 was

submitted against accused Manoj Kumar. Accordingly, learned Magistrate took cognizance on 30.11.1999 and committed the case to the court of sessions on the same day. After commitment of the case records, Sessions Trial No. 708 of 2000 was registered in which charge was framed on 17.01.2002 under Sections 302/34 of the IPC against Sunil Kumar, Lalbabu Prasad, Ranjit Kumar @ Mangru, Radha Kumar @ Adhwa and Manoj Kumar and under Section 302 IPC against Sanjay Kumar @ Chhotu and Manohar Ram @ Manhar Ram.

5. In course of trial, altogether ten prosecution witnesses were examined and two documents were exhibited on behalf of prosecution. In course of trial, defence also brought four witnesses. The list of prosecution witnesses, exhibits on behalf of prosecution and defence witnesses are being mentioned hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Aarti Devi
PW-2	Rajan Kumar
PW-3	Dr. Kumar Raj Kishor Raushan
PW-4	Mintu Kumar
PW-5	Bheem Sah
PW-6	Ashok Kumar
PW-7	Aasha Devi
PW-8	Surya Prakash Suman
PW-9	Vinay Kumar
PW-10	Dr Ashok Kumar Yadav

List of Defence Witnesses

DW-1	Binod Prasad
DW-2	Shambhoo
DW-3	Deo Kumar Pandit
DW-4	Binod Kumar

List of Exhibits

Ext.-1	Signature on fardbeyan of Dr. Kumar Raj Kishore Raushan	21.09.05	Sd/- 21-9-05
Ext.-2	P.M. Report	07.07.2009	

Findings of the Learned Trial Court

6. Learned trial court, on analyzing the evidences of the prosecution witnesses found that PW-2, PW-3 and PW-4 have been declared hostile in which PW-2 and PW-3 are the own brothers of the deceased and PW-4 is an independent witness. Learned trial court found that PW-1 is the wife of the deceased, PW-7-wife of deceased's brother and PW-8-the son of the deceased have only supported the occurrence as eye witnesses. Learned trial court found that though PW-2 PW-3 and PW-4 have been declared hostile but they have categorically stated about the killing of deceased Naresh Kumar Swatantra and as such evidence is there regarding killing of Naresh Kumar Swatantra. Learned trial court did not find any contradiction in the evidence of PW-1, PW-7 and PW-8 and opined that though they are the members of

the family of the deceased but the kind of description regarding incident given by them they became natural witness of the circumstances as appearing from the records. PWs 2 and 3 had also gone to the place of occurrence as is appearing from the evidence of PWs 2 and 3 but they have been declared hostile. Learned trial court opined that the defence has failed to show any contradiction between the depositions of PW-1, PW-7 and PW-8 given in course of trial and statements recorded before Police. On the point of identification, learned trial court relied upon the evidence of PW-1, PW-7 and PW-8 that they witnessed the occurrence and they identified the accused persons as they are the residents of the same Mohalla. Learned trial court found that since the informant has identified his signature on the *fardbeyan*, non-examination of the SI of Kankarbagh Police Station who recorded the *fardbeyan* has not caused any prejudice to the prosecution.

7. Regarding the place of occurrence, learned trial court found that the prosecution witnesses as well as defence witnesses have categorically stated that deceased was found fallen down near the '*nadh*' of Shambhu who was examined as DW-2 and as such non-examination of the Investigating Officer has not caused any prejudice to the prosecution.

8. Learned trial court found from the evidence of PW-1 that her husband was dragged towards railway line where the accused persons fled away after stabbing him. She further deposed that Manhar Ram @ manohar Ram had stabbed her husband. PW-7 has also stated that all the accused persons dragged deceased Naresh Kumar to railway line where they stabbed him. PW-8 has stated that all the accused persons dragged his father to railway line. PW-8 has stated that Sunil and Manohar stabbed his father. Here, learned trial court found contradictions in the evidence of PW-1 and PW-8. PW-7 has stated that all stabbed the deceased. Learned trial court opined that all the three witnesses (PW-1, PW-7 and PW-8) with others ran towards deceased who was being dragged towards the railway line by the accused persons, the occurrence, is of 22.12.1998 at about 07:00 pm when darkness had already prevailed and in that situation, it is difficult to see that who stabbed the deceased but it is evident that the accused persons were dragging the deceased with common intention and at the place of occurrence, they slammed down the deceased and fled away after stabbing him. Further, learned trial court found five injuries on the body of the deceased from the post-mortem report which led to death of the deceased. Accordingly, learned trial court found that the offence under Section 302/149 IPC is proved

beyond all reasonable doubts. Learned trial court found that PW-1, PW-7 and PW-8 have not taken the name of Ranjit Kumar @ Mangru and accordingly, held that the presence of this accused is doubtful. In result, learned trial court found accused Sunil Kumar, Manoj Kumar, Sanjay Kumar @ Chhotu and Manohar Ram @ Manhar Ram guilty of the offence under Section 302/149 IPC who are appellants before this Court.

Submissions on behalf of the Appellants

9. Learned counsel for the appellants submits that the prosecution case is based on the *fardbeyan* of Dr. Kumar Raj Kishore Roshan (PW-3) but in course of trial, PW-3 has turned hostile and has not supported the prosecution case. PW-3 has stated that his elder brother Dr. Naresh Kumar Swatantra was stabbed but he had not seen as to who had stabbed him. It is submitted that the Police Officer who has recorded the *fardbeyan* of PW-3 has not been examined and as such the same has not been exhibited. PW-3 was though cross-examined by the prosecution but he remained on his statement, rather in paragraph '3' of his cross-examination, he has stated that Darogaji had not allowed him to read the *fardbeyan* and had only told him to put his signature thereon.

10. Learned counsel for the appellants has contended before this Court that in this case, both the brothers of the deceased who came as PW-2 and PW-3 in course of trial have not supported the prosecution case and they have been declared hostile. In fact, PW-4, PW-5 and PW-6 who were sought to be examined as independent witnesses to the occurrence have turned hostile.

11. Learned counsel for the appellants submits that the learned trial court has failed to appreciate the evidences of PW-1, PW-7 and PW-8 who are the wife, wife of the younger brother of the deceased and the son of the deceased respectively as regards their presence at the place of occurrence and that they had stated two different places of occurrence. Learned counsel for the appellants submits that while PW-1 and PW-7 have stated that the place of occurrence is near the railway line, PW-8 who is the son of the deceased has stated that the place of occurrence is the lane which is East to the house of Shambhu Singh. It is submitted that since, in this case, the I.O. has not been examined, the actual place of occurrence has not been duly proved.

12. Learned counsel submits that as regard the place of occurrence, PW-7 has stated that the place of occurrence is situated at a distance of 100 yards from her house. PW-7 had not

seen whether any person from the Mohalla had come to the place of occurrence after hearing the shouts. In her cross-examination, PW-7 has stated that the Darogaji had recorded her statement in the night of the occurrence but she cannot say as to where her statement was recorded. In paragraph '9' of her cross-examination, PW-7 has stated that when she saw the accused persons, the distance between her and the accused persons was that of 100 yards and when she reached near the said place, the accused persons had stabbed Naresh and fled away.

13. Learned counsel has pointed out that if the evidences of PW-1 and PW-7 are taken together then it appears that they have stated that the place of occurrence is situated at a distance of 100 yards from their house, therefore, these two witnesses are though claiming that they have seen the occurrence after coming out from their house which is the same and one house, they are not consistent about the distance from which they had seen the accused persons. Learned counsel submits from the evidences of PW-1 and PW-7, one thing is clear that both the witnesses were not present at the place of occurrence and they had gone near the place of occurrence after the accused persons had fled away. The learned trial court has held that the occurrence took place on 22.12.1998 at 7:00 PM, there was darkness and in that situation it

is difficult to see as to who stabbed but at this stage, the learned trial court could not appreciate that in the month of end December at 7:00 PM when darkness had prevailed and the face of the accused persons were not in front of the witnesses it would not have been possible to identify the persons who were taking away the deceased.

14. Learned counsel for the appellants has relied upon the judgment of the Hon'ble Supreme Court in the case of **Munuwa @ Satish and Others versus State of U.P.** reported in **(2023) 1 SCC 714** (paragraphs '23' and '24') to submit that there being doubt as to the place of occurrence, the prosecution case is liable to fail.

15. Learned counsel has further submitted that PW-8 was aged about 10 years at the time of occurrence but the prosecution did not get his statement recorded under Section 164 CrPC immediately after the occurrence. After about 7 years of the occurrence, he came to depose in course of trial and the manner in which he has deposed on the line of PW-1 and PW-7, it is evident that he has been deposing on the basis of what has been told to him by his mother (PW-1).

16. Learned counsel for the appellants have pointed out that in this case, four defence witnesses have been examined but

while appreciating their evidences, the learned trial court has failed to appreciate the settled proposition of law that the prosecution and the defence witnesses are to be appreciated keeping in view the principle of equality in their status. In this regard learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Munshi Prasad and Ors. versus State of Bihar** reported in (2002) 1 SCC 351 (paragraph '3') and **State of Haryana versus Ram Singh** reported in (2002) 2 SCC 426 (paragraph '19').

17. Learned counsel for the appellants submits that DW-1 is Binod Prasad whose *khatal* (cow-shed) is situated beside the *khatal* of Shambhu. The dead body of victim was found lying near *Nadh* of cow-shed of Shambhu and this witness had seen him first, whereafter he has stated to have informed PW-1 and thereafter he along with PW-1 had taken the victim to PMCH. DW-1 has stated that the Darogaji had not come to the said place.

18. Shambhu near whose *khatal* (cow-shed) the dead body of the victim was found, has deposed as DW-2 who has stated that when Binod Prasad (DW-1) was going to inform at the house of the deceased, none of the family members of the deceased was present at the place of occurrence.

19. Deo Kumar Pandit (DW-3) is one of the cousin brothers of the deceased who had stated that he had seen Binod running towards the house of the deceased and he came back with the wife of the deceased where this witness was also present and he had seen that Naresh Pandit had fallen down near the *Nadh* of cow-shed of Shambhu after suffering the stabbings. DW-3 has stated that when he reached near the dead body, no member of the family of the deceased was present there.

20. Referring to the deposition of Binod Kumar (DW-4) learned counsel submits that this witness is another cousin brother of the deceased who has not been questioned by the prosecution. This witness has stated that he is residing in the said Mohalla for the last 16-17 years and he had seen that Binod was going towards the railway line with his elder Bhabhi Aarti Devi (PW-1), he followed them and found that Naresh Pandit was lying near the *Nadh* of Shambhu Singh in injured condition. This witness has stated in his examination-in-chief that there is no complaint of the accused persons in the Mohalla. He has also stated that there is no source of light at the *khatal* of Shambhu and after 2-3 days, he came to know that the appellants have been made accused in this case.

21. Learned counsel submits that the prosecution has not cross-examined these defence witnesses either on the ground that they had gone in collusion with the defence or that they had any enmity with the informant's side and for that, they are deposing in favour of the accused. Lastly it has been submitted that the learned trial court convicted the appellants without appreciating the evidence of prosecution witnesses together with defence witnesses.

22. Referring to the statement of the accused persons under Section 313 CrPC, learned counsel for the appellants submits that all the accused persons have been put one and same question which shows that the the incriminating materials which came against them were not put before them. In this regard reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Hate Singh Bhagat Singh versus State of Madhya Bharat** reported in AIR 1953 SC 468 (para 25).

Submissions of the State

23. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State has opposed these appeals. It is submitted that the trial court has, after analysing the entire evidences on the record held that the guilt of the appellants has been proved beyond all reasonable doubts. So far as the place of occurrence is concerned the prosecution witnesses as well as the defence

witnesses have stated about finding of the dead body of the deceased near the '*Nadh*' of Shambhu therefore, non-examination of the Investigating Officer has not caused any prejudice to the defence. It is submitted that the informant (PW-3) has identified his signature on the *fardbeyan* which has been marked Exhibit '1' without objection and as such non-examination of the police officer who recorded the *fardbeyan* shall not prove fatal for the prosecution.

24. Learned Additional P.P. submits that PW-1, PW-7 and PW-8 have stated that they witnessed the occurrence and they identified the accused persons as they are the residents of the same Mohalla.

25. Referring to the evidences of PW-1, PW-7 and PW-8, learned Additional P.P. submits that the deceased was dragged towards railway line where the accused persons fled away after stabbing him. PW-1 further deposed that Manhar Ram @ manohar Ram had stabbed her husband. PW-7 has also stated that all the accused persons dragged deceased Naresh Kumar to railway line where they stabbed him. PW-8 has stated that all the accused persons dragged his father to railway line. PW-8 has stated that Sunil and Manohar stabbed his father. All the three witnesses (PW-1, PW-7 and PW-8) deposed that they with others ran towards

deceased who was being dragged towards the railway line by the accused persons, the occurrence. In view of the materials which have come in the depositions of these three witnesses, learned trial court rightly found accused Sunil Kumar, Manoj Kumar, Sanjay Kumar @ Chhotu and Manohar Ram @ Manhar Ram guilty of the offence under Section 302/149 IPC.

Consideration

26. We have heard learned counsel for the appellants and learned Additional PP for the State as also perused the trial court's records. The prosecution case is based on the *fardbeyan* of Dr. Kumar Raj Kishore Roshan (PW-3). In course of evidence, PW-3 has turned hostile and has not supported the prosecution case. He has stated that his elder brother Dr. Naresh Kumar Swatantra was stabbed but he had not seen as to who had stabbed. He has stated that his *fardbeyan* was recorded in the police station, he identified his signature which has been marked as Exhibit '1'. This witness was though cross-examined by the prosecution but he remained on his statement, rather in paragraph '3' of his cross-examination, he has stated that Darogaji had not allowed him to read the *fardbeyan* and had only told him to put his signature thereon. He has stated that he was making this statement on his own will without being under pressure.

27. This Court finds that the Sub-Inspector of Police Sita Ram Singh of Kankarbagh Police Station who had recorded the *fardbeyan* of PW-3 has not been examined by the prosecution. He was also made Investigating Officer (I.O.) of the case but he did not turn up in the dock to prove the *fardbeyan*. The officer-in-charge of the police station, namely, Raj Kishore Sinha who had forwarded the *fardbeyan* to the officer-in-charge of Kadamkuan Police Station, Patna to register the FIR against the accused Sunil Kumar and other eight named accused persons has also not been examined in course of trial. On perusal of the impugned judgment, it appears that the learned trial court has though noticed that the Sub-Inspector who had recorded the *fardbeyan* has not come to prove the same and this is an act of negligence on the part of the prosecution, observed that because there is a signature of the informant on the *fardbeyan* and the said signature has been marked as Exhibit '1', therefore, the existence of the *fardbeyan* cannot be denied. This Court finds that even as PW-3 admitted his signature on the *fardbeyan*, he has stated in his evidence that Darogaji had not allowed him to read the *fardbeyan*. Thus, it is evident that the contents of the *fardbeyan* were not proved in course of trial by any competent witness.

28. Learned counsel for the appellants has contended before this Court that in this case, both the brothers of the deceased who came as PW-2 and PW-3 in course of trial have not supported the prosecution case and they have been declared hostile. In fact, PW-4, PW-5 and PW-6 who were sought to be examined as independent witnesses to the occurrence have also turned hostile. The learned trial court has held the appellants guilty on the basis of the evidences of PW-1, PW-7 and PW-8 who are the wife, wife of the younger brother of the deceased and the son of the deceased respectively. The learned trial court seems to have failed to appreciate the evidences of these three prosecution witnesses as regards their presence at the place of occurrence and that they had stated two different places of occurrence. We find substance in the submission of learned counsel for the appellants that while PW-1 and PW-7 have stated that the place of occurrence is near the railway line, PW-8 who is the son of the deceased has stated that the place of occurrence is the 'lane' which is East to the house of Shambhu Singh. Since, in this case, the I.O. has not been examined, the actual place of occurrence has not been duly proved. In this regard, we notice from the deposition of PW-1 that according to her, the place of occurrence is situated at a distance of 100 yards from her house and when she had seen the accused

persons, they were at a distance of 50 yards. She has stated in her cross-examination that she had seen the occurrence from a distance of 30 yards and the occurrence had taken place for about 10-15 minutes. She has stated that when the accused persons ran away, then she had gone near the place of occurrence. She had stated in her cross-examination that there is no dense population near the place of occurrence, however, she has stated that the place from where she had seen the occurrence is densely populated. This witness has stated that her statement was recorded by police after 10-15 days of the occurrence. Apart from these facts, PW-1 has stated that her husband was an agent of LIC and he used to come home daily after collecting money from the people. She was suggested by the defence that when her husband was coming with money, somebody picked his pocket and stabbed him but the accused persons have been falsely implicated. As regard the place of occurrence, PW-7 has stated that the place of occurrence is situated at a distance of 100 yards from her house. She had not seen whether any person from the Mohalla had come to the place of occurrence after hearing the shouts. In her cross-examination, PW-7 has stated that the Darogaji had recorded her statement in the night of the occurrence but she cannot say as to where her statement was recorded. In paragraph '9' of her cross-examination,

she had stated that when she saw the accused persons, the distance between her and the accused persons was that of 100 yards and when she reached near the said place, the accused persons had stabbed Naresh and fled away. If the evidences of PW-1 and PW-7 are read together, it would appear that while both of them have claimed that they came outside from house at the same time after hearing the shouts, but while PW-1 claims that when she saw the accused persons, they were at a distance of 50 yards, PW-7 has stated that when she saw the accused persons, they were at a distance of 100 yards. Both the witnesses have stated that the place of occurrence is situated at a distance of 100 yards from their house, therefore, it appears to this Court that these two witnesses are though claiming that they have seen the occurrence after coming out from their house which is the same and one house, they are not consistent about the distance from which they had seen the accused persons. One thing is evident that both the witnesses were not present at the place of occurrence and they had gone near the place of occurrence after the accused persons had fled away. The learned trial court has held that when the occurrence took place it was 7:00 PM so darkness had prevailed. It has been recorded as a finding that it was difficult to see as to who stabbed. On the same reasoning, this Court is of the opinion that

when the witnesses saw the accused persons dragging away her husband, they were at a distance of 50 yards and 100 yards, their faces were not in front of the witnesses, therefore in the month of December at 7:00 PM in the darkness, it would not have been possible to identify nine persons who were named in the FIR.

29. This Court further finds from the evidence of PW-1 and PW-7 that both the witnesses have stated that their house is situated in a Mohalla which is densely populated, still no independent witness has deposed in this case to support the prosecution story. In fact, from the statement of PW-7 in paragraph '10' of her deposition, it would appear that she has stated to have reached the place of occurrence within five minutes after hearing the shouts. She has stated that it will take five minutes run to reach the railway line (the place of occurrence) from her house. From this statement of PW-7, it appears that she claims to have reached the place of occurrence within five minutes still she claims to have seen the occurrence from 100 yards which is the total distance from her house to the railway line. PW-7 says that the occurrence continued for about 15 minutes whereas PW-1 has stated that she reached near the place of occurrence after the accused persons had fled away. If the evidence of PW-1 and PW-7 are read together, it

is not believable that PW-1 and PW-7 had seen the occurrence which, according to them, took place near the railway line.

30. At this stage, this Court would also notice the evidence of PW-8 who is the son of the deceased and was aged about 10 years only at the time of occurrence. He has deposed on the same line with PW-1 and PW-7. This witness has stated that when he came outside his house after hearing the voice of his father, he saw that some persons were dragging away his father towards the railway line, they were Sunil Kumar, Ram Manohar, Sanjay, Manoj, Nityanand, Lal Babu and Adhwa. He has stated that all the family members reached near them. They had slammed down his father near the cow-shed of Shambhu and fled away. This witness has stated to have seen Sunil and Manohar stabbing upon his father while PW-1 has stated that Manohar Ram and Sanjay had stabbed the deceased and others had caught hold of him and they were assaulting the deceased by hand and leg. In his cross-examination, PW-8 has stated in paragraph '9' that the occurrence had taken place at the East to the house of Shambhu Singh. He has further stated that the Eastern side lane was *kacha* at the time of occurrence and the said lane has a width of 8-10 feet. While PW-1 has stated that the place of occurrence is not densely populated, PW-8 has stated that the area between his house and the

place of occurrence is very densely populated but he cannot say whether any person from Mohalla had seen the occurrence or not. He has stated that though he had made statement before the I.O. but he cannot say that after how many days and when his statements were recorded. It is evident from the deposition of PW-8 that he has given a different place of occurrence. Again, because the I.O. has not been examined in this case, the place of occurrence could not be ascertained and the defence could not elicit the truth with regard to the place of occurrence because of non-examination of the I.O. This has caused prejudice to the defence. This, according to us, would prove fatal to the prosecution case.

31. Learned counsel for the appellants has relied upon the judgment of the Hon'ble Supreme Court on this point which we have taken note of hereinabove. In the case of **Munuwa @ Satish and Others** (supra), the Hon'ble Supreme Court has while pointing out the importance of the proof of place of occurrence opined in paragraphs '23' and '24' as under:-

“**23.** There is a great amount of uncertainty about the place of occurrence of the crime. As per the FIR, as well as the evidence of PW 1 and PW 6, the incident took place in the passage in front of the verandah where the deceased and PW 6 were sitting in two chairs facing each other. It is at this place that the accused are alleged to have fired at the deceased causing as many as seven gunshot injuries on his body. Inspector Chob Singh (PW 7) who was cross-examined about the place of

occurrence has stated that he has not found blood spots on the chair or the floor around the chair. This contrasts with the testimony of PW 1, who, in his cross-examination, stated that when the deceased was lying on the bullock cart in a cot, blood was oozing out from him, which is relatable to the injuries sustained at the place of occurrence.

24. It is unnatural that not even single drop of blood could be traced or recovered from the chair or the floor where the deceased and PW 6 were sitting, casting a serious doubt about the veracity of the prosecution's story regarding the place of the incident. It is common knowledge that a place where a severe bodily injury occurs, it naturally leaves a trail of the incident². It is also common for the prosecution to collect proof of bloodstained earth, clothes, or other materials, from where the incident would have occurred.

2. In *Meharaj Singh v. State of U.P.*, (1994) 5 SCC 188 : 1994 SCC (Cri) 1391, this Court held : (SCC p. 197, para 13)

“13. ... The absence of any blood in the field of Kirpal Singh as also the absence of blood trail from the field of Kirpal Singh to the place where the dead body was found, as admitted by PW 8, also suggests that the occurrence did not take place in the manner suggested by the prosecution and that the genesis of the fight has been suppressed from the court.”

A similar view was taken in *Ramsewak v. State of M.P.*, (2004) 11 SCC 259, wherein it was held : (SCC pp. 265-66, para 14)

“14. ... We also notice that there is considerable doubt in regard to the place of incident also. From the medical evidence we notice that the deceased suffered 3 major incised wounds leading to the severance of the blood vessels and amputation of his hand near the wrist and the body in question was lying at the spot till the police came which was nearly 4 to 5 hours later but still the investigating agency was unable to find any blood on the spot. Of course, the prosecution has given an explanation that after the incident in question it had rained *but even then it is difficult to believe that even traces of blood could not have been found on the soil in spite of the rain. The absence of any such material also supports the prosecution case that the incident in question might not have happened at the place of incident.*” (emphasis supplied)

32. We have also found that PW-8 was aged about 10 years at the time of occurrence but the prosecution did not get his statement recorded under Section 164 CrPC immediately after the occurrence. After about 7 years of the occurrence, he came to depose in course of trial and the manner in which he has deposed on the line of PW-1 and PW-7, it is evident that he has been deposing on the basis of what has been told to him by his mother. The prosecution had suggested this witness that he had not stated before Darogaji about the occurrence which this witness had denied but because the I.O. has not been examined in this case, the defence could not extract contradiction from the I.O. on this point.

33. Learned counsel for the appellants have pointed out that in this case, four defence witnesses have been examined but while appreciating their evidences, the learned trial court has missed out on the settled proposition of law that the prosecution and the defence witnesses are to be appreciated keeping in view the principle of equality in their status. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of **Munshi Prasad** (supra) and **Ram Singh** (supra) wherein the Hon'ble Supreme Court has been pleased to observe in paragraphs '3' and '19' respectively as under:-

“**3.** Without attributing any motive and taking the evidence on its face value, therefore, it appears that the place of occurrence was at 400-500 yards from the place of Panchayat and it is on this piece of evidence, the learned advocate for the State heavily relied upon and contended that the distance was far too short so as to be an impossibility for the accused to be at the place of occurrence — we cannot but lend concurrence to such a

submission : a distance of 400-500 yards cannot possibly be said to be “presence elsewhere” — it is not an impossibility to be at the place of occurrence and also at the Panchayat meet, the distance being as noticed above : the evidence on record itself negates the plea and we are thus unable to record our concurrence as regards acceptance of the plea of alibi as raised in the appeal. Before drawing the curtain on this score, however, we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution — a lapse on the part of the defence witnesses cannot be differentiated and be treated differently than that of the prosecutors’ witnesses.

19. Significantly all disclosures, discoveries and even arrests have been made in the presence of three specific persons, namely, Budh Ram, Dholu Ram and Atma Ram — no independent witness could be found in the aforesaid context — is it deliberate or is it sheer coincidence — this is where the relevance of the passage from *Sarkar on Evidence* comes on. The ingenuity devised by the prosecutor knew no bounds — can it be attributed to be sheer coincidence? Without any further consideration of the matter, one thing can be, more or less with certain amount of conclusiveness be stated that these at least create a doubt or suspicion as to whether the same have been tailor-made or not and in the event of there being such a doubt, the benefit must and ought to be transposed to the accused persons. The trial court addressed itself on scrutiny of evidence and came to a conclusion that the evidence available on record is trustworthy but the High Court acquitted one of the accused persons on the basis of some discrepancy between the oral testimony and the documentary evidence as noticed fully hereinbefore. The oral testimony thus stands tainted with suspicion. If that be the case, then there is no other evidence apart from the omnipresent Budh Ram and Dholu Ram, who however are totally interested witnesses. While it is true that legitimacy of interested witnesses cannot be discredited in any way nor termed to be a suspect witness but the evidence before

being ascribed to be trustworthy or being capable of creating confidence, the court has to consider the same upon proper scrutiny. In our view, the High Court was wholly in error in not considering the evidence available on record in its proper perspective. The other aspect of the matter is in regard to the defence contention that Manphool was missing from the village for about 2/3 days and is murdered on 21-1-1992 itself. There is defence evidence on record by DW 3 Raja Ram that Manphool was murdered on 21-1-1992. The High Court rejected the defence contention by reason of the fact that it was not suggested to Budh Ram or Dholu Ram that the murder had taken place on 21-1-1992 itself and DW 3 Raja Ram had even come to attend the condolence and it is by reason therefor Raja Ram's evidence was not accepted. Incidentally, be it noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one — the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution. Rejection of the defence case on the basis of the evidence tendered by the defence witness has been effected rather casually by the High Court. Suggestion was there to the prosecution witnesses, in particular PW 10 Dholu Ram that his father Manphool was missing for about 2/3 days prior to the day of the occurrence itself — what more is expected of the defence case: a doubt or a certainty — jurisprudentially a doubt would be enough: when such a suggestion has been made the prosecution has to bring on record the availability of the deceased during those 2/3 days with some independent evidence. Rejection of the defence case only by reason thereof is far too strict and rigid a requirement for the defence to meet — it is the prosecutor's duty to prove beyond all reasonable doubts and not the defence to prove its innocence — this itself is a circumstance, which cannot but be termed to be suspicious in nature.”

34. Keeping in view the aforesaid principles enunciated by the Hon'ble Supreme Court, when we examine the defence evidence, it is found that DW-1 is Binod Prasad whose *khatal* (cow-shed) is situated beside the *khatal* of Shambhu. The dead body of victim was found lying

near '*Nadh*' of cow-shed of Shambu and this witness had seen him first, whereafter he has stated to have informed PW-1 and thereafter he along with PW-1 had taken the victim to PMCH. This witness has stated that the Darogaji had not come to the said place. Shambhu near whose *khatal* (cow-shed), the dead body of the victim was found has deposed as DW-2 who has stated that when Binod Prasad (DW-1) was going to inform at the house of the deceased, none of the family members of the deceased was present at the place of occurrence.

35. Deo Kumar Pandit (DW-3) is one of the cousin brothers of the deceased who has stated that he had seen Binod running towards the house of the deceased and he came back with the wife of the deceased where this witness was also present and he had seen that Naresh had fallen down near the *Nadh* of Shambhu after suffering the stabbings. He has stated that when he reached near the dead body, no member of the family of the deceased was present there. This witness has stated that his house is in the same Mohalla, he placed his voter ID card before the court. This witness has claimed in his examination-in-chief that the deceased is his cousin brother and in the cross-examination, the prosecution has not questioned his claim that he happens to be the cousin brother of the deceased. Similarly, we find that Binod Kumar (DW-4) is another cousin brother of the deceased who has not been questioned by the prosecution. This witness has stated that he is residing in the said Mohalla for the last 16-17 years and he had seen that Binod was going towards the railway line with his elder Bhabhi

Aarti Devi (PW-1), he followed them and found that Naresh was lying near the *Nadh* of Shambhu Singh in injured condition. Binod had lifted him on his shoulders and put him in the tempo for taking to PMCH. When he reached the place of occurrence, he had not seen any of the accused there and after two hours, when he went to PMCH, he found that Naresh had died. Police had inquired from him and his statement was recorded. This witness has stated in his examination-in-chief that there is no complaint of the accused persons in the Mohalla. He has also stated that there is no source of light at the *khatal* of Shambhu and after 2-3 days, he came to know that the appellants had been made accused in this case.

36. We are of the view that the evidence of the defence witnesses, particularly, that of the cousin brothers of the deceased have not been properly appreciated by the learned trial court. The prosecution has not cross-examined these defence witnesses either on the ground that they had gone in collusion with the defence or that they had any enmity with the informant's side and for that, they are deposing in favour of the accused. In our opinion, the evidence of the defence witnesses, particularly, that of DW-3 and DW-4 are to be given appropriate evidentiary value.

37. It has been pointed out to us that because of non-production of the I.O. in course of trial, the defence has got seriously prejudiced inasmuch as the defence could neither ask the I.O. as to whether he had found any blood mark at the place of occurrence,

whether he had verified the place of occurrence where the actual occurrence had taken place. Even the means of identification of the accused could not be questioned. It is pointed out that the occurrence took place in the month of December at about 07-07:30 pm and there would be possibility of dense fog during that season, therefore, the source of identification was required to be established and for that purpose, if the I.O. could have come in the dock, the defence could have extracted the truth from him.

38. Learned counsel has further pointed out that in this case, during the statement of the accused persons under Section 313 CrPC, the incriminating materials which were brought by the prosecution in course of trial could not be placed before them. To consider this point, we extract the statement of one of the accused recorded under Section 313 CrPC hereinbelow:-

“ प्रश्न – क्या आपने साक्षियों का साक्ष्य सुना ?

उत्तर – ही हों।

प्रश्न – आपके विरुद्ध साक्षियों का कथन है कि दिनांक – 22.12.1998 ई0 को मुहल्ला कुम्हार टोली में लगभग 7.30 –8.00 बजे संध्या के बीच डां0 नरेश कुमार स्वतंत्र को छूरा मारकर हत्या कर दी ? क्या कहना है?

उत्तर – ही नहीं।

प्रश्न – सफाई में क्या कहना है। ?

उत्तर – निर्दोष हूँ। मुझे फसाया है।”

39. All other accused were put the same and one question. It has been contended before us that according to the prosecution, the genesis of the case is the fact that these accused persons were involved in committing theft of the irons and for that reason the deceased was

sometimes scolding them. PW-1 has vaguely stated that the accused persons were committing wrong acts which were being opposed by her husband. PW-7 has gone to the extent of saying that prior to this occurrence, a complaint was lodged against Sunil Kumar and others and in that connection, she can file the relevant papers and PW-8 has stated that the cause of occurrence is the fact that the accused persons were involved in selling the stolen iron of the railway which was being opposed by his father. The fact remains that in course of trial, no evidence at all has been brought that these accused persons-appellants had any criminal antecedents. The oral testimony of PW-1, PW-7 and PW-8 which were of incriminating nature were not put before the appellants in course of their statement under Section 313 CrPC. Since the I.O. did not appear in course of trial, the defence was unable to extract the contradictions on this point. It is also pointed out that the prosecution did not mention the place of occurrence where the deceased was stabbing.

40. Referring to the importance of the statement of the accused under Section 313 CrPC, learned counsel for the appellants has relied upon the judgment of the Hon'ble Supreme Court in the case of **Hate Singh Bhagat Singh** (*supra*). Paragraph '8' of which has been referred to and relied upon by the Hon'ble Supreme Court in the case of **Sukhjit Singh vs. State of Punjab** reported in (2014) 10 SCC 270. We extract paragraphs '12' and '13' of the judgment in the case of **Sukhjit Singh** (*supra*) hereunder for a ready reference:-

“12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat*⁴ Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra*⁵ in following terms: (SCC pp. 347-48, para 14)

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused’s failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

4. AIR 1953 SC 468 : 1953 Cri LJ 1933

5. (2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371

41. We find substance in the submissions of learned counsel for the appellants that in this case when the statement of the accused persons were being recorded under Section 313 CrPC, all the incriminating materials which were brought by the prosecution against them were not put to their notice and the same will prove fatal to the prosecution case. We have noticed that while discussing with respect to the place of occurrence and dealing with the stand of the defence, the learned trial court has recorded a finding that on behalf of the defence all the four witnesses have stated that the deceased was lying near the cow-shed of Shambhu, therefore, from the evidence of the defence witnesses, it is established that the place of occurrence is near the cow-shed of Shambhu and the railway line is only at a little distance from there. We are afraid that to establish the place of occurrence, instead of appreciating the prosecution evidence and then taking a view as to whether the prosecution has proved the place of occurrence or not, the learned trial court has proceeded to establish the place of occurrence on the basis of the evidence of the defence witnesses. It is well settled that the prosecution must stand on its own legs and the case of the prosecution cannot be established by citing the defence evidence. In this regard, this Court would rely upon the judgment of the Hon'ble Supreme Court in the case of **Suchand**

Pal V. Phani Pal and Anr. reported in **(2003) 11 SCC 527.**

Paragraph '9' of the said judgment is being quoted hereunder for a ready reference:-

“9. The trial court appears to have discarded the defence version highlighting the unacceptability of the prosecution version and came to a conclusion that the shot was made from a close range on the courtyard. This plea was taken at the argument stage by the prosecution, trying to read the prosecution evidence in a manner so that the ocular evidence and medical evidence do not appear to be irreconcilable. The High Court was right in disapproving the course adopted by the trial court. It is an established position in law that the prosecution can succeed by substantially proving the version it alleges. It must stand on its own legs and cannot take advantage of the weakness in the defence case. The court cannot on its own make out a new case for the prosecution and convict the accused on that basis. Only when a conclusion is arrived at on the evidence and the substratum of the case is not changed, such a course is permissible. The High Court noticed the medical evidence to be consistent with the defence version that the deceased was hit by the gunshot from a close range and that she was accidentally shot in the scuffle between the informant party and the accused. Coming to the acceptability of the dying declaration, the High Court has rightly discarded it. The declaration made by the deceased was not voluntary and in fact, the answers were not given by her and it was her husband who was answering. Such nature and manner of response from the injured who ultimately succumbed to injuries can by no means be elevated to the level of her “dying declaration”, even when it is found to sound “the voice of Jacob”. Stand of the prosecution that he tried to clarify by stating that it was the accused who had fired the gun does not improve the situation. In the true sense of the term or in legal parlance the statement made by the deceased cannot be called a dying declaration. In view of the admitted hostility and strained relations, the natural effort was to rope in the accused. The High Court, therefore, discarded the evidence as not worthy of acceptance.”

42. At the end, we would also notice the post-mortem report (Exhibit '2') of the victim. The post-mortem report has been proved by the Doctor (PW-10) who has noticed as many as five injuries on the body of the deceased which were ante-mortem in nature. The injuries found on the body of the deceased are being extracted hereunder for a ready reference:-

“(1) One incised wound $\frac{1}{2}$ ” x $\frac{1}{6}$ ” x $\frac{1}{6}$ ” size was found on the rt side of lower lip.

(2) One incised wound 1” x $\frac{1}{4}$ ” x $\frac{1}{6}$ ” size was found over the chin.

(3) One incised wound $\frac{3}{4}$ ” x $\frac{1}{2}$ ” x $\frac{1}{4}$ ” size was found on the rt buttock.

(4) One punctured wound 1.25” x $\frac{1}{2}$ ” x up to chest cavity was found 2” right to the mid sternal and 2” horizontally left to rt nipple between rt 4th and 5th ribs on the front.

(5) One punctured wound 1.5” x $\frac{1}{2}$ ” up to abdominal cavity was found 2.25” right to mid abdominal like and 3.75” below the injury no.4 over the rt side of the chest.

After opening the thoraco abdominal cavity the diaphragm, liver, stomach and right lungs were found cut and infiltrated with blood and blood clots. Rt 7th and 8th rib were found cut on the front.

Above mentioned injuries were antemortem in nature. Injury nos. 1 to 3 were simple in nature and caused by sharp cutting weapon. Injury nos. 4 and 5 were grievous and dangerous to life in ordinary course of nature and caused by sharp pointed weapon.

Cause of death :- Haemorrhage, shock

Time of death:- within 12 to 24 hours from the time of P.M examination.”

43. According to PW-10, injury nos. 1 to 3 were simple in nature caused by ‘sharp’ cutting weapon whereas injury nos. 4 and 5 were serious and dangerous to life in ordinary course of nature and caused by a ‘short’ pointed weapon. In the deposition of PW-10 while it is recorded that injury nos. 4 and 5 have been

caused by 'short' pointed weapon, we find from the post-mortem report which has been proved by this witness that according to this report, injury nos. 4 and 5 were grievous and dangerous to life and caused by 'sharp' pointed weapon. We take that the word 'short' as occurring in the hand written deposition of PW-10 is referring to the opinion as present in the post-mortem report (Exhibit '2') which says it is 'sharp' pointed weapon. From the postmortem report, while it appears that some of the injuries have been caused by 'sharp' cutting weapon, the prosecution witnesses are silent on this aspect as they have referred to only the stabbing by dagger. We are, however, not required to detain us much on this issue as we have seen that the learned trial court has recorded a finding that in the darkness it was difficult to see the occurrence. We have noticed from the materials on the record discussed above that in this case, the prosecution witnesses such as PW-1, PW-7 and PW-8 who are only material witnesses in this case materially differ with respect to the place of occurrence and overall appreciation of their evidences would lead this Court to conclude that they are neither eyewitnesses to the occurrence nor they had seen the accused-appellants taking away the victim towards the railway line. The evidence of defence witnesses cannot be thrown out lightly particularly that of DW-3 and DW-4 who are the cousin

brothers of the deceased and have deposed with regard to the circumstances which they immediately witnessed after finding the dead body of the victim near the cow-shed of Shambhu. None of the defence witnesses have been cross-examined on the point of their presence at the place from where the dead body of the victim was lifted and taken to the PMCH. We are of the view that this is a case of blind murder during the winter season of December month in the night when darkness had prevailed where no credible witness is present to identify the real culprit. Whether the victim was dragged to the railway line through the lane situated east to the house of Shambhu or he was intercepted by miscreants while crossing the railway line remain a mystery. He used to come with money of daily collection and his house being near to railway line, he may have fallen prey to the miscreants while crossing railway line on way to his home. It is evident that in a densely populated area from where he was allegedly being dragged and taken away, there is no independent witness who claims to have seen taking away of the victim by the accused-appellants.

44. In result, these appeals are allowed. The impugned judgment of conviction and order of sentence dated 18.10.2017 passed by learned Fast Track Court Judge-I, Patna in connection with Sessions Trial Case No. 708 of 2000/Trial Case No. 346 of

2017 arising out of Kadamkuan (Kankarbagh) P.S. Case No. 819 of 1998 is, accordingly, set aside. The appellants are acquitted of the charge giving them benefit of doubt.

45. We have been informed that all the appellants except one Sanjay Kumar @ Chhotu who is appellant no.2 in Cr. Appeal (DB) No. 1473 of 2017 are on bail. They are discharged from their sureties and liability of their bail bonds.

46. The appellant no.2 in Cr. Appeal (DB) No. 1473 of 2017, namely, Sanjay Kumar @ Chhotu is said to be in custody. He shall be released forthwith if not wanted in any other case.

47. Let a copy of the judgment and the trial court records be sent back to the trial court.

48. All these appeals are allowed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

SUSHMA2/-

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CAV DATE	
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