

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.147 of 2019

Arising Out of PS. Case No.-36 Year-2014 Thana- MADHEPUR District- Madhubani

1. Mukesh Yadav, Son of Sita Ram Yadav, Resident of Village - Birpur, P.S.- Madhepur, District- Madhubani
2. Tantu Yadav, Son of Raghunandan Yadav, Resident of Village - Birpur, P.S.- Madhepur, District-Madhubani.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 70 of 2019

Arising Out of PS. Case No.-36 Year-2014 Thana- MADHEPUR District- Madhubani

1. Ram Khelawan Yadav, Son of Kusheshwar Yadav, Resident of Village- Birpur, P.S- Madhepur, District-Madhubani.
2. Mahesh Yadav, Son of Ram Charitar Yadav, Resident of Village- Birpur, P.S- Madhepur, District-Madhubani.
3. Saini Ram, Son of Phulchan Ram, Resident of Village- Birpur, P.S- Madhepur, District-Madhubani.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 150 of 2019

Arising Out of PS. Case No.-36 Year-2014 Thana- MADHEPUR District- Madhubani

Sanjay Yadav, Son of Ram Prasad Yadav, Resident of Village - Birpur, P.S.- Madhepur, District- Madhubani.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 169 of 2019

Arising Out of PS. Case No.-36 Year-2014 Thana- MADHEPUR District- Madhubani

Sita Ram Yadav, Son of Jugli Yadav, Resident of Village - Birpur, P.S.- Madhepur, District- Madhubani.

... .. Appellant



Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 147 of 2019)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Hriday Narayan Harshit, Advocate
Mr. Ritwik Thakur, Advocate

For the Respondent/s : Mr. Satya Narayan Prasad, Addl.PP
(In CRIMINAL APPEAL (DB) No. 70 of 2019)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Hriday Narayan Harshit, Advocate
Mr. Pravin Kumar, Advocate

For the Respondent/s : Mr. Ajay Mishra, Addl.PP

(In CRIMINAL APPEAL (DB) No. 150 of 2019)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Md. Imteyaz Ahmad, Advocate
Ms. Vaishnavi Singh, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, Addl.PP

(In CRIMINAL APPEAL (DB) No. 169 of 2019)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Hriday Narayan Harshit, Advocate
Mr. Purushottam Kumar, Advocate
Mr. Modit Meet, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 20-08-2025

These appeals have been preferred for setting aside the judgment of conviction dated 27.11.2018 (hereinafter referred to as ‘the impugned judgment’) and the order of sentence dated 05.12.2018 (hereinafter referred to as ‘the impugned order’) passed by learned Additional District & Sessions Judge-VI, Madhubani (hereinafter called ‘the learned trial court’) in Sessions Trial No. 210 of 2015 arising out of Madhepur P.S. Case No. 36 of 2014.



2. By the impugned judgment, the learned trial court has convicted all the appellants for the charges under Section 302/149 of the Indian Penal Code (in short 'IPC'). By the impugned order, the appellants have been ordered to undergo life imprisonment with a fine of Rs.10,000/- under Section 302/149 IPC and in default of payment of fine they have to further undergo simple imprisonment for three months.

Prosecution Case

3. On 05.03.2014, the informant's father-in-law, namely, Ramchandra Yadav and cousin father-in-law, namely, Ram Bihari Yadav had proceeded to Madhubani on their motorcycle at about 08:30 AM to attend a date. When they reached Ram Bagh Chowk, (1) Sitaram Yadav, (2) Kailash Yadav, (3) Ghanshyam Yadav, (4) Rinku Yadav, (5) Mukesh Yadav, (6) Ram Prasad Yadav, (7) Sanjay Yadav, (8) Laddu Yadav, (9) Tantu Yadav, (10) Mahesh Yadav, (11) Saini Ram, (12) Ranjay Yadav, (13) Suresh Yadav, (14) Ramakant Yadav, (15) Ram Khelawan Yadav, (16) Hiran Yadav (who is the son of Beeshan Yadav) all belonging to village- Birpur, Madhubani along with 4-5 unknown persons all armed with pistol, three nut, *farsa*, *lathi*, *tangi*, *dabia* were already sitting there. They surrounded the informant's father-in-law and cousin father-in-law and fired on them and also assaulted them due to which they got



injured badly. On hearing hulla, Manohar Yadav, Sanjay Yadav, Tej Narayan Yadav rushed towards them and saved them. They were taken to Primary Health Centre, Madhepur for treatment from where they were referred to D.M.C.H., Darbhanga for better treatment. On way to D.M.C.H., both of them died.

4. On the basis of the written application, Madhepur P.S. Case No. 36 of 2014 dated 05.03.2014 was registered under Sections 147, 148, 149, 341, 323, 324, 307 and 302 IPC and Section 27 of the Arms Act against 16 accused persons. After investigation, Police submitted a chargesheet bearing No. 70 of 2014 dated 20.06.2014 against eight accused persons, namely, (1) Mukesh Yadav, (2) Ram Prasad Yadav, (3) Tantu Yadav, (4) Ramakant Yadav, (5) Mahesh Yadav, (6) Suresh Yadav, (7) Saini Ram and (8) Ram Khelawan Yadav under Sections 147, 148, 149, 341, 323, 324, 307 and 302 IPC and Section 27 of the Arms Act keeping investigation pending against rest of the accused. Later on, police submitted supplementary chargesheet bearing no. 162 of 2014 dated 07.11.2014 against three accused, namely, (1) Sita Ram Yadav, (2) Kailash Yadav and (3) Sanjay Yadav under same Sections. Police also submitted final form against four accused persons. On the basis of the chargesheets, learned Magistrate took cognizance of the offences under Sections 147, 148, 149, 341, 323,



324, 307 and 302 IPC and Section 27 of the Arms Act. Learned Magistrate vide order dated 22.05.2015 committed the records to the court of Sessions. After receiving the records, Sessions Trial No. 210 of 2015 was registered. Charges were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried. Accordingly, vide order dated 01.08.2017, charges were framed under Sections 323, 341, 307/149, 324, 302/149 IPC and Section 27 of the Arms Act against ten accused persons, namely, (1) Mukesh Yadav, (2) Ram Prasad Yadav, (3) Tantu Yadav, (4) Ramakant Yadav, (5) Mahesh Yadav, (6) Suresh Yadav, (7) Saini Ram and (8) Ram Khelawan Yadav (9) Sita Ram Yadav and (10) Sanjay Yadav.

5. In course of trial, the prosecution examined as many as twelve witnesses and exhibited several documents to prove it's case. The defence also examined one witness, namely, Md. Rahamtullah (DW-1) and exhibited several documents. The list of the prosecution witnesses and the exhibits on behalf of prosecution as well as defence are being shown hereunder in tabular form:-

List of Prosecution witnesses

PW-1	Sanjay Yadav
PW-2	Dr. Vimlesh Yadav
PW-3	Reshma Devi
PW-4	Manohar Yadav
PW-5	Anita Devi



PW-6	Mira Devi
PW-7	Manju Devi
PW-8	Anil Kumar
PW-9	Ram Dai Devi
PW-10	Aarti Kumari
PW-11	Ram Chandra Yadav
PW-12	Dr. Ajit Kumar

List of Exhibits on behalf of Prosecution

Exhibit '1'	Signature of Dr. Vimlesh Kumar on postmortem report
Exhibit '1/1'	Signature of Vinod Kumar on P.M. report as observer
Exhibit '2'	Signature of informant Manju Devi on written statement
Exhibit '3'	Seizure list of cartridge and farsa
Exhibit '4'	Seizure list of hathori
Exhibit '5'	Report of Major
Exhibit '6'	Requisition for injury by police
Exhibit '7'	Chargesheet No. 70/14
Exhibit '8'	Chargesheet No. 162/14
Exhibit '9'	Forwarding on written statement
Exhibit '10'	Formal FIR
Exhibit '6/1'	Injury report of Ramchandra Yadav
Exhibit '11'	F.S.L. report Sl. No. 956/14

List of Exhibits on behalf of Defence

Exhibit 'A'	Attested copy Attendance Register sheet
Exhibit 'B'	Certified copy of judgment of ST.-882/06
Exhibit 'C'	C.C. FIR of ST.-164/07
Exhibit 'D'	C.C. of FIR of G.R.-1265/09
Exhibit 'E'	C.C. of Chargesheet of GR. 1265/09
Exhibit 'F'	C.C. of cognizance order dt. 02.08.2010 of GR. 1265/09
Exhibit 'G'	C.C. of FIR of GR-274/10
Exhibit 'H'	C.C. of Chargesheet G.R.-274/10
Exhibit 'I'	C.C. of FIR GR-639/10
Exhibit 'J'	C.C. of Chargesheet GR.-639/10
Exhibit 'K'	C.C. of FIR of GR-289/11



Exhibit 'L'	C.C. of Chargesheet of GR-289/11
Exhibit 'M'	C.C. of FIR of ST-277/13
Exhibit 'N'	C.C. of Chargesheet of ST-277/13
Exhibit 'O'	C.C. of FIR of ST-92/17
Exhibit 'P'	C.C. of Chargesheet of ST-92/17
Exhibit 'Q'	C.C. of FIR of ST-406/16
Exhibit 'R'	C.C. of Chargesheet of ST-406/16
Exhibit 'S'	C.C. of Chargesheet of ST-335/14
Exhibit 'T'	C.C. of Judgment of ST-335/14
Exhibit 'U'	C.C. of FIR of GR-63/14
Exhibit 'V'	C.C. of Seizure List of GR-63/14
Exhibit 'W'	Original sale deed no. 1030 dated 01.03.2014.
Exhibit 'X'	Letter No. 04 dated 05.07.2017
Exhibit 'Y'	Photocopy of Page No. 5 of death registration register
Exhibit 'Z'	Letter No. 05 dated 22.08.2017

Findings of the Learned Trial Court

6. Before the learned trial court, a number of submissions were made on behalf of both the parties. While the prosecution pleaded that it has been able to prove its case beyond all reasonable doubts against the accused, the accused persons in their defence submitted that there are material contradictions in the evidence of the prosecution witnesses. The informant Manju Devi (PW-7) is the wife of Arjun Yadav, son of Ram Chandra Yadav (PW-11). Both Arjun Yadav and Ram Chandra Yadav had been held guilty and sentenced in Sessions Trial No. 335 of 2014 for the murder of the deceased Rinku @ Neeraj Yadav. It was also submitted that the two alleged eyewitnesses, PW-1 and PW-4, are the relatives of all the above witnesses, so they are interested and would fall in the category of an inimical witness. The trial court



held that even after cross-examination of the prosecution witnesses on the strength of some minor contradictions, it cannot be doubted that they were not present on the spot at Rambag Chowk at the time of occurrence.

7. The learned trial court held that in a situation where a murder had taken place of a kin person, a difference in *fardbeyan* and the statement under Section 161 of the CrPC does not come into thinking of a person who is not law known and this difference is not a material contradiction of the facts when a person did not appear to prove the writing of FIR also, this does not affect the prosecution case. The learned trial court took into consideration the issue raised by the defence that the informant had not mentioned the occurrence of alleged Madhepur Hospital but observed that FIR is not chronicle of the total concerned case, therefore, this fact alone could not affect the prosecution case.

8. As regards the second place of occurrence i.e. the Primary Health Centre, Madhepur, the defence contended that the prosecution had not adduced the admission receipt of the patient, any doctor, nurse or medical staff to say that Ram Bihari was treated there, only the statement of the witnesses PW-3, PW-5, PW-6, PW-7, PW-9 and PW-10 which are highly contradictory would not prove the prosecution case. Even Arti Kumari (PW-10)



who allegedly claimed herself to be an Asha Didi and had gone there at PHC, Madhepur regarding the delivery of a lady patient had not adduced any chit of paper regarding the treatment of that lady patient nor contact with any doctor or staff. The trial court held that the fact that Ram Bihari was given medical treatment at Madhepur Hospital is corroborated with the fact appearing from the inquest report of the deceased where it is clearly mentioned by ASI Rajkeshwar Singh (not examined) that he found bandage at right thigh and injury with bandage at the forehead of the deceased. The Investigating Officer (PW-18) had also stated at paragraph '4' of his examination-in-chief that for better treatment, Ram Bihari was referred to DMCH where on the way he died. The trial court, therefore, took this fact duly proved that he was treated at Madhepur.

9. The learned trial court has held that no doubt there are some grave irregularities of the Investigating Officer, the most important fact is that Investigating Officer did not record the statement when he arrested Ram Chandra Yadav at Madhepur Primary Health Centre and not till his statement before the court, non-seizure of bullet from the pocket of deceased during the inquest report and not mentioning the hole in the cloth wore by the



deceased of bullet injury but irregular investigation would not affect the case of the prosecution.

10. The learned trial court has taken PW-1 and PW-4 as independent witnesses and it has been held that they have named the appellants and other eyewitnesses who are the family members. The three accused namely Suresh Yadav, Ram Prasad Yadav and Ramakant Yadav have been acquitted from all the charges whereas the seven accused who are appellants before this Court have been convicted for the offences punishable under Section 302/149 IPC.

Submissions on behalf of the appellants

11. Learned counsel for the appellants has submitted that in the present case, the Investigating Officer (PW-8) had received information by way of a rumour at 9:30 AM that there is an exchange of firing at Rambag Chowk, whereafter he had reached there. He had also gone to the Primary Health Center, Madhepur. It is his own statement that he had recorded a 'sanha' of the information and had proceeded to the place of occurrence for verification. PW-8 not only verified the occurrence, he proceeded to investigate the same. The two seizure lists were prepared on the same day which are Exhibit '3' and '4' respectively by taking two witnesses whose statements were also taken by the I.O. (PW-8) but



till the time of preparation of the seizure lists and the recording of the statement of these seizure list witnesses, no formal FIR was lodged. In his submission the 'sanha' in this case is liable to be treated as First Information Report. The belated application of PW-7 after about twelve hours of the occurrence would be hit by Section 162 CrPC. The I.O. (PW-8) has stated that there was no *fardbeyan* of the informant (PW-7). The written information was not in his handwriting. He had searched the wife of Ram Bihari on the day of occurrence but prior to lodging of the case, her statement was not taken. He first met wife of Ram Bihari after FIR. At the time of submission of the application, wife of Ram Bihari was present.

12. Learned counsel further submits that in this case it is evident that the informant (PW-7) has not claimed herself an eyewitness in the written information submitted before police. Later on, she has come to depose as an eyewitness of the occurrence. In her written information, she had not stated about the second occurrence which allegedly took place in the Primary Health Center at Madhepur but in course of trial she has developed her case with regard to the second occurrence.

13. It is submitted that PW-7 is the wife of Arjun Yadav who was earlier convicted in the attempt to murder case of Rinku



Yadav and has also been convicted in the counter case which has been lodged for the murder of Rinku Yadav. The other family members of the deceased who have deposed are PW-3, PW-5, PW-6, PW-9 and PW-10 who are closely related, interested and inimical witnesses. From the evidences available on the record it may be found that all of them were in village Birpur at the time of occurrence. In course of trial they have developed a story that they were present at Rambag Chowk but their self-contradictory statements would prove that they were not present at Rambag Chowk and had gone to Madhepur Primary Health Center only at a much belated stage where they did not find anyone.

14. It is further submitted that there is no evidence on the record that the deceased or the injured witness (PW-11) were treated in the Primary Health Center, Madhepur. Neither any of the prosecution witnesses nor the I.O. (PW-8) has disclosed the name of the doctor, the compounder or any other staff of the Primary Health Centre, Madhepur. No documentary evidence showing admission of the deceased or the injured in Primary Health Center at any stage has been brought on record. There is no eyewitness of the alleged second occurrence and this story has been developed only in course of trial.



15. Learned counsel submits that the prosecution has suppressed the earlier version of the case, in course of postmortem, live cartridge of gun was recovered from the possession of the deceased which falsifies the prosecution case that he was going to attend a date in Madhubani court.

16. Learned counsel further submits that the learned trial court has grossly erred in treating PW-1 and PW-4 as independent witnesses. In fact, they are related to PW-7 and are residents of another village. Their presence at Rambag Chowk at around 8 o'clock in the morning is highly doubtful. From their deposition, it would appear that they have not even claimed to have seen the entire occurrence.

17. Learned counsel further submits that police had prepared seizure lists on 05.03.2014 but the seized articles were not produced in court. After more than two months, an application was filed in the trial court for obtaining permission to send those articles to the Sergeant and the Forensic Science Laboratory. PW-8 has stated that he had kept them in *Malkhana* but the *Malkhana* Register/entries showing deposit of seized articles have not been brought in evidence. Moreover, the FSL report (Exhibit '11') would show that no blood was found on the *farsa* and the blood



stain on the handle of the hammer was too small to get a serological report.

18. It is pointed out that the defence had got exhibited several documentary evidences which are from Exhibit 'B' to Exhibit 'V'. They are either FIR or the charge-sheets against the deceased or the injured witnesses. Exhibit 'T' is the certified copy of the judgment of Sessions Trial No. 335 of 2014 arising out of Madhepur P.S. Case No. 34 of 2014 for the offences under Sections 147, 148, 341, 323/34, 324/34, 307/149 and 302/149 IPC, this is the counter case against the accused persons namely Arjun Yadav, Ramashish Yadav, Ram Chandra Yadav (PW-11), Doma Yadav, Pappu Yadav and Shri Lal Yadav. Exhibit 'T' is the judgment in the counter case lodged on 05.03.2014 at Madhepur P.S. in connection with the murder of Rinku Yadav. In the said case, beside others, Ram Bihari Yadav (the deceased) was also an accused and the injured (PW-11) and other accused have been convicted and have been sentenced to undergo life imprisonment.

19. It is submitted that there are evidences on the record to show that the parties were having land dispute on account of plot measuring three and half *kattha* in Tauji No. 13822, Plot No. 2329 and 3230 under Khata No. 562 and 894 respectively. One of the purchasers of this land is Neeraj Kumar @ Rinku Yadav who is



the deceased of the counter case. It is pointed out that some of the witnesses of the said counter case have been also murdered for which FIRs have been lodged and those FIRs are also exhibits.

20. It is submitted that the learned trial court has failed to appreciate that while recording the statements of the accused persons under Section 313 CrPC, the evidences adduced by the prosecution which have been used against accused persons to convict them have not been pointed out to them, therefore, such evidences cannot be looked into and considered for the purpose of conviction of the appellants.

Submissions on behalf of the State

21. Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State, has though contested the appeals but he has categorically submitted that in this case, though the first place of occurrence has been established by the prosecution, there is no clinching evidence with regard to the second occurrence which took place in Madhepur Primary Health Centre. In the written information submitted by PW-7, there is neither any mention of the second occurrence nor of any of the family members of the deceased. The FIR has been registered after twelve hours of the occurrence is not disputed.



22. The learned Public Prosecutor submits that the prosecution witnesses in this case do not seem to be eyewitnesses of the occurrence. Ram Chandra Yadav, who is an injured witness (PW-11) is not an eyewitness of the second occurrence, though he is an eyewitness of the occurrence which took place at Rambag Chowk.

23. Learned Additional Public Prosecutor does not dispute the facts which are evident from the certified copy of the judgment of the learned trial court rendered in Sessions Trial No. 335 of 2014 arising out of the counter case of the same date with regard to the killing of Rinku Yadav in which PW-11 of the present case and some other accused have been convicted and sentenced for the offences under Sections 302/149 IPC.

24. Learned Additional Public Prosecutor accepts that the learned trial court has not found sufficient materials to convict the accused persons under Section 307 IPC as the prosecution failed to prove the so-called injury to Ram Chandra Yadav so as to attract offence under Section 307 IPC, the prosecution also failed to prove the offences under Sections 323 and 341 IPC.

Consideration

25. We have heard learned counsel for the appellants and learned Additional Public Prosecutor for the State as also perused



the trial court's records. The prosecution case starts with the formal FIR (Exhibit '10') based on written information submitted by Manju Devi (PW-7) to the Officer-in-Charge of Madhepur Police Station on 05.03.2014, the FIR was registered at 8:30 PM. From the first information report, it appears that the occurrence took place on 05.03.2014 at 8:30 AM when the deceased along with his brother Ram Chandra Yadav (PW-11) had left their house in village-Birpur on a motorcycle to attend a date at Madhubani, they reached Rambag Chowk where the seventeen named accused persons and 4-5 unknown persons armed with gun, three-nut, *farsa*, *lathi*, *tangi* and *dabiya* were sitting. According to the informant (PW-7), the accused persons surrounded the deceased and PW-11, the deceased Ram Bihari Yadav was badly injured by firing and by *tengari* and *farsa*. According to the informant, on *hulla*, Manohar Yadav (PW-4), Sanjay Yadav (PW-1) and Tej Narayan Yadav (not examined) came running and saved them, they took them in injured condition to Primary Health Centre, Madhepur from where the injured were referred to Darbhanga Medical College and Hospital (DMCH) for better treatment but on way to the hospital, Ram Bihari Yadav died. From the formal FIR, it appears that the place of occurrence is at a distance of seven kilometer from the police station.



26. The I.O. (PW-8) has stated that at 9:30 AM he heard a rumour that a firing is taking place between two groups at Rambag Chowk, in which some persons have been injured. He registered a '*sanha*' and for verification of the same, he while informing it to the senior police officer, reached the place of occurrence with Sub-Inspector Rajkeshwar Singh, Sub-Inspector Vijay Kumar Singh, DAP Guard and armed forces. He has stated that when he reached the place of occurrence, he found that shells of fired cartridges (*khokha*) and cartridges were lying scattered which he left under watch of *chowkidar* and armed forces, he reached Madhepur Primary Health Centre where huge crowd had assembled. The injured Rinku Yadav had been referred to DMCH for better treatment but he died on way whereafter his dead body was brought to the Primary Health Centre, Madhepur where doctors declared him dead. In his deposition, the I.O. has further stated that the injured Ram Bihari Yadav had also been referred to DMCH for better treatment by the doctors but there was no family member or relative present there. In absence of any of the family members or relative, the *fardbeyan* could not be recorded. He got information from *Chowkidar* Md. Hira Khan (not examined) that injured Ram Bihari had died on way to DMCH. He recorded a *sanha* in this regard and telephonically informed Rajkeshwar



Singh to reach Sadar Hospital, Madhubani and prepare the inquest report of Ram Bihari Yadav. Rajkeshwar Singh got the postmortem of Ram Bihari Yadav done and brought back the dead body to the police station. He told that no relative of the deceased had come to Sadar Hospital, Madhubani to take the dead body.

Non-production of 'sanha' – Delay in registration of FIR – Evidence of the informant Manju Devi (PW-7) and Ramdei Devi (PW-9) discussed.

27. First of all, we will discuss the evidence of Manju Devi (PW-7) who is the informant of this case. She is wife of Arjun Yadav who was earlier convicted in connection with attempt to murder case of Rinku Yadav in Sessions Trial No. 882 of 2006 arising out of Madhepur P.S. Case No. 78 of 2004. Arjun Yadav is the son of Ram Chandra Yadav (PW-11). Arjun Yadav and Ram Chandra Yadav both have been convicted in Sessions Trial No. 335 of 2014 arising out of Madhepur P.S. Case No. 34 of 2014 for the murder of Rinku Yadav in the occurrence which took place on 05.03.2014 at about 9:00 AM at Rambag Chowk. In this case, Ram Bihari Yadav was made one of the accused as an order giver. Ram Bihari is the deceased of the present case which has been lodged after Madhepur P.S. Case No. 34 of 2014.



28. According to the informant (PW-7) she had gone to the police station in between 9:00-10:00 AM with Anita (PW-5) and Reshma (PW-3) and had submitted an application but they had not signed on that. She has submitted that she stayed at the police station for about half an hour. In paragraph '27' of her deposition she has stated that her *fardbeyan* was recorded at the police station at 11:00 PM on which she had put her signature. This has been denied by PW-8. She has also stated that she had submitted one more application in addition after 1-1½ hour. Thus, according to her own statements, she had submitted two applications within 1-1½ hour. She has submitted that on the second application, Reshma (PW-3) and Ramdei (PW-9) had put their thumb impression. This Court finds that the second application is the basis of the present FIR registered on 05.03.2014 at 20:30 Hrs. Exhibit '2' is the signature of PW-7 on the written information. Thus, according to her own statement at the time of submission of the first application in the police station, Anita Devi (PW-5) and Reshma Devi (PW-3) both were present with her but no one had put their signature on that. She had stayed in the police station only for about half an hour but then she has claimed that she submitted another application after 1-1½ hour on which Reshma and Ramdei both had put their thumb impression. This is not



believable. Reshma Devi (PW-3) and Ramdei Devi (PW-9) have not corroborated PW-7 on this point.

29. In order to appreciate as to whether the second application was submitted within 1-1½ hour, when the evidence of PW-7 is read together with the evidence of Ramdei Devi, wife of the deceased/(PW-9), it would appear that in paragraph '77' of her deposition, PW-7 has stated that Ramdei Devi (PW-9) had gone with Ram Bihari for his treatment to Darbhanga. In paragraph '78' she says that Ramdei Devi (PW-9) had returned with the dead body and told her that she had gone in the vehicle but on way at which place Ram Bihari died was not told. She has then stated in paragraph '79' that Ramdei Devi had gone for the treatment of her husband to Madhepur, she had not gone to Darbhanga. PW-7 has stated that Ramdei Devi had reached police station with the dead body earlier but this witness had not asked her that how much earlier she had reached there. In paragraph '27' of her deposition this witness has stated that she had seen the dead body of Ram Bihari on the date of occurrence for the first time at 11 o'clock in night. In paragraph '29' she has stated that her first application was of 3-4 pages but she had not counted the same, she had put her signature on all the 3-4 pages, the second application was of one or two pages in which her signature was present on the



last page. From the evidences of PW-7, it is evident that she is not consistent about her making *fardbeyan*, submission of application(s) and the time of submission of the applications to the police. The I.O. (PW-8) has contradicted the statement of PW-7.

30. It appears from the formal FIR (Exhibit '10') that police had got information of the occurrence at 9:30 AM. It is evident from the statement of the I.O. (PW-8) that he had reached the place of occurrence after hearing a rumour and he had registered a *sanha*, therefore, this Court finds that there was an information to PW-8 with regard to the occurrence in the nature of a cognizable offence. But this '*sanha*' has not been brought on record. In paragraph '69' of her deposition, PW-7 falsifies her own claim to have visited Madhepur Police Station between 9-10 AM. She has stated that till now she had visited the Madhepur police station only once to bring the dead body. It is her own statement that she had seen the dead body of Ram Bihari at the police station for the first time at 11:00 PM. This Court finds that the first application which according to PW-7 was of 3-4 pages has not come on the record. The FIR has been registered on the basis of an one page written application on which she had identified her signature (Exhibit '2'). It is important to note that the the thumb impression of Ramdei (PW-9) on the written information has not



been exhibited but I.O. (PW-8) has stated that he met PW-9 after registration of FIR.

31. Regarding Ramdei Devi (PW-9), PW-7 has stated that she had gone with Ram Bihari for his treatment to Darbhanga in the ambulance but from the evidence of Ramdei (PW-9) it appears that in her examination-in-chief she has stated that she heard about the occurrence from her daughter Meera Devi (PW-6) who was told about the occurrence by Anita Devi (PW-5). Thus, PW-9 is not an eyewitness of the first occurrence is evident. In paragraph '2' she has stated that she had gone to the hospital where her husband was getting treated, she was sitting there at the side of his legs and his daughter was sitting at the side of the head. At that time, Ghanshyam Yadav, Sitaram Yadav, Sanjay Yadav, Mukesh Yadav and Tantu Yadav reached there. Sanjay Yadav assaulted her husband by a hammer whereafter they were made to get out, police vehicle came and took away her husband. Then her husband died. PW-9 has not stated that she had gone with her husband for DMCH in the ambulance. She was not present at Sadar Hospital, Madhubani where inquest report was prepared by Rajkeshwar Singh, S.I. is also evident from the fact that she is not a witness to the inquest report (not exhibited but recorded in para '11' of the case diary as per evidence of the I.O.).



32. PW-9 has stated that she was present in the PHC, Madhepur but this is not getting corroborated by PW-7. In her examination-in-chief, PW-7 has stated that she had gone to the hospital with her mother-in-law Reshma Devi (PW-3) and cousin mother-in-law Anita Devi (PW-5). In her cross-examination, PW-7 has initially stated that Ramdei Devi met her in the police station with dead body. She has not stated that when the second occurrence took place Ramdei Devi (PW-9) was present with her in PHC, Madhepur. Similarly, PW-9 has not stated in her examination-in-chief about presence of PW-3, PW-5 and PW-7 in PHC, Madhepur. In fact, PW-7 is herself not an eyewitness of either the first or second occurrence is evident from the fact that in the written information, she has not claimed her presence at Rambagh Chowk at the time of occurrence, she has not claimed herself an eyewitness, in course of investigation she did not say to the I.O. (PW-8) that she was present at Rambag or that she was sitting at her house. Her attention was drawn towards her previous statements before police and the I.O. (PW-8) has contradicted her. As regards the second occurrence, in her statement in paragraph '47' of the deposition she has stated that she was not in the room. She had fled away to *verandah* and remained unconscious for 2-2½ hours. She had not seen the occurrence.



33. In paragraph '79', PW-7 has stated that Ramdei (PW-9) told her that police informed Ramdei that Ram Bihari had died. On the other hand, Ramdei Devi has stated in paragraph '10' of her cross-examination that she had met Anita Devi (PW-5) in the evening on the date of occurrence. At that time she had met Anita (PW-5), Reshma (PW-3) and Manju Devi (PW-7). She has also stated that at that time sunset had already taken place. When the evidence of PW-7 and PW-9, are read together, the prosecution case that PW-7 had gone to the police station between 9:00-10:00 AM, submitted her first application and then after one and a half hour she had submitted her second application stands falsified, thus 'not proved'.

34. The fact that the first application has not come on record and the second application of one page bears the thumb impression of PW-7 (Exhibit '2') would prove that the second application was submitted late in the evening on 05.03.2014 after sunset when Ramdei after getting information from police about death of her husband had gone to the police station and she was there with the dead body of her husband, at this time, Manju (PW-7) was also present, Ramdei (PW-9) has stated to have met Anita, Reshma and Manju (PW-7) in the evening after sunset, then the written application which is the basis of the FIR was submitted.



This is the only possible finding which may be recorded for the lodging of the FIR at 20.30 Hrs. Thus, there is an unexplained delay of 12 hours in registration of FIR.

35. What will be the effect of not bringing on record the ‘*sanha*’ which was registered by PW-8 and non-recording of case diary until 08:30 PM may be discussed with reference to the judgments of the Hon’ble Supreme Court in case of **Allarakha Habib Memon Etc. vs. State of Gujarat** reported in **AIR 2024 SC 4201** and **Animireddy Venkata Ramana and Ors. vs. Public Prosecutor, High Court of Andhra Pradesh** reported in **AIR 2008 SC 1603** as also from the judgment of **State of A.P. vs. Punati Ramulu** reported in **1994 Supp (1) SCC 590**.

In the case of **Allarakha Habib Memon Etc. (supra)**, the Hon’ble Supreme Court has taken note of the judgment in the case of **Punati Ramulu** in paragraph ‘29’ which is reproduced hereunder for a ready reference:-

29. This Court in *State of A.P. v. Punati Ramulu and Others*⁴ held that when the police officer does not deliberately record the FIR on receipt of information about cognizable offence and the FIR is prepared after reaching the spot after due deliberations, consultations and discussion, such a complaint cannot be treated as FIR and it would be a statement made during the investigation of a case and is hit by Section 162 CrPC. The relevant paragraphs of the judgment in this regard are reproduced hereinbelow :

“5. According to the evidence of PW 22, Circle Inspector, he had received information of the incident from Police Constable No. 1278, who was on

4. 1994 Supp (1) SCC 590 : AIR 1993 SC 2644



“bandobast” duty. On receiving the information of the occurrence, PW 22 left for the village of occurrence and started the investigation in the case. Before proceeding to the village to take up the investigation, it is conceded by PW 2 in his evidence, that he made no entry in the daily diary or record in the general diary about the information that had been given to him by Constable No. 1278, who was the first person to give information to him on the basis of which he had proceeded to the spot and taken up the investigation in hand. It was only when PW 1 returned from the police station along with the written complaint to the village that the same was registered by the Circle Inspector, PW 22, during the investigation of the case at about 12.30 noon, as the FIR, Ext. P-1. In our opinion, the complaint, Ext. P-1, could not be treated as the FIR in the case as it certainly would be a statement made during the investigation of a case and hit by Section 162 CrPC. As a matter of fact the High Court recorded a categorical finding to the effect that Ext. P-1 had not been prepared at Narasaraopet and that it had “been brought into existence at Pamaidipadu itself, after due deliberation”. Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stopped to fabricate evidence and create false clues. Though we agree that mere relationship of the witnesses PW 3 and PW 4, the children of the deceased or of PW 1 and PW 2 who are also related to the deceased, by itself is not enough to discard their testimony and that the relationship or the partisan nature of the evidence only puts the Court on its guard to scrutinise the evidence more carefully, we find that in this case when the bona fides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case.”

(emphasis supplied)



36. In the case of **Animireddy Venkata Ramana** (*supra*), the Hon'ble Supreme Court has taken the following view in paragraphs '10', '11' and '13':-

"10. The investigating officer was also informed. A report to that effect might have been noted in the general diary but the same could not have been treated to be an FIR. When an information is received by an officer in charge of a police station, he in terms of the provisions of the Code was expected to reach the place of occurrence as early as possible. It was not necessary for him to take that step only on the basis of a first information report. An information received in regard to commission of a cognizable offence is not required to be preceded by a first information report. Duty of the State to protect the life of an injured as also an endeavour on the part of the responsible police officer to reach the place of occurrence in a situation of this nature is his implicit duty and responsibility. If some incident had taken place in a bus, the officers of Road Transport Corporation also could not ignore the same. They reached the place of occurrence in another bus at about 1 a.m. The deceased and the injured were only then shifted to Tuni Hospital.."

11. A first information report was recorded at about 3 o'clock in the night. In the aforementioned situation, it cannot be said that the information received by the investigating officer on the telephone was of such a nature and contained such details which would amount to a first information report so as to attract the provisions of Section 162 of the Code.

13. ... If furthermore the purported entry in the general diary, which had not been produced, is not treated to be a first information report, only because some enquiries



have been made, the same by itself would not vitiate the entire trial. Enquiries are required to be made for several reasons; one of them is to ascertain the truth or otherwise of the incident and the second to apprehend the accused persons...”

37. In the case of Superintendent of Police, CBI and Others vs. Tapan Kumar Singh reported in **(2003) 6 SCC 175**, the Hon’ble Supreme Court has held that general diary entry may be treated as FIR in an appropriate case, where it discloses the commission of a cognizable offence. Paragraphs ‘16’, ‘19’ and ‘20’ of the said judgment are quoted hereunder:-

“**16.** The parties before us did not dispute the legal position that a GD entry may be treated as a first information report in an appropriate case, where it discloses the commission of a cognizable offence. If the contention of the appellants is upheld, the order of the High Court must be set aside because if there was in law a first information report disclosing the commission of a cognizable offence, the police had the power and jurisdiction to investigate, and in the process of investigation to conduct search and seizure. It is, therefore, not necessary for us to consider the authorities cited at the Bar on the question of validity of the preliminary enquiry and the validity of the search and seizure.

19. The High Court fell into an error in thinking that the information received by the police could not be treated as a first information report since the allegation was vague inasmuch as it was not stated from whom the sum of rupees one lakh was demanded and accepted. Nor was it stated that such demand or acceptance was made as motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show in exercise of his official function, favour or disfavour to any person or for rendering, attempting to render any service or disservice to any person. Thus there was no basis for a police officer to suspect the commission of an offence which he was empowered under Section 156 of the Code to investigate.



20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not



absolved of his duty to investigate the case and discover the true facts, if he can.”

38. In the present case, I.O. (PW-8) had received the information by way of a rumour at 9:30 AM regarding exchange of firing being taking place at Rambagh Chowk whereafter he recorded a ‘sanha’ in the police station and after informing his seniors he reached Rambagh Chowk. He also went to the PHC, Madhepur where he met several people. He prepared two seizure lists (Exhibit ‘3’ and ‘4’) on the same day at 15:45 Hrs. and 18:15 Hrs. respectively. Rajkeshwar Singh, Sub-Inspector had prepared the inquest report (not exhibited) at Sadar Hospital, Madhubani, Emergency Ward, postmortem was performed at 4:00 PM whereafter the dead body was brought to Madhepur P.S. It means on the basis of ‘sanha’, the investigation had already begun. In course of the investigation, seizure lists were prepared taking two witnesses, namely, Avinash Kumar Aman and Rajkumar Yadav. In para ‘11’, PW-8 has stated to have taken statement of both the witnesses. To this Court, therefore, in the facts of this case it appears that ‘sanha’ was the first information to the police regarding a cognizable offence having taken place at Rambagh Chowk. It followed with the visit of I.O. at the place of occurrence where he prepared seizure lists, seized the firearm *khokha*/cartridges *farsa* & hammer. Also took statement of seizure list witnesses. Further in paragraph ‘29’, the I.O. has stated that he got



information from the people assembled at hospital regarding some sort of occurrence had taken place in the hospital, this he has not recorded in paragraph '2' of the case diary.

39. This Court has found that PW-8 started writing the case diary only at 08:30 PM after registration of formal F.I.R. It is evident that people present at hospital had informed PW-8 something, this information was not recorded and as such the earliest version of the prosecution case which emerged from '*Sanha*', statement of seizure list witnesses and from the statement of people present at PHC, Madhepur have been withheld by the prosecution. The FIR registered at 8:30 PM has been lodged on the basis of written information submitted by PW-7 at a much belated stage, during the investigation under Section 161 CrPC. It will, therefore, be hit by Section 162 CrPC [now Section 181 of the Bharatiya Nagarik Suraksha Sanhita (in short 'BNSS')]. There is no explanation for delay of twelve hours in submission of written information.

40. In view of the aforementioned discussions, we arrive on the following conclusions:

- (i) The '*sanha*' entered in the police station by the I.O. (PW-8) is the first information of the occurrence. Investigation started on this basis.



(ii) The written information bearing signature (Exhibit '2') which is the basis of formal F.I.R. (Exhibit '10') was submitted by PW-7 in course of investigation only, therefore it would be hit by section 162 CrPC (Section 181 BNSS).

(iii) PW-7 is a wholly unreliable witness. There are huge material contradictions in her own statements. She is not an eyewitness of either the first or second occurrence. She has shown a tendency to suppress material facts regarding conviction of her husband in the earlier case.

(iv) PW-9 admits that regarding first occurrence, she is a hearsay witness. Her evidence with regard to the second occurrence is totally inconsistent rather contradictory compared to the evidence of PW-7. They do not corroborate each other. I.O. (PW-8) has contradicted both these witnesses with reference to their statements made in course of investigation.

(v) PW-7 and PW-9 are closely related, interested and inimical witnesses, hence, their evidences are required to be considered with all circumspection and care. There must be some clinching corroboration of their evidences.



Inquest – Postmortem and evidence of the Doctors

(PW-2 and PW-12) discussed

41. Dr. Bimlesh Yadav (PW-2) who was posted as Medical Officer in Sadar Hospital, Madhubani and conducted autopsy on the dead body has not mentioned about any bandage present on the head or any other part of the body of the deceased.

He found following injuries:-

- “(i) Lacerated injuries in the left parietal region of head size 1/2” x 1/4” x deep to bone.
- (ii) Lacerated injuries in the left side of the face size 1/2” x 1/4” deep to bone.
- (iii) Lacerated injury left lateral side of the chest in mid axillary line, and lateral to nipple size 1/2” x 1/2” x deep bone.
- (iv) Lacerated injury in the right thigh above knee size 1/2” x 1/2” x deep to bone.
- (v) Entry wound lacerated injury in the right lateral of the middle of thigh size 1/2” x 1/2” x deep to bone.
- (vi) Lacerated injury over mid part of head size 2” x 1/2” x deep to bone.”

42. PW-2 has further recorded in the postmortem report

as under:-

“Dissection:- Fracture of right femur bone. Bullet detected in upper portion of the right side of the thigh. Heart - both chambers empty. All the internal viscerae pale namely lungs, liver, spleen and both kidneys. Brain and meninges lacerated. Skull fractured. Blood and blood clot in cranial cavity. Stomach containing digested food materials. Intestine containing fecal masses and gases. Urinary bladder empty. Detected bullet preserved and handed over to chaukidar with one unfired gun bullet, motorcycle key ring, three piece keys two plastic chunauti, two packets khaini, one election eye card, some papers.
Time since death within 24 hours. Death in our opinion was due to hemorrhage and shock caused by above mentioned injuries.”



43. Apparently, the prosecution has not brought on record any evidence of reference made to DMCH or the entries made in the Emergency Ward of the Sadar Hospital, Madhubani. Who declared Ram Bihari Yadav dead at the Emergency Ward is not known. If deceased was going to attend a date to Madhubani court then why will he carry .12 bore live gun cartridge in his pocket? If Ram Bihari was shot at while driving the motorcycle how motorcycle key ring will be found in his possession. This creates a doubt over the prosecution story that Ram Bihari and Ram Chandra had left their house to attend a date in Madhubani court and firing took place on Ram Bihari when he was driving the motorcycle. Ram Bihari was named as order giver in the counter case of murder case of Rinku Yadav. Defence has suggested that after murder of Rinku Yadav, Ram Bihari and Ram Chandra were fleeing away by motorcycle which met an accident in which they suffered injuries.

44. Dr. Ajit Kumar (PW-12) had examined Ram Chandra (PW-11). He has stated that he was posted at Sub-Divisional Hospital, Jhanjharpur as Medical Officer. He had examined Ram Chandra on 05.03.2014 at 12:30 AM (night). He noted the following injuries:-

- “(i) Pain in the chest wall. X-ray normal
- (ii) Pain in the left knee. X-ray normal



(iii) Multiple abrasion at right ankle. X-ray normal wound margin red. Cause of injury hard and blunt substance. Nature of injury simple. Time of injury within 6 hours.”

45. He proved the injury report as Exhibit ‘6/1’. In his cross-examination, he has stated that the patient had himself come in the hospital. He had not informed it to local police. Patient had come with requisition (Exhibit ‘6’). He had received the requisition from the police accompanying him but he cannot say as to which police station had issued it. PW-12 has admitted that there is an overwriting on the time in different ink and there is no initial on that. Informant (PW-7) has stated in paragraph ‘84’ of her deposition that Ram Chandra (PW-11) had no firearm injury, no injury of *dabiya*. He had only *lathi* blow. At this stage, when evidence of the I.O. (PW-8) in paragraph ‘8’ is taken into consideration, it would be found that the place of occurrence is Rambag Chowk where both the sides had indulged in exchange of firing and *marpeet*. PW-8 has prepared the seizure list (Exhibit ‘3’) showing seizure of eleven 7.65 mm and one front part of pellet, one black colour pellet of which the front part was spread and one *farsa*, both the parties had exchanged fire from their respective sides. Given the kind of manner of occurrence, it seems highly improbable that despite presence of Ram Bihari and Ram Chandra together on the motorcycle in which Ram Bihari got several



firearm injuries, Ram Chandra (PW-11) would not receive a single pellet of the bullets fired from the rival side. In this connection, evidence of PW-11 is required to be considered. According to him, when he and Ram Bihari reached Rambag Chowk on a motorcycle, then the named accused persons were present there armed with gun, pistol, threenut, rifle, *farsa*, *dabiya* and *lathi*. He has stated that Sitaram Yadav and Ghansyam Yadav ordered to kill whereafter Laddu @ Ashok Yadav fired upon Ram Bihari who received injuries on his right thigh whereafter he and Bihari fell down then all the accused started assaulting by *lathi*, *farsa* and *dabiya* which he also suffered. When accused were assaulting him and Bihari, Rinku came and suffered the *dabiya* and *farsa* blow of his own party. Thereafter, *hulla* of police was heard, the accused persons fled away. People took him and Ram Bihari to Madhepur Hospital by a vehicle. PW-11 has not named the person who brought them to Madhepur Primary Health Centre. He claims to have been arrested there, police brought him to police station but the accused persons chased him at police station then to save him, police brought him to Jhanjharpur Hospital. The I.O. (PW-8) has, however, stated that PW-11 was arrested from Madhepur Market.

46. In paragraph '8' of his cross-examination, he says that the motorcycle was of black colour which was in his name but



he does not remember the vehicle number. He further says that his son had sold the vehicle. He says that on the date of his arrest vehicle was not with him. He had not shown the vehicle to police and police had themselves taken away the vehicle, this was told to him by his son, in the morning vehicle was returned to his son. He had not signed any document of sale of vehicle. He did not remember the name of agency from where vehicle was purchased.

47. It is evident from paragraph '8' of PW-11 that he has not been able to prove that he owned a motorcycle. The motorcycle was neither found at Rambagh Chowk nor at PHC, Madhepur. It is, therefore, highly doubtful that on the date and time of occurrence, Ram Bihari and PW-11 both had together reached Rambag Chowk on a motorcycle on way to Madhubani. PW-11 has stated that police arrested him from hospital at 8:00 AM whereas in his examination-in-chief, he has stated that occurrence took place at 9:00 AM, when he was arrested no one from his family was present there. He first met doctor then police. Doctor was treating Ram Bihari, he was at *verandah* when he was arrested. He did not know the name of the doctor. About 20-25 minutes after his arrival to the hospital, police came. He did not request the doctor to treat him, he had not received any bullet.



Later on, he says that he had received some pellet injuries and he was bleeding.

48. It is important to note that in his examination-in-chief, this witness has clearly stated that no one from his family was present in the hospital and he did not request the doctor to treat him. Then, the claim of PW-7, PW-9 and other witnesses that they reached PHC, Madhepur after Ram Bihari was taken to hospital stands falsified. The claim of PW-11 that he had received pellet injuries and was bleeding is not believable for the reason that in such condition he would have definitely requested the doctor to treat him. Moreover, Exhibit '6/1' proved by the doctor (PW-12) does not reveal any pellet injury to PW-11. This witness has not stated about the second occurrence. After 20-25 minutes of his reaching to the PHC, in his presence police had arrived. It is not the prosecution case that in presence of police the second occurrence took place at PHC, Madhepur. PW-11 has been convicted in the murder case of Rinku Yadav. His son Arjun Yadav was convicted in the earlier case of attempt to murder of Rinku and again in the murder case of Rinku.

49. In paragraph '17' of his deposition PW-11 has stated that at the point where his motorcycle took a turn at a distance of 2-3 hand vehicle had fallen down and both of them got injured in



that. He had seen the accused persons from ten *lagga*, he got frightened, in the north side of that place there is a *hatia* and he could have taken a turn to that side but he did not take a turn. In paragraph '31' he has stated that on fall from the vehicle he had got injuries in his knee (*thahuna*). It is important to note that according to PW-11 two persons only had proceeded with Ram Bihari in a vehicle. The accused persons had not chased them, they were fleeing towards Bhagwanpur.

50. PW-11 has nowhere said that PW-1 and PW-4 were present at the Rambag Chowk. This witness has then stated that one person put Ram Bihari on the vehicle. Thus, it is found that PW-1 and PW-4 were introduced as a chance witness in this case being related to PW-7, in her FIR. Even PW-7 changed her version in course of trial.

51. It is evident from the deposition of PW-11 that he is withholding many material facts, his presence at the place of occurrence at the time of occurrence and the manner of occurrence become doubtful. He is a highly inimical witness. His conduct in not seeking any treatment at PHC, Madhepur is quite unnatural. He has suffered injuries due to fall from motorcycle. The defence has suggested to this witness that when he was fleeing away with



Ram Bihari on a motorcycle, he met with an accident in which he had suffered injuries.

Evidence of PW-3, PW-5, PW-6 and PW-10 discussed
(close family members of the deceased) – Veracity of their
Testimonies – Not Reliable

52. Reshma Devi is mother-in-law of PW-7. According to PW-3, she was present with her *gotni* Sunita Devi and daughter-in-law Manju at Rambag Chowk. She claims herself an eyewitness. She has narrated the occurrence and claimed that Ram Chandra (PW-11) took Ram Bihari to hospital, from behind she along with her *gotni* and daughter-in-law reached Madhepur. She claims to have also seen the second occurrence. In paragraph '12' this witness has stated that on that day her husband had left with Ram Bihari after taking breakfast. That day he had eaten rice but she cannot say whether he had eaten within five minutes or half an hour before leaving the house.

53. In her cross-examination in paragraph '18' she has stated that when she reached Rambag Chowk there was a crowd of about fifty persons, among them there was no one with arm. In paragraph '23' and '24' she has stated that when she reached hospital there was not a single person in the hospital. Ram Chandra was not there. She had not seen that day any treatment.



She had informed police the next day. On the other hand, PW-11 has stated that no one from his family was there in the hospital. He has not stated that this witness was present at Rambag Chowk at the time of occurrence. In the postmortem report the doctor has recorded that stomach was containing digested food material which could not have been possible if the deceased had left his house that day with Ram Chandra after taking breakfast. The occurrence took place immediately after leaving their house.

54. Anita Devi (PW-5) is the wife of the brother of Ram Chandra Yadav. In her examination-in-chief, she has stated that on the date of occurrence at 8:30 AM, she had gone to Rambag Chowk for purchase of medicine for her *natni*. The medicine shop was closed, then she was sitting at her *verandah*. In front of house of Mukesh, about thirty persons were standing, she identified sixteen persons. She has named some of the persons. She has stated that Ram Chandra Yadav and Bihari Yadav were coming from Birpur, they took a turn in the Madhepur Road. Sitaram and Ghanshyam ordered to kill Bihari on which Sanjay Yadav intercepted them from the front and fired which hit on the left thigh of Bihari. Mukesh Yadav fired from pistol which hit on the right temporal region. Ladoo @ Ashok fired from rifle which hit on his neck. In paragraph '4', she has stated that Ram Chandra



Yadav was also assaulted by *lathi* and *farsa*. Ram Chandra Yadav put Bihari on a vehicle and brought him to Madhepur Hospital where saline water was being administered. Accused persons had fled away. It is important to note that according to I.O. the place of occurrence is at the Fatki Road whereas this witness has stated that Ram Bihari and Ram Chandra had taken a turn in the Madhepur Road. Both are in two different direction from Rambag Chowk.

55. In her examination-in-chief, this witness has not stated that she had gone to PHC, Madhepur but in paragraph '6' of her statement, she has stated that Sanjay Yadav assaulted on head by a hammer and fled away. In the cross-examination, this witness has stated that her husband is brother of Ram Chandra Yadav and Ram Bihari. She was suggested by the defence that her husband was in jail after his conviction in a case. She was also suggested by defence in paragraph '21' that at the time of taking the death certificate, Ramdei Devi (PW-9) had given an application in which she had written that Ram Bihari died in his house. This witness denied this suggestion.

56. In paragraph '23' of her deposition, this witness has stated that when she reached there, Bihari Yadav was in injured condition. She again said that when she reached there, she did not find anyone in injured condition. She has stated that when she



reached there, she found rifle in the hand of four persons and gun in the hand of one person, she had seen pistol in the hand of four persons and threenuit with one person, 3-4 persons were having *lathi*, one was having *farsa*, one was having *tengari* and one was having *dabiya*. In course of further cross-examination, this witness has stated that when she reached hospital, no one from her family was present there. No one from the family of Ram Chandra was present. She has stated that prior to her reaching there, Ramdei (PW-9) and Meera Devi (PW-6) were present and when she reached, saline water was being administered. She has further stated that she stayed for one hour in the hospital but she cannot say that how many bottles were administered to Ram Bihari. Within that one hour, no doctor had come to change the saline water. Compounder was coming regularly. She did not disclose the distance between Rambag Chowk and Madhepur hospital but she has stated that she had come to Madhepur Hospital by a tempo.

57. Contrary to her statement, PW-9 has stated in paragraph '11' of her deposition that Anita (PW-5) had a talk regarding the occurrence with her daughter Meera (PW-6) in her presence and at that time, sixteen persons were present there. PW-9 has specifically stated that Anita Devi and some other persons of the family were there. They had not gone to Rambag Chowk, she



had gone to Madhepur Hospital with Meera, Reshma Devi, Anita Devi and Manju Devi by a tempo. It is, thus, evident that when the occurrence took place, these witnesses were in village Birpur where they came to know about the occurrence and from there they had proceeded to Madhepur Hospital by tempo. They are not eyewitnesses of the occurrence which took place at Rambag Chowk.

(underline is mine)

58. Regarding the second occurrence in PHC, Madhepur, witness (PW-5) has not stated in her examination-in-chief that she had gone to PHC, Madhepur and in her presence, the second occurrence took place. In cross-examination though she has tried to develop that story but it would not instill confidence. These witnesses cannot be taken as a credible witnesses.

59. Mira Devi (PW-6) is the niece of Ram Chandra Yadav (PW-11). She has stated that she heard about the first occurrence from Anita Devi over phone but PW-9 has stated that Anita came and informed. PW-6 was in her home in courtyard. She claims to have gone to PHC, Madhepur with Ramdei Devi where saline water was being administered to Ram Bihari Yadav. She has stated that Manju Devi (PW-7), Anita Devi (PW-5), this witness and Ramdei (PW-9) reached there. So, this witness has not



taken name of Reshma (PW-3) and her presence at PHC, Madhepur. PW-3 has stated that she reached PHC with her *dayadin* and daughter-in-law (PW-7), not a single person was there. According to PW-9, she had reached PHC on getting information. She has not taken name of Mira Devi, Reshma Devi, Anita Devi and Manju Devi and about their presence at Rambagh Chowk at the time of occurrence.

60. In cross-examination, PW-6 has stated that at the time of occurrence, she was in Birpur. She is daughter of PW-9. Her father had solemnised second marriage about 3-4 years back. In paragraph '26' of her evidence, she has stated that when she got information about the occurrence it was 09:00 AM. She was in her courtyard, at that time, Ramdei, Indrakala, this witness and her step-mother were in the house. They left for Rambag Chowk by foot. She claims that at Rambag Chowk, she had seen Ram Chandra. This Court finds that Ram Chandra (PW-11) has stated that after five minutes of the occurrence, he had gone to hospital, therefore, the statement of this witness and that of PW-11 are at variance and do not corroborate each other. She has stated that Motorcycle by which Ram Bihari and Ram Chandra were going belonged to her father Ram Bihari and the same was still there in her house whereas PW-11 says that he was the owner of the



motorcycle which his son had already sold out. She met police next day at her house.

61. According to this witness, Sanjay Yadav had fled away with the hammer with which he had assaulted. Contrary to the statement of PW-6, her mother (PW-9) has stated that at the time when Anita had a talk with Mira, she was present there. There were sixteen persons present. After hearing this, she did not go to Rambag. She went to hospital, she had gone with Mira. With her Reshma, Anita and Manju Devi had gone by a Tempo. Thus, PW-9 does not support PW-6 that they had gone to Rambag Chowk. Manju Devi (PW-7), Reshma (PW-5) and Ramdei Devi (PW-9) together with this witness went to hospital by Tempo whereas this witness (PW-6) said that they proceeded by foot to Rambag Chowk. Thus, the mother (PW-9) and daughter (PW-6) are making two different statements. Their presence at PHC Madhepur is not stated by PW-11.

62. Aarti Kumari (PW-10) is an Aasha worker. She claims her presence in PHC Madhepur from 07:00 AM. At 10:00 AM, she heard and found that Ram Bihari had come. He had suffered firearm injury in the thigh. Saline water was being administered. After half an hour accused persons came. On the order of Ghanshyam and Sitaram, Sanjay assaulted Ram Bihari on



his head by a hammer whereafter they started firing, then she left that place. In her examination-in-chief, she has not stated about presence of Ram Chandra Yadav in PHC, Madhepur. She has also not stated about the presence of PW-3, PW-5, PW-6, PW-7, PW-8 and PW-9 till that time. The I.O. (PW-8) had reached Rambag Chowk at 09:30 AM and had gone to PHC, Madhepur. He has stated that when he reached there he did not find any family member or relative of Ram Bihari Yadav at that place. I.O. has not stated about any firing having taken place at PHC, Madhepur.

63. This witness (PW-10) is the daughter of Bhim Yadav. Bhim Yadav was convicted in the attempt to murder case of Rinku Yadav. The defence suggested her that her husband was accused in the case of assault on Officer-in-Charge of Madhepur P.S. Case No. 78 of 2004, she was also an accused in that case. Her husband was also accused in Madhepur P.S. Case No. 146 of 2009, 74 of 2010, 37 of 2011 and 41 of 2012. Defence has exhibited the certified copies of FIRs of several cases as Exhibits 'C', 'D', 'G', 'I', 'K' and 'M'.

64. This witness (PW-10) could not prove any registration number of the patient with whom she claimed to have visited PHC for delivery. The name was not registered in the Register and no paper was given by the doctor or nurse. The



defence has been able to prove that this witness was not present in PHC, Madhepur on 05.03.2014. She is an inimical witness.

65. The learned trial court has observed in its judgment *inter alia* that there are some contradictions among the statements of the witnesses but when the occurrence is of day light at a chowk where the house of the prosecution is existing and also of the accused, the witnesses PW-3, PW-5, PW-6, PW-7, PW-9 and PW-10 being from the same family and their evidences being corroborated by two independent witnesses PW-1 and PW-4 of another adjacent village, the total prosecution case would not be affected only on account of some minor contradictions. The trial court has, therefore, rejected the plea of the defence that statement of the witnesses are having vital contradictions on material facts. We have, however, found that PW-3, 5, 6, 7, 9 and 10 who are all female family members of Ram Bihari Yadav and Ram Chandra Yadav were in village-Birpur at the time of occurrence. They were not present at Rambagh Chowk. In fact they are not shown as eyewitnesses in the written information given by PW-7. The evidence of PW-9 proves that all of them had not gone to Rambagh Chowk after hearing about the occurrence. We have found that there are material contradictions in the evidence of these witnesses.



66. A question would arise in this case as to whether the trial court is correct in taking PW-1 and PW-4 as independent witnesses. Who will be independent witness has been considered by the Hon'ble Supreme Court in the case of **Dalip Singh vs. State of Punjab** reported in **(1953) 2 SCC 36**. Paragraph '24' of the same is being reproduced hereunder for a ready reference:-

“**24.** A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

67. Evidences are available on the record that PW-1 and PW-4 are cousin brothers and they are related to PW-7. They have come as a chance witnesses, still they had not seen the entire occurrence and the assertion of PW-7 in the FIR that after the occurrence they had brought Ram Bihari to PHC, Madhepur has



not been confirmed by PW-1 and PW-4 in their evidence. In fact, in trial, PW-7 changed her statement and claimed that it was PW-11 who had brought Ram Bihari to PHC, Madhepur. This is a material deviation, and shows that PW-1 and PW-4 are not eyewitness.

68. PW-7 is the wife of Arjun Yadav, who was earlier convicted in the attempt to murder case of Rinku Yadav (deceased of this case). Arjun is son of Ramchandra Yadav (PW-11). After this case, at least two witnesses of the counter case have been killed in which Arjun is charge-sheeted. Thus, the kind of enmity between the parties is such that PW-1 and PW-4 cannot be said to be independent witnesses in this case.

P.W.1 & P.W.4 as Chance Witnesses - their presence is highly doubtful.

69. On a close reading of the First Information Report it would appear that the informant has stated about three persons, namely, Manohar Yadav (PW-4), Sanjay Yadav (PW-1) and Tej Narayan Yadav (not examined) who came running to the place of occurrence and saved the father-in-laws of the informant and took them to the Primary Health Centre, Madhepur for treatment from where they were referred for better treatment to DMCH.



70. Sanjay Yadav (PW-1) has deposed in this case as an eyewitness and the learned trial court has placed much reliance on his deposition. In the FIR though the informant (PW-7) has stated that this witness came running on hearing *hulla*, in course of trial this witness Sanjay Yadav (PW-1) has claimed to have seen the occurrence when he was present at Rambag Chowk. In his cross-examination, this witness has stated that when he reached the *chauraha*, two-four persons were present there but he did not know the name of any one of them. He has stated that two-three shops were open but he did not know the name of the *paan*, medicine and ration shops. He has stated that he was going to market by his motorcycle and Manohar Yadav (PW-4), who is his co-sharer, was with him. He was taking *paan* at the *paan* shop. It has come in evidence of PW-4 that Sanjay Yadav (PW-1) is his cousin brother. PW-4 has stated that his co-brother (*sadhu*) is in village Birpur. From the deposition of PW-1 it appears that nobody had called him that day at Rambag Chowk, he claims to have come on his own and in paragraph '41' of his deposition, he has stated that he was returning from Madhepur. PW-4 who is said to be accompanying PW-1 has stated that he had to go to Madhepur to do purchasings for the marriage of his brother. It is evident that while PW-1 claims that he was coming from Madhepur, his



companion PW-4 has stated that he was going to Madhepur for purchases. They are not consistent rather they have made contradictory statements with regard to their reaching to the Rambag Chowk on that day at the time of occurrence.

71. This Court further finds that while the informant claims that PW-1 and PW-4 had taken her in-laws to the Primary Health Center after saving them, neither PW-1 nor PW-4 says so. In paragraph '44', PW-1 has stated that he was present at Chowk for 15-10 minutes, he had left 10-15 minutes after 8:00 o'clock. He has stated that after seeing the armed people, he got frightened and had fled towards Madhepur. He had not shown the place of occurrence to police. He has also stated that from there he had not gone to the hospital, he did marketing and then went to his house whereafter on 6th at 3:00 PM, he met police at Rambag Chowk. On this point, PW-4 has stated that he was taking *paan* at about 8:30 AM at Rambag Chowk. He had to go to Madhepur to do purchasings for his brother's marriage. He has stated that from Birpur side, Ram Bihari Yadav and Ram Chandra Yadav came, in the meantime, Kailash Yadav and his people started abusing Ram Chandra Yadav and 3-4 persons namely Tantu Yadav, Kailash Yadav and Ghanshyam Yadav fired upon Bihari Yadav. In paragraph '4', he has stated that he heard that Bihari Yadav had



been injured, he was taken to Madhepur Hospital, he heard that there the accused persons assaulted him by hammers. Sanjay Yadav and other 3-4 persons had assaulted him but he cannot say so.

72. PW-4 has stated in course of his cross-examination that the house of Ram Bihari Yadav is situated at the said *chauraha* but he cannot say whether it is ten or twenty rooms. The house of Ram Bihari and Ram Chandra Yadav is the same and one. This Court finds that there is no evidence on record that Ram Bihari and Ram Chandra were living in that house with their family. Rather the evidence is that they were coming from Birpur side. This witness has admitted that Tej Narayan Yadav of village Birpur is his *sadhu*, his father's name is Harishchandra Yadav. In paragraph '32', he has stated that he had gone to Madhepur where he had heard the talks on the road. He had heard the talks between 9-10 AM, he had done the marketing that day but in whose shops he had done marketing and for how much money he had done the marketing cannot be said. There was no *kacha* or *pakka* bill of the purchases. He has stated in paragraph '38' that in Madhepur P.S. Case No. 37 of 2011, the informant Bihari Mukhiya had lodged the case against Ram Chandra Yadav, Ram Bihari Yadav, Ramashish Yadav and against all the three brothers of his *sadhu*. He could not



say that Sanjay Yadav and Kailash Yadav who are the witnesses of the counter case were accused in the present case. This witness was suggested by the defence that he is related to the accused persons of this case, therefore at their instance he had deposed falsely.

73. On a conjoint reading of the evidence of PW-1 and PW-4, we are of the considered opinion that they are not eyewitnesses to the occurrence. Their presence at the place of occurrence is highly doubtful, they are related, chance and inimical witnesses. It is highly improbable that for marketing purposes they would leave their village in morning at 08:00 AM as normally market is not opened at morning time. The informant has claimed that PW-1 and PW-4 had taken the deceased and the injured to the Primary Health Centre, Madhepur but these witnesses have clearly stated that they had left Rambag Chowk after taking *paan*, they had never stated about their visiting the Primary Health Centre, Madhepur. PW-1 and PW-4 both did not go to the police station or waited till arrival of the police at the place of occurrence, their statement that they went to the market, did the shopping and returned home cannot be said to be a natural conduct of these witnesses. PW-4 has come out with statement that



he heard about the second occurrence in Primary Health Centre, Madhepur.

74. From the examination-in-chief of the I.O. (PW-8) it is evident that the information with regard to the occurrence was received in the police station after about an hour from 8:30 AM by way of a rumour that two groups are engaged in exchange of firing at Rambag. PW-8 heard rumours whereafter he reached the place of occurrence but from his own statements it is evident that during this period the injured Rinku Yadav and Ram Bihari Yadav both had already been referred by the doctors to DMCH for better treatment.

75. The prosecution has not proved that Ram Bihari Yadav (the deceased of this case) was treated at PHC, Madhepur, but the learned trial court has assumed that he was treated at PHC, Madhepur. In this regard, the findings of the learned trial court is based on the inquest report (not exhibited) prepared by Rajkeshwar Singh, Sub-Inspector at Sadar Hospital, Madhubani. The time at which the inquest report has been prepared is not mentioned. Here it is important to note that if PHC, Madhepur referred Ram Bihari to DMCH and he died on the way, then how did the ambulance having Ram Bihari reached Sadar Hospital, Madhubani, Emergency Ward. PW-8 was informed about death of



Ram Bihari by Chowkidar Md. Hira Khan who has not been examined. Rajkeshwar S.I. who prepared the inquest was sent by I.O. after receipt of information only.

76. At this stage, it is important to note that in the postmortem report (Exhibit '11'), the doctor has mentioned that the dead body was brought from the Emergency Ward, Sadar Hospital, Madhubani and the name of Chowkidar as mentioned is one Satyanarayan who has not been examined. The postmortem was done at 4:00 PM. According to the I.O. (PW-8), Ram Bihari was already referred to DMCH when he reached PHC, Madhepur. It is evident that Ram Bihari was brought to Sadar Hospital, Madhubani where he was taken to Emergency Ward. It is quite possible that initially he was treated in Emergency Ward, but he died and then his postmortem was performed at 4:00 PM. Neither Rajkeshwar Singh, S.I. nor the Chowkidar Md. Hira Khan or Chowkidar Satyanarayan have been examined in this case. The Ambulance and driver of the Ambulance are also unidentified. To this Court, it appears that examination of Rajkeshwar Singh, Sub-Inspector would have unraveled many important facts and circumstances but prosecution has not brought him in dock and even Inquest report has not been exhibited. The I.O. has stated that in paragraph '11' of the case diary.



77. As per the trial court, the inquest report mentions that there were bandage on the head and other parts of the body of Ram Bihari but in absence of any evidence and because of non-examination of Rajkeshwar S.I. and the Chowkidars, this Court has no evidence to form an opinion that bandage on the body of the deceased would prove that he was earlier treated in PHC, Madhepur. Some vital aspects of the prosecution case remained unraveled. In paragraph '26' of his deposition, the I.O. has stated that he had not recorded statement of any of the staffs of PHC, Madhepur. In paragraph '27', the I.O. has stated that he had not tried to know that who was the doctor who treated Ram Bihari and who referred him.

78. PW-8 has further stated in paragraph '28' that when he reached PHC, Madhepur huge crowd was there, he inquired about presence of any relative of Ram Bihari Yadav there but no one was there. He recorded this in the case diary. He had not recorded in the case diary about any information received from the persons present there about any occurrence having taken place with Ram Bihari in the hospital. He had not mentioned about presence of blood at the second place of occurrence.

79. On a complete reading of the entire evidences on the record, it appears that the prosecution is not able to prove that Ram



Bihari Yadav had been treated at PHC, Madhepur and was referred to DMCH. There is no evidence regarding the second occurrence. PW-8 has contradicted the informant (PW-7) and other witnesses. It is evident from the statements made from paragraph '51' to '55' of the deposition of the I.O. (PW-8), that the witnesses had not stated about the manner of first occurrence in the same way as stated in course of trial. They did not claim themselves eyewitness. These witnesses had not stated about the second occurrence. This Court finds no reliable piece of evidence as regards second occurrence in the PHC, Madhepur. In fact, PW-7 had not stated before the I.O. that Ram Chandra had taken Ram Bihari to hospital. She had also not stated that she along with her mother-in-law Reshma Devi (PW-3) and cousin mother-in-law Anita Devi (PW-5) had gone to Madhepur Hospital. This Court, therefore, finds that neither the informant nor other prosecution witnesses are eyewitnesses of the occurrence.

80. PW-8 has stated that the dead body of Rinku Yadav had been again brought to the PHC, Madhepur where he was declared dead whereas the information with regard to the death of injured Ram Bihari Yadav on way to DMCH was also received but his inquest report was prepared by Rajkeshwar Singh (not examined) at Sadar Hospital, Madhubani.



81. PW-8 has given the description of the place of occurrence in paragraph '8' of his deposition. He has stated that the place of occurrence is situated at Rambag Chowk. The two groups had a quarrel and firing at this place. At the north-east corner of the place of occurrence is the house of Ram Bihari Yadav (the deceased), in this house there are shops facing western side which were all closed. At the south-west corner of the place of occurrence are the shops of Kailash Yadav and others. In front of this house, there is a *pakki* road which is going towards village Fatki. At this place in front of the shops at different places empty cartridges were found. PW-8 has stated that from the chowk one road goes towards Fatki and the second road goes from Banki towards Bhagwanpur, therefore there is a *chauraha* at this place. It has come in evidence that from *chauraha* one road goes to Madhubani via Madhepur. PW-11 has stated that he had seen the accused persons from ten laggas distance and he could have taken a turn towards hatia. Therefore, this Court finds that the conduct of PW-11 and the deceased in not taking a turn and save themselves rather moving towards Fatki Road shows that they had gone to the place of occurrence armed with weapon – killed Rinku Yadav (the deceased of counter case). In the said occurrence while Ram Bihari sustained serious injuries and succumbed later on to the



injuries, PW-11 had fled away, met with an accident in which he suffered simple injury on his ankle and knee only. He was arrested from Madhepur Market.

82. PW-8 has stated that both the parties had fired from their respective places as a result of which some empty cartridges were lying towards western side from the chowk whereas some empty cartridges and live cartridges were lying in the east side of the chowk. We find that while the informant claims that her father-in-laws had left their house at 8:30 AM by motorcycle and they were assaulted and fired upon when they reached at Rambag Chowk, the I.O. (PW-8) has given a completely different story as according to him, both the sides have their houses in two different sides of the roads and from the circumstances present at the place of occurrence, the I.O. found that both the parties had fired from their respective places thus the prosecution case with regard to the place of occurrence and manner of occurrence are not getting corroborated from the I.O. of the case.

83. We have found that the I.O. has stated in his examination-in-chief that the Medical Officer in the Sadar Hospital, Madhubani had in course of the postmortem of the dead body of Ram Bihari Yadav found one cartridge from his possession, he had handed it over to the *Chowkidar* and one live



cartridge on the base of which 'KF-12' was written was safely kept in the *Malkhana*. Recovery of cartridge from the deceased Ram Bihari Yadav clearly shows his participation in the firing from his side. It appears that the I.O. (PW-8) prepared a seizure list on 05.03.2014 at 15:45 Hrs. showing seizure of eleven 7.65 mm and one frontal part of the pellet, one black colour pellet of which the frontal part was scattered and one *farsa* without any handle. The seizure list (Exhibit '3') has been witnessed by Avinash Kumar Aman and Ram Kumar Yadav but in course of trial they have not been examined by the prosecution. The second seizure list has been prepared by the I.O. on 05.03.2014 at 18:15 Hrs. in Primary Health Centre, Madhepur from where recovery of one hammer with handle and one Zen mobile of Model No. 4721 in damaged condition have been shown. This seizure list (Exhibit '4') witnesses are the same as that of Exhibit '3', however, they have not been examined.

84. We have found that the seizure lists Exhibit '3' and Exhibit '4' were prepared by PW-8 on 05.03.2014 itself. The seized shells of fired cartridges and live cartridges, the *farsa* and the hammer were, however, not produced in the trial court. The seizure list witnesses have not been examined by the prosecution. One live cartridge of 12 bore on the base of which KF-12 was



inscribed was sent to the Sergeant for testing by order of the court on the petition filed by the I.O. on 12.05.2014. The forwarding letter of the Sergeant Major (Exhibit '5') is on the record. On 12.05.2014 i.e. after more than two months of the seizure, the cartridges, *farsa* and hammer were also ordered to be sent to the FSL. The shells of fired cartridges and cartridges (*khokha*) and pellets were marked Exhibit 'B1' to 'B13', one hammer fitted with wooden handle on which blood mark were said to be present was marked Exhibit 'C' and one *farsa* without handle said to have blood mark was marked Exhibit 'D'. The learned court permitted the I.O. to send those articles to the FSL. The three sheets of FSL reports have been marked Exhibit '11' vide order dated 07.05.2018 passed by the learned trial court under Sections 292, 293 and 294 CrPC. At this stage, the plea of the defence that these were not public documents was rejected by the learned trial court. A perusal of the same would show that blood has been detected in the exhibit marked 'C' but it was too small for serological test. Blood could not be detected in the exhibit marked 'D'. The exhibit marked 'A' being a fired bullet of 7.65 mm caliber pistol cartridge was examined, no lands and grooves were present on the surface of the fired bullet marked 'A' but some scratch marks were present on the surface of the fired bullet indicating that it had been fired from the



country made firearm designed to fire 7.65 mm caliber pistol cartridge. It is a part of ammunition. The Exhibit 'B1' to 'B11' were fired shells of 7.65 mm caliber pistol cartridge of I.O.F. make. The fired shells marked 'B1' to 'B11' were also examined and compared among each other. As a result of microscopic examination and comparison, the shape of firing pin marks and breech face marks present on the percussion caps of fired shells marked 'B1' to 'B11' were irregular in shape and similar to each other indicating that they have been fired from same countrymade firearm designed to fire 7.65 mm caliber pistol cartridge. These are part of ammunition. The exhibit marked 'B12' was a fired jacket of .315/8 mm caliber rifle cartridge. The fired jacket was examined, no lands and grooves were present on the surface of the jacket but some scratches were present indicating that it had been fired from countrymade firearm designed to fire .315/8 mm caliber rifle cartridge. The exhibit marked 'B13' is a lead core of fired bullet. The lead core was chemically examined, as a result of chemical analysis nitrite could be detected indicating that it had been fired. The weight and diameter of lead core corresponds to weight and diameter of .315/8 mm caliber rifle cartridge. It is evident from the FSL report that the firing was done at the place of occurrence from 7.65 mm caliber pistol and .315/8 mm caliber



rifle indicating that both the sides had indulged in exchange of firing and they exchanged firing from their respective sides. PW-8 could not recover/seize any firearm weapon.

85. This Court finds that there is not a single independent witness in this case. It is stated that there were several shops at the Rambag Chowk and some of them were opened but no one has deposed in this case. Rampuran Thakur who is said to be an independent witness has not been examined. All the prosecution witnesses are not only related, interested and inimical witnesses, their testimonies are self-contradictory clearly indicating that they are not eyewitnesses of the occurrence but at a belated stage, they have come to depose in course of trial claiming that they had seen the occurrence at both the places. On a careful scrutiny and analysis of the evidences of these prosecution witnesses, this Court is of the opinion that they do not inspire confidence and it would not be safe to convict the appellants on the basis of their testimonies.

86. Regarding the charge under Section 307 I.P.C., the learned trial court has, upon analysis of the evidences on record, held as under:-

“The charge was also framed under Sections 307/149, 341, 323 of I.P.C. in context to the victim Ram Chandra Yadav but from the perusal of evidence, since there is no sufficient injury on the person of Ram Chandra Yadav to



constitute the offence under Section 307, not proved from whose injury and by whom offence of 323 and 341 of I.P.C. was committed, the fire arm injury to Ram Bihari is also uncertain by whom cause so the case under above said Sections and under 27 of Arms Act also not proved.”

87. In this case, the defence has proved the certified copy of the judgment rendered by the learned trial court in Sessions Trial No. 335 of 2014 which is the counter case. The learned trial court has held in paragraph ‘20’ of the judgment as under:-

“From the perusal of entire evidence of prosecution and hearing the arguments advanced on behalf of both parties I came to this conclusion that on 5-3-14 at about 9 A.M. accused persons with intention to commit murder of Neeraj Yadav alias Rinku formed unlawful assembly and at the time of occurrence Arjun Yadav, Pappu Yadav were armed with fire-arm, Ram Chandra Chandra Yadav, Bhim Yadav were armed with farsa, Ram Ashish was armed with dabia and Doma Yadav Shree Yadav were armed with axe (Tengari) and Ram Bihari Yadav (who was murdered later on) was also member of that assembly. Thus, the prosecution keeping the accused persons namely, Arjun Yadav, Ramashish Yadav, Ram chandra Yadav, Doma Yadav, Pappu Yadav and Shree Lal Yadav beyond all reasonable doubts had proved that all the accused persons being members of an unlawful assembly having armed with deadly weapon like Gun, Farsa, Dabiya and knife and Axe in prosecution of common object to cause death caused such type of injuries to the deceased which were sufficient to cause death. So they have committed murder of Niraj Kumar alias Rinku Yadav. So above named accused persons have been found guilty for committing



offence w/s 148,302/149 IPC and accused Arjun Yadav has also found guilty for the offence u/s 27 Arms Act. All these convicts are in judicial custody, so they are being sent back to the jail. Put up the record on 7-8-2017 for hearing on the point of sentence.”

88. On a complete analysis of the evidences available on the record, we find that in this case, the learned trial court has failed to appreciate the evidences available on the record. The place of occurrence and the manner of occurrence as alleged by the prosecution have not been duly proved by producing reliable evidences. PW-1 and PW-4 who are related, inimical and chance witnesses have been wrongly labelled as independent witnesses by the learned trial court. Their presence at the place of occurrence has not been duly proved. The informant (PW-7) is not an eyewitness of the occurrence. She developed her case to become an eye-witness only in course of trial. There is no proof of second occurrence in PHC, Madhepur. The prosecution witnesses, namely, PWs 3, 5, 6, 9 and 10 are highly inconsistent to the extent of contradicting their own statements with regard to the place and manner of occurrence as also their own presence at the place of occurrence. Their depositions are not corroborated from the evidence of the I.O. (PW-8) and the witnesses are not only related and interested witnesses rather they are highly inimical. In the kind of evidences brought on record, huge delay of 12 hours in



submission of written information under signature of PW-7 would only lead to take a view that the prosecution story was still in embryo from morning 8:30 AM–9:30 AM till late in evening at 8:00 PM when the FIR was registered.

89. We are, therefore, of the opinion that the judgment and order of the learned trial court are liable to be set aside.

90. We accordingly set aside the impugned judgment and order giving benefit of doubt to the appellants.

91. It is made clear that the observations made by this Court in this judgment shall not cause any prejudice to the pending appeals, if any, of the convicts of the Sessions Trial No. 335 of 2014 arising out of Madhepur P.S. Case No. 34 of 2014.

92. The appellant Tantu Yadav in Cr. Appeal (DB) No. 147 of 2019 is in incarceration, he shall be released forthwith, if not wanted in any other case.

93. The appellant Mukesh Yadav in Cr. Appeal (DB) No. 147 of 2019 is on bail. The appellants in Cr. Appeal (DB) No. 70 of 2019, Cr. Appeal (DB) No. 150 of 2019 and Cr. Appeal (DB) No. 169 of 2019 are also on bail. They and their sureties are discharged from the liability of the bail bonds.

94. All these appeals are allowed.



95. Let a copy of the judgment along with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

SUSHMA2/-

AFR/NAFR	
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