

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.977 of 2017

Arising Out of PS. Case No.-156 Year-2003 Thana- SURYAGARHA District- Lakhisarai

1. Mukesh Yadav, Son of Late Daso Yadav,
2. Jalandhar Yadav, Son of Darogi Yadav,
3. Bijay Yadav, Son of Late Baleshwar Yadav,
4. Ramgulam Yadav @ Gulo Yadav, Son of Late Harsahay Yadav, All Resident of Village- Kharra, P.S.- Surajgarha, District- Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1184 of 2017

Arising Out of PS. Case No.-156 Year-2003 Thana- SURYAGARHA District- Lakhisarai

1. Tital Yadav @ Title Yadav, Son of Darogi Yadav,
2. Nandan Yadav, Son of Late Balmiki Yadav, Both resident of Village- Kharra P.S.- Surajgarha, District- Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 977 of 2017)

For the Appellant/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Jitendra Narain Sinha, Advocate
Ms. Khusi Awadh, Advocate

For the State : Ms. Shashi Bala Verma, APP

For the Informant : Mr. Rahul Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 1184 of 2017)

For the Appellant/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Jitendra Narain Sinha, Advocate
Ms. Khusi Awadh, Advocate

For the State : Ms. Shashi Bala Verma, APP

For the Informant : Mr. Rahul Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 15-05-2025



Heard Mr. Rajendra Narayan, learned Senior Counsel appearing for the appellants assisted by Mr. Jitendra Narain Sinha, Advocate, Mr. Rahul Kumar Singh, learned counsel for the informant and Ms. Shashi Bala Verma, learned APP for the State.

2. The Cr. APP (DB) No. 977 of 2017 has been filed by the appellants namely, Mukesh Yadav, Jalandhar Yadav, Bijay Yadav and Ramgulam Yadav @ Gulo Yadav (hereinafter referred to as 'A-1, A-2, A-3 and A-4' respectively). The Cr. APP (DB) No. 1184 of 2017 has been filed by the appellants namely, Tital Yadav @ Title Yadav and Nandan Yadav (hereinafter referred to as 'A-5 and A-6' respectively).

3. Both the above mentioned appeals have been preferred against the common judgment of conviction and order of sentence dated 29.07.2017 passed by the learned Fast Track Court-2nd, Lakhisarai in Sessions Trial No. 336 of 2010/Trial No. 45 of 2017 arising out of Surajgarha P.S. Case No. 156 of 2003 whereby and whereunder the appellants have been convicted for the offence under Section 302 read with Section 34 of the Indian Penal Code (in short 'IPC') and for the offence under Section 27 of the Arms Act. The appellants have been sentenced to undergo rigorous imprisonment for life alongwith a fine of Rs. 5,000/- each for the offence under Section 302/34 of IPC and in default of payment of



fine, they have been directed to undergo simple imprisonment for one week. The appellants have also been sentenced to undergo rigorous imprisonment for three years each for the offence under Section 27 of the Arms Act. Both the sentences awarded upon each of the appellants have been directed to run concurrently by the trial court.

4. Here it is important to mention that one co-accused namely, Binod Kumar Himanshu @ Binod Yadav faced trial alongwith the appellants but he became absent on the date when the impugned judgment was to be pronounced, so, his case was separated by the trial court.

5. As both the appeals have been preferred against the common judgment which is impugned herein, hence, these appeals are being decided by a common judgment.

6. The appellants including the co-accused Binod Kumar Himanshu @ Binod Yadav stood charged for the offences punishable under Section 307 read with Section 34 and 302 read with Section 34 of the IPC and also stood charged for the offence under Section 27 of the Arms Act. These charges were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried for the charged offences.



7. The substance of the prosecution story appearing from the *fardbeyan* (Ext.- 1/b) of the informant, Rai Sahab Yadav (PW-3) is as follows:-

As per the informant, on 08.07.2003 at about 8:00 am he left with his uncle namely, Tarni Yadav, the victim (hereinafter referred to as 'deceased') to meet a carpenter namely, Asarfi Mistry, a resident of Chanania village on their motorcycle. The motorcycle was being driven by his uncle at that time and when they reached at the house of Asarfi Mistry in Chanania village, he (Asarfi Mistry) was not found at his home, then they waited for him for sometime and finally started returning back to their village, Kharra. When they were on the way and had reached near the shop of one, Rajendra Shah, in Chanania village then he saw Chandradeo Yadav, Binod Kumar Himanshu, Mukesh Yadav (A-1), Ashok Yadav, Tital Yadav @ Title Yadav (A-5), Jalandhar Yadav (A-2), Kamleshwari Yadav, Nandan Yadav (A-6), Janardan Yadav, Udai Yadav, Bijay Yadav (A-3), Arun Yadav, Anil Yadav, Sitaram Yadav, Gulo Yadav (A-4), Daso Yadav, Baleshwar Yadav, Mahesh Yadav, Arbind Yadav, Upendra Yadav, all resident of Chanania village (hereinafter referred to as 'accused'). They found all the accused standing on the road and then they surrounded their motorcycle and at that time, they were having pistol and sixer. The



informant further stated in his *fardbeyan* that upon seeing the accused armed with pistol and sixer, he became terrified and also noticed the dangerous intention of the accused and then he jumped from his motorcycle and rushed in a lane/street situated in front of the place of occurrence and stood there at some distance from the place of occurrence and in the meantime, the accused forcefully got his uncle off the motorcycle and also caught him. Thereafter, the accused Chandradeo Yadav and Sitaram Yadav asked the other accused as to what they were seeing and they should kill him (deceased) and then the accused, Binod Kumar Himanshu @ Binod Yadav, Tital Yadav @ Title Yadav (A-5), Nandan Yadav (A-6), Udai Yadav, Arun Yadav and Anil Yadav started firing at the deceased indiscriminately by using their pistol and sixer and caused firearm injuries to his chest, stomach and temporal region. The informant further alleged that all the named accused surrounded the deceased from three sides during the occurrence of firing so that no one could save him and also the deceased himself could not escape from their clutch by entering into the house of Rajendra Sao, situated in front of the place of occurrence. According to the informant, his uncle was killed at the spot by the accused. The informant further alleged that after killing his uncle, Tarni Yadav, the accused also fired at him with an intention to kill



him but anyhow he escaped from that firing and fled away and reached his home and informed his family members about the occurrence. As per the informant, the incident was witnessed by the people of the nearby areas also, who would give their evidence. Regarding the cause of occurrence, it was stated by the informant in his *fardbeyan* that there was four to five bigha *Gair-majarua* land which was under the possession of the prosecution party who cultivated the same and adjoining of it the accused, Baleshwar Yadav, Daso Yadav and one, Balmiki Yadav, father of the accused Kamleshwari Yadav had purchased some land situated nearby the said *Gair-majarua* land and the accused wanted to take the *Gair-majarua* land under their possession due to which, they committed the alleged occurrence while having common intention to kill his uncle.

8. As per prosecution, the informant's *fardbeyan* was recorded at the place of occurrence on 08.07.2003 at 9:30 am by an assistant sub-inspector, Ramashish Paswan and on that basis, the formal FIR bearing Surajgarha P.S. Case No. 156 of 2003 was registered under Sections 307 and 302/34 of IPC and under Section 27 of the Arms Act on the same day at 13:00 hrs which set the criminal law in motion and the investigation was started by S.I. Dhananjay Kumar (PW-6).



9. After investigation, the police chargesheeted altogether eight accused including the appellants namely, Mukesh Yadav (A-1), Jalandhar Yadav(A-2), Bijay Yadav (A-3), Gulo Yadav (A-4), Tital Yadav @ Title Yadav (A-5), Nandan Yadav (A-6) and the co-accused Ashok Yadav and Binod Kumar Himanshu @ Binod Yadav, out of them, the accused, Binod Kumar Himanshu @ Binod Yadav, Ashok Yadav, Jalandhar Yadav (A-2), Tital Yadav @ Title Yadav (A-5) and Gulo Yadav (A-4) were chargesheeted showing them absconding. Rest thirteen co-accused who were also named in the FIR, were not sent up by the police showing them innocent.

10. After the submission of chargesheet, the learned Magistrate, vide order dated 07.01.2004, took cognizance of the alleged offences under Section 302/34 of IPC and under Section 27 of the Arms Act against all the chargesheeted accused namely, Mukesh Yadav (A-1), Jalandhar Yadav (A-2), Bijay Yadav (A-3), Ramgulam Yadav @ Gulo Yadav (A-4), Tital Yadav @ Title Yadav (A-5), Nandan Yadav (A-6) and co-accused Binod Kumar Himanshu @ Binod Kumar and by the same order, the final report was accepted in respect of the other accused who were not sent up by the police. By an order dated 06.03.2010, the case of the appellants was committed to the court of Sessions and the case of



the co-accused, Ashok Yadav, was separated on account of his plea of juvenility.

11. As mentioned above, the appellants stood charged for the aforesaid offences alongwith the co-accused Binod Kumar Himanshu @ Binod Yadav who later on did not appear at the end of the trial when the judgment was to be delivered, so, his (Binod Kumar Himanshu @ Binod Yadav) case was separated by the trial court and the appellants who are here, were convicted for the charged offences and sentenced for the same.

12. During the trial, prosecution examined the following witnesses:-

Sl. No.	Name	Relevancy
PW-1	Damador Yadav	Brother of the deceased and he claimed himself to be an eyewitness
PW-2	Biyas Yadav	Brother of the deceased and he claimed himself to be an eyewitness
PW-3	Rai Sahab Yadav	Informant, nephew of the deceased and he claimed himself as an eyewitness
PW-4	Asarfi Mistry	A resident of Chanania village and the victim went to his house as per prosecution story at the relevant time
PW-5	Dr. Parshuram Prasad	Doctor who conducted the postmortem examination
PW-6	Dhananjay Kumar	Investigating Officer

13. In documentary evidence, the prosecution proved the following documents and got them marked as exhibits which are as under:-

Ext.-1	Signature of Damodar Yadav (PW-1) on the <i>fardbeyan</i>
Ext.-2	Signature of Damador Yadav (PW-1) on the seizure list



Ext.-3	Signature of Damador Yadav (PW-1) on the carbon copy of the inquest report
Ext.-1/a	Signature of informant, Rai Sahab Yadav (PW-3) on the <i>fardbeyan</i>
Ext.-1/b	<i>Fardbeyan</i>
Ext.-3/a	Signature of informant, Rai Sahab Yadav (PW-3) on the carbon copy of the inquest report
Ext.-4	Postmortem Report
Ext.-1/c	The contents of the <i>fardbeyan</i> in the writing of A.S.I. Ramashish Paswan
Ext.-3/B	Inquest Report
Ext.-5	Signature and writing of the A.S.I. Ramashish Paswan on the seizure list
Ext.-6	Chargesheet

14. After the completion of prosecution's evidence, the statements of the appellants were recorded by the trial court under Section 313 of Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') giving them an opportunity of explaining the main circumstances appearing against them from the prosecution's evidences. The appellants denied the main circumstances appearing against them and claimed themselves to be innocent but they did not take any specific defence while recording their statements.

15. In defence, the appellants examined five persons as defence witnesses who are as follows:-

Sl. No.	Name
DW-1	Manish Yadav
DW-2	Sudhir Yadav
DW-3	Arun Kumar
DW-4	Daso Yadav
DW-5	Ramchandra Yadav



16. While convicting the appellants, the learned trial court placed reliance upon the evidence of PW-1, PW-2 and PW-3 deeming them eyewitnesses of the alleged occurrence and observed that the death of the deceased was caused by firearm injuries which was also supported by defence witnesses and got corroboration from the medical evidence given by the doctor (PW-5) and further observed that the investigating officer (PW-6) established the place of occurrence and also took into account the enmity running in between both the parties due to a land dispute as the motive of the appellants to commit the alleged murder.

Submissions on behalf of the appellants:-

17. Mr. Rajendra Narayan, learned Senior Counsel assisted by Mr. Jitendra Narain Sinha, Advocate has argued that the *fardbeyan* of the informant, which is the basis of the prosecution's case, is not the first version of the prosecution party and the same was created by way of an afterthought as the first information which had been received by the police as per PW-2 at about 9:05 am and was also reduced into writing, was intentionally suppressed by the police and further, the *fardbeyan* of the informant which is said to have been recorded by him (informant) at the place of occurrence, is so descriptive giving the complete parental details of 21 accused, that it was not possible to



have been recorded by one in such a manner before a police officer at the place of occurrence. As per prosecution, the *fardbeyan* was recorded at 9:30 am but the same reached the police station at 13:00 Hrs (1:00 P.M.) on 08.07.2003 and it was sent to the concerned Magistrate on 09.07.2003, not immediately and these facts are sufficient to show the creation of the *fardbeyan* as an afterthought by the police in collusion with the prosecution party.

Learned senior counsel has further argued that as per FIR, many people witnessed the commission of the alleged occurrence but the informant did not reveal their names and during the investigation, the I.O. recorded the statements of more than 20 persons who were independent persons and relying upon them, 13 named accused persons were not sent up but none of these independent persons was produced and examined by the prosecution, so, the clear picture of commission of the alleged occurrence, did not come before the trial court and in this regard, no explanation was given by the prosecution. It is stated that actually PW-1 and PW-2 are not the eyewitnesses of the alleged occurrence and PW-3, who is said to be the star witness of the prosecution, cannot be deemed to be trustworthy in view of the improvements which were made by him in the prosecution story before the trial court by showing some more named accused



persons as being assailants despite them being shown as non-assailant in the FIR and further, he also cannot be deemed to be an eyewitness of the occurrence in view of other surrounding circumstances.

Learned senior counsel has further argued that though in order to prove an offence even the evidence of a single witness is sufficient but only when the evidence of such witness seems highly reliable and trustworthy and if there is slight reason for creating a doubt in the trustworthiness of such witness then independent corroboration from other witnesses who are also said to have witnessed the commission of the alleged occurrence, is must and the same situation is prevalent in the present matter as PW-3 is not fully reliable and trustworthy and the prosecution has failed to examine any independent person, despite several independent persons having witnessed the occurrence as per I.O., whose statements were also recorded during investigation.

In support of above submission, learned counsel has placed reliance upon the following judgments of the Hon'ble Apex Court:-

(i) Masalti and Ors. vs. The State of Uttar Pradesh, reported in **AIR 1965 SC 202**. Reliance has been placed on paragraph no. 16, which is being reproduced as under:-



“16. Mr Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case.”

(ii) Kathi Odhabhai Bhimabhai and Others vs. State of Gujarat, reported in **AIR 1993 SC 1193**. Reliance has been placed on paragraph nos. 2 and 4, which are being reproduced as under:-



“2. In this appeal Shri T.U. Mehta learned counsel for the appellants submits that the sole testimony of PW 1 suffers from many infirmities and the very fact that he had given a version which is in conflict with the medical evidence and when he has gone to the extent of implicating four accused as having dealt blows and when that version is found to be incorrect it is highly unsafe to rely on PW 1's sole testimony particularly when, admittedly, he is an interested witness and when there was inordinate delay in giving the report. Mr R.P. Bhatt, learned counsel appearing for the State on the other hand, submits that the presence of PW 1 at the scene of the occurrence is not disputed inasmuch as he is an injured witness and the inconsistencies in his evidence with reference to the medical evidence can be explained and the fact that the delay in giving the report has also been sufficiently explained.”

“4. As mentioned above one of the two eyewitnesses examined by the prosecution PW 2 turned hostile. Now coming to the evidence of PW 1 Shardulbhai we have examined the same and we find that the version given by him is in conflict with the medical evidence. PW 1 deposed that on the day of the incident he was returning along with his uncle, the deceased, after visiting the fields. When they reached the field of Shivabhai Soni, the four accused came running towards them. They abused them and when the deceased objected, the accused got annoyed. A-1 was armed with a dharia, a cutting instrument and he gave a blow on the head of the deceased. A-3 gave a blow with an axe with the blunt part thereof on the temporal region of deceased. The deceased fell down. PW 1 raised



cries. On hearing that PW 2 Mavji Magan came there. A-3 hit PW 1 with an axe on the head. A-1 raised the dharia to give a blow to him and pointed end of that dharia touched on the right hand. A-2 gave a blow with an axe on the left leg. A-4 gave a dharia blow on his head. Then all the four accused started giving blows simultaneously with the blunt part of the axes and with the handles of the dharias. PW 2 further stated that all the accused further gave a number of blows to the deceased and that 3 or 4 blows fell on the body of the deceased when he was fallen. When PW 2 Mavji Magan came there the accused ran away. After some time the injured were taken to the hospital. If this version is taken to be true then there should be number of injuries on the deceased as well as on himself. As already noted both the doctors, who examined the deceased, found only one contused lacerated wound over right fronto-parietal region and only oedema over the right lower eyelid and the deceased died one week later. The doctor, who conducted the post-mortem also found only two external injuries but internally he found the fracture of the temporal and parietal bones. These injuries are due to injury No. 1. Echymosis near the right eye did not cause any internal injury. The doctor however, during the internal examination, also found the fracture of three ribs on the right side and fracture of two ribs on the left side. But there were no corresponding external injuries. If the version given by PW 1 is taken to be true then there should have been numerous injuries on the body of the deceased as well as on PW 1. It must be borne in mind that he has implicated four accused and deposed that the four attacked him as well as the deceased. No doubt



the medical evidence corroborates his version to the extent that A-1 having dealt a blow on the head. But here again we find some variation. Dharia is a cutting instrument whereas injury found on the deceased is a contused lacerated wound which caused internal damage. Likewise there are no corresponding injuries on himself. When the case rests mainly on the sole testimony of PW 1, it should be wholly reliable. PW 2 the other eyewitness was treated hostile. Therefore the High Court did not place any reliance on his evidence. Under these circumstances, the trial court held that implicit reliance cannot be placed on the evidence of PW 1 and in that view acquitted the accused. It cannot be said that this view is not reasonable.”

It has been further argued by learned senior counsel that the material objects which were seized such as cartridges and bullet shells were not produced before the trial court and the same were not exhibited as material objects which can be deemed to be fatal to the prosecution's case.

Learned counsel further argued that if the manner of occurrence as described in the FIR is taken into account then there must be countless firearm injuries over the body of the deceased but only 4 to 5 sets of firearm injuries were found on the body. Learned counsel lastly submitted that the deceased was a veteran criminal and there were several cases against him and his family members and in this regard, the evidence of PW-3, the star witness



of the prosecution, is relevant, who accepted several criminal cases against his family members, so, the deceased might have been killed by someone else with whom he had enmity, though, there was a land dispute between some of the appellants and the deceased during the relevant period but the same was not a strong reason on the part of the appellants to kill the deceased in a brutal manner and it is a well settled principle of law that '*enmity cuts both the ends*' and the same can also be used to implicate one falsely in a crime which has taken place, with revengeful attitude.

Submissions on behalf of the respondents:-

18. On the other hand, Mr. Rahul Kumar Singh, learned counsel appearing for the informant has submitted that the evidence of PW-1, PW-2 and PW-3 is sufficient to prove the alleged offences and the most important witness is PW-3, the informant, whose credibility as an eyewitness to the alleged occurrence of murder, could not be shaken by the defence/appellants despite cross-examining him at length with regard to the relevant facts such as presence of the appellants at the alleged place of occurrence and their alleged role, manner of occurrence and other relevant facts and his sole evidence is sufficient to bring the appellants' guilt home. It has been further submitted that the evidence of investigating officer (PW-6) has



established the place of occurrence as detailed in the FIR and further, the defence witnesses did not dispute the place of occurrence as well as killing of the victim by gun shot injuries and in this regard, the medical evidence given by PW-5, who conducted the postmortem examination over the body of the deceased, is also relevant. On the body of the deceased, seven entry wounds of firearm injuries were found which sufficiently proves the alleged indiscriminate firing by the accused on the deceased. So far as the motive of the accused to kill the deceased is concerned, the same has also been established by the prosecution's evidences as admittedly there was a land dispute in between the parties during the relevant period of time on account of a *Gair-majarua* land and the appellants and co-accused persons committed the alleged occurrence while having common intention to kill the deceased by using two types of firearms i.e. pistol and sixer and as per the informant, the accused fired at the deceased from close range which gets corroboration from the nature of external injuries found on the body of the deceased which were discussed in the postmortem report and the same shows that blackening and charring/scorch were found at and near the entry point of wounds. It has lastly been submitted that at the place of occurrence, a motorcycle was also found which is corroborative to



the prosecution's story as to the deceased going with the informant on a motorcycle during the relevant time of the alleged occurrence, thus, the prosecution has succeeded to prove the charged offences against the appellants and they have rightly been convicted for the said offences and there is no need to interfere in their conviction.

19. Ms. Shashi Bala Verma, learned APP appearing for the State has adopted the submissions advanced by the learned counsel appearing for the informant.

Consideration and Analysis:-

20. We have heard both the sides, perused the evidences adduced by both the sides which are available on the record of the trial court and also have gone through the statements of the appellants.

21. Now keeping in mind the arguments advanced by both the sides, we shall discuss the evidence of the witnesses adduced by both the sides to see whether the prosecution's evidences are sufficient to bring the guilt of the appellants home for the charged offences or not and also to see whether the trial court appreciated the evidences of both the sides in right perspective manner or not.

22. The prosecution witness, Damodar Yadav (PW-1), brother of the deceased, stated in the examination-in-chief that he



heard the sound of firing and at that time, his son Rai Sahab Yadav (informant) (PW-3) was with Tarni Yadav (deceased) and the accused fired at his son also but he managed to escape and he told him about the occurrence. He further stated in the examination-in-chief that the alleged occurrence had been witnessed by Biyas Yadav, Chandradeo Yadav, Chano Yadav, Kanhaiya Yadav and Rajendra Sao. Here it is important to mention that among the said persons, only Biyas Yadav (PW-2) was examined by the prosecution. This witness stated in the cross-examination that he, his wife namely, Sita Devi, Biyas Yadav, his mother and the wife of the deceased and wife of Biyas Yadav were present in their house at the time of the commission of the alleged occurrence and he heard the sound of firing coming from north-east side and the same was coming from a distance of 200 *Gaj* and the entire details of the occurrence was told to him by his son. He further deposed that after knowing the incident, he alongwith all his family members went to the place of occurrence to get the details of the incident and several co-villagers had gathered at the place of occurrence before they had reached at the place of occurrence and he got the details of the incident from Biyas Yadav, Kanhaiya Yadav, Asarfi Mistry, Rajendra Sao and Chano Yadav near the dead body of the deceased. He further stated that in a case relating



to quarrel (*marpit*), the deceased was an accused. In paragraph no. 14 of his cross-examination, he described the boundaries of the place where the dead body was lying and according to him, in northern side, there was house of Asarfi Mistry, in southern side, there was house of one, Rajendra Sao, in the eastern side, there was house of Kameshwar Sao and in western side, there was house of one namely, Bangali Rai at the time of occurrence. He further stated that a motorcycle was found lying near the dead body of the deceased and the same was of 'Yamaha' company.

From the above facts stated by PW-1, one thing is evident that the said witness as well as his family members including Biyas Yadav (PW-2) were present in their house when the alleged occurrence took place and they came at the place of occurrence after getting the information of the occurrence from the informant and when they reached at the place of occurrence several co-villagers had already gathered, so, in such a situation, this witness cannot be deemed to be an eyewitness of the alleged occurrence and the learned trial court erred in deeming him as an eyewitness of the alleged occurrence and further, the evidence of this witness also goes against PW-2's claim that he is an eyewitness of the alleged occurrence.



23. Prosecution witness, Biyas Yadav, examined as PW-2, is said to be the real brother of the deceased. He stated in the examination-in-chief that the murder of the deceased was committed at the shop of one, Rajendra Sao and the accused used sixer (a firearm) and pistol in killing the deceased. He further stated that he himself saw the commission of the alleged occurrence. Accordingly, this witness claimed himself as an eyewitness of the alleged occurrence. This witness deposed in cross-examination that there are several houses in between his house and the place of occurrence and out of these houses, some belong to one Siyaram Yadav, Ashok Mandal, Sevan Ram, Mahesh Pandit, Shankar Thakur, Paro Thakur etc. When he was asked about the details of the cases running against the deceased, he stated that he did not have the knowledge of the said cases but fairly accepted that the deceased and Damodar Yadav (PW-1), brother of the deceased, had faced the trial of a murder case of one, Binod Yadav, a co-villager of the deceased, in which the deceased was acquitted. He further stated in paragraph no. 8 of his cross-examination that the informant (his nephew) informed him about the occurrence and at that time, his wife Kiran Devi, *Bhavo* (wife of younger brother), Damodar Yadav (PW-1) and his wife, his mother and several other persons of the village were present when



the said information was being given by the informant. He further stated in the paragraph no. 9 that he himself saw the informant and the deceased going on a motorcycle from his house and he did not go to the police station upon getting information of the occurrence and his statement was recorded when the police came. He further stated that he went to the police station alongwith Rai Sahab (informant) after getting the information of the occurrence and at that time, the female members of his family also went with them to the police station and thereafter, the police reached the place of occurrence. He further deposed in paragraph no. 11 that the distance of Surajgarha police station is ten kilometers from his village and they left for the police station at 9:00 am and took five minutes in reaching the police station by a Jeep and *Daroga Ji* (S.H.O.) prepared a document in the police station and his statement was also recorded at that time and his and informant's signatures were also taken by him. He further stated in paragraph no. 12 of his deposition that he signed his statement before *Daroga Ji* (S.H.O.) and also made his signature before the S.H.O at his house and the police came at his house one day after the occurrence. He further deposed in paragraph no. 13 that the people were residing in their houses situated on the boundaries of the place of occurrence who also saw the dead body of the deceased



and they were already present at the place of occurrence before his arrival.

From the above facts as stated by this witness, one thing is quite clear that the said witness falsely claimed himself as an eyewitness of the alleged occurrence which also gets support from the evidence of PW-1 and it is also evident that several co-villagers of this witness had reached at the place of occurrence before this witness reached there and in the nearby houses situated on the boundaries of the place of occurrence, the people were residing when the alleged occurrence took place and the same is stated to have taken place in the morning at 8:00 am. From the evidence of this witness it is also evident that he and the informant went to Surajgarha police station at 9:00 am and reached there within five minutes by a Jeep and the S.H.O. recorded the statement of this witness and got his and informant's signature upon it. As per the prosecution's case as it appears from the FIR, the *fardbeyan* of the informant was recorded on 08.07.2003 at 9:30 am at Chanania village (place of occurrence) by a Sub-Inspector D. Kumar (PW-6) while as per the evidence of this witness, he and the informant had reached at the said police station before 9:30 am and at that time, the statement of this witness was also recorded by the S.H.O. upon which, his and informant's signatures were also taken, so, in such a



situation, the *fardbeyan* of the informant does not appear to be the first version of the prosecution and it can be deemed that the first information of the alleged occurrence given by this witness, was suppressed by the prosecution regarding which the prosecution did not give any reason. The learned APP appearing for the State in the present case has also failed to give any explanation regarding the suppression of the first information. In this regard, we would like to refer to a judgment rendered by the Hon'ble Apex Court in the case of **State of M.P. vs. Ratan Singh & Others**, reported in **(2020) 12 SCC 630**, wherein, the Hon'ble Apex Court while taking into account the inconsistencies of the so-called eyewitnesses with regard to the place of occurrence, as they had described different places as the scene of offence, had also taken into account the suppression of the actual FIR by the prosecution and affirmed the decision of the High Court. The relevant paragraph of this judgment being paragraph no. 10, is reproduced as under :-

“ 10. Additionally, the so-called eye witnesses to the incident have described different places as the scene of offence. None of the eye witnesses are consistent so far as the scene of offence is concerned. This means that each of the eye witness must have allegedly seen the incident at different places and happening in a different manner. The suppression of the actual FIR, coupled with the conflicting versions of the so-called eye witnesses relating to different



scenes of offence and different stories collectively would reveal that the prosecution wanted to suppress and has suppressed the real incident and culpability of real culprits. The origin and genesis of the prosecution is clearly suppressed in the case.”

24. Prosecution witness, Asarfi Mistry (PW-4), though is not stated to be an eyewitness of the alleged occurrence but regarding some material facts of the prosecution story, such as the informant and the deceased coming to his house on a motorcycle for some carpenter work on the alleged day and after staying for some minutes returning back and just after some minutes thereafter, the alleged occurrence had taken place, his evidence is important. He stated in examination-in-chief that the deceased Tarni Yadav had been murdered but he did not know about the accused and he knew about the occurrence after coming from Delhi. This witness was not declared hostile by the prosecution. He stated in the cross-examination that he had no personal knowledge of the occurrence, the police did not make any enquiry from him. In this way, the witness showed himself to be completely ignorant about having any knowledge of the alleged occurrence. Though as per the evidence of I.O., the alleged occurrence involving indiscriminate firing by several persons took place near the house of this witness in the morning.



Accordingly, the evidence of this witness does not help the prosecution in any way.

25. The prosecution witness, PW-6, Dhananjay Kumar is a police officer and he was the then Station House Officer (in short 'S.H.O.') of the concerned police station during the relevant time and he himself investigated the present matter. He stated in examination-in-chief that on 08.07.2003, the *fardbeyan* of the informant was recorded by an assistant sub-inspector namely, Ramashish Paswan, and he also made his signature upon it and the said *fardbeyan* was recorded before him. This witness identified his signature present upon the *fardbeyan* which was marked as Ext.- '1/c'. He further stated in examination-in-chief that the inquest report was prepared by the said ASI Ramashish Paswan upon his direction and he also made his signature upon it. The said signature of this witness was exhibited as '3/B'. This witness further stated that he inspected the place of occurrence and found the dead body of the deceased lying on village road near a two storey building of one Rajendra Sao, a resident of Chanania village and there was blood on the earth and he also found one cartridge of 314 bore and 4 small brass cartridges of sixer revolver and two front part of the bullets of 315 bore as also found a red colour caliber motorcycle without any registration number in lying



condition at the place of occurrence and all these materials were seized and in this regard, seizure memo was also prepared before two independent witnesses. This witness further stated in cross-examination that he recorded the statements of the witnesses namely, Biyas Yadav (PW-2), Asarfi Mistry (PW-4), Prasadi Mistri, Rajendra Sao and Kanhaiya Sao, all resident of Chanania village and also recorded the statements of the witnesses namely, Awadesh Yadav, Jatan Yadav, Ramesh Yadav, Bangali Yadav and Ranjit Yadav, all resident of Kharra village and according to this witness, all these persons supported the alleged occurrence. This witness further stated in cross-examination that during investigation, he was transferred from Surajgarha police station and thereafter, the investigation was handed over to the then In-charge S.H.O. of Surajgarha police station, namely, Abdul Gaffar Khan (ASI), who later filed chargesheet in this matter. He further deposed in cross-examination that the informant informed him on his mobile phone at 9:00 am and at the time of recording of the *fardbeyan* of the informant he was present at the place of occurrence and at that time, ASI Ramashish Paswan and Sub-Inspector Jawahar Paswan were also present with him. He further stated that he also recorded the statement of Rajendra Sao, resident of the house situated nearby the place of occurrence. According to



this witness, the informant and said Rajendra Prasad were eyewitnesses of the alleged occurrence and in this regard he made a statement in paragraph no. 25 of his cross-examination. This witness further stated in cross-examination that he did not make any investigation regarding the ownership of the seized motorcycle.

From the above facts as stated by this witness, it is evident that the first information of the occurrence had been received by this witness at 9:00 am, though, he stated that he recorded the *fardbeyan* of the informant at the place of occurrence but in this regard, the evidence of PW-2 is completely contradictory and the said witness (PW-2) who is own brother of the deceased, claimed to have gone to the police station at 9:00 am where he recorded his statement upon which he and the informant made their signatures. As per this witness, at the time of recording of the *fardbeyan* of the informant at the place of occurrence, ASI Ramashish Paswan and SI Jawahar paswan were also present with him but they were not examined by prosecution and according to this witness, *fardbeyan* of the informant and the inquest report were recorded and prepared at the place of occurrence at about 9:30 am. The formal FIR was registered on 08.07.2003 at 13:00 Hrs (1:00 pm) but the inquest report (Ext. -3) contains the details of the P.S. Case No. of the



present matter which shows that either the inquest report was prepared after the registration of the formal FIR or the first column of the inquest report was kept blank and the same was filled in later by the investigating officer when he got the details of the registration number of the FIR but these circumstances create a doubt about the prosecution's case and particularly makes strong the *factum* of suppression of the first version of the prosecution party given to the police regarding the details of the commission of the alleged occurrence.

From the evidence of this witness, one thing is also evident that this witness, who himself conducted major part of the investigation, recorded the statements of several persons belonging to Chanania village and Kharra village and he claimed that the said persons supported the alleged occurrence but none of them, except one, Asarfi Mistry (PW-4), was produced and examined by the prosecution and the prosecution failed to give any explanation for not producing these persons whose evidence might be material to bring out the truth of the occurrence and withholding of these persons by the prosecution goes against the prosecution and in this regard, we would like to refer to a judgment of the Hon'ble Apex Court rendered in the case of **Sekaran vs. State of Tamil Nadu**,



reported in **AIR 2024 SC (Cri.) 201**, relevant paragraph whereof being paragraph no. 18 is being reproduced as under : -

“18. It is in the deposition of PW 11 that PW 10 had recorded the statement of, inter alia, Velukutti earlier and that PW 11 himself had recorded the statements of PWs 1, 2 and 3 as well as Ponnaian. Ponnaian and Velukutti were admittedly present at the tea stall when the alleged incident of assault took place (version of PWs 2 & 3). The prosecution has not explained why Ponnaian and Velukutti were not called upon to depose despite they being present at the place of occurrence and despite their statements having been recorded in course of investigation. If indeed they were unavailable to depose, it was incumbent on the prosecution to adduce relevant evidence in that regard. The prosecution having not examined Ponnaian and Velukutti, Illustration (g) of Section 114 of the Evidence Act is well and truly attracted in the present case.”

So, in view of the above-mentioned principle laid down by the Hon’ble Apex Court it should be presumed that the evidence of the persons who have been withheld by the prosecution, would have been unfavorable to the prosecution if they were examined on behalf of the prosecution.



As per this witness, from the place of occurrence a red colour caliber motorcycle without having any registration number, cartridges and bullet shells were recovered and the same were seized by making seizure memo but these articles were not produced before the trial court and as per the defence of the appellants, an unknown person came on a motorcycle and shot dead the deceased and fled away leaving behind his motorcycle and it has come in the evidence of PW-1 that the deceased and the informant went to the house of Asarfi Mistry, a carpenter, on a motorcycle of 'Yamaha' company but as per the evidence of this witness, only one motorcycle was found lying at the place of occurrence which was a red colour caliber motorcycle and the said contradiction could have been explained by the prosecution if in this regard a proper investigation was made by the investigating officer but no such investigation was done and here, it is relevant to mention that the informant could not justify the possession of the deceased of the motorcycle found at the place of occurrence and in this regard, he did not give satisfactory answer when he was cross-examined.

26. Now, we come to the evidence of PW-3 who is the star witness of the prosecution as he was accompanying the deceased on a motorcycle when the alleged occurrence took place



as per the prosecution story and the prosecution projected him as an eyewitness, so, his evidence is very important in this matter. The informant, Rai Sahab Yadav, was examined as PW-3.

27. Before evaluating the evidence of PW-3, Rai Sahab Yadav, the informant of this matter, we would like to say that in the light of the provision of Section 134 of the Indian Evidence Act the quality of evidence of a witness is paramount to prove a particular fact and not the number of the witnesses to prove such fact and any specific number of witness is not required to prove a fact. If several witnesses come before the court to prove a fact but their evidence seems to be not qualitative then such fact can be deemed to have been not proved by them sufficiently despite they being in large number while on the other hand, if only one witness is produced as an eyewitness of a relevant fact or circumstance then for proving such fact or circumstance, the sole evidence of such witness is sufficient. In the matter of a sole eyewitness, there may be two situations, in first situation there may be only a sole eyewitness of the commission of an offence and the prosecution does not show other person or persons as eyewitnesses and in the second situation, there may be two or more eyewitnesses of the commission of an offence but amongst them only one is produced before the trial court to prove the alleged offence or offences and



before the trial court, the prosecution's case depends mainly on the evidence of a witness who claims to be one of the eyewitnesses and in both the situations particularly in the second situation, the court should be very careful in examining the credibility and reliability of such sole witness particularly, when there are large number of accused. In this regard, we would like to refer to the observations made by the Hon'ble Apex Court in the following judgments which are being enumerated as under:-

(i) **Anil Phukan vs. State of Assam** reported in **(1993)**

3 SCC 282, wherein the Hon'ble Apex Court held as follows:-

“ Conviction can be based on the testimony of a single eyewitness and there is no rule of law or evidence which says to contrary provided the sole eyewitness passes the taste of reliability and also observed that where the single eyewitness is not found to be a wholly reliable witness in the sense that there are some circumstances which may show that he could have an interest in the prosecution then the courts generally insist upon some independent corroboration of his testimony before recording conviction. ”

(ii) **State of Rajasthan vs. Bhola Singh**, reported in

AIR 1994 SC 542, wherein the Hon'ble Apex Court held that it is well settled that if the case rests only on the sole evidence of the eyewitness such testimony should be wholly reliable.



(iii) **Bhimapa Chandappa Hosamani and Others vs. State of Karnataka**, reported in **(2006) 11 SCC 323**, wherein the Hon'ble Apex Court reiterated the aforesaid law and the relevant portion thereof is being reproduced as under:-

“ This Court has repeatedly observed that on the basis of the testimony of a single eyewitness a conviction may be recorded, but it has also cautioned that while doing so the court must be satisfied that the testimony of the solitary eyewitness is of such sterling quality that the court finds it safe to base a conviction solely on the testimony of that witness, in doing so the court must test the credibility of the witnesses by reference to the quality of his evidence, the evidence must be free of any blemish or suspicion, must impress the court as wholly truthful, must appear to be natural and so convincing that the court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness.”

28. Now, we come to the present matter. Altogether six witnesses were examined by the prosecution in this matter before the trial court and out of them, PW-6 is investigating officer, PW-5 is the doctor concerned who conducted the postmortem examination over the dead body of the deceased and other four witnesses (PW-1 to PW-4) are the witnesses of facts and circumstances and as discussed above PW-1, PW-2 and PW-4 cannot be deemed to be eyewitness of the commission of the alleged occurrence, so the case of the prosecution mainly depends



on the evidence of PW-3, informant of the present matter as he claims to have seen the entire occurrence and according to the prosecution story he was accompanying the deceased during the relevant time of the occurrence and the prosecution projected him to be the most important witness as well as eyewitness.

29. Now, in the context of the surrounding circumstances and other evidences, we have to find out whether PW-3 is wholly reliable or not and whether it will be safe to justify the conviction of the appellants solely on the basis of the evidence of this witness deeming him as an eyewitness of the occurrence.

30. In the light of the prosecution story narrated in the *fardbeyan* by this witness (PW-3) and after having gone through the evidence given by him before the trial court as well as the evidences given by other witnesses, we find the following circumstances having emerged in this matter :-

Firstly, this witness gives the details of 21 accused including the appellants revealing their complete parentage details and narrating the entire occurrence in full sequence including the motive of the accused to kill the deceased. The alleged occurrence took place on 08.07.2003 and this witness was examined on 19.04.2011 and at that time he disclosed his age as twenty one year and the same age was assessed by the trial court while recording



his evidence, so in view of the said age of this witness, it can be deemed that this witness was about thirteen year old at the time of commission of the alleged occurrence, thus, in such a situation it was not easy for this witness to record his *fardbeyan* in the aforesaid manner and it has come out in the evidence of PW-2 who signed the *fardbeyan* of PW-3 that the said witness and the informant had gone to the police station at 9:00 am on 08.07.2003 before 9:30 am, the time when the informant recorded his *fardbeyan* at the place of occurrence as per prosecution and at that time, the statement of this witness (PW-3) was also recorded by the police officer upon which he and the informant made their signature and in the preceding paragraphs it has been concluded by us that the first version of the prosecution party was suppressed by the police.

Secondly, it transpires from the evidence of this prosecution witness that many criminal cases were pending against the deceased and the informant. The informant accepted in his cross-examination that he was made accused in Surajgarha P.S. Case No. 183 of 1998 registered under Sections 307 and 384/34 of IPC and Section 27 of the Arms Act and also made accused in Surajgarha P.S. Case No. 194/2004 relating to murder of two persons namely, Ramanand Yadav and Dashrath Yadav. He further accepted in



cross-examination that the deceased and PW-2 were accused in a criminal case bearing Surajgarha P.S. Case No. 274 of 1997 relating to the murder of one, Bindeshwari Yadav. He further accepted in paragraph no. 10 of his cross-examination that his father was an accused in Surajgarha P.S. Case No. 03/1979, lodged under Section 302 of IPC. In view of these criminal cases, one thing is quite clear that not only the deceased but also the informant had criminal background at the time of the alleged occurrence.

Thirdly, in the *fardbeyan*, this witness showed six accused persons namely, Binod Kumar Himanshu @ Binod Yadav, Tital Yadav @ Title Yadav (A-5), Nandan Yadav (A-6), Udai Yadav, Arun Yadav and Anil Yadav as the assailants who had allegedly opened fire on the deceased by using pistol and sixer but before the trial court, this witness improved his first version by adding some co-accused in the group of assailants and he added and showed accused, Ashok Yadav, Mukesh Yadav (A-1), Jalandhar Yadav (A-2) and Bijay Yadav (A-3) as being the part of the assailant group and accordingly, he projected ten accused out of twenty one as assailants in his court evidence.

Fourthly, as per prosecution story this witness and the deceased were riding on the same motorcycle and they were



intercepted by the accused who were in large number being twenty one and this witness claimed that he managed to escape and stood in a lane, 10-15 feet away from the place of firing and revealed that the accused persons also fired at him, but admittedly, not a single scratch was caused on the body of the informant in the alleged firing which was done by six or ten persons according to him.

Fifthly, it has come out in the evidence of the material witnesses including the informant (PW-3) and investigating officer (PW-6) as discussed above that several villagers reached at the place of occurrence during the relevant time of the commission of the alleged occurrence which had been committed in front of the shop-cum-house of one, Rajendra Sao and on the boundaries of the place of occurrence, there were houses of several persons which was admitted by the investigating officer and he also admitted that he recorded the statements of several independent persons, who, according to him, supported the case of prosecution but very surprisingly none of them were produced by the prosecution and all these independent persons were withheld by the prosecution without giving any explanation and the non-official witnesses including the informant who were produced and examined, are relatives of the deceased, so, they can be deemed to be highly



interested in the conviction of the appellants with whom they had a land dispute during the relevant period of time. In this regard, we would like to refer to a judgment of the Hon'ble Apex Court, rendered in the case of **Masalti vs. State of Uttar Pradesh** (*supra*) in which the Hon'ble Apex Court held as follows:-

“ Where an offence involving a large number of offenders and a large number of victims then it is usual to adopt the test that conviction could be sustained only if it is supported by two or three more witnesses who give a consistent account of the incident.”

In the present matter, admittedly, twenty one persons are alleged to be involved in the commission of the alleged occurrence of murder, though, only two persons are said to be the victims of the alleged occurrence, first is the deceased and the second is the informant. However, in the light of above principle laid down by the Hon'ble Apex Court, the prosecution ought to have produced and examined some more witnesses in addition to the informant but prosecution has failed to do so.

31. In view of the above-mentioned circumstances surrounding the informant (PW-3), we are of the view that though the said witness might have seen the commission of the alleged occurrence but he does not seem to be wholly reliable and his evidence cannot be deemed to be completely free from suspicion



and as per the evidence of I.O. (PW-6), two persons namely, Rajendra Prasad and the informant (PW-3) were eyewitnesses of the occurrence and he also revealed that there were several independent persons whose statements were recorded by him, who fully supported the case of prosecution, so, in such a situation, some of these persons ought to have been produced by the prosecution to substantiate and corroborate the allegations levelled by the informant and in light of aforesaid circumstances, we are persuaded to form an opinion that it would not be safe to convict the appellants for the charged offences in the absence of independent corroboration of the testimony of PW-3.

32. Now, we come to the manner of occurrence and motive of the appellants to commit the alleged occurrence.

33. As per prosecution story, the accused persons being twenty one in number including the appellants suddenly appeared on the village road with firearms and firstly intercepted the informant and the deceased when they were coming on a motorcycle from Chanania village and after stopping them, the accused persons armed with firearms surrounded the deceased from three sides and six accused persons opened fire at the deceased by using sixer and pistol and during the course of occurrence, the informant managed to save himself by fleeing and



he claimed to have seen the occurrence from 10-20 feet away from the place of occurrence. The said manner of occurrence shows that the accused persons committed the occurrence in a planned manner, if the prosecution story is believed to be true, as before the commission of the occurrence, no sort of scuffle or *marpit* or any other occurrence had taken place in between the victims and the accused. But the surrounding circumstances do not suggest the alleged occurrence having taken place in the said manner since as per the prosecution story, the occurrence took place in the morning at 8:00 am and the distance of the place of occurrence from the house of the deceased was about 200 *Gaj* and as per the informant, on the fateful day and relevant time of the occurrence, he and the deceased had proceeded to Chanania village to go to the house of one carpenter namely, Asarfi Mistry whose house is situated in the said village. The distance between the village of the deceased and the village of Asarfi Mistry, is less than one kilometer, so, the time when the occurrence took place, and the cause for which the deceased and the informant proceeded to an adjacent village to take the help of one carpenter for some domestic work do not suggest that the accused who were in large number, had got information about the deceased's plan of going to Chanania village on a motorcycle and during course, thereof they



had sufficient time to form an unlawful assembly with firearms with a plan or common object to kill the deceased. So, the alleged manner of occurrence does not give rise to the presumption that the accused had sufficient time to make a plan to commit the alleged occurrence in a planned manner with firearms and the said circumstance also creates a doubt regarding the prosecution story, particularly, with regard to the alleged manner of occurrence and further, as per the defence of the appellants, the deceased was murdered by someone else other than the named accused and the actual assailant came on a motorcycle, caused firearm injuries upon the deceased and fled away after leaving behind his motorcycle. Further, as per the FIR and the evidence of the prosecution's witnesses, there was a land dispute in between the family of the deceased and the accused on account of 5-6 bigha *Gair-majarua* land which was under cultivating possession of the prosecution party at the time of the occurrence and as per FIR, fifteen accused persons had their lands situated adjacent to the said *Gair-majarua* land and they wanted to take possession of the said land. But on the other hand, the deceased, the informant and their some family members had remained involved in several criminal cases relating to serious offences prior to the alleged occurrence, so, the enmity in between them and the other side related to the



said criminal cases might be in existence at the time of the occurrence. So, on one side there was simply a land dispute relating to 5-6 bigha *Gair-majarua* land upon which fifteen named accused of this matter wanted to create their possession but in respect of other named co-accused such interest does not appear and further the prosecution has failed to give complete details of said *Gair-majarua* land before the trial court and the I.O. accepted that he did not investigate about the said *Gair-majarua* land while on the other hand some others might not be having good relations with the deceased on account of past criminal cases. Hence, if we compare both the said situations then no strong motive on the part of the appellants in comparison with others with whom the prosecution party might not be having good relations on account of some past criminal cases, appears and further, as far as some of the co-accused are concerned, there was no reason for them to be involved with the assailants in killing the deceased as it does not appear that they had any land situated adjacent to the said *Gair-majarua* land of the prosecution party and in rural areas it is common for the victim to often implicate several persons in a crime which takes place, especially with whom he/she has no good relation and in our opinion, the above circumstance relating to the motive on the part of the appellants to commit the alleged murder,



also creates a doubt in the prosecution's story. It is a well established principle of law that if two interpretations of the evidence are possible, one pointing to the guilt of the accused and the other to their innocence, the latter must be favoured and the two views theory is also known as the benefit of doubt theory and the Hon'ble Apex Court in several judgments has reinforced this principle, emphasizing that the court should not convict an accused person if there is even a slight doubt regarding his/her guilt even if a guilty view is possible. In this regard, we would like to refer to a judgment of the Hon'ble Apex Court, rendered in the case of **Harijana Thirupala and Others vs. Public Prosecutor, High Court of A.P., Hyderabad**, reported in (2002) 6 SCC 470, paragraph no. 11 whereof is being reproduced as under :-

“11. In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as



false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case.”

Conclusion:-

34. After having discussed the material facts and circumstances appearing from the evidences adduced by both the sides before the trial court, we reach to the conclusion that though the deceased was murdered by gun shot injuries and on his body several firearm injuries were also found but in the present matter, the prosecution produced only three non-official witnesses including the informant projecting them as eyewitnesses of the occurrence but there are sufficient materials, as discussed in the



preceding paragraphs, to deem PW-1 and PW-2 as being not eyewitnesses of the occurrence and for the above discussed reasons and circumstances appearing in respect of PW-3 who is informant and said to be the star witness of the occurrence, he does not appear to be wholly reliable, though, he might have witnessed the occurrence but in absence of independent corroboration of his evidence, it is not safe to hold the appellants liable for the commission of the alleged murder, since there were several independent persons whose evidence might have been helpful for the prosecution to corroborate the evidence of informant but the prosecution withheld them and all the non-official witnesses except PW-4 who claimed themselves as eyewitness, are relatives of the prosecution party. As such, in this matter, we find that the appellants are entitled to the benefit of doubt, hence we are not persuaded to affirm the conviction of the appellants for the charged offences. Thus, the judgment and order impugned convicting and sentencing the appellants are hereby set aside. The appellants are given the benefit of doubt and they are acquitted of the charged offences.

35. The appellants namely, Mukesh Yadav (A-1), Jalandhar Yadav (A-2), Bijay Yadav (A-3) and Ramgulam Yadav @ Gulo Yadav (A-4) {in Cr. APP (DB) No. 977 of 2017} and the



appellant namely, Nandan Yadav (A-6) { in Cr. APP (DB) No. 1184 of 2017} are on bail, hence, they and their sureties are discharged from their respective bail bonds.

36. The appellant Tital Yadav @ Title Yadav {in Cr. APP (DB) No. 1184 of 2017} is in custody, so, he is directed to be released forthwith if his custody is not required in any other case.

37. In the result, both the appeals i.e. Cr. APP (DB) No. 977 of 2017 and Cr. APP (DB) No. 1184 of 2017 succeed and are allowed.

38. Let the judgment’s copy be sent to the trial court concerned for needful information and compliance.

(Shailendra Singh, J)

I agree.

(Mohit Kumar Shah, J)

(Mohit Kumar Shah, J)

maynaz/-

AFR/NAFR	AFR
CAV DATE	29.04.2025
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