

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 335 of 1995

Arising Out of PS. Case No.-314 Year-1993 Thana- HAJIPUR SADAR District- Vaishali

1. Harendra Rai Son of Shri Jamindar Rai Resident of Village - Lalpokhar, Dighi (Jagdishpur), P.S. Sadar Hajipur, District - Vaishali.
2. Abhay Shankar Nirala son of Shri Shiv Chandra Rai, Resident of Village - Lalpokhar, Dighi (Jagdishpur), P.S. Sadar Hajipur, District - Vaishali.
3. Jagarnath Rai Son of Shri Birchandra Rai Resident of Village - Lalpokhar, Dighi (Jagdishpur), P.S. Sadar Hajipur, District - Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance:

For the Appellant/s	:	Mr. Niraj Kumar, Advocate Ms. Saloni Sinha, Advocate
For the State	:	Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 02-09-2025

The present appeal has been preferred under Section 374 (2) of the Code of Criminal Procedure (hereinafter referred to as the “Cr.P.C.”) against the judgment of conviction and the order of sentence dated 28.09.1995 and 29.09.1995 respectively, passed by the learned 2nd Additional Sessions Judge, Vaishali at Hajipur, in Sessions Trial No.176 of 1994 (arising out of Hajipur Sadar P.S. Case No. 314 of 1993) whereby and whereunder, the appellants have been convicted under Section 307/34 of the



Indian Penal Code (hereinafter referred to as the “IPC”) and under Section 3/4 of the Explosive Substances Act, 1908 (hereinafter referred to as the “Act, 1908”). By the said order of sentence dated 29.09.1995, the appellants have been sentenced to undergo rigorous imprisonment for 10 years under Section 307/34 of the IPC and have been further sentenced to undergo rigorous imprisonment for 10 years under Section 3 of the Act, 1908 with a fine of Rs.500/-each as also they have been sentenced to undergo rigorous imprisonment for 7 years under Section 4 of the Act, 1908 with a fine of Rs.500/- each, and in default of payment of fine, they have been further sentenced to undergo simple imprisonment for 6 months each under Section 3 and 4 of the Act, 1908. All the sentences have been directed to run concurrently.

2. Short facts of the case are that the *fardbeyan* of the informant, namely Baijnath Prasad (PW-9) was recorded by the Sub-Inspector of Police, Kameshwar Kumar Singh (PW-13) at Sadar Hospital, Hajipur on 19.12.1993 at 22.30 hours. The informant has stated in his *fardbeyan* that on 19.12.1993, at about 8:30 p.m., his brother Kishundeo Rai (deceased) was sitting at the door of the house of his neighbor, namely Panchhi Lal Rai (PW-8) and at that time Uday Shankar Nirala (one of the



accused) had come out of his house and gone to the house of Panchhi Lal Rai (PW-8) where his brother, namely Kishundeo Rai was sitting and in a state of being agitated, he had asked Kishundeo Rai as to why he had objected him from playing tape recorder in the morning upon which the brother of the informant told him that since the children were studying, it was causing inconvenience. Thereafter, Uday Shankar Nirala said that nobody can stop him, since he is very powerful and then he had taken out a pistol from his waist and had fired on the brother of the informant, which had hit his brother on his chest, whereafter the informant raised an alarm but being scared ran towards the village for calling the villagers upon which Uday Shankar Nirala went to the roof of his house. On the roof, Abhay Shankar Nirala (appellant no.2), Jagarnath Rai (appellant no.3), Harendra Rai (appellant no.1) and Kisun Rai (now dead) were already present and had formed an unlawful assembly as also were indiscriminately firing gun shots and hurling bombs. Kishun Rai had hurled bomb on the brother of the informant resulting in him being injured, whereafter Jagarnath Rai had also hurled bomb which had hit the leg of the informant and injured him leading to him falling down and becoming unconscious. Thereafter, the villagers, namely Devanand Rai (PW-3), Parmanad Rai (PW-1),



Raghunath Rai (PW-4), Bishwanath Rai (PW-10), Kamleshwar Prasad Yadav (PW-2) and Upendra Rai had arrived there, whereupon they had lifted the injured brother of the informant, namely Kishundeo Rai and taken him to Sadar Hospital, Hajipur where the doctor had declared his brother to be dead, however the informant was being treated at the hospital. The informant has further stated that the motive for the occurrence is that the brother of the informant had objected to playing of tape on account of the same interrupting the studies of his children.

3. The aforesaid *fardbeyan* of the informant was read over to him which he had heard and understood and then he had made his signature upon the same in presence of other witnesses, i.e. Devenand Rai (PW-3), Raghunath Rai (PW-4) and Jiwanand Rai (PW-7) as also the same was signed by the Sub-Inspector of Police, i.e. Kameshwar Kumar Singh (PW-13). On the basis of the aforesaid *fardbeyan* of the informant, Hajipur Sadar P.S. Case No. 314 of 1993 was registered under Sections 302, 307/34 of the IPC, Section 27 of the Arms Act and Section 3/4 of the Act, 1908 against the appellants and two others, who have died during the pendency of the present appeal. The police had then conducted investigation and finding the case to be true, had filed charge-sheet dated 12.03.1994 against five accused persons,



including the appellants. The learned Trial Court upon consideration of the materials on record and the charge-sheet filed by the police had taken cognizance of the offences on 14.11.1994 under the aforesaid sections. Thereafter, the case was committed to the Court of Sessions, vide order dated 03.12.1994 and was numbered as Sessions Trial No.176 of 1994. After taking into consideration the charge-sheet and the materials collected during the course of investigation, the learned Trial Court framed charges against the appellants vide order dated 21.04.1995 under Sections 302/149 and 307 of the IPC and Sections 3/4 of the Act, 1908 to which they pleaded not guilty and claimed to be tried.

4. During the course of trial, 15 witnesses were examined on behalf of the prosecution, PW-1 Parmanand Rai, PW-8 Panchhi Lal Rai and PW-9 Baijnath Rai are said to be eye witnesses to the said occurrence. PW-2 Kamleshwar Prasad Yadav and PW-3 Devanand Rai are witnesses to the inquest report as also signatory to the *fardbeyan*. PW-4 Raghunath Rai, PW-6 Dinesh Kumar and PW-10 Bishwanath Rai are tendered witnesses while PW-5 Sunil Kumar is witness to the seizure list. PW-7 Jiwanand Rai is a witness to the *fardbeyan*. PW-11 is the doctor, who had conducted post-mortem examination of the dead body of the



deceased brother of the informant. PW-12 Uttim Singh is a police official while PW-13 Kameshwar Kumar Singh is also a police official. PW-15 Sangita Kumari is the investigating officer of the present case and PW-14 is the clerk in the District Law Office, Hajipur, who has proved the sanction order of prosecuting the appellants under the provisions of the Act, 1908.

5. The prosecution, by way of documentary evidence, had proved the following documents, which were marked as exhibits during the course of the trial:-

EXHIBIT NO.	DESCRIPTION
Exhibit No.1	Signature of Kamleshwar Pd. Yadav on the inquest report.
Exhibit No.1	Signature of Jiwanand Rai on the fardbeyan.
Exhibit No.1/1	Signature of Devanand Rai on the fardbeyan.
Exhibit No.1/2	Signature of Devanand Rai on the inquest report.
Exhibit No.1/3	Signature of Sunil Kumar on the seizure-list.
Exhibit No.1/4	Signature of Dinesh Kumar on the Seizure-list
Exhibit No.2	Signature of Jiwanand Rai on the fardbeyan.
Exhibit No.2/1	Signature of Raghunath Rai on the fardbeyan.
Exhibit No.3	Signature of Baidyanath on the fardbeyan.
Exhibit No.4	Injury report of Baidyanath Prasad.
Exhibit No.5	Post-mortem report of Kishundeo Rai.
Exhibit No.6	Seizure List I. Blood-Soaked mud.



	II. Pieces of tin. III. Sutari (small rope) IV. Doll made of Iron. V. Pieces of stone. VI. Nails. VII. Pieces of glass. VIII. Pellet.
Exhibit No.7	Fardbeyan.
Exhibit No.7/1	Formal FIR
Exhibit No.8	Inquest report.
Exhibit No.9	Sanction of prosecution Letter.
Exhibit No.10	Para No. 55 of the Case-diary of P.S. Case No.318/93.
Exhibit No.11	Order sheet dated 16.09.1993
Exhibit No.11/1	Order sheet dated 16.02.1994
Exhibit No.11/2	The final page of P.S. Case No.318/93

6. Thereafter, the defence had also examined the investigating officer of the present case, Sangita Kumari as DW-1 and had proved the following documents, by way of documentary evidence:-

EXHIBIT NO.	DESCRIPTION
Exhibit No.A	Writing of K.K. Singh on the back of injury report.
Exhibit No.B	Fardbeyan of Sadar P.S. Case No.318/93
Exhibit No.B/1	Formal FIR
Exhibit No.C	Report of Dayashankar Rai with regard to



	injury of Jagirdar Rai.
Exhibit No.D	Seizure List
Exhibit No.D/1	Seizure List
Exhibit No.E	Signature of SDPO on the supervision note.
Exhibit No.C/1	Injury report of Jamindar Rai
Exhibit No.C/2	Injury report of Jamindar Rai
Exhibit No.F	Order sheet dated 10.05.1990
Exhibit No.B/2	Formal FIR
Exhibit No.B/3	Fardbeyan.

7. The learned counsel for the appellants has submitted that in the FIR, there is specific allegation with regard to the appellant no.1, namely Harendra Rai having hurled a bomb leading to the same having hit the roof (Chhaja), however PW-1 Parmanand Rai has stated in his evidence that Kishun Rai had hurled a bomb which had hit Kishundeo Rai (deceased) and Jagarnath Rai (appellant No. 3) had hurled bomb which had hit Baijnath Prasad, the informant (PW-9) as also Harendra Rai had hurled a bomb, which had hit the protruded part of the roof (Chhajja). As far as PW-3 Devanand Rai is concerned, he has stated that Kishun Rai had hurled a bomb from the roof, which had hit Kishundeo Rai (deceased), whereafter Jagarnath Rai had hurled a bomb which had hit Baijnath Prasad and then Harendra Rai had hurled a bomb which had hit the roof. As far as PW-8 is



concerned, he has stated in his evidence that Kishun Rai had hurled a bomb which had hit Kishundeo Rai, whereafter Jagarnath Rai had hurled a bomb which had hit Baijnath Prasad and then Harendra Rai had hurled a bomb which had hit the roof. As regards PW-9 Baijnath Prasad, i.e. the informant, it is submitted that though he has stated about the bombs being hurled by Harendra Rai (appellant No.1) and Jagarnath Rai (appellant No.3) which had hit the roof (Chhajja) and the informant respectively, however there is no whisper about bomb being hurled by Abhay Shankar Nirala. Thus, it is submitted that if the contents of the first information report is read together with the evidence of PW-1, PW-3, PW-8 and PW-9, it would be apparent that contradictory stand has been taken and there is no whisper about the appellant No.2 having hurled any bomb while there is contradiction in the mode and manner of hurling of bomb by the accused persons.

8. The learned counsel for the appellants has further submitted that since the occurrence had taken place in the month of December at around 8:30 p.m., it is difficult to visualise that any witness would have been present there, nonetheless the prosecution has surprisingly produced witnesses who claim to be eye witnesses to the occurrence in question. It is next



submitted that though the wife of the deceased is stated to be present at the place of occurrence, however her evidence has been withheld, which creates a suspicion regarding the prosecution having suppressed the actual mode and manner of occurrence. It is contended that while in the inquest report, bleeding injury has been found on left chest and right side of back, however in the post-mortem report entry wound of bullet has been found on left chest, while exit wound has been found on the back of left chest. Thus, it is submitted that there is discrepancy in between the injury mentioned in the inquest report *vis-à-vis* injury mentioned in the postmortem report. Lastly, it is submitted that PW-2 and PW-3, who are witnesses to the inquest report and the *fardbeyan* were examined by the police after 15 days for the first time on 04.01.1994, although they were present at the time of preparation of the inquest report and recording of the *fardbeyan* of the informant as also were present for the entire night in the hospital. Thus, it is submitted that the judgment of conviction and order of sentence is full of inconsistencies and fit to be set aside.

9. The learned Additional Public Prosecutor for the State, Ms. Shashi Bala Verma has submitted that all the witnesses examined by the prosecution are consistent and there is no



contradiction in their evidence as also the defence has not been able to elicit any contradictions while cross-examining them. It is also apparent from the first information report and the evidence available on record that the appellant no.1 had hurled a bomb, which had exploded on the roof (chhajja) as also had hurled a bomb which had not exploded and subsequently live bomb was found from the roof of the hut whereas Jagarnath Rai (appellant no.3) had hurled a bomb on the informant which had hit middle part of his leg and the same also stands substantiated from the injury report. It is thus, submitted that there is no infirmity in the judgement of conviction and order of sentence passed by the learned Trial Judge, hence this Court is not required to interfere with the same.

10. Besides hearing the learned counsel for the parties, we have minutely perused both the evidence, i.e. oral and documentary. Before proceeding further, it is necessary to cursorily discuss the evidence led by the prosecution.

11. PW-1 Parmanand Rai has stated in his evidence that the occurrence dates back to about 17 months at about 8:30 p.m. in the night when he was sitting on the stairs of *veranda* of his house along with Kishundeo Rai. Thereafter, Uday Shankar Nirala had arrived there and in an agitated mood had asked



Kishundeo Rai as to why he had told him not to play tape in the morning, upon which Kishundeo Rai had replied that since the studies of his children were being impeded, he had told him not to play the tape. Thereupon, Uday Shankar Nirala had told him that he is the most powerful person of the village and nobody can stop him from playing the tape, whereafter while Kishundeo Rai was standing on the stairs, Uday Shankar Nirala had taken out a pistol from his waist and pointed the same on Kishundeo Rai and fired on him leading to gunshot injury being inflicted on the left chest of Kishundeo Rai, whereupon he had fallen down and then Uday Shankar Nirala had gone running to the roof of his house where Harendra Rai (appellant no.1), Jagarnath Rai (appellant no.3), Abhay Shankar Nirala (appellant no.2) and accused Kishun Rai were present, who had then started hurling bombs. The bomb hurled by Kishun Rai had hit Kishundeo Rai (Deceased), bomb hurled by Jagarnath Rai had hit Baijnath Prasad (Informant) and the bomb hurled by Harendra Rai had hit protruded part of the roof (chhajja). At the time of occurrence, Devanand Rai (PW-3), Panchhi Lal Rai (PW-8), Baijnath Prasad (informant) and Vishwanath Rai (PW-10) were present there. On account of being hit by the bomb Kishundeo Rai and Baijnath Rai had become injured. The deceased was then required to be



taken to the hospital in an injured condition but since the accused persons were hurling bombs, brother of PW-1, namely Panchhi Lal Rai (PW-8) had resorted to three firing in air by his licensed gun leading to the accused persons fleeing away. Thereafter, the deceased was brought at the Hospital at Hajipur, where Kishundeo Rai was declared dead while Baijnath Prasad was being treated. PW-1 had recognised the accused persons standing in the dock.

12. In cross-examination, PW-1 has stated that the witnesses to the occurrence, namely Devanand Rai (PW-3), Panchhi Lal Rai (PW-8) and Jiwanand Rai (PW-7) are his own brothers. PW-1 has also stated that on the eastern side of his house, open space and road is situated and in front of his house, the house of Uday Shankar Rai is situated and towards the southern side of the house of Uday Shankar Rai, the house of Chhedi Rai is situated. He has also stated that he along with Raghunath Rai, Panchhi Lal Rai, Devanand Rai are accused in a case of dacoity. In paragraph no.15 of his cross-examination, PW-1 has stated that Zamindar Rai had filed a counter case bearing Hajipur Sadar P.S. Case No.318 of 1993 against them. In paragraph no.16 of his cross-examination, PW-1 has stated that the occurrence had taken place for 1-1½ minutes and no overt act was resorted to



from his side and at the end Panchhi Lal Rai (PW-8) had fired three gun shots in the air. He has also stated that electric light was present there and on the roof also electric bulb was available. He has stated that gun shot fired by Panchhi Lal Rai did not hit anyone. He has next stated that on the northern/western side of the house of Uday Shankar Nirala, there is a hut which belongs to Jagarnath Rai and towards the southern/eastern side of the said hut, house of Uday Shankar Nirala is situated. In paragraph no.19 of his cross-examination, PW-1 has stated that when the police came, he was not present and he had met the police in the night of the occurrence at 2 a.m. at the place of occurrence. In paragraph no.22 of his cross-examination, PW-1 has stated that the police had not seized any pellet or bullet from the place of occurrence in his presence. He has stated that he had seen bleeding injury on the chest of the deceased but he could not see his back. He has also stated that though it was the month of December, but it was not very cold.

13. In paragraph no.25 of his cross-examination, PW-1 has stated that he had told the police that Uday Shankar Nirala had told him that since he is powerful, nobody can stop him from playing tape. In paragraph no.26 of his cross-examination, PW-1 has stated that he had told the police about hurling of bombs but



he had not told that the bomb had hit the protruded portion of the roof (chhajja). In paragraph no.29 of his cross-examination, PW-1 has stated that he had seen the person who had fired gun shot on the deceased from a distance of about four hands' length and at that time they were standing adjacent to the deceased whereas Panchhi Lal Rai was standing on the road side at a distance of 8 feet from the deceased. PW-1 has stated that when gun shots were fired, they had not fled away and were standing on the *veranda*. In paragraph no.30 of his cross-examination, PW-1 has stated that the injury of bomb was inflicted on Kishundeo Rai and Baidyanath Prasad. In paragraph no.32 of his cross-examination, PW-1 has stated that one gun shot was inflicted on the deceased, which had resulted in serious injury and as far as bomb is concerned, the same had resulted in the deceased sustaining three injuries, i.e. on left hand, head and little bit everywhere. In paragraph no.33 of his cross-examination, PW-1 has stated that no dispute was existing from before. In paragraph no.34 of his cross-examination, PW-1 has stated that he had not seen any injury on the body of Zamindar Rai and when he had gone there also, he did not find Zamindar Rai. In paragraph no.35 of his cross-examination, PW-1 has stated that all the females of the house were inside the house and



upon hearing the sound of firing, only the wife of the deceased had come outside the house.

14. PW-2 Kamleshwar Prasad Yadav has stated in his evidence that the occurrence dates back to 17 months at about 8:30 p.m. in the night when he was at his house and then he heard the sound of gunshot firing and explosion of bomb, whereafter he came running to the place of occurrence. On the way, near the house of Bhola Rai on the road, he saw the accused persons including the appellants fleeing away. PW-2 has also stated that when he asked Uday Shankar Prasad as to what was the matter, he did not say anything, however, he was running away in a state of nervousness. PW-2 has further stated that after he reached the house of Panchhi Lal Rai, he saw Kishundeo Rai was smeared with blood and was lying in an unconscious state as also Baijnath Prasad had been injured and at that place Parmanand Rai (PW-1), Panchhi Lal Rai (PW-8), Devanand Rai (PW-3), Baidyanath Prasad (PW-9), Bishwanath Rai (PW-10), Raghunath Rai (PW-4), Upendra Rai and one lady were present as also the people present there were making arrangement to take the injured to the hospital. After Kishundeo Rai was taken to the hospital, he was declared dead. The Officer-in-charge had come at the hospital and had prepared the



inquest report on which PW-2 had signed which he has identified and the same has been marked as Exhibit-1. PW-2 had recognized the accused persons standing in the dock. In paragraph no.6 of his cross-examination, PW-2 has stated that after the incident, he was not present at the place of occurrence when the police had come for inspection, however he again said that he had seen the police for the first time at the hospital, but his statement was recorded on 4th January, 1994 by the police at the place of occurrence. In paragraph no.9 of his cross-examination, PW-2 has stated that it is not a fact that he had not told the police about the name of the other accused persons other than Uday Shankar Nirala.

15. PW-3 Devanand Rai has stated in his evidence that the occurrence dates back to 17 months at about 8:30 p.m. in the night when he was at his house when he heard the sound of quarrelling and then he came outside his house whereupon he saw that Uday Shankar Nirala had taken out a pistol from his waist and had fired gun shot on Kishundeo Rai leading to him falling down on account of being hit by gun shot. Thereafter, Uday Shankar Nirala had gone to the roof of his house where Kishun Rai, Harendra Rai, Jagarnath Rai and Abhay Shankar Nirala were present from before. Thereafter, Kishun Rai had



hurled a bomb from the roof which hit Kishundeo Rai, Jagarnath Rai had hurled bomb which hit Baidyanath Prasad and Harendra Rai had hurled a bomb which hit the roof. He has also stated that it was necessary to take the injured to the hospital, but bomb was regularly being hurled and then Panchhi Lal Rai had gone to his southern room and from southern window he had fired three gun shots in air and then the accused persons had fled away, whereafter the injured persons were taken in a maruti car to the Sadar Hospital at Hajipur where the doctor had declared Kishundeo Rai to be dead, however, the treatment of Baidyanath Prasad had started. Thereafter, the police had recorded the *fardbeyan* of Baidyanath Prasad on which PW-3 had put his signature as a witness which he has identified and the same has been marked as Exhibit-1/1. PW-3 has also stated that the inquest report was prepared by the Officer-in-charge at the hospital on which he had also put his signature which he has identified and the same has been marked as Exhibit-1/2. PW-3 had identified the accused persons standing in the dock.

16. In paragraph no.7 of his cross-examination, PW-3 has stated that he had stated before the police that after Uday Shankar Nirala had fired gun shot, he had gone to the roof of his house. He had also stated before the police that on the roof,



Kishun Rai, Harendra Rai, Jagarnath Rai and Abhay Shankar Nirala were present from before. He had also told that the bomb hurled by Kishun Rai had hit Kishundeo Rai and the bomb hurled by Jagarnath Rai had hit Baidyanath Prasad resulting in them sustaining injuries. In paragraph no.12 of his cross-examination, PW-3 has stated that the hospital is at a distance of 3 kilometres from the place of occurrence. In paragraph no.13 of his cross-examination, PW-2 has stated that when the statement of Baidyanath Prasad was being recorded, he was present there, but Panchhi Lal Rai had returned back immediately. In paragraph no.17 of his cross-examination, PW-3 has stated that when he had come outside after hearing *hulla* (alarm), he saw that Parmanand Rai, Panchhi Lal Rai, Baidyanath Prasad, Vishwanath Rai, Kishundeo Rai (deceased) and the wife of deceased were present there and Uday Shankar Nirala had come there. In paragraph no.19 of his cross-examination, PW-3 has stated that after half an hour of the deceased being shot by gunshot firing, bomb was hurled and at that time, they all were at the *veranda* which is eastern facing and when they were at the *veranda*, bomb had not hit anyone but the bomb had hit those who were outside the *veranda*. In paragraph no.20 of his cross-examination, PW-3 has stated that he had not seen the gun shot



fired by Panchhi Lal Rai having hit anyone. PW-3 has stated that he had given his statement to the investigating officer on 04.01.1993 (should be 04.01.1994). In paragraph no.23 of his cross-examination, PW-3 has stated that he was at the hospital all throughout the night and the Officer-in-charge had arrived at the hospital for recording the *fardbeyan* at 10:00 p.m. in the night and he had left the hospital at around 10:30 in the night.

17. PW-4 Raghunath Rai, PW-6 Dinesh Kumar and PW-10 Vishwanath Rai are the tendered witnesses. As far as PW-4 is concerned, nothing significant is forthcoming from his evidence. As far as PW-6 is concerned, he has stated that certain articles were seized from a place situated at one hand distance towards eastern side of ladder of the house of Panchhi Lal Rai. PW-6 has also stated that the seizure-list was prepared in his presence which was read over to him and after hearing it he had put his signature over the same. He has also stated that the articles seized from the *veranda* in question are *kanti* (nail), *sutari* (small rope), piece of tin and live bomb from the *madai* (roof of the hut). PW-6 has identified the seizure-list, which has been marked as Exhibit-1/3 and he has said that the same was prepared in his presence and signed by him. PW-10 has stated in his evidence that Zamindar Rai is father of Uday Shankar Rai



and the deceased Kishundeo Rai as also the informant are his own brother.

18. PW-5 Sunil Kumar has stated in his evidence that the occurrence dates back to 19.12.1993 at about 11 p.m. in the night and the officer-in-charge had prepared the seizure list in his presence pertaining to mud soaked with blood, bullet of pistol, small nails, pieces of tin, stone and glass, half burnt *sutari* (small rope), which was read over to him and after hearing the same, he had put his signature over the same which he has identified and the same has been marked as Exhibit 1/3. He has also stated that Dinesh Kumar (PW-6) had also signed the seizure list in his presence and he has identified his signature which has been marked as Exhibit-1/4. PW-5 has also stated that after half an hour of preparing the seizure-list, the police officer Uttim Singh had also seized one tape recorder, 28 cassettes and one stabilizer from the house of Shiv Chandra Rai. At that time one live bomb was also recovered from the roof of the hut of Veer Chand Rai, apart from seizure of 2-4 small nails and half burnt *sutari* (small rope), whereafter seizure list was prepared on which he had made his signature.

19. PW-7 Jiwanand Rai has stated in his evidence that the occurrence dates back to 19.12.1993 on which date the injured



Baidyanath Prasad had given his statement at Sadar Hospital, Hajipur in his presence and at that time, Raghunath Rai and Devanand Rai were also present there. The Officer-in-charge, who had recorded the *fardbeyan* of Baidyanath Prasad had read over the same which Baidyanath Prasad had heard and upon finding the same to be correct, he had put his signature over the same which was also signed by him, apart from Raghunath Rai having also put his signature over the same and both the signatures have been identified by PW-7, which have been marked as Exhibit 2 and 2/1. In paragraph no.4 of his cross-examination, PW-7 has stated that he was present in the hospital for half an hour and after sometime, the Superintendent of Police had also arrived there. In paragraph no.6 of his cross-examination, PW-7 has stated that at the inception, Baidyanath Prasad was unconscious, but when he regained consciousness the officer-in-charge had recorded his statement. In paragraph no.7 of his cross-examination, PW-7 has stated that he had not seen the occurrence taking place with his own eyes. In paragraph no.8 of his cross-examination, PW-7 has stated that his statement was not recorded before the police.

20. PW-8 Panchhi Lal Rai has stated in his evidence that the occurrence dates back to about 20 months at about 8 p.m. in the



night when he was at his house where Kisundeo Rai and Parmanand Rai (PW-1) were also present and there Uday Shankar Nirala had arrived and had told Kishundeo Rai as to why he had objected him from playing the tape, whereupon Kishundeo Rai had told that his son has problem in studying on account of the sound, hence he had objected to playing tape which led to eruption of quarrel in between them. Uday Shankar Nirala had then got agitated and had fired gun shot on the chest of Kishundeo Rai and upon being inflicted gunshot injury Kishundeo Rai had fallen down on the ground whereupon Uday Shankar Nirala had fled away to the roof of his house and from the roof of his house, bombs were hurled by Jagarnath Rai, Kishun Rai and Abhay Shankar. The bomb hurled by Kishun Rai had hit Kishundeo Rai on the space in between the fingers of his left hand. The bomb hurled by Jagarnath Rai had hit both the knees of the legs of Baidyanath Prasad. The bomb hurled by Harendra Rai had hit the roof. After the bomb was hurled, PW-8 had gone to the room situated on the southern side and from the southern window, he had fired three gun shots in air from his licensed gun, whereafter the accused persons had fled away from the roof. PW-8 has stated that he had then taken the injured persons on a maruti car to the Sadar Hospital, Hajipur where



Kishundeo Rai was declared dead by the doctor and the injured Baidyanath Prasad's treatment was started. PW-8 has recognized the accused persons standing in the dock.

21. In paragraph no.16 of his cross-examination, PW8 has stated that it was moonlit night on the day of occurrence and electric light was also there. In paragraph No.17 of his cross-examination, PW-8 has stated that Uday Shankar Nirala had come out from his house and after taking out pistol from his waist, he had fired and quarrel had taken place for 2½-3 minutes and at the time quarrel was taking place, altogether 8 persons were present there. In paragraph no.20 of his cross-examination, PW-8 has stated that the bomb was being hurled from the roof of the house of Uday Shankar Nirala. In paragraph no.24 of his cross-examination, PW-8 has stated that those people who were at *veranda* did not sustain bomb injuries. In paragraph no.26 of his cross-examination, PW-8 has stated that two persons had sustained bomb injuries. In para no.27 of his cross-examination, PW8 has stated that he had stated before the police that the bomb which had hit Kishundeo Rai had hit him in between space of 3 fingers. In para no.28 of his cross-examination, PW-8 has stated that he had also told the police that Harendra Rai had also hurled bomb. In paragraph no.29 of his cross-examination,



PW-8 has stated that the bomb was hurled for about 2-2½ minutes and then he had fired from his gun. In para no.35 of his cross-examination, PW-8 has stated that when he had returned back from the hospital, the Officer-in-charge and the Superintendent of Police had come at his house, however his licensed gun was not seized and he had deposited his arms with the arms shop at Hajipur. In para no.40 of his cross-examination, PW-8 has stated that after 2 days, the accused persons had also filed a counter case in which they have been made accused.

22. PW-9 Baidyanath Prasad, who is the informant of the present case, has stated in his evidence that the occurrence dates to 20 months at about 8:30 p.m. in the night. In paragraph Nos.2 to 7 of his examination-in-chief, he has narrated exactly the same story as has been recited by him in his *fardbeyan*. In paragraph No.8, PW-9 has stated that he had taken the injured and others on his maruti car to the Sadar Hospital, Hajipur. He has also stated that the reason for the quarrel is playing of tape by Uday Shankar Nirala leading to the children of the deceased having difficulty in studying. He has also stated that his statement was recorded by the Officer-in-charge at the hospital, which was read over to him and upon finding the same to be correct, he had put his signature over the same which he has



identified and the same has been marked as Exhibit-3. In his presence, Devanand Rai, Jiwanand Rai and Raghunath Rai had also put their signature over his *fardbeyan* which has already been exhibited as Exhibit-2. He has also stated that in the night of the incident, the Officer-in-charge had recorded his restatement at about 1:20 a.m. in the night. PW-9 has recognized the accused persons standing in the dock.

23. In paragraph no.19 of his cross-examination, PW-9 has stated that the officer-in-charge had taken his statement in hospital at 10:30 p.m. and on the second occasion his statement was taken by madam at 1:20 a.m. in the night. In paragraph No. 20 of his cross-examination, PW-9 has stated that he had become unconscious at the place of occurrence but thereafter during the course of treatment, he did not become unconscious. In paragraph No.22 of his cross-examination, PW-9 has stated that when the bomb was hurdled, he had not fled away. In his cross-examination, PW-9 has also described the area situated in and around the actual place of occurrence. In paragraph no.28 of his cross-examination, PW-9 has stated that he does not know about the incident which had taken place earlier in the morning regarding playing of tape, when for the first time quarrel had taken place in between Uday Shankar Nirala and Kishundeo



Rai. In paragraph no.30 of his cross-examination, PW-9 has stated that when Uday Shankar Nirala had arrived at the place of occurrence, at that time Parmanand Rai was also sitting on the stairs along with Kishundeo Rai. In paragraph No.31 of his cross-examination, PW-9 has stated that when he, for the first time looked towards the place of occurrence, he saw Kishundeo Rai and Uday Shankar Nirala quarrelling amongst them. In paragraph No.33 of his cross-examination, PW-9 has stated that when the gun shot was fired, his younger brother Bishwanath Rai and wife of Kishundeo were also standing near the *gairaj* and immediately upon gun shot being fired, the wife of Krishnadeo Rai became unconscious. In paragraph No.36 of his cross-examination, PW-9 has stated that Uday Shankar Nirala had fired approximately from a distance of 5-6 feet and then he had ran away towards his house, however nobody tried to catch hold of Uday Shankar Nirala. In paragraph no.41 of his cross-examination, PW-9 has stated that the shots firing by Panchhi Lal Rai did not hit anyone. Upon question being asked regarding PW-9 having not recited the incident of firing being resorted to by Panchhi Lal from his room situated on the southern side, PW-9 has stated that he had narrated the said incident in his re-statement. In paragraph no.48 of his cross-examination, PW-9



has stated that in his presence, no witness had made any statement before the police during the entire night. In paragraph no.49 of the cross-examination, PW-9 has stated that they had reached at the hospital at about 8:45 p.m. in the night and at about 10:30 p.m., the Officer-in-charge had come to record his statement, however before his statement was recorded by the Officer-in-charge, the doctor had already examined his injuries. In paragraph no.52 of his cross-examination, PW-9 has stated that in the night of occurrence, while he was in hospital, nobody from his family had arrived there.

24. PW-11 Dr. Praveen Kumar has stated in his evidence that on 19.12.1993, he was posted as Civil Assistant Surgeon at Hajipur Sadar Hospital and on that day, he had examined the injuries of Baidyanath Prasad (PW-9) and found the following injuries:-

“(i) Lacerated wound with blackens margin on the middle of front of left leg $\frac{1}{4}$ ” x $\frac{1}{4}$ ” x $\frac{1}{4}$ ”.

(ii) Lacerated wound $\frac{1}{4}$ ” x $\frac{1}{4}$ ” x $\frac{1}{4}$ ” on the front of right knee red in colour.

(iii) Abrasion 2” x $\frac{1}{4}$ ” on the lower part of front of right leg.”

PW-11 had found the age of injury to be within six hours and as far as the cause of injury is concerned, he has stated that



injury no.1 has been caused by explosive substance such as splinter of bomb and rest all are due to hard and blunt substance such as stone pieces, nonetheless he had found that the nature of injury to be simple. He has identified the injury report, which has been prepared in his pen and signature and the same has been marked as Exhibit-4.

25. PW-11 has further stated that he had conducted the post-mortem examination of the dead body of the deceased and found the following ante-mortem injuries:-

“(1) Lacerated wound on the front of left chest in the third inter space 2½" inside the left nipple ¼" x ¼" with blackening of margin, wound of entry.

(II) Lacerated wound on the back of left chest in the back of intra scapular region 1/3" x 1/3" margins everted, communicating with injury no.1. It is wound of exit. If pellet pierces then two injuries are possible.

(iii) Blackening and tattooing of left fore arm and hand.

On dissection:-

(i) On opening of the skull brain is pale.

(ii) Left side of chest is full of blood and blood clots.

(iii) Left lung is lacerated and collapsed.

(iv) On opening the abdomen, all the abdominal viceras are pale. Stomach contains about 6 ounce of semi liquid. Small and large intestine contain gas and faecal matter.



Substance used- Injury No.1 and II are caused by fire arms. Such as revolver, from short distance. Injury no. III caused by explosive substance such as bombs.”

26. PW-11 has identified the post-mortem report, which has been prepared in his writing and bears his signature and the same has been marked as Exhibit-5. In cross-examination, PW-11 has stated that on police requisition, he had examined the injuries of Baidyanath Prasad (PW-9) at 9:15 p.m. In paragraph no.12 of his cross-examination, PW-11 has stated that injury nos. 2 and 3 on the person of Baidyanath Prasad are also possible by fall, the injuries are not on vital part of the body as also not so serious that the same would cause unconsciousness to the injured. In paragraph no.15 of his cross-examination, PW-11 has stated that as medico legal expert, he is apprised with identity of firearms and ammunition and there is difference between pistol and revolver. After firing the shot, the empty case will remain in the chamber of revolver while in a pistol, the spent cartridge cases are automatically ejected as a part of firing of the pistol. He has also stated that there is difference between pellet and bullet. While bullet are fired through a barrel which has spiral groove cut upon the inner surface of the bore to impart rotatory motion, pellet is fired through a smooth barrel gun. He has also stated that inquest was sent to him prior to the post-



mortem examination and in the inquest report, it is written that injury is on the back, on the right side. In paragraph No.22 of his cross-examination, PW-11 has stated that he had found solitary bleeding wound on the left side of the back. In paragraph no.23 of his cross-examination, PW-11 has stated that the inquest report and the post-mortem report are not commensurating but in the inquest report it is mentioned right side of the back of chest, which may be due to slip of pen. In paragraph no.28 of his cross-examination, PW-11 has stated that where the firing range is short, the perforation of the entry wound is enlarged due to projectile and due to pressure of gases. In paragraph no.30 of his cross-examination, PW-11 has stated that if a splinter of an explosive comes in contact with the injury no.1, it may have blackening colour around.

27. PW-12 Uttim Singh has stated in his evidence that on 19.12.1993 he was posted as Inspector of Police at Hajipur Sadar Hospital and on the said day, in the night of 19.12.1993 at about 23:00 hours, he had gone to the house of Panchhi Lal Rai (PW-8) and had seized half burnt *sutari* (small rope), small nails, iron pieces, pieces of stones and glass, blood mixed soil, pellet, edge whereof had become blunt and had prepared the seizure list in presence of PW-5 and PW-6, who had also put



their signature over the same. PW-12 has identified his signature as also the signature of PW-5 and PW-6 made over the seizure-list and the same have been marked as Exhibit-6. PW-12 has described the articles seized by him as follows:-

- (i) blood mixed mud.
- (ii) pieces of tin-5.
- (iii) half burnt *sutari* (small rope).
- (iv) pieces of iron-4
- (v) pieces of stone-3
- (vi) nail-3
- (vii) pieces of glass-4
- (viii) pellet-1

28. In cross-examination, PW-12 has stated that aforesaid material exhibits have been brought in the court, but no *malkhana* number is indicated, however he has stated that whenever material exhibit is seized and is brought to the police station, entry is made in the station register and *malkhana* register. He has also stated that from looking at the material exhibit, it cannot be deciphered that entry thereof has been made in the station diary. In paragraph no.4 of his cross-examination, PW-12 has stated that he is not the investigating officer of the present case and he had given seized article to Sangita Kumari at the police station. In paragraph No.5 of his cross-examination, PW-12 has stated that the seized explosive substance was



examined by the ballistic expert. In paragraph No.8 of his cross-examination, PW-12 has stated that he had reached at the place of occurrence at 23:00 hours in the night and had returned in the morning, whereafter he had gone back to the police station at about 10-11:00 a.m. In para no.11 of his cross-examination, PW-12 has stated that when he reached at the place of occurrence at 23:00 hours, the investigating officer, namely Sangita Kumari was not with him and she came at the place of occurrence at 1:00 a.m. in the night whereafter, she was told that the injured are alive and then she had gone to the Hajipur Hospital. In para no.12 of his cross-examination, PW-12 has stated that the seized articles including the splinter & bullet, etc. were not sent to the ballistic expert because the ballistic expert had come to the police station and had conducted examination.

29. PW-13 Kameshwar Kumar Singh has stated in his evidence that he was posted as Inspector of Police at Town Police Station, Hajipur on 19.12.2023 and on the same day, at 22:30 hours, he had recorded the *fardbeyan* of Baidyanath Prasad at Sadar Hospital, Hajipur, whereafter he had read over the same to Baidyanath Prasad and upon finding the same to be correct, he had put his signature. Thereafter, witnesses i.e. Devanand Rai (PW-3), Jiwanand Rai (PW-7) and Raghunath Rai



(PW-4) had also put their signature over the same which he has recognized. PW-13 has identified the *fardbeyan*, which is in his writing and bears his signature and the same has been marked as Exhibit-4. He has also stated that thereafter, he had sent the *fardbeyan* to the Sadar Police Station, Hajipur. PW-13 has further stated that he had prepared the inquest report of the deceased Kishundeo Rai on 19.12.1993 at 22:45 hours in the presence of witnesses i.e. PW-3 and PW-2 who had also put their signature over the same voluntarily. PW-13 has identified the carbon copy of the inquest report, which has been marked as Exhibit-8. In paragraph No.5, PW-13 has stated that bleeding injuries were found on the left chest and on the back over right side of the deceased. Injury was also present at various places on left hand as also burnt injuries were present which appeared to have been sustained by firearms and bombs. In paragraph no.7, PW-13 has stated that it appears that the deceased was murdered by injuring him by bullet and bomb. In paragraph No.9 of his cross-examination, PW-13 has stated that he had prepared the inquest report at 22:45 hours and had also prepared the injury report of Baidyanath Prasad, which he has identified and has stated that the same is in his writing and the same has already been marked as Exhibit-4. In paragraph no.10 of his cross-



examination, PW-13 has stated that the injury report is on the back of Exhibit-4 which is in his writing and bears his signature and the same has been marked as Exhibit-A. In paragraph no.15 of his cross-examination, PW-13 has stated that at the end of the inquest report, he has mentioned the date as 13.12.1993 by mistake which is on account of slip of pen.

30. PW-14 Sitesh Kr. Chaudhary has stated in his evidence that he is posted as Clerk in the office of District Law Office, Hajipur since 1992. He has identified the letter dated 20.12.1993 granting sanction to prosecute the accused under the provisions of the Act, 1908, which has been marked as Exhibit-9.

31. PW-15 Sangita Kumari is the investigating officer of the present case and she has stated in her evidence that on 19.12.1993, she was posted as Probationer Deputy Superintendent of Police in the district of Vaishali. On 19.12.1993, she was posted as Officer-in-charge of Sadar Town Police Station, Hajipur and on 19.12.1993 at 21:00 hours she received information from the In-charge Sub-Inspector of Police, Sadar Police Station on telephone that sound of gunshot firing and explosion of bomb is coming from Lalphokhar village. Thereafter, she had made entry in the station diary bearing No.451 and along with other police personnel had left



for Lalpokhar village and upon reaching there it transpired that Baidyanath Prasad and Kishundeo Rai have been inflicted with gunshot and bomb injuries and they have been taken to the hospital, whereafter they left for Sadar Hospital, Hajipur and on the way, they had stopped at Town Police Station where *fardbeyan* of Baidyanath Prasad was received and then PW-15 had undertaken the investigation of the present case and sent the *fardbeyan* to Sadar Police Station for institution of the first information report. At about 1:05 a.m., PW-15 had left for Sadar Hospital from Town Police Station and reached there at 1:20 a.m. where she had recorded the restatement of the informant of the present case, namely Baidyanath Prasad (PW-9) and he had fully reiterated the statement made by him in his *fardbeyan*. However, the statement of other witnesses could not be recorded since they were not present there. Thereafter, she had reached at the place of occurrence at 2:00 a.m. in the night and inspected the place of occurrence in the light of electric bulb, torch and petromax. In paragraph no.3, PW-15 has described the place of occurrence.

32. PW-15 has also stated that according to the informant, deceased-Kishundeo Rai was shot in the open space situated in front of the house of Panchhi Lal Rai by the accused Uday



Shankar Nirala on account of which blood had fallen in front of the house as also in front of staircase in huge quantity which she had found. She had also seen blood having fallen on the *varanda* situated outside the house as also in the courtyard situated inside the house. She had also found remains of explosive substance in the front portion of the house in the *varanda* and near the staircase. PW-15 had also seen black marks on the roof of the wall situated in front of the said house which appears to have been caused by explosive substance. In paragraph no.4, PW-15 had described the articles seized by her, which have already been described hereinabove. PW-15 had seized the aforesaid articles. PW-15 had seen drops of blood all over the gallery starting from the *veranda* as also she had found, near the staircase, remains of explosive substance including iron pieces, pieces of tins, nails and half burnt *sutari* (small rope). In paragraph no.5, PW-15 has stated that one live bomb was recovered from the roof of the hut situated adjacent to the place of occurrence. In paragraph no.7, PW-15 has stated that the seizure-list was prepared by her in presence of SI Uttim Singh. PW-15 has also stated that she had recorded the statements of Panchhi Lal Rai (PW-8), Parmanand Rai (PW-1), Malti Devi, Vishwanath Rai (PW-10), Kamleshwar Prasad Yadav(PW-2),



Upendra Rai, Devanand Rai (PW-3) and Raghunth Rai (PW-4), who have fully supported the FIR. In paragraph No.9, PW-15 has stated that she had received the injury report of Baidyanath Prasad and the post-mortem report of the deceased from the Sadar Hospital, Hajipur. She had also received supervision report and the letter sanctioning prosecution from the District Magistrate, Vaishali. PW-15 has also stated that upon finding the case to be true, she had submitted charge-sheet against the accused persons.

33. In paragraph no.22 of her cross-examination, PW-15 has stated that though the seized blood was sent for examination, however she has not stated about the same in the case-diary. In paragraph no.23 of her cross-examination, PW-15 has stated that though the splinter, *sutari*, nails, etc. had been examined at the police station itself, however till filing of the charge-sheet, the report had not been received. In paragraph no.24 of her cross-examination, PW-15 has stated that seizure list of remains of explosive substance seized from the house and hut of Uday Shankar Nirala has not been mentioned in this case since a separate case has been lodged for the same. In paragraph no.27 of her cross-examination, PW-15 has stated that she had recorded the statement for the first time on 04.01.1994 of PW-2



Kamleshwar Prasad Yadav, PW-3 Devanand Rai and PW-4 Raghunath Rai, but she had not recorded the statement of PW-9 Baidyanath Rai. In paragraph no.28 of her cross-examination, PW-15 has stated that she has not brought the material exhibits from the police station. In paragraph no.38 of her cross-examination, PW-15 has stated that Parmanand Rai (PW-1) had not given any statement to the effect that Uday Shankar Nirala has said that nobody has the guts to challenge him and nobody has courage to stop him from playing tape as also he had not stated before her that Uday Shankar Nirala had fired gun shot on Kishundeo Rai which hit him on his left chest. In paragraph no.39 of her cross-examination, PW-15 has stated that Kamleshwar Prasad Yadav (PW-2) has stated before her that he had reached at the place of occurrence upon bomb being hurled and had seen Kishundeo Rai and Baidyanath Prasad in an injured condition. In paragraph no.40 of her cross-examination, PW-15 has stated that Devanand Rai (PW-3) had not taken the name of Kishun Rai, Harendra Rai, Jagarnath Rai and Abhay Shankar Nirala before her in his statement. In paragraph no.41 of her cross-examination, PW-15 has stated that PW-8 Panchhi Lal Rai had not told her about bomb being hit over the *gassa* (space between the fingers of hand) of Kishundeo Rai and



Panchhi Lal Rai had not told her that firing was made in air.

34. After closing the prosecution evidence, the learned Trial Court recorded the statement of the appellants on 12.09.1995 under Section 313 of the Cr.P.C. for enabling them to personally explain the circumstances appearing in the evidence against them, however they claimed themselves to be innocent and denied the same.

35. The defence has also examined the investigating officer Sangita Kumari as DW-1 and she has stated in her evidence that she was posted as Probationer Dy. S.P. in December, 1992 at Hajipur and on the said day, Sub-Inspector of Police, Daya Shankar Rai had sent written *fardbeyan*, which was received by her on 22.12.1993, which she has identified and has also identified the same to be in the writing of Girija Shankar, which has been marked as Exhibit-B. On the basis of the said *fardbeyan*, the formal FIR was registered, which has been marked as Exhibit-B/1. DW-1 has \ stated that she had also conducted investigation of Sadar P.S. Case No.318 of 1993 and has proved the injury report of Zamindar Rai, which has been marked as Exhibit-C. On 22.12.1993, DW-1 recorded the re-statement of Zamindar Rai as also the statement of his wife and had also inspected the place of occurrence at 8:30 a.m. in the



morning. She has also stated that she had inspected the place of occurrence of the present case and P.S. Case No.314 of 1993 together on 19.12.1993 and the detailed description has been mentioned in the case-diary pertaining to P.S. Case No.314 of 1993. PW-15 has proved the seizure-list of remains of bombs upon which signature of PW-5 Sunil Kumar and PW-6 Dinesh Kumar are present, which has been marked as Exhibit-D. DW-1 has also proved the second seizure list, which is in the writing of Uttim Singh and the same has been marked as Exhibit-3/1.

36. In paragraph no.9, DW-1 has stated that the supervision note of SDPO was received on 23.12.1993 pertaining to this case as also relating to P.S. Case No.314 of 1993 and the case was found to be true qua the accused of P.S. Case No.318 of 1993, under Sections 448, 323, 525, 307 of the IPC, Section 27 of the Arms Act and Section 3/4 of the Act, 1908 and sufficient proof was found for filing the charge-sheet. In para no.11, DW-1 has proved the signature of Supervisory Officer i.e SDPO, made on the supervision note and the same has been marked as Exhibit-E. In paragraph no.12, DW-1 has described the place of occurrence. In paragraph no.15 of her cross-examination, DW-1 has identified the writing and signature of Uttim Singh, made in paragraph no.55 of the case-diary pertaining to P.S. Case No.318



of 1993, which has been marked as Exhibit-10 (with objection). In paragraph no.16 of her cross-examination, DW-1 has stated that in the case-diary, she has not written about P.S. Case No.318 of 1993 to be true, however the same has been written in the supervision note. In paragraph no.19 of her cross-examination, DW-1 has stated that in the *fardbeyan*, the deceased Kishundeo Rai has also been made an accused. In paragraph no.22 of her cross-examination, DW-1 has stated that during the course of investigation of P.S. Case No.318 of 1993, the factum of paying of tape has not come to light. In paragraph no.22 of her cross-examination, DW-1 has stated that when she had reached the place of occurrence for the first time for investigating P.S. Case No.314 of 1993, nobody had told her about the details of the case pertaining to P.S. Case No.318 of 1993 and in fact the police personnel present there had not told her about P.S. Case No.318 of 1993. In para no.27 of her cross-examination, DW-1 has stated that she has no knowledge as to whether P.S. Case No.318 of 1993 was found to be true or not.

37. We have perused the impugned judgement of the learned Trial Court, the entire materials on record, as also the evidence adduced at the trial and have given our thoughtful consideration to the rival submissions made by the learned counsel for the



appellants as well as the learned APP for the State.

38. At the outset, the issue which is required to be adjudicated is as to whether the date, time, mode and manner of occurrence have stood proved on the basis of ocular evidence led by the prosecution. In this regard, we find that PW-1 Parmanand Rai, PW-3 Devanand Rai, PW-8 Panchchi Lal Rai and PW-9 Baidyanath Prasad (informant) are stated to be the eye witnesses of the present occurrence. As far as PW-1 is concerned, he has stated in his evidence that at the time of occurrence, he was sitting at the staircase of his *veranda* and the deceased Kishundeo Rai was also sitting along with him whereupon the accused Uday Shankar Nirala had arrived there and an altercation had taken place in between him and Kishundeo Rai regarding Kishundeo Rai having objected him from playing tape loudly in the morning. Thereafter, Uday Shankar Nirala had taken out a pistol from his waist and fired on the deceased, whereafter he had fled away and gone to the roof of his house where other accused persons, including the appellants were present and then all of them had started hurling bombs indiscriminately. The bomb hurled by Kishun Rai had hit Kishundeo Rai (deceased), bomb hurled by Jagarnath had hit Baidyanath Prasad (informant) and the bomb hurled by



Harendra Rai had hit on the protruded portion of the roof (chhajja). PW-1 has also stated in his evidence that the house of Uday Shankar Prasad is situated in front of his house and that he had mentioned, in his statement made before the police about the bomb being exploded by the accused persons. As far as PW-15 is concerned, she has stated that PW-1 had not stated before her that Uday Shankar Nirala had said that there is no one in the village who can challenge him and nobody has the courage to stop him from playing tape. PW-15 has also stated that PW-1 had not stated before her that Uday Shankar Singh had shot on the chest of Kishundeo Rai. Nonetheless, we find that PW-15 has not stated in her evidence that PW-1 had denied the factum of hurling bombs by Harendra Rai and Jagarnath Rai.

39. PW-3 Devanand Rai has stated in his evidence that at the time of occurrence, he was at his house and upon hearing sound of quarrel, he had come out of his house and had seen Uday Shankar Nirala taking out a pistol from his waist and firing at Kishundeo Rai leading to Kishundeo Rai having fallen down and then Uday Shankar Nirala had gone to his roof, where accused persons, including the appellants were present from before, whereafter they had started hurling bomb. The bomb hurled by Kishun Rai had hit Kishundeo Rai, the bomb hurled



by Jagarnath had hit Baidyanath Prasad and the bomb hurled by Harendra had hit somewhere on the roof. PW-3 is also signatory to the *fardbeyan* and the inquest report, which has been marked as Exhibit-1 and 1/2 respectively. As far as PW-15 is concerned, she has though stated that PW-3 had not disclosed the name of the appellants before her, nonetheless we find that the testimony of eye witnesses, i.e. PW-1 Parmanand Rai, PW-8 Panchilal Rai and PW-9 Baidyanath Prasad definitely substantiates the evidence of PW-3.

40. Now coming to the evidence of PW-8 Panchhi Lal Rai, he has also more or less narrated about the factum of the case as has been stated by PW-1, as described hereinabove and he has further stated in his evidence that Jagarnath Rai, Kishun Rai and Abhay Shankar Nirala had hurled bomb from the roof. PW-8 has also stated in his evidence that the bomb hurled by Kishun Rai had hit Kishundeo Rai (deceased) and the bomb hurled by Jagarnath Rai had hit Baidyanath Prasad (informant) on the knees of his legs and the bomb hurled by Harendra Rai had hit in front, on the roof. PW-8 has also stated that the bombs were being hurled from the roof of Uday Shankar Nirala and not from their house. PW-8 is stated to have told the police that the bomb which hit Kishundeo Rai had hit him on his *gassa* (space



between fingers of the hands) and the bomb thrown by Harendra Rai had hit on the roof, while the bomb hurled by Jagarnath Rai had hit the informant on both knees of legs. PW-8 has also stated that at the time of hurling bomb, he was present in *veranda* of his house and had seen the bombs being hurled. As far as PW-15 is concerned, she has stated that PW-8 did not tell her about hitting of bomb in the middle of fingers of hand of Kishundeo Rai as also he did not disclose about firing being made in the air, nonetheless she has not denied the factum that bomb was being hurled by the appellants as also the bomb hurled by Jagarnath Rai had hit the informant while that hurled by Harendra Rai had hit chhajja/roof.

41. As far as PW-9 Baidyanath Prasad (informant) is concerned, he has stated in his evidence that at the time of occurrence, he was at the door of his house and he saw that the accused Uday Shankar Nirala had come out of his house and had reached at the door of the house of Panchhi Lal Rai where his brother Kishundeo Rai was sitting on the stairs and then an altercation had taken place in between Uday Shankar Nirala and his brother Kishundeo Rai leading to Uday Shankar Nirala having taken out a pistol from his waist and having fired gun shot on Kishundeo Rai leading to him falling down on the



ground, whereafter Uday Shankar Nirala had immediately gone to the roof of his house where the accused persons including the appellants were present from before and then they started firing and hurling bombs indiscriminately. PW-9 has also stated in his evidence that Kishundeo Rai was injured by the bomb hurled by Kishun Rai and he was injured by the bomb hurled by Jagarnath Rai which had hit his knees. PW-15 has not contradicted the statements made by PW-9. We find that no contradiction has been drawn by the defence while examining PW-15 with regard to the statement made by PW-9 before the police. We may also refer to the well settled law to the effect that an injured eye witness is accorded a special status since such witness offers an extremely valuable piece of evidence. Reference be had to a judgement rendered by the Hon'ble Apex Court in the case of *Abdul Sayeed vs State of Madhya Pradesh*, reported in (2010) 10 SCC 259, wherein it has been held that where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in-guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.



42. Now coming to PW-2, we find from his evidence that he had seen the appellants fleeing away in a nervous condition. As far as PW-13 is concerned, he had recorded the *fardbeyan* of the informant, prepared the inquest report and the injury report of the injured witness, i.e. PW-9 Baijnath Prasad. As far as PW-12 is concerned, he had prepared seizure-list as aforesaid. As far as PW-15 is concerned, she had not only investigated the present case and found it to be true but had also seized the remains of bomb and other articles as also had found live bomb from the roof of the hut, situated adjacent to the house of Uday Shankar Nirala. She had also examined PW-2, PW-3 and PW-4 on 04.01.1994. PW-11 is the doctor, who had conducted the post-mortem examination of the deceased and he had found wound of entry and exit of bullet on the body of the deceased, relatable to the gunshot fired upon the deceased by Uday Shankar Nirala. PW-11 had also found black and tattooing mark on the left forearm and hand of the deceased and with regard to the injuries sustained by the deceased, he had opined that two injuries have been caused by firearm such as revolver from short distance and third injury has been caused by explosive substance such as bomb. As far as PW-9 Baijnath Prasad is concerned, PW-11 had also examined the injuries found on his person & he had opined



that as far as injury no.1 is concerned, the same has been caused by explosive substance such as splinter of the bomb and rest of the injuries have been caused due to hard and blunt substance.

43. Thus, after consideration of the entire prosecution evidence and its careful analysis, we can safely conclude that the evidence of the prosecution witnesses, especially PW-1, PW-2, PW-3, PW-8 and PW-9, apart from the evidence of the investigating officer, i.e. PW-15 and the doctor, i.e. PW-11 are cogent, convincing, creditworthy and reliable, hence there is no reason to doubt the genuineness of their testimony, on the basis of which the learned Trial Court has convicted the appellants. We also find that no contradiction has been drawn by the defence while cross-examining the said witnesses. It is apparent from the evidence of the said witnesses that the appellant no.1 Harendra Rai had hurled bomb which had though not hit anyone but had hit the Chhajja (roof) of the house in question and the investigating officer, i.e PW-15 has also substantiated the same inasmuch as she had found black marks, purportedly on account of bomb explosion on the roof apart from seizing remains of explosive substance. Similarly, the evidence of the aforesaid witnesses also shows that the appellant no.3 i.e. Jagarnath Rai had hurled bomb on the informant, i.e. PW-9 leading to him



sustaining bomb injury as has stood substantiated by the evidence of the doctor (PW-11) and the injury report prepared by him as also from the evidence of PW-15. Thus, the factum of the appellant no.1 and the appellant no.3 having hurled bomb which had also exploded stands proved beyond all reasonable doubts apart from the factum of the appellant no.3 having hurled bomb on the informant, i.e. PW-9 leading to him sustaining bomb injury having also stood proved. As far as date, time, place and mode/manner of occurrence is concerned, the same also stands proved from a holistic reading of the evidence of the aforesaid prosecution witnesses as also from the fact that though the accused side had filed a counter case bearing Hajipur Sadar P.S. Case No.318 of 1993 belatedly, on 22.12.1993, however the police had found the same to be untrue and had filed final form which was also accepted by the learned Trial Court, vide order dated 16.09.1995. In fact, the investigating officer, while being examined as DW-1 has stated in her evidence that the place of occurrence of both the cases are same and further she has stated in paragraph no.20 that during the course of investigation of the counter case, i.e P.S. Case No.318 of 1993, the factum of playing of tape has come to light, thus the genesis and motive of the case also stands proved.



44. We also find that the ocular testimony of the eye witnesses stands corroborated by the medical evidence and the evidence led in the present case would show that the medical evidence in fact supports the injuries which have been caused in the manner alleged, hence the ocular evidence cannot be thrown out. In this regard, reference be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Solanki Chimanbhai Ukabhai vs. State of Gujarat***, reported in (1983) 2 SCC 174.

45. At this juncture, it would be appropriate to quote Section 307 of the IPC hereinbelow:-

“307. Attempt to murder.—

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.— When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.”

From a bare perusal of Section 307 of the IPC, it is apparent that whoever does any act, with the intention or knowledge, which may cause death and in furtherance to the



said intention and knowledge, he was doing such an act, he would be guilty under Section 307 of the IPC, but it would be required to be seen from the evidence produced by the prosecution, whether enough material has been brought on record to establish the charge under section 307 of the IPC beyond all reasonable doubts. In fact, to justify a conviction under Section 307 of the IPC, it is not essential that fatal injury capable of causing death should have been inflicted and it would be sufficient to justify a conviction under Section 307 IPC, if there is present an intent coupled with some overt act in execution thereof. Thus, what is material for Section 307 is the intention or knowledge of the accused and not the actual consequence of the act performed in furtherance of such intention. The provision clearly contemplates an act committed with the intention of causing death, which ultimately fails to achieve the intended result due to intervening circumstances. The requisite intention or knowledge must be of such a degree as is necessary to constitute the offence of murder. In the absence of such intention or knowledge, which forms an essential ingredient of Section 307 IPC, no offence of “attempt to murder” can be said to exist. Since intention is a state of mind, it cannot be proved by direct evidence with precision. As



a fact, it can only be inferred from the surrounding circumstances and other relevant factors, such as the nature of the weapon used, any exchange of words between the accused and the victim at the time of the incident, the motive of the accused, the place of the injuries inflicted, the nature of the injuries and the overall circumstances under which the occurrence took place. These factors serve as crucial indicators in detecting or inferring intention through indirect or circumstantial evidence, which ultimately aids in establishing the mental element of the accused.

46. In this regard, we would refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Jage Ram vs. State of Haryana***, reported in ***(2015) 11 SCC 366***, paragraph nos. 12 and 13 whereof are reproduced herein below:-

“12. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.

13. In State of M.P. v. Kashiram [(2009) 4 SCC 26], the



scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under:

“12. ... ‘13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in State of Maharashtra v. Balram Bama Patil [(1983) 2 SCC 28], Girija Shankar v. State of U.P. [(2004) 3 SCC 793] and R. Prakash v. State of Karnataka [(2004) 9 SCC 27].

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury.’

See State of M.P. v. Saleem [(2005) 5 SCC 554], paras 13-14 and 16.”

47. Now, coming back to the case in hand, it is apparent from perusal of the evidence brought on record by the



prosecution, as discussed herein above in the preceding paragraphs that the factum of the appellant no.1 and the appellant no.3 having hurled bomb which had also exploded stands proved beyond all reasonable doubts apart from the factum of the appellant no.3 having hurled bomb on the informant, i.e. PW-9 leading to him sustaining bomb injury having also stood proved. We further find that though the bomb thrown by Harendra Rai hit the roof and did not injure any member of the prosecution party, the same does not indicate that the act was committed without intention or knowledge. It is reflected from the evidence on record that the accused were also involved in preparation of explosive substances, as the seizure list records various materials recovered from the place of occurrence as well as from the house of co-accused Uday Shankar Nirala, which were intended for manufacturing explosive substance such as country made bomb. The said house was also used by the accused including appellant Nos. 1 and 3 for hurling bombs on the informant and the deceased. Thus, the act of the appellant No.1, Harendra Rai as also that of the appellant no.3, Jagarnath Rai clearly demonstrates both intention and knowledge that their conduct was likely to cause death or grievous injury and yet, in furtherance of such



intention and knowledge, they proceeded to commit the act. The Hon'ble Apex Court has consistently laid down the principle of law concerning Section 34 of the Indian Penal Code in various judgments, holding that a pre-arranged meeting of minds or a common intention does not necessarily require prior planning. Such intention may arise, form, or develop instantaneously, even on the spur of the moment. Thus, in view of the evidence discussed above, and the law laid down by the Hon'ble Apex Court, it is evident that the appellant No.1, Harendra Rai, acted in furtherance of the common intention shared with appellant no.3, Jagarnath Rai. Consequently, we are satisfied that in the facts and circumstances as evident from the records, the prosecution has been able to establish beyond all reasonable doubt the guilt of the appellant No.1, Harendra Rai as also the appellant no.3, Jagarnath Rai, for which they have been convicted by the Ld. Trial court under Section 307/34 of the IPC and Sections 3 and 4 of the Act, 1908. Hence, as far as the judgement of conviction dated 28.09.1995, passed by the Ld. 2nd Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No.176 of 1994 is concerned, it is upheld qua the appellant No.1, Harendra Rai and the appellant no.3, Jagarnath Rai.



48. Now we would like to delve upon the issue of sentence required to be awarded to the appellant nos. 1 and 3 whose conviction under Sections 3 and 4 of the Act, 1908 and Section 307/34 of the IPC has already stood confirmed by us. In this regard, first of all we would like to quote Sections 3 and 4 of the unamended Explosive Substance Act, 1908 (which has stood amended by Act 54 of 2001 with effect from 01.02.2002), herein below:-

“3. Punishment for causing explosion likely to endanger life or property.-any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused not, be punished with imprisonment for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property. Any person who unlawfully maliciously-

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in [India] of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control



any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in [India] or to enable any other person by means thereof to endanger life or cause serious injury to property in [India];

shall, whether any explosion does or does not take place and whether any injury person or property has been actually caused or not, be punished with imprisonment for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.”

A bare perusal of Sections 3 and 4 of the Act, 1908 would show that the accused/convict can also be punished with imprisonment for a term which may extend to 10 years.

49. As far as Section 307 of the IPC is concerned, a bare perusal of the same would show that the maximum corporeal sentence imposable for conviction under Section 307, IPC is imprisonment for a term which may extend to ten years. Reference in this regard be had to a judgment rendered by the Hon’ble Apex Court in the case of ***Amit Rana @ Koka and Anr. Vs. State of Haryana***, reported in ***2024 SCC OnLine SC 1763*** as also to the one rendered in the case of ***Ganesan v. State of T.N.***, reported in ***(2025) 4 SCC 231***.

50. We would now advert to the issue of awarding a proper



sentence, considering the principles laid down by the Hon'ble Apex Court in a catena of judgments. In this regard, it would be apposite to refer a judgment rendered by the Hon'ble Apex Court in ***Hazara Singh vs. Raj Kumar and Ors.*** reported in ***(2013) 9 SCC 516***, paragraphs nos. 10 to 17 whereof reproduced herein below-

“10. In order to understand the reasoning of the High Court for reduction of sentence, it is but proper to refer Section 307 IPC which reads thus:

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinabove mentioned.”

From the above, it is clear that the maximum punishment provided therein is imprisonment for life or a term which may extend to 10 years. Although Section 307 does not expressly state the minimum sentence to be imposed, it is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. The legislature has bestowed upon the judiciary this enormous discretion in the sentencing policy, which must be exercised with utmost care and caution. The punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the Judges in arriving at a fair and impartial verdict.

11. The cardinal principle of sentencing policy is that the



sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases.

12. The factual matrix of this case is similar to the facts and circumstances in Shailesh Jasvantbhai v. State of Gujarat [(2006) 2 SCC 359] wherein the accused was convicted under Sections 307/114 IPC and for the same the trial court sentenced the accused for 10 years. However, the High Court, in its appellate jurisdiction, reduced the sentence to the period already undergone. In that case, this Court held that the sentence imposed is not proportionate to the offence committed, hence not sustainable in the eye of the law. This Court observed thus: (SCC pp. 361-62, paras 7-8)

“7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of ‘order’ should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: ‘State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society.’ Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants



to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.”

13. This position was reiterated by a three-Judge Bench of this Court in Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat [(2009) 7 SCC 254], wherein it was observed as follows:

“99. ... The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to (sic break the) law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not



only keep in view the rights of the victim of the crime but the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong.” In that case, the Court further goes to state that meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society.

14. In Jameel v. State of U.P. [(2010) 12 SCC 532], this Court reiterated the principle by stating that the punishment must be appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, this Court observed thus:

“15. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

16. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence.”

15. In Guru Basavaraj v. State of Karnataka [(2012) 8 SCC 734], while discussing the concept of appropriate



sentence, this Court expressed that:

“33. ... It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice which includes adequate punishment cannot be lightly ignored.”

16. Recently, this Court in Gopal Singh v. State of Uttarakhand [(2013) 7 SCC 545] held as under

“18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence.”

17. We reiterate that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.”

51. We have made an in-depth analysis of the principles pertaining to sentencing and find that the same have been



congruously and succinctly laid down by the Hon'ble Apex Court in a catena of judgments, rendered in the cases of *Santa Singh vs. State of Punjab*, reported in (1976) 4 SCC 190, *Tholan vs. State of Tamil Nadu*, reported in (1984) 2 SCC 133, *Sevak Perumal & Anr. Vs State of Tamil Nadu*, reported in (1991) 3 SCC 471, *State of Uttar Pradesh vs. Shri Kishan*, reported in (2005) 10 SCC 420, *Gopal Singh vs. State of Uttarakhand*, reported in (2013) 7 SCC 545 and *Pratap Singh @ Pikki vs. State of Uttarakhand*, reported in (2019) 7 SCC 424. It would be apropos to summarize few important principles of law discernible from the aforesaid Judgments rendered by the Hon'ble Apex Court, herein below:

(i) A proper sentence is amalgam of many factors, which are being enumerated herein below:-

- the nature of the offence,*
- the circumstances,*
- extenuating or aggravating of the offence,*
- the prior criminal record, if any, of the offender,*
- the age of the offender,*
- the record of the offender as to employment,*
- the background of the offender with reference to education, home — life, sobriety and social adjustment,*
- the emotional and mental condition of the offender,*
- the prospects for the rehabilitation of the offender,*
- the possibility of return of the offender to a normal life in the community,*
- the possibility of treatment or training of the offender,*
- the possibility that the sentence may serve as a*



deterrent to crime by the offender or by others.

(ii) Undue sympathy to impose inadequate sentence has been held to do more harm to the justice system since the same undermines the public confidence in the efficacy of law and society. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc., inasmuch as if the courts do not protect the injured, the injured may then resort to private vengeance.

(iii) For deciding just and appropriate sentence to be awarded for an offence, after giving due consideration to the facts and circumstances of each case, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of relevant circumstances in a dispassionate manner by the Court.

(iv) The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

(v) Imposition of sentence without considering its effect on the social order in many cases may in reality be a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and



strengthened by string of deterrence inbuilt in the sentencing system.

(vi) The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should “respond to the society's cry for justice against the criminal.”

52. We would now like to give a careful consideration to the evidence on record of the present case for the purposes of awarding a proper sentence, considering the principles laid down by the Hon'ble Apex Court in a catena of judgments, as has been referred to hereinabove in the preceding paragraphs. It is apparent from perusal of the evidence brought on record by the prosecution, as discussed herein above in the preceding paragraphs that the factum of the appellant no.1, Harendra Rai and the appellant no.3, Jagarnath Rai having hurled bomb which had also exploded stands proved beyond all reasonable doubts apart from the factum of the appellant no.3 having hurled bomb on the informant, i.e. PW-9 leading to him sustaining bomb injury having also stood proved. Thus, upon a prudent consideration of the evidence, it is clear that the appellant no.1,



Harendra Rai and the appellant no.3, Jagarnath Rai along with the other co-accused have actively participated in hurling bombs. These circumstances do not negate the element of intention and knowledge as contemplated under Section 307 of the IPC. It is further evident from the facts that, although the bomb hurled by appellant no.1, Harendra Rai did not cause any bodily injury to the members of the prosecution party, his act unequivocally demonstrates an intention to endanger the life and property of the prosecution party inasmuch as the bomb thrown by the appellant No.1, Harendra Rai had struck the front side of the roof of the house of PW-8 and during the course of investigation, PW-15 had found black burn marks on the east and north walls of the roof of the house of PW-8.

53. Factually, as submitted by the learned counsel for the appellant No. 1, Harendra Rai and appellant no.3, Jagarnath Rai, they have remained in custody for a total period of about 78 days only (56 days pre-conviction and 22 days post-conviction), till date. However, considering the fact that the appellant No. 1, Harendra Rai is presently about 75 years of age and appellant no.3, Jagarnath Rai is about 55 years of age and bearing in mind the necessity of balancing the aggravating and mitigating factors, as well as the circumstances in which the crime was



committed, we proceed to examine the relevant aspects. The prosecution witnesses, in their testimony, have nowhere deposed that the appellant Nos. 1 and 3 bore any prior enmity with the members of the prosecution party, nonetheless the evidence on record clearly indicates that the principal assailants were Uday Shankar Nirala and Kishun Rai (both of whom are now dead), who inflicted fatal injuries upon the deceased by using a gun and a bomb, respectively. It is pertinent to note that the occurrence took place on 19.12.1993, i.e. more than 30 years ago, nevertheless as per the settled principle of law laid down by the Hon'ble Apex Court in a catena of judgments, mere passage of time does not diminish the objectives of deterrence and societal protection, hence there is no justification for undue leniency in the matter of sentencing.

54. Moreover, we find that the appellant Nos. 1 and 3 stand convicted for the offence of attempt to murder under Section 307 read with Section 34 of the IPC, as well as under Section 3/4 of the Act, 1908, although they were originally charged under Sections 302/149 and 307 of the IPC and Sections 3 and 4 of the Act, 1908. Thus, we are of the considered opinion that no symbolic punishment should be imposed, particularly in light of the principle of proportionality, which mandates prescribing



liability in accordance with the degree of culpability associated with each category of criminal conduct. Granting undue sympathy by imposing an inadequate sentence would not only undermine the administration of justice but also erode public confidence in the efficacy of law. Such an approach would ultimately prove counterproductive and contrary to societal interests, which must be safeguarded and reinforced by the deterrent element inherent in the sentencing system. Reference in this regard be had to a Judgment rendered by the Hon'ble apex Court in the case of *Pramod Kumar Mishra vs State of Uttar Pradesh*, reported in (2023) 9 SCC 810.

55. Thus, taking into account an overall perspective of the entire case, as indicated hereinabove, considering the evidence on record, considering the aggravating and mitigating factors, as also considering the principles of sentencing laid down by the Hon'ble Apex Court in a catena of decisions, as aforesaid apart from the fact that we have already upheld the conviction of the appellant nos.1 and 3 under Section 307/34 of the IPC as well as under Sections 3 and 4 of the Act, 1908, we are of the opinion that a sentence of rigorous imprisonment for 5 years would suffice. Accordingly, we modify the order of sentence dated 29.09.1995, passed by the Ld. 2nd Additional Sessions Judge,



Vaishali at Hajipur, in Sessions Trial No.176 of 1994 qua the appellant nos. 1 and 3 and deem it fit and proper to sentence them to undergo rigorous imprisonment for 5 years each.

56. Now coming to appellant no.2 Abhay Shankar Nirala, we find that no specific allegation of either firing gunshot or hurling bomb, resulting in injuries being sustained by any member of the prosecution side, has been levelled against him. Thus, the allegation levelled qua the appellant no.2, in our opinion, upon consideration of the evidence on record, does not stand proved beyond all reasonable doubt. At this juncture, we would like to examine as to whether the appellant no.2 can be roped in with aid of Section 34 of the IPC. We may reproduce Section 34 of the IPC herein below:-

“34. Acts done by several persons in furtherance of common intention— When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

In this regard, we find from a bare perusal of Section 34 of the IPC that its pre-requisites are - (a) pre-consent, (b) presence, (c) common intention, and (d) participation must be established. In the present case, we do not find from the evidence on record that the appellant no.2 can be said to have



actively participated in the alleged crime apart from the fact that no material is available on record to show that he shared a common intention with other accused persons, hence mere presence together with other witnesses is not sufficient to hold that the appellant no.2 shared a common intention to either kill the deceased or injure PW-9 and others. Thus, Section 34 of the IPC would not be attracted qua the appellant no.2.

57. On the aforesaid aspect of the matter, i.e as to whether appellant no.2 can be held guilty under Section 307 with the aid of Section 34 of the IPC, we would delve upon the law laid down by the Hon'ble Apex Court. Firstly, we would like refer to a judgement rendered by the Hon'ble Apex Court in the case of ***State of UP vs. Rohan Singh***, reported in ***1996 AIR SCW 2612***, paragraph no.4 whereof is reproduced hereinbelow:-

“4. From the statement of Mashooq Khan, PW 2, it transpires that Rohan Singh had fired on him and at the same time Dulare had fired a shot by his unauthorised single barrel gun on Naqi Raza. Neither Rohan Singh assaulted Naqi Raza, deceased nor did Dulare fire any shot at Mashooq Khan, PW. 2. After analysing the evidence led by the prosecution, we are of the opinion, that the most that can be said in favour of the prosecution is that the two respondents shared a similar intention to shoot at the two victims but from the



material on record, it is not possible to positively attribute to them the common intention to commit the crime. There is a material difference between the sharing of similar intention and common intention. Section 34, IPC can be attracted only if the accused share a common intention and not where they share only similar intention. There are no circumstances on the record from which it may be possible to draw the inference that the respondents had shared the common intention. Mere presence together is not sufficient to hold that they both shared the common intention to murder Naqi Raza and injure Mashooq Khan. In this view of the matter, we find that the judgment of the High Court does not call for any interference. The reasons recorded by the High Court are sound and cogent and the same have appealed to us.”

58. At this juncture, we would also like to refer to a judgement rendered by the Hon’ble Apex Court in the case of ***Suresh Sakharam Nangare vs. State of Maharashtra***, reported in ***(2012) 9 SCC 249***, paragraph no.21 whereof is reproduced herein below:-

“21. Since the conviction of the appellant is based only with the aid of Section 34 IPC, it is useful to refer the same:

“34. Acts done by several persons in furtherance of common intention— When a criminal act is done by several persons in furtherance of the common intention



of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

A reading of the above provision makes it clear that to apply Section 34, apart from the fact that there should be two or more accused, two factors must be established: (i) common intention, and (ii) participation of the accused in the commission of an offence. It further makes clear that if common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent, Section 34 cannot be invoked. In other words, it requires a prearranged plan and presupposes prior concert, therefore, there must be prior meeting of minds.”

59. It would also be apposite to refer to yet another judgement rendered by the Hon'ble Apex Court in the case of **Suresh vs. State of U.P.**, reported in **(2001) 3 SCC 673**, paragraph nos. 52 and 53 whereof are reproduced hereinbelow:-

“52. In Surendra Chauhan v. State of M.P. [(2000) 4 SCC 110] this Court held that apart from the fact that there should be two or more accused, two factors must be established — (i) common intention, and (ii) participation of the accused in the commission of the offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability. Referring to its



earlier judgment this Court held:

“11. Under Section 34 a person must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other facilitate the execution of the common design is itself tantamount to actual participation in the criminal act. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them. (Ramaswami Ayyangar v. State of T.N. [(1976) 3 SCC 779]) The existence of a common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purpose of common intention even the participation in the commission of the offence need not be proved in all cases. The common intention can develop even during the course of an occurrence. (Rajesh Govind Jagesha v. State of Maharashtra [(1999) 8 SCC 428]) To apply Section 34 IPC apart from the fact that there should be two or more accused, two factors must be established: (i) common intention, and (ii) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked. In every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and circumstances of each case.”

53. For appreciating the ambit and scope of Section 34, the preceding Sections 32 and 33 have always to be kept



in mind. Under Section 32 acts include illegal omissions. Section 33 defines the “act” to mean as well a series of acts as a single act and the word “omission” denotes as well a series of omissions as a single omission. The distinction between a “common intention” and a “similar intention” which is real and substantial is also not to be lost sight of. The common intention implies a prearranged plan but in a given case it may develop on the spur of the moment in the course of the commission of the offence. Such common intention which developed on the spur of the moment is different from the similar intention actuated by a number of persons at the same time. The distinction between “common intention” and “similar intention” may be fine but is nonetheless a real one and if overlooked may lead to miscarriage of justice”

60. Thus, taking a holistic view of the evidence led by the prosecution in the present case coupled with the law laid down by the Hon’ble Apex Court, as referred to hereinabove in the proceeding paragraphs, we find that even with the aid of Section 34 of the IPC, the appellant no.2 cannot be convicted for the offence under Section 307 of the IPC. As far as Section 3/4 of the Act, 1908 is concerned, we find from the evidence on record that firstly, the same would not be attracted qua the appellant no.2, since neither he was in possession of any bomb nor his act of having hurled any bomb has stood proved nor his participation in any manner has stood proved. Hence, we find



that the appellant no.2 is liable to be acquitted of the charges levelled under Section 3/4 of the Act, 1908 as well. Consequently, the appellant no.2 is acquitted of the charges levelled against him under Section 307/34 of the IPC and under Sections 3 and 4 of the Act, 1908 and to the said extent, the judgement of conviction and the order of sentence dated 28.09.1995 and 29.09.1995 respectively, passed by the learned 2nd Additional Sessions Judge, Vaishali at Hajipur, in Sessions Trial No.176 of 1994, qua the appellant no.2 is set aside.

61. The appellant no.2, Abhay Shankar Nirala has now stood acquitted of all the charges, hence we discharge him from the liability of his bail bonds.

62. As far as appellant no. 1, Harendra Rai and appellant no.3, Jagarnath Rai are concerned, though we have upheld their conviction under Section 307/34 of the IPC as well as under Sections 3 and 4 of the Act, 1908 but the order of sentence dated 29.09.1995, passed by the Ld. 2nd Additional Sessions Judge, Vaishali at Hajipur, in Sessions Trial No.176 of 1994 qua the appellant nos. 1 and 3 has been modified and now they have been sentenced to undergo rigorous imprisonment for 5 years each by the instant judgment, hence their bail bonds are hereby cancelled and they are directed to surrender before the learned



Trial Court within a period of eight weeks from today, for being sent to jail for serving the remaining sentence.

63. Accordingly, the aforesaid appeal bearing Criminal Appeal (DB) No.335 of 1995 stands partly allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

(Soni Shrivastava, J)

Kanchan./-

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