

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**GOVT. APPEAL (DB) No.26 of 1999**

Arising Out of PS. Case No.-173 Year-1983 Thana- HASANPUR District- Samastipur

The State of Bihar

... .. Appellant/s

Versus

1. Ram Prakash Mahto S/O Late Bahoran Mahto R/O Village- Goha, P.S- Hasanpur, Distt.- Samastipur.
2. Kesho Mahto S/O Late Mannu Mahto R/O Village- Maldah, P.S- Hasanpur, Distt.- Samastipur.
3. Sagar Mahto S/O Late Gopi Mahto R/O Village- Maldah, P.S- Hasanpur, Distt.- Samastipur.
4. Banarsi Das S/O Late Bhattu Das R/O Village- Maldah, P.S- Hasanpur, Distt.- Samastipur.
5. Iffan Mian S/O Late Hussaini Mian R/O Village- Maldah, P.S- Hasanpur, Distt.- Samastipur.
6. Dargahi Mian S/O Late Hussaini Mian R/O Village- Maldah, P.S- Hasanpur, Distt.- Samastipur.
7. Akbar Mian S/O Chhedi Mian R/O Village- Maldah, P.S- Hasanpur, Distt.- Samastipur.
8. Deoshankar Sah S/O Late Baidyanath Sah R/O Village- Maldah, P.S- Hasanpur, Distt.- Samastipur.
9. Suresh Yadav S/O Yadu Yadav R/O Village- Surha, P.S- Hasanpur, Distt.- Samastipur.
10. Ram Swaroop Mahto S/O Chhitan Mahto R/O Village- Ahilwar, P.S- Hasanpur, Distt.- Samastipur.

... .. Respondent/s

**Appearance :**

|                     |   |                            |
|---------------------|---|----------------------------|
| For the Appellant   | : | Mr. Dilip Kumar Sinha, APP |
| For the Respondents | : | None                       |

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**  
**and**  
**HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

**Date : 01-07-2025**

The present appeal has been filed by the State of  
Bihar under Section 378(1) & (3) of the Code of Criminal



Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment and order dated 22.09.1999, rendered by the learned 5<sup>th</sup> Additional Sessions Judge, Samastipur in Sessions Trial No.55 of 1986, arising out of Hasanpur P.S. Case No.173 of 1983, whereby the respondents-accused have been acquitted of the charges levelled against them by the learned Trial Court.

2. The factual matrix of the present case is as under:-

2.1. *Fardbeyan* of Ram Sagar Mahto was recorded on 20.08.1983 at 18:00 hrs. in Samastipur Malaout Door Hospital wherein the informant has stated that on the previous day, i.e., on 19.08.1983 at 04:30 p.m., when he, Tarni Mahto, Ramlal Mahto, Hakru Mahto etc. were sitting in Dihwar Sthan, he saw that a mob of 40-50 persons armed with Bhala, Farsa, Lathi, Nalkatua, pistol etc. were going towards south direction raising slogans and abusing Kastakars. It is further stated that in the said mob Dr. Umesh, Deo Shankar Sahu, Irfan Miyan, Guneshwar Mahto, Ram Prakash Mahto, Keshav Mahto, Dargahi Miyan, Sagar Mahto, Banarsi Das, Akbar Miyan, Ram Swaroop Mahto and Suresh Yadav were present. The said mob was headed by Dr. Umesh Jha of Garpura. When the mob reached near Dihwar Sthan, Irfan Miyan said that these persons deposed in the case lodged by the C.O., kill them. At this, the



mob started attacking and Guneshwar Mahto assaulted him by means of Bhala which hit his thigh and others started assaulting by Lathis. Ram Dayal Mahto and Tarni Mahto were also assaulted. On their alarm, the village people came and encounter started between the village people and the said mob. Irfan Miyan shot fire and commotion started and members of the mob fled away. All three were brought to Gajpati Hospital by the villagers where the doctors were warned by the naxalites not to give treatment. Thereafter they were brought to Samastipur Hospital by train where their treatment is going on. The reason for the occurrence is that a few days ago, the naxalites committed a crime with C.O. Saheb and they (prosecution side) gave testimony against the naxalites.

2.2 After registration of the formal FIR on the basis of the aforesaid *fardbeyan*, the Investigating Agency started investigation. During course of investigation, the Investigating Officer recorded the statement of the witnesses, collected the documentary evidence and thereafter filed charge-sheet against the respondents-accused.

2.3 The case was exclusively triable by court of sessions and, therefore, the learned Magistrate committed the same to the concerned sessions court where the same was



registered as Sessions Trial No. 55 of 1986.

2.4 During course of trial, the prosecution had examined 13 witnesses. Three defence witnesses and three court witnesses have also been examined. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court has acquitted the respondents-accused of the charges levelled against them as stated hereinabove.

2.5 Against the judgment dated 22.09.1999 passed by the learned Trial Court by which the respondents-accused have been acquitted of the charges levelled against them, the appellant/State of Bihar has filed the instant appeal.

3. Heard Mr. Dilip Kumar Sinha, learned APP for the appellant/State of Bihar. None appears on behalf of the respondents-accused.

4. Mr. Dilip Kumar Sinha, the learned APP appearing for the State/appellant would mainly submit that in the present case, there are eye-witnesses to the incident in question and, in fact, the said witnesses also sustained injuries during the occurrence in question. The injured eye-witnesses have supported the case of the prosecution. Further, the medical evidence with regard to the treatment given by the doctor to the



injured witnesses also corroborates the version given by the eye-witnesses. Thus, the prosecution has proved the case against the respondents-accused beyond reasonable doubt despite which, the Trial Court has passed the impugned judgment whereby the Trial Court has acquitted the respondents-accused of the charges levelled against them. Learned APP for the State/appellant, therefore, urged that the impugned judgment be quashed and set aside and thereby the respondents-accused be convicted for the charged levelled against them.

5. It is required to be observed at this stage that none appears on behalf of the respondents-accused. However, as the present appeal is pending since the year 1999 and is listed for hearing since long, the same has been taken up for final disposal.

6. We have considered the submissions canvassed by learned APP appearing for the appellant/State of Bihar, we have also perused the materials placed on record and the evidence led by the prosecution and the defence before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined 13 witnesses, namely, PW-1, Ramcharitra Mahto, PW-2, Rajeshwar Prasad Sinha, PW-3, Shyam Kumar Jha, PW-4, Tetar Yadav, PW-5, Manoj Kumar, PW-6, Tarni Mahto, PW-7,



Dr. R.P. Mishra, PW-8, Dr. Navin Kumar Verma, PW-9, Pramod Thakur, PW-10, Ram Dayal Mahto, PW-11, Hakru Mahto, PW-12, Siyaram Mahto and PW-13, Dhanik Lal Mahto. Three defence witnesses and three court witnesses have also been examined, namely, DW-1, Ajab Lal Rai, DW-2, Dr. Jai Prakash Bindwar, DW-3, Irfan Mian, CW-1, Ram Sagar Mahto, CW-2, Mahavir Mahto and CW-3, Sitaram Mahto.

7. PW-1, Ramcharitra Mahto has deposed in his examination-in-chief that the occurrence took place three years and four months ago on a Friday at 04:30 p.m. He was present in his tea shop at that time. Dihwar Sthan is situated in the west in front of his shop. Six persons, namely, Ram Sagar Mahto, Tarni Mahto, Ram Dayal Mahto, Dhanik Lal Mahto, Ram Prakash Mahto and Hakru Mahto were sitting under a pipal tree. Ram Prakash came to his shop and demanded a cup of tea. He started preparing tea. In the meantime, from the northern side, 40-50 persons reached in front of his shop in which he identified 12 persons, namely, Bhuneshwar Mahto, Kesho Mahto, Irfan Miyan, Dargahi Miyan, Akbar Miyan, Ram Prakash Mahto, Banarsi Singh, Dev Shankar Sah, Ram Sagar Mahto, Akbar, Ram Swaroop Mahto and Suresh Yadav. Bhuneshwar Mahto, Akbar Miyan and Suresh Yadav were having *bhalas* in their



hands. Irfan was having a *Nalkatwa* pistol in his hand rest were having *lathies* in their hands. Irfan Miyan instigated to kill Tarni, Ramsagar, Ramdayal Mahto etc. as they deposed in the case of C.O. Saheb. At this, Bhuneshwar Mahto assaulted Ram Sagar Mahto by means of *bhala* which hit his left thigh. Suresh Yadav assaulted Tarni and Ramdayal by means of *bhala*. Umesh Jha assaulted Tarni by means of *danda*. Ram Prakash assaulted Ramdayal by means of *lathi*. Thereafter Irfan assaulted Bhuneshwar by means of *Nalkatwa* pistol due to which Bhuneshwar fell on the ground and died. The members of mob took away Bhuneshwar with them.

7.1. The said witness has stated in his cross-examination that he has no knowledge whether the case of murder of Bhuneshwar Mahto against Deepak Mahto, Tarni Mahto, Ramsagar Mahto, Ramdayal Mahto etc. is going on in the same court or not. He has also no knowledge that there is allegation of murder of Bhuneshwar Mahto by means of pistol on Tarni Mahto. He was present in his shop during the occurrence. The six persons, who were sitting in Dihwar Sthan, tried to escape but could not succeed and they were assaulted there. All injured persons had fallen after assault. They were not unconscious. He saw 1-2 injuries on the body of Ram Sagar



Mahto which were in his left thigh. Tarni Mahto sustained two bhala injuries on his buttock and behind the shoulder. Ramdayal sustained injury in his left thigh. The police recorded his statement after 1-2 months. The said witness has denied the suggestion that he is a man of Deepak Mahto and he lends money from him, therefore, on his dictate, he came to give false testimony.

8. PWs.-2, 3, 4 and 5 are formal witnesses, therefore, their evidences need not be discussed in detail.

9. PW-6, Tarni Mahto has deposed in his examination-in-chief that the occurrence took place about three years and nine months ago on a Friday at 04:30 p.m. At that time, he was present in Deosthan under a tree and was taking rest. Hakru Mahto, Ram Sagar Mahto, Ram Dayal Mahto, Dhanik Lal Mahto, Ram Prakash Mahto etc. were also with him. He saw a mob of 40-50 persons coming from the North direction armed with Lathi, Bhala, Pistol etc. He identified 12 persons, namely, Dev Shankar Sah, Sagar Mahto, Banarsi Das, Ram Prakash Mahto, Akbar Miyan, Irfan Miyan, Dargahi Miyan, Keshi Mahto, Bhuneshwar Mahto, Ram Swaroop Mahto, Suresh Yadav and Umesh Doctor. Bhuneshar Mahto, Akbar Miyan and Suresh Yadav were armed with *Bhalas*. Irfan Miyan was



carrying a Nalkatwa pistol in his hand, Umesh was carrying a stick and a leather bag in his hand and rest were carrying *Lathis* in their hands. Irfan Miyan shouted that these people have given testimony in the case of C.O., kill them. At this, Bhuneshwar Mahto assaulted Ram Sagar Mahto by means of *Bhala* which hit his thigh. When Ram Sagar Mahto fell down, Dr. Umesh assaulted him by means of stick. Suresh Yadav assaulted him and Ram Dayal by means of *Bhala*. Umesh Doctor assaulted him by stick due to which his right hand was broken. Irfan Miyan shot a fire which hit the chest of Bhuneshwar and he died. Thereafter the mob took him away with them. The said witness claims to identify all the accused persons.

9.1. The said witness has stated in his cross-examination that he cannot say whether accused Ram Prakash Mahto lodged a case against them in connection with the aforesaid occurrence on the date of occurrence or not? No murder case is going on against him. Thereafter the witness said that this murder case is going on against him. That murder case is not related with Bhuneshwar Mahto rather it is related with the murder of Ram Prakash. In that case, Sagar Mahto is the informant and the witnesses of this case are accused. Bhuneshwar Mahto was a member of the mob. He was not from



prosecution side. The doctor treated him at 10:00-11:00 a.m. Darogaji took his statement after ten days. Darogaji took statements of all three injured persons on the same day. The said witness has denied the suggestion that by getting fake certificate from the doctor, to escape from the murder case, they lodged a false case.

10. PW-7, Dr. R.P. Mishra has deposed in his examination-in-chief that on 20.08.1983, he was posted as Civil Assistant Surgeon at Sadar Hospital, Samastipur and at 01:15 p.m. he examined Tarni Mahto and found the following injuries on his person:

(1) Swelling and tenderness whole dorsem of right palm and abrasion 1/2"x1/2" in the lateral side.

(2) One incised injury left supra clavicular region 4"x1/6"x1/5".

(3) Abrasion right supra clavicular region 4"x1/2".

(4) One incised injury on left buttock 1"x1/3"x1/3".

Age of injuries is within 24 hours.

Nature: All injuries are simple in nature except Injury No.1, regarding which opinion is kept reserved.

On the same day, the said doctor has also examined Ram Dayal Mahto at 01:08 p.m. and found the following



injuries on his person:

(1) One vertical incised injury 1"x1/3"x1/2" -4" above the left knee on the antero lateral surface of thigh.

(2) One incised injury on the pinna of left ear – 1"x1/4"x1/6".

(3) Abrasion scalp 4" above the left ear 1"x1/2".

(4) Abrasion scalp – 4 1/2" above and the interior to right ear – 1/2"x1/2".

Age of injury within 24 hours.

All injuries are simple in nature.

The said doctor has also examined Ramsagar Mahto on the same day at 01:05 p.m. and found the following injuries on his person:

(1) One incised injury in the middle of medial surface of left thigh 1:x1/5" 1/2".

(2) Complain of pain whole over body.

(3) Pain in chest.

Age of injuries – Within 24 hours.

All injuries are simple in nature.

10.1. The said doctor has stated in his cross-examination that Bhala generally causes piercing or punctured wound.



11. PW-8, Dr. Navin Kumar Verma has deposed in his examination-in-chief that on 20.08.1983, he was posted as Civil Assistant Surgeon at Sadar Hospital, Samastipur and he conducted *post mortem* examination on the dead body of Guneshwar Mahto at 12:30 p.m. and found the following *ante-mortem* injuries:

(1) Lacerated wound of 1” in diameter with inverted and blackening margin in front of chest just right side of Xiphisternum.

(2) Lacerated wound of 2” in diameter with everted margin on the back of right side of chest between 7<sup>th</sup> and 8<sup>th</sup> ribs. Surrounding margin was blackened.

On dissection, injury no.1 communicating with injury no.2 travelling and piercing diaphragm with lacerated wound right low of the liver and lower part of the right lung and chest cavity contained blood about half first and Peritoneal cavity also contained food.

Both the above injuries were grievous and were caused by firearm, such as a country made gun.

In his opinion the cause of death was due to shock and hemorrhage due to above injuries noted.

11.1. The said witness has stated in his cross-



examination that Injury no.1 is the injury of entrance and injury no.2 is the injury of exit. Both these injuries are communicating, but they are not in the same line. He has no idea about the exact velocity of the bullet.

12. PW-9, Pramod Thakur is an attesting witness to Ext.2/1, 4/1, Ext.6 and Ext.7. The said witness has stated in his cross-examination that he does not know as to who were the accused persons and witnesses in the case of Pramod Kumar Singh.

13. PW-10, Ram Dayal Mahto has deposed in his examination-in-chief that the occurrence took place four years, five months and fifteen days ago on a Friday at 04:30 p.m. At that time, he was taking rest in Dihwar Sthan. Ram Sagar Mahto, Tarni Mahto, Dhaniklal Mahto, Ram Prakash Mahto and Hakru Mahto were also present there. He saw that a mob of 40-50 was coming from the North direction abusing farmers. He identified 12 persons amongst the mob, namely, Umesh Jha, Suresh Yadav, Ramswaroop Mahto, Bhuneshwar Mahto, Kesho Mahto, Irfan Miyan, Dargahi Miyan, Akbar Miyan, Ramprakash Mahto, Banarsi Das, Ram Sagar Mahto and Deo Shankar Sao. Akbar Miyan, Suresh Yadav and Bhuneshwar Mahto were armed with *Bhalas*, Irfan Miyan was having a country made



*Nalkatwa* pistol in his hand, Umesh was having a leather bag and a stick in his hand and rest were having *Lathis* in their hands. On the instigation of Irfan Miyan, the mob attacked them. Irfan Miyan shot a fire which hit the chest of Bhuneshwar Mahto. He fell down. The mob took away Bhuneshwar towards North. The village people came and took them to Gajpati Hospital.

13.1. The said witness has stated in his cross-examination that there is a cross case against the present one in which he is an accused. It is a false case. Deepak Mahto is also an accused in the said cross case. He is not an accused in any case except the cross case. Daroga recorded his statement ten days after the occurrence. He has stated before the Daroga that the mob surrounded them. He has also stated before the Daroga that when Bhuneshwar Mahto turned around after piercing Bhala to Ramsagar Mahto, he received bullet injury. The said witness further stated that he cannot say where the accused took Bhuneshwar.

14. PW-11, Hakru Mahto in his cross-examination stated that he has not deposed against the accused persons in any other case.

15. PW-12, Siyaram Mahto has deposed in his



examination-in-chief that he was present at Dihwar Sthan on the date of occurrence. Dhanik Lal Mahto, Hakru Mahto, Ram Prasad Mahto, Ram Dayal Mahto, Tarni Mahto and Ramsagar Mahto were also present there. He saw a mob coming from the North direction abusing the farmers. The mob reached at Dihwar Sthan. He identified 12 persons amongst the members of the mob, namely, Suresh Yadav, Ramswaroop Mahto, Bhuneshwar Mahto, Kesho Mahto, Irfan Miyan, Dargahi Miyan, Akbar Miyan, Ram Prakash Mahto, Bararsi Das, Deo Shankar Sao, Sangar Mahto and Umesh Jha. Accused Akbar Miyan, Suresh Yadav and Bhuneshwar Mahto were armed with *Bhalas*. Accused Irfan Miyan was having a country made *Nalkatwa* pistol in his hand. Umesh was carrying a leather bag in his hand. Rest were having *Lathis* in their hands. When the mob reached at Dihwar Sthan, Irfan Miyan said after seeing Ram Dayal Mahto and others that they have deposed in the case of C.O. Saheb, kill them. The mob surrounded Ram Dayal and others. Thereafter Suresh assaulted Tarni and Ram Dayal by means of *Bhala*. Umesh assaulted Tarni by means of *Danda* on his hand causing fracture injury. Ram Prabhash assaulted Ram Dayal by means of *Lathi* on his temple. Bhuneshwar assaulted Ram Sagar Mahto by means of *Bhala* which hit his left thigh. At the same



time, when Bhuneshwar turned around, Irfan Miyan shot fire at Ram Sagar and Ram Dayal, which hit Bhuneshwar due to which Bhuneshwar fell down and died. Thereafter all fled away.

15.1. The said witness has stated in his cross-examination that a cross case is going on against the present one. When the incident of murder took place, Daroga had said to give statement on the same day. Daroga had told him after 4-5 days. He does not know whether on the next day of murder, Daroga had come to Dihwar Sthan or not. He does not know whether cross case was lodged or not on the day of murder. It is further stated by this witness in his cross-examination that Bhubneshwar fell down and members of the mob fled away. Thereafter he also fled away.

16. PW-13, Dhanik Lal Mahto has deposed in his examination-in-chief that the incident took place four years and eleven months on a Friday at about 04:30 p.m. At that time, he was taking rest under a tree at Dihwar Sthan. Rampyare Mahto, Haklu Mahto, Ramsagar Mahto, Tarni Mahto and Ramprabhas Mahto were also sitting there. A mob of 40-50 persons came from the northern side. The mob was coming abusing the farmers and raising slogans. The said witness identified 12 persons amongst the members of the mob, namely, Umesh Jha,



Deo Shankar Sao, Ram Sagar Mahto, Ram Prakash Mahto, Banarsi Das, Akbar Miyan, Irfan Miyan, Dargah Miyan, Kesho Mahto, Bhuneshwar Mahto, Suresh Yadav and Ram Swaroop Mahto. Suresh Yadav, Akbar Miyan and Bhuneshwar Mahto were carrying *Bhalas* in their hands. Irfan Miyan was carrying a *Nalkatwa* pistol in his hand and rest were carrying *Lathis* in their hands. As soon as the mob came near, Irfan Miyan ordered to kill Rampyare, Ramsagar and Tarni as they had deposed in the case of C.O. At this, Suresh Yadav inflicted spear blow on Tarni and Ram Dayal and Ram Prabhas assaulted Ram Dayal with a *Lathi*. Bhuneshwar Mahto threw spear on Ram Sagar which hit his thigh and he fell down. As soon as Bhuneshwar Mahto turned around after inflicting spear blow, he and Ram Sagar sustained bullet injury fired by Irfan Miyan from his *Nalkatwa*. Umesh Jha assaulted Ram Sagar and Tarni due to which wrist of Tarni was broken. Thereafter Bhuneshwar fell down and died. Members of the mob took him away with them. The said witness has further deposed that after the incident he, Dhanesar and others rushed injured Ram Sagar, Ram Dayal Mahto and Tarni Mahto to Gajpati Hospital where the doctor refused to treat them on the ground that he was threatened by Naxalites. Thereafter they were taken to Samastipur Hospital and got



admitted where they stayed for 15-16 days. He has identified all the accused persons present and claimed to identify others by face.

16.1. The said witness has stated in his cross-examination that Suresh Yadav inflicted two spear blows on Tarni but he cannot say how many *Lathi* blows were given. Tarni remained conscious during the incident. A few drops of blood had oozed from the body of Tarni but he had not received any injury on his head. Ram Dayal received only one spear injury. He was not assaulted with *Farsa*. Ram Sagar also received one spear blow and 10-15 *Lathi* blows. The incident continued for 10-15 minutes. He has further stated that his statement was recorded before the Daroga a month after the incident. He had admitted to have given the statement before Darogaji that as soon as Bhuneshwar Mahto turned around after inflicting spear, he received bullet injury fired by Irfan on Ram Sagar from his *Nalkatwa*. He has further stated that even after hearing the sound of firing, he did not flee away. Bhuneshwar fell on the road and died. He has denied the suggestion that Tarni fired at Bhuneshwar from his gun.

17. DW-1, Ajab Lal Rai is an attesting witness to Ext.A, i.e., the FIR written by S.H.O. Chandrashekhar Singh and



bearing his signature.

17.1. In his cross-examination, he has stated that the FIR was not written in his presence nor he has any personal knowledge about the contents of the FIR.

18. DW-2, Dr. Jai Prakash Bhindwar has deposed in his examination-in-chief that on 19.08.1983, he was posted at Primary Health Centre, Hasanpur as Medical Officer. On that day at 06:30 p.m., he examined Ram Swaroop Mahto and found the following injuries on his person:

(i) Lacerated wound over vault of the scalp slightly to the left 1 ½" x 1/2" x 1/4".

(ii) Lacerated wound over temporal region of right side of scalp 1" x 1/2" x 1/2"

Both the injuries were caused by hard and blunt substance as Lathi. Both the injuries were simple in nature. Time elapse was within 6 hours.

On the same day at 06:20 p.m., the said doctor examined Md. Akbar Miyan and found the following injuries on his person:

(i) Incised vertical wound over middle of the right chest 1" x 1/4" x 1/4".

(ii) Transverse lacerated wound over ulner border of



left wrist joint 1/2" x 1/4" x 1/4".

(iii) Vertical lacerated wound over ulner boarder of right wrist joint 1/2" x 1/4" x 1/4".

(iv) Abrasion with swelling over upper part of the back of the right chest wall 2" x 1" x 1/2".

Injury No.(i) was caused by sharp cutting instrument whereas Injury Nos. (ii), (iii) & (iv) were caused by hard blunt substance. All the injuries were simple in nature. Time elapsed within 6 hours.

18.1. The said witness has stated in his cross-examination that if Bhala is stabbed, it must cause piercing injury.

19. DW-3 is accused Irfan Miyan who has denied the allegations and the manner of occurrence.

19.1. In his cross-examination he has stated that prior to this incident C.O. of Hasanpur had lodged a case against him in connivance with Deepak Mahto. Ram Sagar Mahto had also lodged a criminal case against him which is going on in this court. He has further stated that in the case lodged by Ram Sagar, he is also an accused. Ram Sagar and Tarni are full brothers. In the case lodged by the C.O., Ram Dayal is a witness against him. He has denied the suggestion that he had enmity



with Ram Dayal, Tarni, Ram Sagar and Deepak due to which he and others had falsely implicated these persons. He has further denied that he has falsely deposed to save himself and his associates.

20. CW-1, Ram Sagar Mahto is the informant of this case who has deposed in his examination-in-chief that the occurrence took place five years, ten months and seven days ago on a Friday at 04:30 p.m. He was sitting at Devi Sthan. Dhanik Lal Mahto, Ram Prakash Mahto, Hakru Mahto, Tarni Mahto and Ram Dayal Mahto were also sitting there. He saw that a mob of 40-50 persons abusing the farmers was coming. He identified 12 persons from the members of the mob, namely, Umesh Jha, Deo Shankar Sao, Ram Sagar Mahto, Banarsi Das, Ram Prakash Mahto, Akbar Miyan, Kesho Mahto, Irfan Miayn, Dargahi Miyan, Bhuneshwar Mahto, Suresh Yadav and Ram Swaroop Mahto. Dr. Umesh was having a bag and a stick in his hand, Bhuneshwar Mahto, Suresh Yadav and Akbar Miyan were carrying Bhalas in their hands, Irfan Miyan was carrying a country made Nalkatwa pistol in his hand. Other four were having Lathis in their hands. Irfan instigated that these people had deposed against us in the case lodged by C.O., kill them. The mob surrounded us. Within an hour, Tarni Mahto and Ram



Dayal Mahto died. Bhuneshwar Mahto assaulted him with spear which hit his thigh. Suresh Yadav assaulted Tarni Mahto and Ram Dayal Mahto with spear. Umesh Jha and Ram Prakash assaulted him, Ram Dayal and Tarni with his stick. Irfan Miyan fired from his country made Nalkatwa pistol. They were treated in Sadar Hospital. Jamadar Saheb came to Sadar Hospital and recorded our statements.

20.1. The said witness has stated in his cross-examination that when Darogaji of Hasanpur police station went to the village, he stated everything to him. He is facing a criminal trial lodged by Ram Prakash regarding killing of Bhuneshwar Mahto. All witnesses of the present case are accused of that case. Ram Prakash lodged the case on the date of occurrence at 04:30 p.m. He had lodged the case one day after the occurrence at 07:00 a.m. He had not given statement in writing. He and Tarni were not witnesses in the case lodged by the C.O. He has specifically stated that when the mob was fleeing away, no firing was made rather when the witness and two others had fallen, a firing was made targeting him but the same hit Bhuneshwar followed by a commotion. All the three injured were taken to Hasanpur without informing the police station. They did not take any treatment either at Hasanpur or



Rosera. They did not get opportunity to go to Samastipur Hospital. None of them have gone to the police station. He has denied the suggestion that they together killed Bhuneshwar and injured Akbar and Ram Sewak. He has also denied that to save them from the murder case, a forged certificate was obtained. He has also denied that Deepak Mahto etc. in consultation with the concerned Advocate had got a false case lodged through him to save themselves from the murder case. Lastly, he has denied the suggestion to have given false evidence.

21. CW-2, Mahavir Mahto has not stated anything about the occurrence and has denied any relation with Deepak Mahto.

22. CW-3, Sitaram Mahto is an attesting witness to Ext.8 and 8/1. He has identified the handwriting and signature of S.H.O., Hasanpur, namely, Shri Chandra Shekhar Singh. He has stated that para 2 to 56 of the case diary of Hasanpur P.S. Case No.173/83 is in his pen and signature. He has also identified the handwriting and signature of Inspector Md. Hadis, Rosera P.S. from para 57 to 137 (Ext.8/2).

23. We have re-appreciated the entire evidence led by the prosecution. From perusal of the evidence led by the prosecution, it transpires that one Ram Sagar Mahto gave his



fardbeyan on 20.08.1983 at 18:00 hours. As per his case, the incident in question took place on 19.08.1983 at 04:30 p.m. Thus, it appears from the record that there is a delay of more than 25 hours in lodging the FIR for which the prosecution has failed to give any explanation. Keeping in view the aforesaid aspects, if we further examine the evidence led by the prosecution, it transpires that the prosecution did not examine the informant Ram Sagar Mahto and, therefore, the said witness has been examined as Court Witness (CW-1). The prosecution has projected PW-6, Tarni Mahto, PW-10, Ram Dayal Mahto and informant Ram Sagar Mahto as injured eye-witnesses however, as observed hereinabove, informant Ram Sagar Mahto was not examined as prosecution witness. From the deposition given by PW-6 and PW-10, it transpires that both the aforesaid witnesses have deposed before the court that accused Irfan Miyan shot a fire which hit the chest of Bhuneshwar Mahto as a result of which he died and in the very said incident both the aforesaid witnesses also sustained injuries. At this stage, we would like to refer the deposition given by PW-7, Dr. R.P. Mishra who had examined and given the treatment to the aforesaid two witnesses as well as the original informant. The said witness has specifically deposed that on 20.08.1983 at



about 01:05 p.m., he had examined Ram Sagar Mahto (informant). He had also examined Ram Dayal Mahto (PW-10) at 01:08 p.m. whereas he examined Tarni Mahto (PW-6) at 01:15 p.m. It further transpires that the injuries sustained by the informant, Ram Dayal Mahto (PW-10) were simple in nature. Similarly, injuries sustained by Tarni Mahto (PW-6) were simple in nature except injury no.1. Thus, from the aforesaid deposition given by PW-7, it transpires that the so called injured eye-witnesses took the treatment at about 01:00 p.m. to 01:15 p.m. on 20.08.1983, i.e., after more than 20 hours.

24. As observed hereinabove, the prosecution has failed to examine Ram Sagar Mahto (informant) as prosecution witness and, therefore, the court had examined him as Court Witness (CW-1). From the deposition given by CW-1 and more particularly from his cross-examination, it is revealed that counter case has been lodged by the other side, i.e., Ram Prakash regarding killing of Bhuneshwar Mahto against the informant as well as the witnesses of the present case. The said witness has further admitted that all witnesses of the present case are accused of that case. Further, it is revealed that Ram Prakash lodged the FIR on the date of occurrence, i.e., on 19.08.1983 at 04:30 p.m. whereas the informant of the present



case, i.e., Ram Sagar Mahto lodged the FIR on the next day. At this stage, we have also gone through the impugned judgment rendered by the Trial Court. It has been specifically observed in para-12 of the judgment that for the counter case, S.T. No.55/84 was conducted in which Tarni Mahto (PW-6) has been convicted for the offence punishable under Section 302 of the Indian Penal Code and his associates including both the injured have been convicted for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code in the judgment pronounced on the same day. Thus, from the aforesaid evidence, it can be said that for the murder of Bhuneshwar Mahto, two separate trials were conducted and in the counter case, in fact, the informant of the present case as well as two injured witnesses and other witnesses have been convicted.

25. We have also gone through the deposition given by the injured witnesses and we are of the view that there are major contradictions and inconsistencies in their deposition. In the present case, the prosecution has failed to prove the manner in which the incident took place and, in fact, they have tried to put a different story before the court. Even the prosecution has also failed to explain the injury sustained by the accused of the present case.



26. At this stage, it is required to be observed that the State has preferred the present appeal against the judgment of acquittal rendered by the Trial Court and that is why in the present acquittal appeal we have to consider the scope of interference, therefore, at this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Chandrappa and Ors. Vs. State of Karnataka**, reported in **(2007) 4 SCC 415**, wherein the Hon'ble Supreme Court has observed in paragraph no. 42 as under:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis



of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

27. Recently, the Hon’ble Supreme Court in the case of **Nikhil Chandra Mondal Vs. State of West Bengal**, reported in **(2023) 6 SCC 605** has observed in paragraph no. 22 as under:-

“22. Recently, a three-Judges Bench of this Court in the case of Rajesh Prasad v. State of Bihar has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.”

28. From the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that there is double presumption in favour of the accused, when the order of acquittal has been accorded by the Trial Court, Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court.



Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.

29. Keeping in view the aforesaid decisions rendered by the Hon’ble Supreme Court, if the present Government Appeal filed by the State against the order of acquittal is examined, we are of the view that the appellate court should not disturb the finding of acquittal recorded by the Trial Court even if two reasonable conclusions are possible on the basis of the evidence on record.

30. Looking to the aforesaid facts and circumstances of the present case, no interference is required in the impugned judgment rendered by the Trial Court.

31. Accordingly, the appeal stands dismissed.

**(Vipul M. Pancholi, J.)**

**(Sunil Dutta Mishra, J.)**

*Sanjay/-*

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