

IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (DB) No.6 of 2024

Arising Out of PS. Case No.-200 Year-2003 Thana- DANAPUR District- Patna

The State of Bihar through the District Magistrate, Patna
... .. Appellant

Versus

1. Sunil Yadav @ Kana, Son of Late Yugal Rai, Resident of Badi Badalpura,
P.S. - Khagaul, District - Patna.

2. Ranjan Kumar @ Benga, Son of Ram Sakal Rai, Resident of Village- Badi
Badalpura, P.S. - Khagaul, District - Patna.

3. Sharvan Kumar, Son of Suresh Rai, Resident of Village - Kothwan, P.S. -
Khagaul, District - Patna, Bihar.

... .. Respondents

with
CRIMINAL APPEAL (DB) No. 955 of 2024

Arising Out of PS. Case No.-200 Year-2003 Thana- DANAPUR District- Patna

Most Asha Devi, W/O Late Satyanarayan Sinha, Resident of Village- Sarari,
P.S.- Shahpur, District- Patna, Bihar.

... .. Appellant

Versus

1. State of Bihar

2. Sunil Yadav @ Kana, S/O Late Yugal Rai, Resident of Village- Badi
Badalpura, P.S.- Khagaul, District- Patna, Bihar.

3. Ranjan Kumar @ Benga, S/O Ram Sakal Rai, R/O Village- Badi Badalpura,
P.S- Khagaul, Distt.- Patna, Bihar.

4. Shravan Kumar, S/O Suresh Rai, R/O Kothwa, P.S- Khagaul, Distt.- Patna,
Bihar.

... .. Respondents

Appearance :
(In GOVT. APPEAL (DB) No. 6 of 2024)
For the Appellant/s : Mr. Ajay Mishra, APP
For the Respondent/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. P.N. Shahi, Sr. Advocate
Mr. Ghanshyam Tiwary, Advocate
Mr. Pawan Kumar Singh, Advocate
Ms. Annapurna Sinha, Advocate
Ms. Anju Narain, Advocate
(In CRIMINAL APPEAL (DB) No. 955 of 2024)
For the Appellant/s : Mr. Apurv Harsh, Advocate
Mr. Sudhanshu Trivedi, Advocate
Mr. Sujit Kumar, Advocate
Mr. Manu Tripurari, Advocate
Mr. Gaurav Sharma, Advocate
Mr. Raghu Raj Pratap, Advocate
Ms. Jaya Singh, Advocate



For the Respondent/s : Mr. Aditi Sahay, Advocate
Mr. Gajanan Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 25-09-2025

Both the appeals have been preferred by the State and the informant respectively for setting aside the judgment dated 14.05.2024 (hereinafter referred to as the 'impugned judgment') passed in Sessions Trial No. 246 of 2006 arising out of Danapur P.S. Case No. 200 of 2003 passed by the learned Additional Sessions Judge-III-cum-Special Judge MP/MLA, Patna (hereinafter referred to as the 'learned trial court') by which the learned trial court has been pleased to acquit the respondents in Govt. Appeal (DB) No. 6 of 2024 for the offences punishable under Sections 148, 307 and 302 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act.

Prosecution Case

2. The prosecution story is based on the written application of Asha Devi, Wife of Satyanarayan Sinha, Resident of Village- Sarari, PS- Shahpur, District- Patna in which she has stated that on 30.04.2003 in between 11.00-11.30 AM, she was going for her treatment along with Jivan Yadav, Sanjay Kumar,



Nageshwar Prasad, Dheeraj Kumar, Arun Kumar to Khagaul by her vehicle bearing Registration No. BR1T-0222. As soon as they reached near the house of Rambabu Pathik, a Maruti Van was standing in front of the house of Rambabu Pathik, in such a way that their vehicle could not proceed further. The vehicle was driven by informant's husband. He brought his head outside and asked for giving passage. It is alleged that three persons came out of the vehicle and shouted "*Satya Narayan Aa Gaya*". They all were armed with weapons. After hearing the *hulla* Rambabu, Rambabu Pathik, Ritlal Yadav, Sunil Yadav @ Kana, Ranjan Kumar Benga and 8-10 others variously armed with weapon came from the house of Rambabu Pathik. Rambabu Pathik while saying "*Sala Barka Neta Banta Hai Jaan Se Maar Do*", pulled her husband outside and Ritlal Yadav, Sunil Yadav and Ranjan Kumar fired on her husband due to which, he fell down. Thereafter, at the instance of Rambabu Pathik who said "*Gari Me Baithe Logon Ko Maar Do*", all the 10-12 criminals started firing but they all were saved by hiding themselves under the seat of the vehicle. Sanjay and Dheeraj were injured. There were dozen of marks of bullet on the vehicle. The accused persons assuming them dead entered into house of Rambabu Pathik. The informant identifies the other accused persons but does not remember the names. It is the claim



of the informant that the accused persons namely Rambabu Pathik, Ritlal Yadav, Sunil Yadav @ Kana, Ranjan Yadav @ Benga and other criminals had killed her husband Satya Narayan Sinha, due to enmity.

3. On the basis of the written report of the informant, Danapur P.S. Case No. 200 of 2003 dated 01.05.2003 was registered under Sections 147, 148, 149, 323, 307, 324 and 302 IPC and Section 27 of the Arms Act.

4. After investigation, police submitted charge-sheet bearing no. 102 of 2004 dated 26.10.2004 under Sections 147, 148, 149, 323, 324, 307 and 302 of the IPC and Section 27 of the Arms Act against the accused persons. On submission of charge-sheet, cognizance was taken and record was committed to the court of Sessions on 31.01.2006 where Sessions Trial No. 246 of 2006 was registered on 27.02.2006. In Sessions Trial No. 246 of 2006 vide order dated 07.08.2007 case record of Ritlal Yadav was separated and the trial proceeded against accused namely (i) Sharvan Yadav, (ii) Sunil Kumar Rai and (iii) Benga Yadav to whom the learned trial court explained the charges in Hindi, which they denied and claimed to be tried accordingly vide order dated 08.08.2007 charges were framed against them under Sections 148 and 307 IPC and Section 27 of the Arms Act. Against Sunil Yadav



and Benga Yadav separate charge under Section 302 was also framed and against Sharvan Yadav, charge under Section 302/149 was framed.

5. On behalf of the prosecution, as many as eleven witnesses deposed and some documentary evidences were also marked exhibits. The complete description of the prosecution witnesses and the documents marked exhibit are being provided hereunder for a ready reference:-

List of Prosecution Witnesses

PW-1	Asha Devi
PW-2	Baleshwar Rai
PW-3	Kamta Rai
PW-4	Kalawati Devi
PW-5	Sanjay Kumar
PW-6	Nageshwar Prasad Yadav
PW-7	Dheeraj Kumar
PW-8	Ravi Kumar Kishore @ Rintu
PW-9	Dr. Narendra Kumar Singh
PW-10	Arshad Jaman
PW-11	Gautam Kumar

List of Court witness

CW-1	Umesh Kumar
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List of Exhibits on behalf of prosecution

Ext. 1	Signature of the informant on the fardbeyan
Ext. 1/1	Signature of the informant on the protest petition
Ext. 1/2	Signature of Advocate Anil Kumar Singh on protest petition



Ext. 1/3	Signature of the informant on the vakalatnama
Ext. 1/4	Signature of the advocate Anil Kumar Singh on vakalatnama
Ext. 1/5	Signature of the informant on the seizure list
Ext. 1/6	Signature of the informant on the seizure list
Ext. 1/7	Signature of witness Sanjay Kumar on seizure list
Ext. 1/8	Signature of witness Sanjay Kumar on seizure list
Ext. 1/9	Signature of witness Sanjay Kumar on seizure list prepared
Ext. 1/10	Signature of witness Ramanand Rai on seizure list prepared for the recovery of blood stained gamcha
Ext. 1/13	Signature of I.O. Arshad Jaman on the seizure list
Ext. 1/14	Signature of I.O. Arshad Jaman on the seizure list
Ext. 2 (with objection)	Writing of Rajneesh on written report
Ext. 3	Seizure List vide ordersheet dated 13.05.2015
Ext.4 (with objection)	Injury report of Dheeraj Kumar
Ext. 5	PM report

List of exhibits on behalf of defence

Ext. A	Certified copy of judgment of ST Case No 1795/2011
Ext. B	Certified copy of the written information and FIR of Danapur P.S. Case No 198/2003, dated 30.04.2003
Ext. C	Cerified copy of Charge-sheet of Danapur PS. Case No. 196/2003
Ext. D	Certified copy of supplementary Charge sheet of Danapur P.S. Case No. 198/2003
Ext. E	Certified copy of FIR of Khagaul PS Case No. 55/1996



Ext. F	Certified copy of Charge-sheet of Khagaul P.S. Case No. 55/1996
Ext. G	Certified copy of FIR of Khagaul PS Case No. 86/2005
Ext. H	Certified Copy of Charge-sheet of Khagaul P.S. Case No. 86/2005
Ext. I	Certified Copy of supplementary Charge-sheet of Khagaul P.S. Case No. 86/2005
Ext. J	Certified copy of order-sheet dated 29.02.1997 of ST. Case No. 1434/1998
Ext. K	Certified Copy of FIR of Danapur P.S. Case No. 232/1994
Ext. L	Certified copy of Charge-sheet of Shahpur P.S. Case No. 238/1994 corresponding to ST. Case No. 1434/1998
Ext. M	Certified copy of supplementary Charge-sheet of Shahpur P.S. Case No. 238/1994 corresponding to ST. Case No. 1434/1998
Ext. N	Certified copy of the order-sheet of A.C.J.M. Danapur of Khagaul P.S. Case No. 03/2004
Ext. O	Certified copy of application of 1.O. dated 28.12.2005 to A.C.J.M. Danapur
Ext. P	Certified copy of application of 1.O. dated 25.02.2006 to A. C.J.M. Danapur

6. At this stage, it is worth mentioning that Sanjay Kumar (PW-5), Nageshwar Prasad (PW-6) and Dheeraj Kumar (PW-7) were though examined by the I.O. and their statements were recorded in paragraph ‘65’, ‘93’ and ‘98’ of the case diary but they were not specifically made chargesheet witnesses, though the I.O. stated in the chargesheet that other witnesses may be examined apart from the chargesheet witnesses. Thus, the prosecution filed a petition in the trial court to allow the



examination of these witnesses which was allowed *vide* order dated 11.02.2013.

7. One of the witnesses, Rintu Singh (PW-8) was allowed to be examined by the trial court *vide* order dated 12.07.2013 after noting that PW-1, PW-2, PW-4 and PW-5 all had stated about the presence of Rintu Singh at the time of occurrence. A criminal revision bearing number 606 of 2013 was preferred by the accused-respondent no. 2 in the High Court which was rejected. Again, on the request of the prosecution, the court allowed the prosecution petition calling for the injury reports of Dheeraj (PW-7) and summons were issued to the treating doctor Dr. N. K. Singh (PW-9), Dr. H. K. Jha (not appeared despite issuance of warrant) and Dr. R. N. Prasad (not appeared despite summons and warrant).

8. One more fact which is important to take note is that the trial court was able to secure the appearance Dr. Umesh Kumar in court after issuance of a non-bailable warrant only.

9. It appears on perusal of the trial court's records in this trial that the defence filed a petition stating therein that on perusal of the case diary, it is apparent that on the same date and time of occurrence of this case, a separate case was lodged by the same SHO, Danapur *vide* Danapur P.S. Case No. 198 of 2003. The



supervising authority of both the cases i.e. DIG, Central Range, Bihar, Patna directed the I.O. of the case to pray in the court concerned to amalgamate the cases. The I.O. of the case is also the I.O. in the said case. A prayer was made on behalf of the accused that the case diary of Danapur P.S. Case No. 198 of 2003 be called for further cross-examination of the I.O. This plea of the accused was contested by the Special Public Prosecutor for the State who argued that on perusal of the case records, it is evident that the police is in collusion with the accused Ritlal Yadav and others and tried to spoil the case of the informant and for which informant has also filed a protest petition at the conduct of the police. It was submitted that Danapur P.S. Case No. 198 of 2003 was set up by the police to help the accused and it has no concern at all with this case. After hearing the parties, the learned trial court, vide its order dated 14.05.2015, held that at this stage of evidence of prosecution, the prosecution has not relied upon the case diary of Danapur P.S. Case No. 198 of 2003 to prove its case, therefore, at this stage, the said case diary which the prosecution has found not reliable cannot be called for. Defence is free to call for the case diary in his defence evidence. We can also summon the I.O. to confront to the case diary when his term of adducing evidence of



defence witness comes. The petition filed by the defence to call for the case diary of Danapur P.S. Case No. 198 of 2003 was rejected.

10. This Court has found from the ordersheets of the learned trial court that at one stage, one of the accused, Sunil Rai filed a petition that Rabindra Kumar, DIG (Central Range), Patna be directed to appear as a defence witness and he should be summoned for this purpose. In its order dated 08.03.2016, the learned trial court has taken note of it, however, after hearing learned counsel for the parties, vide order dated 14.06.2016, the learned trial court rejected the said prayer. The court held that on perusal of the case diary, it was found that DIG Central Range Rabindra Kumar had conducted supervision of this case and his supervision report has been mentioned in paragraph '114' of the case diary. The I.O. of this case has already been examined, therefore, the court can look into the supervision report of DIG Central Range Rabindra Kumar. The defence counsel may also argue on the report of DIG Central Range, Patna during argument. Considering these facts, the court held that there was no need to call DIG Central Range, Patna as defence witness.

11. This Court finds from the order dated 28.06.2016, passed in this trial case, that on behalf of accused Sunil Rai, a petition was filed praying for calling the case diary of Danapur



P.S. Case No. 198 of 2003 in his defence. The learned trial court allowed the said application and Office was directed to call for case diary of Danapur P.S. Case No. 198 of 2003, however, in the subsequent orders, which are available on the record, this Court finds no mention of the fact as to whether the case diary of Danapur P.S. Case No. 198 of 2003 was received or not. On record, the said case diary is available.

12. It appears from the order dated 10.01.2017 of the trial court that the prosecution evidence was closed on 04.08.2015 and the statement of the accused under section 313 were recorded on 01.09.2015, whereafter the records were fixed for defence evidence. The court has recorded that the case diary ordered by this court on 28.06.2016 had yet not been received, but there was a direction of the High Court to expedite the disposal of the case. In such circumstance, the defence was not granted further opportunity and the defence evidence was closed.

13. The case was fixed for arguments. The defence did not question the order dated 10.01.2017 and agreed to start the argument. On 09.05.2017, the prosecution started its argument. The records were kept for hearing of the Special Public Prosecutor and the informant's petition for adjournment was rejected vide order dated 24.07.2017. The prosecution seems to have closed its



argument thereafter. Thereafter, the records were fixed for hearing the learned counsel for the accused but for one reason or another, only formal orders were passed on several dates and in this way, the record remained pending for several years. This Court has also noticed that the records of this case have been transferred on several occasions which seems to be unusual. The ordersheets of the trial court would show that at one stage, on transfer of the records to the court of learned Special Judge MP/MLA, it was found vide order dated 30.09.2020 that the records were though received from the court of ADJ-XXI with TC, the LCR was not attached with the record and the deposition of witness no. 7 was not on the record. The trial court called for a report regarding the LCR and the case diary of this case and for this purpose a letter was written to the Bench Clerk of the earlier court, however, the original case diary and the LCR were not made available to the trial court. This situation continued for a long time. In its order dated 19.04.2022, the trial court had recorded that the original case diary and the original LCR were not received. It was reported by Rohit Kumar, the Clerk of the then Presiding Officer ADJ-XI that the original LCR relating to this case was not available. This shows how the hearing of this case was tried to be stalled. Ultimately, the informant had to approach this Court in Cr.WJC



No. 1124 of 2021. The High Court was informed that the records are missing and it was being deliberately done to delay the disposal of the case. The learned writ court vide its order dated 12.07.2022 issued directions which are being reproduced hereunder for a ready reference:-

“Call for a report from the District Judge Incharge, Patna as to why the records of Sessions Trial No. 246 and Sessions Trial No. 246A of 2006 arising out of Special Case No. 122 of 2018 (Danapur P.S. Case No. 200/2003) have not been sent to the Special Court of A.D.J.III-cum-M.P./M.L.A. Court. There are serious allegations that the order of this Court passed as back as on 13.05.2016 in Cr. Misc. No. 18493 of 2016 and the order dated 17.01.2017 in Cr. Misc. No. 908 of 2017 have not been complied with.

Mr. S.D.Sanjay, learned Senior Counsel for the petitioner submits that in this case all the prosecution witnesses have been examined and after 313 Cr.P.C. stage the defence evidence was also closed and the case was fixed for hearing. At this stage, it appears that efforts are being made for last several years by the interested persons to drag the final hearing of the case and disposal of the matter.

Let a comprehensive report be sent to this Court.

The District Judge Incharge, Patna shall while submitting the report will examine as to whether there is an attempt in connivance with the staffs of the Civil Court to somehow withheld the records in order to drag the matter and avoid the disposal of the case.”



14. This Court has recorded the entire facts showing how the records of this case were kept pending and also transferred from one court to another. The trial court could finally deliver its judgment only after the records were found pursuant to the order of this Court.

15. On perusal of the records of Sessions Trial No. 246 of 2006, it would appear that while the hearing of the case was going on, the defence was referring to the evidences adduced in Sessions Trial No. 246A of 2006. This was opposed by the prosecution by filing a petition dated 03.04.2024. The stand of the prosecution was that evidence of one session case cannot be referred in another session case even though the occurrence is the same. The prosecution relied upon the judgment of the Hon'ble Supreme Court in the case of **A.T. Mydeen and Another vs. Assistant Commissioner, Customs Department** reported in **(2022) 14 SCC 392**. The petition was opposed by the defence by filing a rejoinder wherein it is stated that after commitment, one of the co-accused namely Ritlal Yadav absconded as such his trial was separated and charges were framed against three remaining accused persons who are facing Sessions Trial No. 246 of 2006. After examination of three witnesses in this trial, the co-accused Ritlal yadav appeared and charges were framed against him and trial commenced as Sessions Trial No. 246(A) of 2006. In the present trial, altogether twelve witnesses were examined



whereas in Sessions Trial No. 246A/2006, ten witnesses have been examined. All the witnesses examined in both the cases are common except PW-2 and PW-3 of Sessions Trial No. 246/2006. The contention was that since both the cases arise out of the same case and the witnesses are same so it cannot be said that proceeding in both the cases are different and the defence cannot refer the evidence of the witnesses recorded in Sessions Trial No.246A/2006. The learned trial court considered the rival submissions and vide order dated 16.04.2024 allowed the petition of the prosecution. Thus, the learned trial court agreed with the stand of the prosecution that the evidence of Sessions Trial No. 246A/2006 could not be referred by the defence in Sessions Trial No. 246/2006.

Judgment in the present trial is copy and paste of the judgment in Trial No. 246A of 2006.

16. At the outset, we have noticed that the judgment of the learned trial court, the reasoning and rationale provided therein in Sessions Trial No. 246 of 2006 is in the same words as that of the judgment in Sessions Trial No. 246A of 2006. It seems that in paragraph '22' of the impugned judgment, the learned trial court has not even taken care to apply its judicious mind that this was going to be judgment in Sessions Trial No. 246 of 2006. The trial court has recorded in the very first line of paragraph '22' as under:-



“22. First point which is important for the consideration that the trial of case no 246/2006 and this trial 246a/2006 have been originated from the same P.S. Case no. i.e. Danapur P.S. Case No. 200/2003....”.

The words “this trial 246A of 2006” clearly show that the trial court is taking this case as if it is Trial No. 246A of 2006.

Findings of the learned Trial Court

17. As recorded hereinabove, since the trial court has recorded the findings in the present case in identical terms with that of Trial number No. 246a of 2006, we record the findings of the trial court which we have noticed while dealing with the impugned judgment in Govt. Appeal (DB) No.7 of 2024 and Criminal Appeal (DB) No. 952 of 2024 (arising out of Sessions Trial No. 246a of 2006).

18. The learned trial court having analysed the evidences adduced on behalf of the prosecution and the defence recorded in paragraph ‘22’ of its judgment that the trial of Trial No. 246 of 2006 and 246a of 2006 have originated from the same P.S. case i.e. Danapur P.S. Case No. 200 of 2003, so both the records will be perused for the ends of justice as well as for the better appreciation of the evidences. The trial court noted that the prosecution witnesses and the informant have stated that the occurrence took place near the house of Ram Babu Pathik, he had also been made



an accused in this case by the informant but after investigation, the police did not find his role in the alleged occurrence, therefore submitted a closure report against him which has been accepted by learned ACJM, Danapur. The prosecution never challenged that order, therefore, it will be deemed to have been accepted by the prosecution. The trial court further noted that the prosecution did not draw the attention of the trial court towards Section 319 CrPC. The trial court observed that Ram Babu Pathik was said to be an order giver and it is stated that all the accused persons came from his house, this becomes more relevant when there is another case for the occurrence on the same day for which Danapur P.S. Case No. 198 of 2003 had been lodged (Exhibit 'B').

19. As regards the place of occurrence, the trial court noted that the I.O. has stated a different place of occurrence from that of the informant and other prosecution witnesses, therefore, the testimony of the prosecution witnesses is required to be perused carefully. After saying so, the trial court proceeded to consider the evidence of PW-1. It is noted by way of observation that PW-1 had never stated in her written information about Rintu Singh. Rintu Singh has been examined as PW-8 but he was not mentioned in the witness column of the chargesheet.



Further, the trial court has noted that the name of Arun Kumar is not stated in the evidence of PW-1, therefore, there is some hide and seek by the informant. The trial court has considered the evidence of PW-1 adduced in Trial No. 246 of 2006 in which in paragraph '20' she had stated that Arun Kumar was injured in Danapur P.S. Case No. 198 of 2003 and other witnesses have stated that he had died. Taking note of this evidence of PW-1 in Trial No. 246 of 2006, the learned trial court raised a question that how it was probable that a man injured and died in another case was sitting along with the deceased husband of the informant. The prosecution has failed to explain this aspect, said the learned trial court.

20. As regards the evidence of the injured witnesses, the trial court noted that the informant has laid stress on their evidence but thereafter the court proceeded to consider the evidence of PW-5 and PW-7. It has been observed that PW-5 has nowhere stated in his examination-in-chief regarding the injuries sustained in the occurrence. Likewise Dheeraj Kumar (PW-7) has stated in his evidence that he and Sunil ji were injured but he has stated a different story as stated by the informant. The trial court took a view that PW-5 has stated that bullet crossed his hand but in paragraph '7' of his cross examination, he had stated that it is not



true that there is no mark of firearm injuries on his hand but he had not shown any mark of injuries to the court during the evidence. Thus, the trial court took a view that his statement does not find any objective corroboration from the evidence of Dr. Umesh Kumar (CW-1) who brought the alleged injury report of Dheeraj Kumar (Exhibit '4'). The injury report did not show any firearm injury on his hand. The trial court, therefore, held that these are the material contradictions in the statement of this witness and the I.O.

21. The trial court has further taken a view that the evidence of the informant and the evidence of the I.O. Arshad Jama have material contradictions. As per the informant, the place of occurrence of the case is near the house of Ram Babu Pathik situated in Jamaluddin Chak but the I.O. has mentioned the place of occurrence on the Khagaul-Neora Main Road. The I.O. was not given suggestion by the prosecution on the point of place of occurrence so the prosecution failed to establish the exact place of occurrence of this case.

The trial court has further held that the I.O. has stated in his evidence in paragraph '9' of his cross-examination that after the occurrence when he tried to take the statement of the informant, she did not give the same. He again tried to take the statement of the informant and the other witnesses, they do not turn up before



him. He became known to the fact that witness Arun Kumar had died in Danapur P.S. Case No. 198 of 2003. The trial court has relied upon the evidence of the I.O. Arshad Jama and recorded that he had taken statement of the informant on 14.06.2003, on that day he had taken the statement of Munna Kumar and after that he recorded the statement of other witnesses like Nageshwar Prasad and Sanjay Kumar. These witnesses had given their statement before police after fifteen days of the occurrence. Prior to recording of their statement, the I.O. had taken the statement of several other witnesses. According to the trial court, the prosecution had not examined them rather seventeen witnesses have been given up for their examination by the prosecution and the same was allowed vide order dated 11.02.2013 by the predecessor court.

22. The learned trial court has dealt with another aspect saying that the witnesses who have been examined for the prosecution are mostly out of other village than the place of occurrence. The informant had gone to her house by taking the dead body of her husband. It is stated by her that approximately forty people used to reside in the houses having same courtyard but none of them have been examined by her. She has also not



examined her own grown up children. For all these reasons, the trial court doubted the occurrence.

It is further held by the learned trial court that there are statement of the witnesses that the accused persons had fired from the front side of the vehicle and some marks of bullet occurred on the vehicle also. The vehicle was produced by the informant herself to the I.O. and thereafter production-cum-seizure list was prepared (Exhibit '1/5' and '1/6'), the seizure lists do not show any mark of bullet on the seized vehicle. There was no FSL report of the material articles which were recovered from the vehicle as per the seizure list. The bullet was removed from the body of the deceased and was handed over to the Constable but there is no Forensic Science Laboratory (FSL) report regarding this. As per seizure list there was no mark of bullet on the vehicle contrary to the statement of the prosecution witnesses who have stated that the accused have fired on the vehicle from the front side and several marks had occurred on the vehicle. The trial court disbelieved the manner of occurrence saying that while informant has stated that the accused fired on her husband when he was in the vehicle, the other witnesses have stated that her husband was dragged from the vehicle and was murdered by the accused persons on being shot to him.



The learned trial court has also taken into consideration the statements of the informant with regard to the post occurrence facts. The trial court held that there were material contradictions in the evidence of the informant (PW-1) and that of the other witnesses. The trial court has found that the evidence of the prosecution witnesses are not getting corroborated by the evidence of the I.O. Some of the witnesses are having criminal antecedents and they are also residents of different village, therefore, their testimonies would not be convincing to the court and that would cast shadow on the entire prosecution case. The I.O. has not been declared hostile by the prosecution. He was Dy.S.P. at the time of investigation and the statement of the informant and other prosecution witnesses were recorded by him in presence of the D.I.G. Central Range, Patna. In such situation, according to the learned trial court, it cannot be said that the I.O. was in collusion with the accused.

In ultimate analysis, the learned trial court held that the prosecution has only proved the death of Satyanarayan Sinha by adducing the evidence of Dr. Narendra Kumar Singh (PW-9) but failed to prove the fact as to who murdered the deceased. In such circumstance, the benefit of doubt will go in favour of the accused



persons. The trial court, therefore, acquitted the accused-respondent no. 2 of all the charges giving him benefit of doubt.

Submissions on behalf of the State

23. Mr. Ajay Kumar Mishra, learned Additional Public Prosecutor for the State, submits that in this case, PW-1, PW-6, PW-7 and PW-8 are the eyewitnesses of the occurrence. PW-8 is also an injured witness. They have given ocular evidence. PW-1 is the star witness of this case. The doctor (PW-9) has proved the postmortem report of the deceased, which corroborates the ocular evidence. The deceased was killed by firing and he had sustained several firearm injuries from a close range. Thus, the manner of occurrence has been fully corroborated from the postmortem report. It is submitted that the learned trial court has not appreciated the evidence of the eyewitnesses and without giving any positive findings on the point of manner and cause of occurrence, acquitted the accused persons. In his submissions, the trial court has passed the judgment of acquittal in a mechanical manner. It is pointed out that from a reading of the concluding part of the judgment of the learned trial court in Sessions Trial No. 246 of 2006 and Sessions Trial No. 246A of 2006 it would appear that the learned trial court has recorded verbatimly same and one thing



and acquitted the accused. There is no separate consideration and appreciation of the evidences of the two different trials.

24. Learned Additional Public Prosecutor further submits that Danapur P.S. Case No. 198 of 2003 and Danapur P.S. Case No. 199 of 2003 were registered only to help the defence/accused because they were very close to the power of the State at the relevant time. One of the accused, Rambabu Pathik, happened to be the *samdhi* of the then Chief Minister of the State of Bihar, therefore, police was acting indifferently and not only the FIR in this case was lodged on the next day of the occurrence but even on all other aspects of the investigation, the first I.O. of the case and then the second I.O. (PW-10) ensured that the materials which are required to be collected immediately be allowed to vanish. It is submitted that the learned trial court has given much emphasis on the evidence of the I.O. (PW-10) without realising that indifferent attitude of the I.O. would not discredit the other prosecution witnesses and it would not enure benefit to the accused.

25. Learned Additional Public Prosecutor has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ganesha vs. Sharanappa and Another** reported in **(2014) 1 SCC 87** to submit that the Hon'ble Supreme Court has taken a view that



in a case where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the trial court shall be obliged to reappraise the evidence in light of the observation of the Revisional Court and take an independent view uninfluenced by any of the observations of the Revisional Court on the merit of the case. By way of abundant caution, it has also been observed that interference with the order of acquittal in revision is called for only in cases where there is manifest error of law or procedure and in those exceptional cases in which it is found that the order of acquittal suffers from glaring illegality, resulting into miscarriage of justice.

26. Learned Additional Public Prosecutor has submitted that the judgment of the learned trial court is only a cut and paste judgment in both the trials and the evidence adduced in one trial has been used in deciding the another trial. The entire judgment suffers from perversity, hence it is liable to be set aside and the accused-respondents are liable to be convicted and sentenced accordingly.



Submissions on behalf of the informant

27. Mr. Apurv Harsh, learned counsel for the informant has endorsed the submissions of learned Additional Public Prosecutor for the State.

28. Learned counsel submits that the learned trial court has completely erred in appreciation of the ocular and the documentary evidences available on the record. It is submitted that the learned trial court has failed to appreciate that in this case the date, time and place of occurrence are fully established by the prosecution. The Police Inspector of Danapur Police Station registered Danapur P.S. Case No. 198 of 2003 on his own statement. It is submitted that the FIR of Danapur P.S. Case No. 198 of 2003 was seen by learned A.C.J.M. only on 02.05.2003, even though it is shown to have been registered on 30.04.2003 at 4:00 PM. This would strengthen the case of the informant that the police did not record the statement of the informant (PW-1) on the date of occurrence at the place of occurrence and delayed the lodging of the FIR of the informant (PW-1) only in order to help the accused persons. The informant, Pramod Kumar Inspector of Police, Danapur and the first I.O. of Danapur P.S. Case No. 198 of 2003 were not examined by the I.O. (PW-10) who subsequently took charge of the investigation and thereby the case of the



informant that the police were in collusion with the accused gets established.

29. Learned counsel submits that the written information and FIR of Danapur P.S. Case No. 198 of 2003 have been marked Exhibit 'B' on behalf of the defence but in fact the written information of this case has not been placed with the formal FIR. It would appear from the self-written statement of Pramod Kumar, Police Inspector of Danapur Police Station that he claims to have received information with regard to the occurrence which took place at about 11:35AM from an unknown person who informed him that gang of criminals are engaged in firing in village Jamaluddin Chak. He reached there and got additional forces. He has written about the immediate circumstance which he found there. In his self-statement, he has recorded that when he reached village Jamaluddin Chak, then he found that on Khagaul-Neora road from the house of Rajendra Rai towards the Sarari Gumti (railway crossing), in between 200-250 yards, about 1000-1500 persons were in running condition (*bhagdar*) and some of the vehicles were burning. He had found that from the crowd and from the roof of the houses, stones were being thrown and firing were being made. The main target of stone-throwing was the house of Shri Rambabu Pathik. Near the house of Shri Pathik, from the roof



of the house of Mahendra Rai also, stones were being thrown and firing were taking place. To understand this situation, when he came near the police force posted at the house of Shri Pathik, the in-charge Havaldar Sheikh Sattar told him that the criminals had attacked the house of Shri Pathik and the armed forces who were with him had made firing in the air in self-defence from SLR. He has recorded that Havaldar Sheikh Md. Sattar had given him written information in this regard which he claimed that he was enclosing with his statement. Learned counsel submits that the written information given by Havaldar Sheikh Sattar is dated 01.05.2003, therefore, it is evident that the self-statement of Pramod Kumar, Police Inspector, shown to have been recorded on 30.04.2003 at 15:00 Hrs. is ante-dated and in fact it has been recorded only on 01.05.2003. On 30.04.2003, no self-statement of Police Inspector was recorded.

30. Learned counsel further submits that in his self-statement, the Police Inspector Pramod Kumar has further recorded that he came to know that supporters of RJD were being taken in the rally called by RJD in Gandhi Maidan, Patna, they were being taken to Gandhi Maidan by their leaders in several vehicles. In the meantime, due to political rivalry and to show supremacy, an attack was made on the rally supporters whereafter



they came down from the vehicle and started running away. Amongst the criminals one person died there, whose name is Satyanarayan Sinha of village Sarari, the people told him that he was an active criminal of the area and he was charged for various offences. He has further stated to have come to know that the other side was being led by Mukhiya Ritlal Yadav, who had also got injured in the occurrence. Thereafter, he has stated about the subsequent actions which were taken by him to control the crowd and in the process, *ashru* gas team was called and the crowd continued to throw bricks and stones and were firing from gun, rifle and countrymade pistols, in which he has named six police personnel who got injured. According to him, seven persons were identified by him and the police force, which included Chunnu Rai and Rintu. He has also mentioned in his self-statement that at the place of occurrence, two persons had fallen down after getting injured from the firearm, they disclosed their name as (i) Arun Kumar, son of Sher Bahadur Rai (ii) Santosh Kumar, son of Ram Bahadur Rai. They were not in a position to make their statements, hence, in order to save their life, they were sent to PMCH and arrested Rajendra Prasad Ram and Ram Bali Rai on chase. They disclosed that earlier Satyanarayan Sinha of village Sarari, P.S.



Sahapur was killed and his dead body has been taken away by his supporters and the same has been concealed.

31. Learned counsel for the informant (PW-1) submits that the manner of occurrence as suggested by the Police Inspector Pramod Kumar in his self-statement giving rise to Danapur P.S. Case No. 198 of 2003 is result of only an afterthought to weaken the case of the informant. This self-statement was recorded only after he had come to know the case of the informant (PW-1) as disclosed to the Police Inspector and in her written statement.

32. Learned counsel further submits that in his own self-statement Pramod Kumar, Inspector has recorded that stones were being thrown and that firings were being done from the roof of the house of Mahendra Rai near the house of Shri Pathik. It would be evident from a bare reading of the self-statement of Pramod Kumar that he had received information about firing being exchanged by two groups of criminals in village Jamaluddin Chak and he had also come to know that while Satyanarayan Sinha had been killed there itself, the other side was being led by Mukhiya Ritlal Yadav and he was also injured in the said occurrence of firing. It is submitted that Mukhiya Ritlal Yadav remained absconding in this case for several months and in course of investigation, during raid in the house of Ritlal Yadav, several



firearms and ammunition were recovered which has been recorded by the I.O. (PW-10) in the case diary.

33. Learned counsel submits that the indifferent attitude of the senior police officers and the previous I.O. as well as the second I.O. (PW-10) in not only registering the case of the informant but even subsequently in course of investigation would not discredit the prosecution witnesses and their evidences are required to be examined independently but the learned trial court has not done so. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Edakkandi Dineshan and Others vs. State of Kerala** reported in **(2025) 3 SCC 273** to submit that the principle of "*falsus in uno, falsus in omnibus*" is not the rule applied by the courts in India. It is submitted that even a part statement of a witness can be believed even though some part of the statement may not be relied upon by the court but in this case the learned trial court has picked up some minor inconsistencies in the statement of the witnesses from here and there in a scattered manner and by relying upon the same, the trial court discredited the prosecution witnesses. This is not the correct approach to appreciate the ocular evidences.

34. Learned counsel further submits that in the case of **Shahaja @ Shahajan Ismail Mohd. Shaikh vs. State of**



Maharashtra reported in **(2023) 12 SCC 558**, the Hon'ble Supreme Court has taken a view that the appreciation of ocular evidence is a hard task and there cannot be any fixed or straitjacket formula for appreciation of the ocular evidence. Learned counsel has relied upon paragraphs '29' and '30' of the judgment.

35. It is further submitted that in the case of **Harendra Rai vs. State of Bihar and Others** reported in **(2023) 13 SCC 563**, the Hon'ble Supreme Court has observed *inter alia* that failure of the State machinery and failure of the trial court to ensure a fair trial from the perspective of the victim side and the aspect of non-marking of the FIR and *bayan tahriri* as an exhibit, non-production of the formal witnesses in the trial would not vitiate the genuineness of the FIR. The Hon'ble Supreme Court refused to give any discount to the accused persons for non-exhibition of those documents. It is thus submitted that the judgment of the learned trial court is liable to be set aside and an appropriate order be passed by this Court as an appellate court.

Submissions on behalf of the private respondents.

36. Mr. Rajendra Narayan, learned Senior Counsel has opposed the appeals. Defending the impugned judgment of the learned trial court, learned Senior Counsel has submitted that no illegality, much less any perversity, may be found in the judgment



of the learned trial court. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **Muralidhar @ Gidda and Another vs. State of Karnataka** reported in **(2014) 5 SCC 730** (paragraph 10 to 13 and 19) and the case of **Ghurey Lal vs. State of U.P.** reported in **(2008) 10 SCC 450** (paragraph 36, 69-76).

37. Learned Senior Counsel for the respondents has submitted that in the case of **Surajpal Singh and Others v. The State** reported in **AIR 1952 SC 52**, the Hon'ble Supreme Court has, while dealing with the powers of the High Court in an appeal against acquittal observed that the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons. Learned Senior Counsel submits that in catena of judgments, the Hon'ble Supreme Court has reiterated the principles relating to appeals from a judgment of acquittal which are in line with the judgment in case of **Surajpal Singh** (supra).

38. Learned Senior Counsel has further submitted that in the case of **Ghurey Lal** (supra), the Hon'ble Supreme Court has



taken note of the main reasons for acquittal by the trial court and the main reasons for reversal of the acquittal order whereafter the Hon'ble Supreme Court disagreed with the High Court. While disagreeing with the opinion of the High Court, the Hon'ble Supreme Court relied upon the judgment in case of **Sheo Swarup vs. King-Emperor** reported in **AIR 1934 PC 227 (2)** in which the scope and ambit of the powers of the appellate court in dealing with an appeal against acquittal has been elucidated by the Privy Council. It has been held that the appellate court is undoubtedly having wide powers of reappreciating and re-evaluating the entire evidence but it would be justified in interfering with the judgment of acquittal only when the judgment of the trial court is palpably wrong, totally ill-founded or wholly misconceived, based on erroneous analysis of evidence and non-existent material, demonstrably unsustainable or perverse [paragraph '43' of the judgment of Ghurey Lal (Supra)].

39. In sum and substance, learned Senior Counsel for the respondents has submitted that in this case, the learned trial court has properly appreciated the entire evidences available on the record, hence no interference is called for.



Analysis of the evidences

40. Asha Devi, who is the informant of this case, has deposed as PW-1. In her examination-in-chief, PW-1 has stated that deceased was her husband. On the date of occurrence i.e. on 30.04.2003 in between 11-11.30 AM, she was going for her treatment to a doctor by her vehicle BR1T-0222. Her husband was driving the vehicle. Rintu Singh was sitting on the front side, in the middle she, Sanjay and Jeevan were sitting. On the backseat, Nageshwar and Dheeraj were there. When her vehicle reached near the house of Rambabu Pathik in Jamaluddin Chak then there was a Maruti vehicle standing on the road in such a way that her vehicle could not have moved ahead. On this, her husband took out his head outside the vehicle and asked for keeping aside the Maruti. In the meantime, three persons came out of the said Maruti van and shouted "*Satya Narayan Aa Gaya*". They were armed with weapon. This witness has further stated that Rambabu Pathik, Ritlal Yadav, Sunil @ Kana, Ranjan @ Benga and 8/10 persons came out from the house of Rambabu Pathik, all were armed with weapons. This witness has stated in paragraph '5' of her deposition that Rambabu Pathik told "*Sala Barka Neta Banta Hai*", in the meantime Ritlal Yadav, Sunil Yadav and Ranjan fired on her husband whereafter her husband fell down and he died. She has



stated that Rambabu told to kill all the persons who were in the vehicle on which all the persons started firing, during this the informant and others who were in the vehicle concealed themselves under the seat. Sanjay and Dheeraj had suffered firearm injury and there were several marks of bullet on the vehicle. PW-1 has stated that all the accused persons went inside the house of Rambabu Pathik. Thereafter she had gone to her village Sarari where police came.

In her cross-examination in paragraph '17' she has stated that police had come at the place of occurrence at 11:45 AM, there were several police officers with Darogaji, she had lodged a case at the place of occurrence but her statement was not recorded by Darogaji. She had got prepared a written information by Rajnish Kumar and had put her signature thereon. She had shown the place of occurrence to police and had also shown the dead body of her husband.

This witness has also stated in her deposition that police was not properly conducting investigation of the case because Rambabu Pathik happened to be the samdhi of the then Chief Minister of the State of Bihar. She had filed a protest petition in Danapur court. This witness has identified her signature on the protest petition as Exhibit '1/1' and has also identified the



signature of Anil Kumar Singh as Exhibit '1/2'. She has also identified the signatures on the production-cum-seizure list as Exhibit '1/5' and Exhibit '1/6' respectively. She has stated in paragraph '15' of her deposition that her statement was also taken in front of DIG Sahab. She has stated in paragraph '19' of her deposition that the dead body of her husband was not sent for postmortem on 30.04.2003. On 30.04.2003, police had lodged Danapur P.S. Case No.198 of 2003 in which twelve persons were named and 1000-1500 unknown persons were made accused. In this Arun Kumar, who was an injured, was also an accused. She has stated in paragraph '20' that in the firing done by the police and accused persons Arun Kumar had got injured.

PW-1 has further stated that police was there because of the rally. She had sent her written application to the police station on 01.05.2003 but cannot say the name of the person through whom the application was sent. She denied the suggestion of the defence that police had seen the dead body of her husband on 01.05.2003 at 11:00 AM. She has stated that police had taken away the dead body of her husband from the *gausala* in the Sarari village. The said *gausala* is at a distance of one kilometer from the place of occurrence. She has also stated in paragraph '26' of her deposition that police had seen the vehicle and the dead body was taken on



the same vehicle to village Sarari. Police had seen the vehicle from the date of occurrence and police used to come and go from the date of occurrence. Police seized the vehicle on 3rd, no seizure was made at the door of the informant and police had taken away the vehicle for examination. PW-1 denied the suggestion of the defence that for the first time the vehicle was produced before police on 10.05.2003. She has stated that police had left the vehicle on her jimmenama.

In her further cross-examination, PW-1 has stated that after 10-15 minutes of the occurrence, she had met the Inspector of Police, Danapur. He had not informed her about the lodgment of the case. She denied the suggestion of the defence that Sunil Kumar had informed her about the lodgment of the case. She denied any information that three cases were lodged with respect to the occurrence. She denied the defence suggestion that she had lodged a fabricated case.

41. On the point of criminal antecedent of her husband, this witness was cross-examined by defence. She has stated that her husband had once gone behind the bars on the allegation of murder, there were 4-5 cases against him. She denied the suggestion of the defence that her husband had gone to jail for 4-5 times. She also denied the suggestion of the defence that no such



occurrence had taken place. She also denied the suggestion of the defence that she was not present at the place of occurrence at the time of occurrence.

42. From the deposition of PW-1, it is evident that she has deposed as an eyewitness of the occurrence. She has stated about the place of occurrence, the date of occurrence and the time of occurrence. She has also stated that police had arrived within 10-15 minutes of the occurrence and she had made statement before Darogaji at 11:45 AM at the place of occurrence but it was not recorded. This witness has also stated that because of the rally police was already there. The defence has not suggested otherwise. It is also evident that PW-1 has stated that the dead body of her husband was not sent for postmortem on 30.04.2003 and she was not informed that police had lodged any case on that day. To this Court, it appears that the statement of PW-1 that at the place of occurrence police had seen the vehicles that police kept on coming and going and were seeing the vehicle are required to be appreciated keeping in mind that in the kind of occurrence which had taken place, it cannot be believed that the vehicle may be kept concealed that too when police had already arrived within 10-15 minutes and that was a day when the ruling party in the State had called for a rally and police were already there. Although the



defence has suggested that PW-1 was not present at the time of occurrence but in the evidence of PW-1, we do not find any contradiction taken with regard to her presence at the place of occurrence.

43. Baleshwar Rai (PW-2) has deposed as a hearsay witness. He has stated that the wife of the deceased had told him about the occurrence. At that time he was in his house and he had not seen who had murdered Satyanarayan Sinha.

44. Kamta Rai (PW-3) deposed that he did not know anything about the occurrence and his statement was not recorded by police. This witness has been declared hostile and was cross-examined by the prosecution.

45. Kalavati Devi (PW-4) is the sister of the deceased Satyanarayan Sinha. She has stated that Satyanarayan Sinha had been going with his wife and 4-5 persons at about 11:00 AM. Her brother was murdered, she had heard the sound of firing and when she came outside her house, then she heard people saying that her brother was killed. Thereafter, she went to the place of occurrence where she found that the wife of Satyanarayan Sinha was present. There, this witness heard that Ritlalva, Bengva, Sunil and Sarvanva had killed her brother.



In her cross-examination, she has stated that police had recorded her statement. Her husband was *Mukhiya* of Sarari Panchayat at the time of occurrence. She has reiterated that her *bhabhi* Asha Devi was present at the place of occurrence. She has stated that there was no police personnel, common people were there and her *bhabhi* was alone weeping with the dead body. The defence suggested her that she had stated before police that if her *bhabhi* would not have reached there then many dead bodies would have fallen. She denied the suggestion that she was making her statement on the tutoring by her *bhabhi*. This witness has stated that the place of occurrence is between the station and the village. She has, however, stated that she had not seen the occurrence. This Court finds that this witness is also a hearsay witness as regards to the occurrence, however, she has deposed on the circumstances immediately present at the place of occurrence wherein she has stated about the presence of her *bhabhi* Asha Devi (PW-1) at the place of occurrence.

46. Sanjay Kumar (PW-5) is a witness of the production-cum-seizure list of the Bolero vehicle bearing Number BR-1T/0222. He has identified his own signature and that of the another witness Rajesh as Exhibit '1/7' and Exhibit '1/8' respectively on the seizure list. He has stated that the vehicle is in



the name of his *bhabhi* Asha Devi. In paragraph '2' of his examination-in-chief, PW-5 has stated that a blood-stained towel was seized from the vehicle, there were blood marks and marks of firing upon the vehicle. In this regard, a separate seizure list was prepared. He identified his own signature thereon as Exhibit '1/9' and the signature of another witness Ramanand Rai as Exhibit '1/10'.

In his cross-examination, the defence drew the attention of this witness that in the seizure list it was not mentioned that the towel was found on the driving seat and it is also not mentioned that on which part of the body of the vehicle there were marks of firing. The defence also drew the attention of this witness that the seizure list was prepared after 15-20 days of the occurrence. This witness denied the suggestion that the seizure list was prepared to falsely implicate the accused.

47. Nageshwar Prasad Yadav (PW-6) has deposed as an eyewitness of the occurrence. He has stated that on 30.04.2003, in between 11-11:30 AM, he was present in the vehicle of Sinha Ji. Sinha Ji was himself driving the vehicle. Rintu Singh was sitting and in the middle seat, Asha Ji, Jeevan Ji and Sanjay Sharma were sitting. On the backside seat, this witness and Dheeraj Kumar were sitting. He has stated that when the vehicle reached in front of the



house of Pathik Ji, a Maruti van was standing there then Sinha Ji took his head outside, four persons came out of that and started shouting that “*Sinha Ji aa gaye*” then from the house of Pathik Ji, Pathik Ji, Ritlal Yadav, Sunil and Ranjan Yadav came out. This witness has stated that Pathik Ji told, “*barka neta hai saale to goli maar do*”. Ritlal Yadav, Sunil Yadav and Ranjan Yadav shot at Sinha Ji whereafter he fell down. Pathik Ji came and said to kill all whereon firing took place in which Sanjay Sharma and Dheeraj Kumar got injured. All the accused persons went inside the house of Pathik Ji after committing the occurrence. In paragraph ‘11’ of his deposition, this witness has stated that after the accused persons left, Rintu Singh drove the vehicle to the home. PW-6 identified Sunil Yadav who had been present in court and claimed that he can identify all other accused.

In his cross-examination, this witness has stated that on the date of occurrence, he had gone to the house of Sinha Ji when the vehicle was about to start. He has stated that he had gone by motorcycle which belonged to his younger brother but he did not remember the number of the vehicle. This witness has further stated that on that day, there was a rally of Rashtriya Janta Dal in Gandhi Maidan, Patna. There were crowds on the road and people were coming by vehicles. On the asking of Sinha Ji, he sat in the



vehicle. This witness has stated that on the way, people were talking in Bolero that they had to go to a doctor. He did not know the other persons who were sitting in the vehicle. He has stated that Rintu Singh was sitting in the front seat in the left side of Sinha Ji who was on the driving seat. In the middle seat, Asha Devi, Jeevan Ji, Sanjay Sharma @ Chunnu were sitting but he did not remember who was sitting which side. On the back seat, he and Dheeraj were sitting. He has stated that firing had taken place from the front side of the vehicle. In the said firing, the glass of the vehicle were broken. He has stated that all the firing had taken place from the front side. He did not remember on which part of the body of Sanjay Sharma and Dheeraj, they were shot at. He did not remember the places of the body where Sinha Ji had suffered bullet shots. He has stated that they had brought the vehicle to the village. Sanjay and Dheeraj got down on the way. He has stated that on 30.04.2003, police had not arrived. He did not remember whether police had arrived at the house in his presence or not. He did not remember that any written information was given regarding the occurrence to police or not.

In paragraph (vi) he has deposed that he has no criminal antecedent. The defence suggested this witness that to control the crowd, police had come and firing had been done on the police by



people who were throwing stones. PW-6 denied the suggestions and said that he was not aware of any such thing. He also expressed his unawareness that to control the crowd, police had fired in self-defence and he further expressed his unawareness that police personnel were also injured in the firing. In paragraph (vii), this witness has stated that he had no business or personal relationship with any of the accused engaged in firing. He did not know them by name. He was not taken by police for identification in test identification parade. This witness was suggested by defence that he had not seen the occurrence and he did not know anything. The stand of the defence was that unknown criminals or in the firing of the police in self-defence, murder had taken place.

This witness has stated that after 1-2 days of the occurrence, police had interrogated him. In his further cross-examination on behalf of Sunil Rai, this witness has stated that he knew the accused persons from before. Chunnu Sharma had informed him about their names. This witness has given the description of the place of occurrence wherein he has stated that the house of Pathik Ji is situated north to the place of occurrence. In south, there is a railway line and except in the north side of the place of occurrence, in no other direction there is any house. He had stayed at the place of occurrence for 10-15 minutes, during this period, police or



public had not arrived. He has further stated that police had recorded his statement at the house of Asha Devi (PW-1). He denied the suggestion of the defence that he was not present in the vehicle and had deposed in court falsely on tutoring.

48. Dheeraj Kumar (PW-7) has also supported the prosecution case. He has stated about presence of his aunty Asha Singh (PW-1), Jeevan Ji, Chunnu Ji, Rintu Ji, Nageshwar Ji and himself. He has stated that the vehicle was being driven by his uncle and when the vehicle reached in front of the house of Pathik Ji in Jamaluddin Chak, then a white-coloured Maruti was standing diagonally on the road. He has stated that from the said Maruti van three persons came out shouting that “*Satyanarayan aa gaya*”, they were armed with weapons, from the house of Pathik Ji, Ritlal Yadav, Sunil, Ranjan @ Benga came out. Pathik Ji told “*barka neta banta hai maar do usko*”, on this Ritlal, Sunil and Ranjan @ Benga pulled out his uncle and fired at him. His uncle got injured and fell down. Thereafter, Pathik Ji told to kill all in the vehicle, in the occurrence, he had received one shot on his hand and had become unconscious. He later on came to know that he was treated in Railway Hospital and PMCH. He identified Sunil and Ranjan @ Benga.



In his cross-examination, he has stated that he knew everyone present in the vehicle except Nageshwar Ji whom he saw for the first time. He has stated that on regaining consciousness in the hospital, he found his father in the hospital but he could not say the name of the hospital. He has stated that he had seen the treatment papers of the Railway Hospital and PMCH but those were not with him. He had not shown the papers to police as they told him that they will collect the papers from the hospital. He had returned from hospital after 8-10 days. He has stated that thereafter he went to the house of his *mausi* in Jamaluddin Chak. Jamaluddin Chak is at a distance of two kilometer from his house. He has stated that the bullet had crossed into his hand from one side to another but he did not know whether stitch was given on the wound. He had not gone to hospital thereafter. He did not remember that after how many days police had recorded his statement. The defence suggested him that he had fled away from the vehicle. This witness denied this suggestion. He denied the suggestion of the defence that he had given statement before police that his treatment had taken place at Saguna More. He further denied the suggestion of the defence that he had stated before police that when firing started on the vehicle, he came down and fled away. He denied the suggestion that he had not taken name of Sunil, Ranjan and Benga.



He also denied the suggestion that he had not taken the name of Pathik Ji before police. He has stated that when he again went to Jamaluddin Chak, he found that vehicle was burning and large number of crowd had assembled. The defence suggested him that he had not seen the occurrence.

In his further cross-examination, this witness has stated that when his uncle was pulled out from the vehicle, nobody tried to save him because they could not get any time for that. He has stated that he had not tried to get down and flee away. This witness has further stated that his uncle was shot at in standing condition. He did not know the parts of the body on which his uncle had suffered the bullet. He did not know that who had taken back the Bolero vehicle. He did not know that who had taken away the dead body of his uncle from there. The defence suggested this witness that to disturb the rally, his uncle and his supporters had made firing and in the said firing, police had tried to control the situation which has arisen out of the firing and stampede. In the said firing done by police, some persons got injured. He denied his information that Arun and Santosh had received the bullet. This witness was suggested that he had not suffered any bullet, the witness denied it.



In this connection, this Court would also take note of the evidence of Dr. Umesh Kumar, (Court Witness no. 1). CW-1 has deposed that on 30.04.2003 he was posted at Danapur Railway Hospital. At the time of his deposition, CW-1 has disclosed that he was posted as Additional Chief Medical Superintendent, Danapur Hospital. He had brought the treatment paper of Dheeraj Kumar (PW-7). CW-1 has stated that Dheeraj Kumar was kept in observation in his hospital on 30.04.2003 at 1:15 PM. In the treatment paper it was written that there was injury on the right forearm. He was administered medicine and injection. CW-1 had brought the papers from the record of the hospital but he could not name the doctor who had written the papers. He has admitted his signature and writing on the other page. CW-1 has stated that he had seen the patient.

In his cross-examination, this witness has stated that only one page is written in his handwriting. He has stated that on the injury report no case number was mentioned. Only complaint is written which is relating to the injury of the case. He has stated that police sends requisition if it is a case of accident or any occurrence. The injury report of Dheeraj Kumar is available on the record which we would reproduce hereunder (Exhibit '4'):

“Dhiraj Kumar, S/o Ashok Kumar,
Add. Sarari, Khagaul



Cut mark on right ankle joint.

C/o injury at right forearm

Adv. Keep under observation
X-Ray Right forearm"

49. On perusal of the injury report of Dheeraj Kumar (Exhibit '04') proved by CW-1, this much is proved that Dheeraj Kumar (PW-7) had gone to the Railway Hospital, Danapur on 30.04.2003 and he was admitted in the hospital for keeping him under observation. The record of the hospital which has been brought on the trial court record would show that in the column showing the "days in hospital" "one" is written and he was also suggested x-ray of the right forearm. The doctor had found injury over the right forearm and to that extent, it is proved that Dheeraj had suffered some injury on his right forearm but it is not clear that he had suffered a firearm injury. No hospital document has been brought on the record to show that he was brought in the hospital in unconscious condition.

50. Ravi Kumar Kishore @ Rintu (PW-8) has deposed as an eyewitness of the occurrence. Like other witnesses he has also given the place of occurrence which is near the house of Rambabu Pathik. He has stated that three persons came out of the Maruti vehicle, they were armed with weapons and loudly shouted that "*Satyanarayan Sinha aa gaya*" thereafter from the house of Rambabu Pathik, Ritlal Yadav, Sunil Yadav, Ranjan Yadav and



other 8-10 persons came and after pulling out Sinha Ji from the Bolero vehicle, Ritlal Yadav, Sunil Yadav and Ranjan Yadav fired at him. Due to said firing, Sinha Ji had got injured and Rambabu Pathik asked them to kill those who were sitting in the vehicle, thereafter all the three accused fired on the people who were in the vehicle. He has stated that in the said firing Sanjay @ Chunnu and Munna Babu got injured. Munna Babu is the alias name of Dheeraj (PW-7). This witness has stated about the presence of Asha Sinha, Sanjay Ji @ Chunnu, Nageshwar @ Mamu, Dheeraj @ Munna and Jeevan Yadav in the vehicle at the time of occurrence. In paragraph '2' of his deposition, he has stated that he had come back to village Sarari taking the three injured.

In his cross-examination, this witness has stated that all the persons in the vehicle sat in the Bolero from the house of Satyanarayan Sinha itself. He did not remember that whether the persons in the vehicle reached prior to his reaching or after his reaching. This witness has also given the description of the place of occurrence. He has stated that the accused persons had opened the door of the vehicle and at that time also this witness and others remained sitting in the vehicle because the accused were armed with weapon. He has stated that the accused persons opened the door from the side of Sinha Ji only, though the vehicle had five



doors. He has stated that Sinha Ji was pulled out of the vehicle and he was kept pushed to the vehicle side and was shot at. After the accused persons fled away, then they put Sinha Ji in the vehicle and left towards Sarari village. He has stated that immediately after the occurrence, crowd had not assembled at the place of occurrence, when they left for village Sarari, then crowd had assembled. He could not say when he reached village Sarari, all the people were in the vehicle and had stayed in the village. During the period when they were in the village, police had also arrived. In paragraph '7' of his deposition, he has stated that after the day of occurrence he had gone to village Sarari in the *shradh*, he had not given statement earlier and he had deposed in the court. After the occurrence and *shradh*, he had not met Asha Sinha. This witness was suggested that Satyanarayan Sinha was a veteran criminal of his area and he had also several criminal cases against him, this witness denied any awareness. He has stated that he is a builder and director in a private limited company. He has given the name of the three partners. He has denied the suggestion of the defence that he had connection with Shambhu Singh and Mantu Singh gang of Muzaffarpur. He has denied the suggestion of defence that he was deposing on the direction of the MLA (PW-1).



51. Dr. Narendra Kumar Singh (PW-9) is the doctor who was posted as Deputy Superintendent in Sub-Divisional Hospital, Danapur on 01.05.2003. He was a member of the Medical Board with Dr. Hemant Kumar Jha and Dr. Ram Niwas Prasad. He had conducted the autopsy on the dead body of Satyanarayan Sinha. This witness has proved the postmortem report as Exhibit '5'. As regards the injuries found on the body of the deceased, PW-9 has stated as under:-

“(i) Lacerated wound 2½” x 2” depth continued inside plus blackening around below the right ear. There was partial laceration over right ear lobule. It was the entry wound.

(ii) Lacerated wound 5” x 3” depth continued with injury no. (i) in front of left ear and left side of face. This is exit wound. There is fracture of right side of mandible, left side of mandible and maxilla.

(iii) Lacerated wound 3½” x 3½” depth continued inside in front and below right shoulder joint plus slide blackening around. It was the entry wound.

(iv) Lacerated wound 5” x 3” depth continued with injury no. (iii) on the back of the neck. This is exit wound.

(v) Lacerated wound 1” x 1” omentum sprouting outside of right side of abdomen plus blackening around the entry wound.

External Examination:-

Scalp – Meningal surface pale

Thorax – There is slight laceration of right upper lobe of lung and blood collection in thoracic cavity.

Right chamber full, left empty



Abdomen - Viscera, liver, spleen, kidney and gut – general look pale. There is collection of blood and gas. Slight laceration of ilium.

Urinary bladder is empty. Stomach contained undigested food.

Small gut – Liquid, semidigested food and gas.

Large gut contained faeces of gas. Fragments of bullet are found in the wall of abdomen and inside the wall of peridium which was handed over to the constable.

(4) Time elapsed since death – 36 hours

(5) Injuries from (i) to (v) were firearm injuries causing hemorrhage, shock and death.

(6) This P.M. report is in the handwriting of Dr. H.K. Jha and written in my presence. It bears the signature of Dr. H.K. Jha, Dr. Ram Niwas Pd. And mine. The P.M. report was marked Exhibit – 4

(7) Blackening around injury suggests that firing was resorted to from close range.”

52. In his cross-examination, PW-9 has stated that he was not a ballistic expert. Dr. H.K. Jha read the postmortem report on the basis of his observation. He was sitting there. He and Dr. Ram Niwas Prasad signed on the postmortem report being members of the Board. About the recovered bullet from his stomach, this witness has stated that the same is not present in the court. It was not mentioned in the postmortem report that the bullet was sealed or not. The bullet was handed over to the Constable. It is not mentioned in the postmortem report that the recovered bullet was kept in the jar or not. Life of bullet and its fragment is not written



in the postmortem report. As regards the direction of the injury, the doctor (PW-9) has stated that the direction of injury was from upper to downwards. He has stated that the time of death of 36 hours is only a range. It may be two hours before or after. PW-9 denied the suggestion that the postmortem report is collusive.

53. Arshad Jama (PW-10) was posted as Dy.S.P. (Sachivalaya) in the year 2003. In his examination-in-chief, he has stated that on 02.05.2003, the DGP, Bihar ordered him to take over the investigation of Danapur P.S. Case No. 200 of 2023. In the light of the said order, he had assumed the investigation of the case and inspected the place of occurrence.

In paragraph '2' of his deposition, he has given the description of the place of occurrence. The place of occurrence is the road going from Danapur Station to Shivala. In East at a distance of 1200 Yards, there is Danapur Railway Station, in West at a distance of 350 yards, there is Sarari Gumti and Chauraha. The road is 20 feet wide. He found blood fallen in the middle of the road in diameter of 18 inch. The blood had dried down. He collected blood and sand from the place of occurrence. He had found broken glasses at the place of occurrence. He found 0.315 bore cartridge shell at the place of occurrence. He prepared a seizure list of the same. He has proved the seizure list (Exhibit '3')



and he has stated that Kamakhaya Prasad and Basant Rai had put their thumb impression on the same.

He has further stated in his examination-in-chief that in course of investigation, he had interrogated Asha Devi and Kalavati Devi and seized the Bolero Vehicle No. BR1T-0222. He had taken statement of Sanjay Kumar and filed application in the court of Chief Judicial Magistrate for sending the seized articles to Forensic Science Laboratory. In paragraph '5' of his examination-in-chief, he has stated that he had recorded the statement of the informant in presence of DIG Central (Range). He had recorded statement of the injured Munna @ Dheeraj and Nageshwar Prasad. He had conducted *Kurki Japti* in the house of accused Ranjan @ Benga and seized the articles. He had recorded the criminal antecedent of Ranjan @ Benga and Sunil Yadav @ Kana. After investigation, he had submitted a charge-sheet showing Ranjan @ Benga and Sunil Yadav as absconder.

In his cross-examination, this witness has stated that he had not mentioned in the case diary as who had shown him the place of occurrence. He had left for the place of occurrence from Sachivalaya at 14:00 Hrs. He had not recorded the time of reaching to the place of occurrence. He had also not recorded the time of inspection of the place of occurrence. He has stated in



paragraph '8' of his deposition that at the time of occurrence, there was no BMP Camp there but police force was there. He had not recorded the time of seizure of the cartridge shell and the time of recording of the statement of the witnesses. He had not recorded the time of reaching to Sarari village for recording the statement of Asha Devi (PW-1). He had not perused the investigation done by the earlier I.O. prior to taking over the charge of the investigation in this case. He had got the charge of investigation on 3rd of May.

54. PW-10 has stated that the earlier I.O. had given the description of the place of occurrence which is not different from the description given by this witness. The earlier I.O. has recorded that the place of occurrence in this case is Khagaul-Neora Pakki Road. From the place of occurrence, this road goes from East to West. At the place of occurrence, in North there is village Jammulddin Chak, in South there is boundary wall of the Railway, in East Danapur-Khagaul Railway Station and West the pakki road going to Neora. The earlier I.O. had not recorded about collection/seizure of blood or the empty cartridge shell. This witness had not recorded in the case diary that he had perused the diary of the earlier I.O. On the same day, this witness had taken over the charge of investigation of Danapur P.S. Case No. 198 of 2003. He has deposed that he had earlier stood as a witness in



another trial in this case but he did not remember that the said connected trial is Sessions Trial No. 246A. This witness has further stated that in the case diary of this case, he had not recorded the time of registration of Danapur P.S. Case No. 198 of 2003. He has stated that in the diary he had recorded that when he went to take statement of the informant then she had refused to give her statement, when he asked for seizure of Bolero Vehicle, she asked her not to do and she did not disclose the name of the witnesses. PW-10 has stated that he had recorded the statement of witnesses in paragraph '27', '28' and '30' of the case diary. Some of the witnesses had stated that he had not seen any lady/female sitting in the jeep. Nobody made such statement. He has stated that some of the witnesses who are named in paragraph '35', '36' and '37' of the case diary had not stated that who had shot at Satyanarayan Sinha. Regarding some other witnesses, PW-10 has stated that they did not say about the role of any of the accused person in the murder.

55. PW-10 has stated in paragraph '15' that according to the report of the FSL, they had not found the finger prints as those were missing. The car was seized from the garage of Sinha Ji and seizure list was prepared on 10.05.2003. He had recorded in paragraph '76' of the case diary that he reached to record the



statement of the witnesses but could not do so. He has, however, stated that he had not taken any action against the informant or any of the witnesses. In paragraph '16' of his deposition, he has stated that there was no mention in the case diary as to where vehicle was kept after seizure. The vehicle was not produced in court. He has stated that the vehicle was left on *Jimmenama*. He has stated that in the case diary, there is no mention about the receipt of the report of examination of blood etc. He has stated that he had come in the court with the seized article, blood, etc. He had not recorded the statement of the earlier I.O. and he came to know that Jeewan Yadav, a witness of this case, was missing and absconding. In paragraph '17' of his deposition, he has stated that he had not taken photographs or he had not prepared any seizure list of car of the place of occurrence. He had also not recorded statement of the guards who were present at the house of Rambabu Pathik. He had recorded the criminal antecedent.

56. Regarding the previous statement of the prosecution witnesses, PW-10 has stated that Kalawati Devi had not given him any information rather she had stated that "*Agar 'bhaujai' ghatnasthal par nahi jati to aur kai log maare jate*". She had not stated before police that she had seen the '*bhaujai*' holding the dead body. She had brought her '*bhaujai*' to the village.



57. Regarding Dheeraj Kumar (PW-7), I.O. has stated that he had not made statement before him that when the vehicle reached in front of the house of Pathik Ji, a Maruti car was found standing there diagonally. He had not stated that three persons had arrived from the van and shouted “*Satyanarayan aa gya*” and that they had arms in their hand. He had not made statement that from the house of Pathik Ji, Sunil, Ranjan @ Benga came outside. In his cross-examination, he had not stated before police that Pathik Ji had told “*Badka Neta Banta hai, goli maar do*”. He had not made statement that the three accused persons had pulled out his uncle and started firing in which his uncle became ill. He has stated that he had suffered one shot on to his hand and he became unconscious whereafter his treatment was done in Railway Hospital and PMCH.

In paragraph ‘19’, PW-10 has stated that witness Dheeraj had not taken name of Sunil, Ranjan @ Benga in the statement before him. In course of investigation, the informant or the witness Dheeraj had not produced his treatment papers before him. He has stated that his treatment was done at Shaguna More. In paragraph ‘20’ of his deposition, PW-10 has stated that Nageshwar was examined on 19.06.2003 and he had recorded his statement in DIG Office. The statement of Sanjay was also recorded in DIG Office.



It is important to note that PW-10 has stated that in course of investigation, witness Arun Kumar was murdered/killed in police firing. PW-10 denied the defence suggestion that to disturb the rally, deceased Satyanarayan had assembled nearby house of Rambabu Pathik, with his 1500-2000 supporters and they had started firing on the vehicles going to the rally, on seeing this, the police personnel present at the house of Pathik Ji and the then Officer Incharge reached there with force then the people started throwing stones and firing and they started burning the vehicles whereafter in self-defence, police fired in which Arun Kumar and Satyanarayan Sinha suffered bullet. This witness denied the suggestion of the defence. He also denied the suggestion that the wife of Satyanarayan Sinha is in politics and under her order, the accused persons have been falsely implicated in this case. This witness has further stated in paragraph '21' that this case was registered after 24 hours of the occurrence. He had tried to record the statement of the informant on 03.05.2003, 05.05.2003, 09.05.2003, 15.05.2003, 24.05.2003, 05.06.2003 and 10.05.2003. He found one towel which was not claimed by anyone. He was the Investigating Officer of Danapur P.S. Case No. 198 of 2003, in the said FIR, it is mentioned that Satyanarayan Sinha was an active criminal.



58. On analysis of the evidence of PW-10, it is found that he had taken over the investigation of the case after three days of the occurrence but on the date of taking over the investigation, he had not perused anything with regard to the investigation done by the earlier I.O. The earlier I.O. was not examined but the earlier I.O. had not recorded about seizure of blood or empty cartridge shell from the place of occurrence. The informant (PW-1) has stated in her deposition that after 10-15 minutes of the occurrence, she had a meeting with the Police Inspector, Danapur. She has stated that on 30.04.2003 itself she had given information to the police station but in the police station, her statement was not recorded. At the place of occurrence, at about 11:45 AM, Darogaji had come with a large number of police officers, she had lodged the case at the place of occurrence but her statement was not recorded by Daroga. This Court finds that there is no explanation in the evidence of the I.O. (PW-10) as to why the earlier I.O. was not examined and has been withheld, he has not even been made a chargesheet witness in this case. PW-10 has stated that he had left vehicle on *Jimmenama* but why the vehicle was not sent to the Forensic Science Laboratory for examination with regard to the bullet marks on the vehicle remained a question mark. PW-10 has stated in his deposition that he had tried to record the statement of



Asha Devi but she did not give her statement. In course of supervision also effort was made to take the statement of the informant but she had refused.

59. This Court has noticed from the evidence of PW-1 that she has a different say about this. She has stated that police was not taking interest in recording of the statement of the witnesses, therefore, she filed a protest petition in the court of the learned Jurisdiction Magistrate. The Protest Petition was filed on 13.06.2003. She had made a complaint that the Senior Officers and the I.O. were not taking interest in the matter. They were showing indifferent attitude as one of the accused in the case happened to be the Samadhi of the then Chief Minister of the State of Bihar. To this Court, it appears that the I.O. (PW-10) and the earlier I.O. both had not taken interest in the proper investigation of the case.

Consideration

60. On going through the evidences available on the record and upon perusal of the impugned judgment, it appears that the learned trial court has passed the impugned judgment in both the trials i.e. Sessions Trial No. 246 of 2006 and Sessions Trial No. 246A of 2006 in the same words verbatimly. In the present trial i.e. Sessions Trial No. 246 of 2006, the learned trial court has briefly



discussed the deposition of the witnesses under the heading '**Findings**' from paragraph '9' to '19'. In paragraph '20' of the impugned judgment, the learned trial court has recorded the submissions advanced on behalf of the prosecution and the informant. Some judgments referred by and on behalf of the prosecution have been taken note of but not even briefly discussed. One of the judgments relied upon on behalf of the prosecution was the judgment in the case of **Harendra Rai** (supra). The signature of PW-1 on her written information has been marked Exhibit '1' but the written information has not been marked Exhibit. The signature of the informant on her protest petition has been marked Exhibit '1/1', her lawyers' signature on that is Exhibit '1/2' but the protest petition has not been exhibited. In paragraph '21' of the impugned judgment, the trial court has recorded the submissions on behalf of the defence. On behalf of the defence as well, some judgments were placed for consideration before the learned trial court but nowhere considered. It appears that the learned trial court has considered the case in paragraph '22' of the judgment. This paragraph '22' of the judgment in Sessions Trial No. 246 of 2006 is verbatimly the same and one as that of paragraph '20' of the impugned judgment in Sessions Trial No. 246A of 2006. In fact, in paragraph '22' of the judgment in Sessions Trial No. 246 of 2006,



the trial court has referred this trial as Sessions Trial No. 246A of 2006.

61. A perusal of the list of exhibits of the defence as mentioned in the impugned judgment of Sessions Trial No. 246 of 2006 would show that Exhibit No. 'B' is the certified copy of the written information and the FIR of Danapur P.S. Case No. 198 of 2003 dated 30.04.2003 but on perusal of the records of the exhibits, this Court found that only formal FIR of Danapur P.S. Case No. 198 of 2003 dated 02.05.2003 is available on the record but the written information submitted by Pramod Kumar, Inspector of Police, Danapur giving rise to Danapur P.S. Case No. 198 of 2003 has not been brought on record. In Sessions Trial No. 246A of 2006, only the written information submitted by Hawaldar M. M. Sattar giving rise to Danapur P.S. Case No. 199 of 2003 has been exhibited as Exhibit 'B-1', therefore, this Court finds that the learned trial court has wrongly recorded in both the judgments about the description of Exhibit 'B' and Exhibit 'B-1' respectively. It is also evident that while the written information of Danapur P.S. Case No. 198 of 2003 has not been perused by the trial court, the written information of M. M. Sattar, Hawaldar giving rise to Danapur P.S. Case No. 199 of 2003 has not at all been considered.

62. The trial court has committed grave error by taking into consideration the records of one trial for purpose of its



judgment in another trial. The trial court says that because both the trials have originated from same P.S. Case i.e. Danapur P.S. case No. 200 of 2003, so both the records will be perused for the ends of justice as well as for the better appreciation of evidences. The trial court seems to have forgotten it's own order dated 16.04.2024 whereby the Court restrained the defence from citing evidence adduced in one trial in course of hearing of another trial. To this Court, there is no iota of doubt that the learned trial court has completely erred by taking into consideration the evidences recorded in Sessions Trial No. 246A of 2006 in delivering its judgment in Sessions Trial No. 246 of 2006. In the original Sessions Trial No. 246 of 2006, eleven prosecution witnesses and one court witness had deposed, whereas in Sessions Trial No. 246A of 2006, nine prosecution witnesses and one court witness deposed. Similarly, as regards the documentary evidences in Sessions Trial No. 246 of 2006, the prosecution exhibited writing of Rajnish on written report (Exhibit '2' with objection) and injury report of Dheeraj Kumar (Exhibit '4' with objection) but in Sessions Trial No. 246 A of 2006, writing of Rajnish was not exhibited and injury report of Dheeraj Kumar was marked Exhibit '5' (without objection). It would appear that in paragraph '22' of the impugned judgment in Sessions Trial No. 246 of 2006 and paragraph '20' of the judgment in Trial No. 246A of 2006, the learned trial court



referred the injury report of Dheeraj Kumar as Exhibit '4' even as in one of the trials, it is marked Exhibit '5'.

63. This Court further finds that in the impugned judgment, the learned trial court has taken a view that PW-3 Sanjay Kumar has nowhere stated in his examination-in-chief regarding the injuries sustained in the occurrence. The trial court seems to have fallen in error by taking PW-3 as the same Sanjay @ Chunnu Sharma who according to the informant (PW-1) had sustained firearm injury in the occurrence of the present case. In this connection, this Court would refer paragraph '1' of the deposition of PW-1 in which she has stated that in the middle seat, she along with Sanjay @ Chunnu were sitting. From perusal of the evidence of Nageshwar Prasad Yadav (PW-6), it would appear that he has named Sanjay Sharma as one of the persons who was sitting with Asha Ji and Jeevan ji in the middle seat. This very witness has stated that he had got information about the accused from Chunnu Sharma. Dheeraj Kumar (PW-7) has stated that in the same vehicle, his aunt Asha Sinha, Chunnu Ji, Jeevan Ji, Rintu Ji, Nageshwar Ji and he was himself sitting. When the deposition of Dheeraj Kumar (PW-7) is further read, it may be noticed that in paragraph (x) of his cross-examination, he has stated that he was not aware about the place of residence of Sanjay @ Chunnu, thus, PW-7 has made it clear that Sanjay @ Chunnu is the same and one person. Rintu



Singh (PW-8) has also taken name of Sanjay Ji @ Chunnu. A perusal of the evidence of the defence would show that Sanjay Sharma @ Chunnu Sharma was murdered and in this regard his mother Usha Devi had lodged a case giving rise to Bihta P.S. Case No. 280 of 2009. In the said case, Ritlal Yadav and some other accused of this case were charged of the offences under Sections 307/120B IPC and 302/120B IPC for the murder of Sanjay @ Chunnu Sharma. During this period, Rit Lal Yadav was absconding. The informant had alleged that he was a witness against Ritlal Yadav in the murder case of Satyanarayan Sinha, therefore, he was killed. Despite presence of the certified copy of the judgment of the said case on the record (Exhibit 'A'), the learned trial court has misunderstood the seizure list witness Sanjay Kumar, son of Chhattu Rai (PW-5) as injured witness and made a comment in paragraph '22' of its judgment that PW-3 has nowhere stated in his examination-in-chief regarding the injury sustained in the occurrence. This is a gross mistake committed by the learned trial court.

64. On perusal of the records of Sessions Trial No. 246 of 2006, it appears that vide order dated 04.12.2015, the learned trial court allowed the defence documents to be taken on record and marked exhibit. It is worth noting that even though the defence documents have been marked exhibits but those have not been



taken into consideration. The formal FIR of Danapur P.S. Case No. 198 of 2003 clearly shows that it was sent to the court of learned ACJM, Danapur only on 02.05.2003 i.e. after two days of the occurrence, therefore, the submission of the prosecution that Danapur P.S. Case No. 198 of 2003 was registered with an afterthought to help the accused persons was required to be considered seriously but the trial court has given a go by to the said submission. The trial court could not notice from the records that the written information of P.S. Case No. 198 of 2003 was not there with the certified copy of formal FIR instead C.C. of the written information dated 01.05.2003 of Havildar M.M. Sattar was on record. Nothing has been discussed by the learned trial court. The case diary of Danapur P.S. Case No. 198 of 2003 was called for by a judicial order dated 28.06.2016 but that was not received on the record of Sessions Trial No. 246 of 2006, still, the defence evidence was closed and then the case was fixed for hearing.

65. In its order dated 14.06.2016, the learned trial court recorded the submissions of the parties, perused the case record along with the case diary and found that DIG Central Range Ravindra Kumar had conducted supervision of this case and his supervision report had been mentioned in paragraph '114' of the case diary. The trial court held that the I.O. of this case has already been examined, therefore, the court can look into the supervision



report of the DIG Central Range Ravindra Kumar. This Court finds that despite this order of the trial court, the said supervision report as contained in paragraph '114' of the case diary was neither exhibited nor looked into by the learned trial court but the trial court went on recording that the statement of the prosecution witnesses had been recorded in presence of DIG Central Range, therefore, it cannot be said that the I.O. (PW-10) was in collusion with the accused persons. In the opinion of this Court, the finding of the learned trial court with regard to the conduct of the I.O. (PW-10) is not based on correct appreciation of the evidences on the record and the circumstances pointing out to the indifferent attitude of the investigating agency in carrying on the investigation of this case. The finding is perverse.

66. As regards the place of occurrence, the trial court has recorded that the I.O. of the case has given a different place of occurrence than that of the place stated by the informant (PW-1). On perusal of the evidence of I.O. (PW-10), we have noticed that he has categorically stated that place of occurrence of the present case is the same and one which is the place of occurrence of Danapur P.S. Case No. 198 of 2003. The learned trial court seems to have erred in appreciation of the evidences.

67. This Court has found that the conduct of investigation in this case has been done with completely indifferent attitude



initially by the first I.O. and then by the second I.O. (PW-10). In the name of investigation only some paperworks were done in the nature of formalities. The fact that the FIR of Danapur P.S. Case No. 198 of 2003 was sent to the court of learned ACJM, Danapur only 02.05.2003 would require a serious consideration as it *prima facie* appears that the FIR has been ante-dated.

68. The trial court has not taken into consideration the protest petition which was filed by the informant (PW-1). She had complained to the court that police was not conducting investigation properly, the statement of the witnesses were not being recorded and because the samdhi of the Chief Minister of the State was involved in this case, therefore, the senior police officers and the I.O. have not taken any legal action in the matter. Exhibit '2' was filed in court on 13.06.2003. Only thereafter the I.O. (PW-10) recorded the statement of the informant on 14.06.2003.

69. This Court has further found from the evidence of the I.O. (PW-10) on the record that while preparing the seizure list of the Bolero vehicle bearing Registration Number BR1T-0222 on 10.05.2003, he recorded only the colour, registration number, engine number and chassis number of the vehicle in the description part of the seizure list. The vehicle was not sent to the FSL for examination but in order to explain this inaction, the I.O. has stated that in case diary he had recorded that when he contacted the



informant to give her statement, she refused to give her statement and when he requested her to send the Bolero vehicle to the FSL, she refused to do it. She had also refused to give the complete name and addresses of the witnesses of the FIR. This Court is of the opinion that this statement of the I.O. (PW-10) is required to be considered with reference to the case diary and the relevant date on which he recorded it and in order to get a complete picture of the progress in investigation. The vehicle was seized on 10.05.2003 and it was a lawful possession of the I.O. From the case diary it appears that on or after 10.05.2003, the I.O. did not take any step to send the vehicle to the FSL, therefore, despite being in lawful possession of the vehicle, the I.O. did not take further action to collect the evidences. This only strengthens the claim of the informant (PW-1) as stated in her protest petition that the senior police officers and the I.O. of the case were not taking legal action in the matter as one of the accused in this case was the *samdhi* of the then Chief Minister of the State.

70. The case of **Harendra Rai** (supra) was cited on behalf of the prosecution but it has not been even looked into by the learned trial court. In the case of **Harendra Rai** (supra), the Hon'ble supreme court has observed *inter alia* that the failure of the State machinery and failure of the trial court to ensure a fair trial from the perspective of the victim side and the aspect of non-



marking of the FIR as an exhibit, non-production of the formal witnesses in the trial would not vitiate the genuineness of the FIR and *bayān tahriri*. The Hon'ble Supreme Court observed "... We refuse to give any discount to the accused persons for non-exhibition thereof....".

71. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Ram Bihari Yadav vs. State of Bihar** reported in (1998) 4 SCC 517, the Hon'ble Supreme Court in the case of **Harendra Rai** (supra) quoted paragraph '13' thereof as under:-

"13. Before parting with this case, we consider it appropriate to observe that though the prosecution has to prove the case against the accused in the manner stated by it and that any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favour of the accused, yet in a case like the present one where the record shows that investigating officers created a mess by bringing on record Ext. 5/4 and GD Entry 517 and have exhibited remiss and/or deliberately omitted to do what they ought to have done to bail out the appellant who was a member of the police force or for any extraneous reason, the interest of justice demands that such acts or omissions of the officers of the prosecution should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed to favour the appellant. In such cases, the story of the prosecution will have to



be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.”

72. At this stage, we rely upon the judgment of the Hon’ble Supreme Court in case of **Paras Yadav and Others vs. State of Bihar** reported in **(1999) 2 SCC 126**, in paragraph ‘8’ of the said judgment the following observations have been made:-

“8. ... the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not.”

73. Keeping in view the aforementioned judgments of the Hon’ble Supreme Court when we examine the impugned judgment in the present case, it is found that the lapses on the part of the investigation has been used against the prosecution and the benefit thereof has been given to the accused without properly appreciating the evidence of the prosecution witnesses from the perspective of the victim side.



74. We rely upon the judgment of the Hon'ble Supreme Court in the case of **Edakkandi Dineshan** (supra) wherein it has been held that a part of the statement of the witness can be believed even though some part of the statements may not be relied upon by the court. Paragraph '20' and '21' of the judgment are quoted hereunder for a ready reference:-

"20. Either a partial, untrue version of one of the witnesses or an exaggerated version of a witness may not be a sole reason to discard the entire prosecution case which is otherwise supported by clinching evidence such as truthful version of the witnesses, medical evidence, recovery of the weapons, etc. At this stage, it may not be out of place to refer to the principle called as "*falsus in uno, falsus in omnibus*".

21. It is a settled position that "*falsus in uno, falsus in omnibus*" (false in one thing, false in everything) that the above principle is foreign to our criminal law jurisprudence. This aspect has been considered by this Court in a plethora of judgments. In *Ram Vijay Singh v. State of U.P.*⁵, a three-Judge Bench of this Hon'ble Court had held that : (SCC pp. 254-55, paras 20-21)

"20. We do not find any merit in the arguments raised by the learned counsel for the appellant. A part statement of a witness can be believed even though some part of the statement may not be relied upon by the court. The maxim *falsus in uno, falsus in omnibus* is not the rule applied by the courts in India. This Court recently in a judgment in *Ilangovan v. State of T.N.*⁶ held that Indian Courts have always been reluctant to apply the principle as it is only a rule of caution. It was held as under : (SCC p. 536, para 11)

5. (2021) 15 SCC 241

6. (2020) 10 SCC 533 : (2021) 1 SCC (Cri) 137



‘11. The counsel for the appellant lastly argued that once the witnesses had been disbelieved with respect to the co-accused, their testimonies with respect to the present accused must also be discarded. The counsel is, in effect, relying on the legal maxim “*falsus in uno, falsus in omnibus*”, which Indian Courts have always been reluctant to apply. A three-Judge Bench of this Court, as far back as in 1957, in *Nisar Ali v. State of U.P.*⁷ held on this point as follows : (SCC OnLine SC paras 9-10) “9. ... *This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded. ...*

10. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called “a mandatory rule of evidence”.”

21. Therefore, merely because a prosecution witness was not believed in respect of another accused, the testimony of the said witness cannot be disregarded qua the present appellant. Still, further, it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality of evidence which is relevant in criminal trial and not the quantity.”

(emphasis in original)”

7. 1997 SCC Online SC 42 : AIR 1957 SC 366



75. We further find that the consideration of the evidences adduced in Sessions Trial No. 246A of 2006 in the name of ends of justice and for the better appreciation of evidences is not correct. In this regard, the judgment of the Hon'ble Supreme Court in the case of **A.T. Mydeen** (supra) and the judgment in the case of **State of Kerala vs. Joseph** reported in **(2014) 16 SCC 385** which has also been referred by the Hon'ble Supreme Court in **A.T. Mydeen** (supra) are laying down the law. In the said case, the High Court had considered the evidence of one sessions case which tried some of the accused in another sessions case, which was trying another set of accused arising out of same offence and acquitted all the accused. The Hon'ble Supreme Court held that the High Court was not right in considering the evidence of one case for another case and accordingly set aside the judgment of the High Court and remanded the matter to the High Court for fresh disposal. Thus, in the present case, we find that the learned trial court has erred on this count also.

76. The trial court has taken an adverse inference for the fact that Rambabu Pathik was not chargesheeted by the investigating agency, the final form was submitted by police which was accepted by learned jurisdictional Magistrate and even in course of trial, the prosecution did not invoke Section 319 CrPC to summon Rambabu Pathik. According to the trial court, such things



are more relevant. In our opinion, this finding of the trial court is completely perverted. The trial court had before it the statement of the prosecution witnesses and the court was aware of the provision of Section 319 CrPC. If the court was satisfied from the evidences that any person not being an accused has committed any offence for which such person could be tried together with the accused, the court could have proceeded against the said person and under subsection (2) of Section 319 CrPC such person could have been summoned. Instead of acting in accordance with law, the trial court drew an adverse inference against the prosecution case to fail it.

77. We have further noticed that the learned trial court has doubted the statement of PW-1 also for the reason that in her written information, she had stated that Arun Kumar was in the Bolero vehicle but in course of trial, in paragraph '20' of her deposition, she has stated that Arun Kumar was injured in Danapur P.S. Case No. 198 of 2003 and other witnesses have stated that he had died. The trial court has raised a doubt that as to how it was probable that a man injured and died in another case was sitting along with deceased husband of the informant. In our considered opinion, the learned trial court has completely missed out in appreciating and co-relating the sequence of events and seems to have gone by the date of registration of the cases. In this connection, the trial court did not notice that Danapur P.S. Case No.



198 of 2003 was though shown registered on 30.04.2003 but the FIR was sent to the court of learned jurisdictional magistrate on 02.05.2003 only. The written information giving rise to the said case was not before the learned trial court, otherwise it would have thrown much light on the sequence of events. The trial court did not notice that though Exhibit 'B' is said to be the written information and FIR of Danapur P.S. Case No. 198 of 2003 but on record it was only the formal FIR and not the written information which was the basis of the FIR. This has led to recording of a finding on the basis of half hearted facts present on the record.

78. We have earlier noticed the judgments placed before us by learned Additional Public Prosecutor for the State. We are of the considered opinion that on the face of the several perverse findings of the learned trial court and the other reasons which we have stated hereinabove, the impugned judgment of acquittal is liable to be set aside. In the case of **Ganesha** (supra) the Hon'ble supreme court has observed as under:-

“... where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the



trial court shall be obliged to reappraise the evidence in light of the observation of the Revisional Court and take an independent view uninfluenced by any of the observations of the Revisional Court on the merit of the case. ... ”

79. On going through the judgment of the learned trial court, we have found that it is not only a cut and paste in reasoning and rationale, the learned trial court has not at all appreciated the ocular evidences independently. The trial court seems to have been swayed away by taking into consideration the lacunae in the investigation of the case. This has resulted in miscarriage of justice. Since this Court has found that some of the documents which were properly available on the record and on which the signature of the prosecution witnesses have been marked exhibits, but the documents have not been marked exhibit, the document which has been marked exhibit (certified copy of the written information of Danapur P.S. Case No. 198 of 2003) is not available on the record of the trial court and the trial court has not taken any effort to discuss those important documents, this Court is of the considered opinion that the impugned judgment of the trial court would be liable to be set aside. Accordingly, we set aside the impugned judgment and remit the matter to the learned trial court for a fresh consideration after ensuring that the documents as discussed above be duly taken on record and marked exhibits.



80. The learned trial court shall hear the parties and dispose of the matter as early as possible. This Court would place on record that earlier the trial of this case has already been delayed, therefore, all endeavours and efforts be made to decide the matter without granting unnecessary adjournments. It is expected that the trial court would decide the matter preferably within a period of four months from the date of receipt of this order with the trial court records.

81. While parting with this judgment, this Court would express its anguish on the manner in which the records of the case have been maintained. We have noticed that a number of important documents are lying on the record in torn condition and are getting destroyed. This Court would, therefore, direct the learned Registrar General of this Court to issue appropriate direction to the concerned Section/Office of this Court to get the records properly arranged and safely preserved. The documents which are getting damaged and destroyed be preserved in digital form.

82. Let this exercise be done within a period of two weeks from today and thereafter the trial court records with a copy of the judgment be sent to the court of learned Additional Sessions Judge-III-cum-Special Judge MP/MLA Court through a special messenger.



83. The accused-private respondents shall surrender in the trial court within two weeks from today, if they are on bail, then the trial court shall obtain fresh bail bonds from the accused-private respondents.

84. It is made clear that the observations of this Court hereinabove shall not prejudice the case of the either parties and the trial court shall conduct an independent reappraisal of the entire evidences and take a view uninfluenced by the observations of this Court on merit.

85. The appeals are allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Rishi/-

AFR/NAFR	
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