

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1043 of 2019

Arising Out of PS. Case No.-96 Year-2011 Thana- MUNGER MUFFASIL District- Munger

Maheshwar Singh, Son of Late Bauku Singh, Resident of Village - Temtha
Banni, P.S.- Maheshkhunt, Distt - Khagaria.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Pankaj Kumar Sinha, Advocate Mr. Raunak Kumar Singh, Advocate
For the State	:	Ms. Shashi Bala Verma, APP
For the Informant	:	Mr. Siddharth Prasad, Advocate Mr. Om Prakash Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 21-01-2025

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State as also learned counsel
for the informant.

2. This appeal has been preferred for setting aside the judgment of conviction dated 25.06.2019 (hereinafter referred to as the ‘impugned judgment’) and the order of sentence dated 28.06.2019 (hereinafter referred to as the ‘impugned order’) passed by learned Additional Sessions Judge-IV, Munger (hereinafter referred to as the ‘learned trial court’) in Sessions Trial No. 555 of 2013 arising out of Muffasil P.S. Case No. 96 of 2011.



3. By the impugned judgment, the appellant has been convicted for the offence punishable under Section 302/149 of the Indian Penal Code (in short 'IPC') and under Section 27 of the Arms Act. By the impugned order, the appellant has been ordered to undergo rigorous imprisonment for life under Section 302/149 IPC with a fine of Rs. 2000/- and in default of payment of fine, he has to further undergo simple imprisonment for three months. He has also been ordered to undergo three years' rigorous imprisonment under Section 27 of the Arms Act with a fine of Rs.2000/- and in default of payment of fine, he has to further undergo simple imprisonment for three months. Both the sentences are to run concurrently.

Prosecution Case

4. The prosecution story is based on the written application of Rakesh Kumar (PW-5). In his written application, he has stated that on 18.05.2011 at 05:00 PM, the informant along with his younger brother Pintu Yadav, Vipin Yadav and Randhir Yadav were present in the *khalihan*. In the meantime, (1) Maheshwar Singh (appellant), (2) Ramgulam Yadav, (3) Nirodh Yadav, (4) Mannu Yadav, (5) Manish Yadav, (6) Guddu Yadav, (7) Kaillu Yadav, (8) Yogendra Yadav, (9) Santosh Yadav, (10) Mastan Singh, (11) Pampam Singh, (12) Naim Khan and (13) Jaldhar



Singh along with 15-20 unknown persons variously armed surrounded them and while abusing entered into his *khalihan*. Thereafter, Maheshwar Singh asked the informant to give Rs. 5 lakhs as *rangdari* and give his licensee weapon, else get ready to die and then Maheshwar Singh shot at Vipin Yadav which hit his leg and ordered other accused persons to kill all of them. On this, Mannu Yadav shot at the eye of Vipin Yadav, thereafter Manish Yadav shot at another eye of Vipin Yadav. Then Kaillu Yadav shot at the right hand of Vipin Yadav. Thereafter, Mastan Singh and Pampam Singh also shot at Vipin Yadav. In the meantime, Pintu Yadav @ Navin Kumar was also shot at but he took out his Licensee Rifle in self defence and jumped into the water. All the accused persons chased Pintu Yadav, Yogendra Yadav shot at him which hit his neck and Santosh Yadav also shot at Pintu Yadav which also hit his neck. After this, Pintu Yadav got drowned in the water and licensee rifle of Pintu Yadav was captured by Guddu Yadav. Thereafter, Ramgulam Yadav, Jaldhar Singh, Nirodh Yadav, Naim Khan, Mastan Singh and Pampam Singh all, with an intention to kill Randhir Yadav, kidnapped him. The informant alleged that he has suspicion that they would also kill Randhir Yadav. The informant stated that the above occurrence was witnessed by Gyani Kumar, Hindu Yadav and Sangin Yadav.



5. On the basis of this written application submitted to Khagaria Chitragupta Nagar police station on 19.05.2011 which was forwarded to Muffasil police station, Muffasil (Munger) P.S. Case No. 96 of 2011 dated 20.05.2011 was registered under Sections 147, 148, 149, 342, 323, 302, 387, 386 IPC and Section 27 of the Arms Act against 13 named including this appellant and 15-20 unknown persons. After investigation, Police submitted supplementary chargesheet bearing No. 200 of 2013 dated 31.07.2013 against this appellant under Sections 147, 148, 149, 341, 342, 323, 302, 379, 386, 387 IPC and Section 27 of the Arms Act. On the basis of this chargesheet, learned Chief Judicial Magistrate, vide his order dated 02.08.2013 took cognizance of the offences under above-mentioned Sections and on 07.08.2013 committed the case to the court of sessions. After receiving the records, Sessions Trial No. 555 of 2013 was registered. Charges were read over and explained to the appellant in Hindi which he denied and claimed to be tried. Accordingly, vide order dated 30.04.2015, charges were framed under Sections 302/149, 342, 386, 387 IPC and Section 27 of the Arms Act.

6. In course of trial, the prosecution examined as many as eight witnesses and exhibited several documents to prove the prosecution case. Defence also examined two witnesses and



exhibited four documentary evidences. The names of the witnesses and the exhibits are being shown hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Chano Yadav
PW-2	Sangin Yadav
PW-3	Gyani Kumar
PW-4	Lukho Yadav
PW-5	Rakesh Kumar
PW-6	Dr. Raja Ram Chaudhari
PW-7	Satyendra Kumar (I.O.)
PW-8	Dr. Prem Kumar

List of Exhibits on behalf of Prosecution

Exhibit ‘1’	Signature on the written application
Exhibit ‘2’	Certified Copy of Inquest report of Pintu Yadav
Exhibit ‘2/1’	Certified Copy Inquest report of Bipin Yadav
Exhibit ‘3’	Certified Copy Post-mortem report of Pintu Yadav
Exhibit ‘3/1’	Certified Copy Post-mortem report of Bipin Yadav
Exhibit ‘3/2’	Certified Copy Post-mortem report of Randhir Yadav

List of Defence Witnesses

DW-1	Abodh Mahto
DW-2	Umesh Singh

List of Exhibits on behalf of Defence

Exhibit ‘A’	C.C. of FIR of Maheshkhut P.S. 41/11
Exhibit ‘B’	C.C. of FIR of Maheshkhut P.S. 42/11
Exhibit ‘C’	C.C. of Chargesheet of Maheshkhut P.S. 42/11
Exhibit ‘D’	C.C. of FIR of Maheshkhut P.S. 43/11



Findings of the Learned Trial Court

7. Learned trial court, after considering the entire materials available on the record, found that the appellant along with their associates formed an unlawful assembly of more than five persons in prosecution of common object of murder, they had opened fire on the deceased. Learned trial court found that the prosecution case is supported by other witnesses and doctor. The court observed that the injuries on the body of the deceased were found in the same manner as stated in the written report and the deposition of witnesses. Learned trial court further found that the the accused persons had full knowledge and intention to kill the deceased persons. Learned trial court found that the injuries caused to all the three persons by gun shots were sufficient to cause their death in ordinary course of nature. Learned trial court held this appellant guilty of the offences punishable under Sections 302/149 of the IPC and Section 27 of the Arms Act and sentenced accordingly as mentioned above. The other charges could not be established against the appellant.

Submissions on behalf of the appellant

8. Learned counsel for the appellants has assailed the impugned judgment and order on various grounds. It is submitted that Chano Yadav (PW-1) has stated that on 18.05.2011 at 5.00



PM he was in his house. He heard the sound of firing and went near the Jalkar where he found that 30-35 persons were firing upon Bipin Yadav and Pintu Yadav. He has named Maheshwar Singh (the appellant), Jaldhar, Naeem, Mastan, Pampam, Yogendra, Santosh, Kailu, Mannu Yadav, Manish, Ramgulam etc. as those who were firing. He has stated that he got afraid and returned to his house and next day in the morning went to '*khalihan*' where he found the dead body of Pintu in the water and the dead boy of Bipin was lying in '*Khalihan*'. The dead body of Randhir was found next day of the said day at some distance

9. Sangin Yadav (PW-2) has stated that on 18.11.2011 at 5.00 PM, he was in his '*Khalihan*', 25-30 people came from eastern side and started firing. He had seen that firing was taking place in the '*Khalihan*' of Rakesh Yadav. They fled away after firing. They had demanded a *Rangdari* of Rs. 5 lacs from Rakesh Yadav. In his cross-examination, this witness has stated that Pintu is his cousin brother and Bipin Yadav (deceased) is his full brother.

10. Gyani Kumar (PW-3) has stated that on the date and time of occurrence, he was in his '*Khalihan*' which is situated besides the '*Khalihan*' of Rakesh Kumar. According to him, 30-40 criminals came from eastern side and they said to kill Pintu and Rakesh, all were armed with rifle. Maheshwar Singh fired which



hit Bipin into his abdomen and all started firing. Pintu received firing and the criminals had taken away Randhir Yadav. This witness also says that he had concealed himself in his '*Khalihan*' and from there he was watching the occurrence.

11. Lukho Yadav (PW-4) has not stated in his evidence about the presence of Rakesh Kumar (PW-5) and other prosecution witnesses and nobody has fired at him. He has no information about police cases and he denied the suggestion that Maheshkhut P.S. Case No.41/2011, 42/2011 and 43/2011 were instituted and deceased were killed in police encounter.

12. Learned counsel submits that Rakesh Kumar (PW-5) is the informant of this case. He claims his presence on the date and time of occurrence in his '*khalihan*'. He is brother of Pintu @ Navin. He claims his presence along with three deceased and other labourers at the place of occurrence. The informant claims that all the accused persons had entered into his '*khalihan*' armed with rifle and they were hurling abuses and Maheshwar Singh demanded a *rangdari* of Rs. 5 lacs and the licensee rifle from his brother Pintu otherwise he threatened him to get ready to die. Thereafter, Maheshwar Singh fired from his rifle which hit Bipin on his thigh and on his order, Kailu Yadav fired which hit on the hand of the Bipin. Manish fired which hit Bipin into his eyes and



the firing by Mannu hit into the eyes of Bipin. Pintu ran with his licensee rifle towards *Jalkar* but he was chased by Santosh Yadav who fired at him. Yogendra also fired at Pintu and Pintu died there. His rifle had fallen into the water which was taken away by Guddu Yadav.

13. It is submitted that PW-6 and PW-8 are the doctors who had conducted autopsy on the dead body of the Randhir Yadav, Bipin Yadav and Pintu Yadav.

14. Satyendra Kumar (PW-7) is the I.O. of the case who had registered Muffasil P.S. Case No.96 of 2011. He had received the written application on 20.05.2011 at 2.05 PM. He had received the inquest report from Chitragupta Nagar police station, Khagaria. He reached the place of occurrence. He has stated in his cross-examination that he had not found any blood mark at the place of occurrence. He has stated in his cross-examination that he had received the supervision note from the Superintendent of Police and had conducted the investigation as per his direction.

Submissions on behalf of the informant and State

15. On the other hand, learned Addl.P.P. for the State as well as learned counsel for the informant have defended the impugned judgment and order. It is submitted that the learned trial court has examined the evidence brought by the prosecution on the



record and has rightly appreciated the same keeping in view the principles of criminal jurisprudence, therefore, the reasoning and rationale provided by the learned trial court cannot be said to be perverted.

Consideration

16. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as well as learned counsel for the informant as also have perused the learned trial court records.

17. In this case altogether eight prosecution witnesses have been examined. Out of eight prosecution witnesses, PW-6 and PW-8 are the doctors who had conducted autopsy on the dead body of the deceased. PW-7 is the I.O. of the case, therefore, PW-1 to PW-5 are the witnesses to the facts and circumstances of the case, therefore, we will examine their depositions in course of trial.

18. Prior to entering into the oral testimonies of the prosecution witnesses, it would be important to take note of certain important facts which are appearing from the records. In this case, the occurrence is said to be taken place on 18.05.2011 at 5.00 PM in the '*Khalihan*' of the informant Rakesh Kumar (PW-5). PW-5 claims that he was present at the place of occurrence and some other persons in the neighbourhood, namely, Gyani Kumar, Dimpu



Yadav and Sangin Yadav have also seen the occurrence. It is, however, evident that neither the informant nor the persons named in the written application gave information with regard to the occurrence to the police station. The inquest reports of Pintu Yadav and Bipin Yadav have been brought on record as Exhibit-2 and Exhibit-2/1 respectively. A perusal of these two exhibits would show that Rakesh Kumar (PW-5) and Gaurav Kumar (not examined) are the witnesses to the inquest reports. The inquest reports have been prepared on 19.05.2011 at 3.15 PM and 3.30 PM respectively in the premises of Sadar Hospital, Khagaria but there is no mention of either any Sanha entry number or the case number on the inquest reports which make it clear that till the time of preparation of the inquest report the prosecution case as disclosed in the written application had not surfaced and the same was still in embryo stage. The inquest reports were prepared in the premises of the Sadar Hospital, Khagaria.

19. The postmortem report of the deceased are Exhibit-3, Exhibit-3/1 and Exhibit-3/2 and on perusal of the same again it appears that these dead bodies were brought for postmortem by Chowkidar Kailash Yadav and Rambali Paswan but they have not been examined by the prosecution. The postmortem reports did not bear any case number. Postmortem commenced at 5.00 PM on



19.05.2011, therefore, it is further evident from the postmortem reports that till commencement of the postmortem, the police case was not registered. As regards the delay in lodging of the FIR, in the case of **Meharaj Singh (L/Nk.) vs. State of U.P. with Kalu vs. State of U.P. and Others reported in (1994) 5 SCC 188**, the Hon'ble Supreme Court has expressed its opinion in paragraph '12' of the judgment which are being reproduced hereunder for a ready reference:-

"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the



prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.”

20. In the aforementioned background, we have examined the oral testimonies of the prosecution witnesses. Chano Yadav (PW-1) has stated that on 18.05.2011 at 5.00 PM he was in his house. He heard the sound of firing and went near the *Jalkar* where he found that 30-35 persons were firing upon Bipin Yadav and Pintu Yadav. He has named Maheshwar Singh, Jaldhar, Naeem, Mastan, Pampam, Yogendra, Santosh, Kailu, Mannu Yadav, Manish, Ramgulam etc. were firing. He has stated that he



got frightened and returned to his house and next day in the morning went to '*khalihan*' where he found the dead body of Pintu in the water and the dead boy of Bipin was lying in '*Khalihan*'. The dead body of Randhir was found next day of the said day at some distance. He came to know from the villagers that Maheshwar Singh had demanded a *Rangdari* of Rs.5 lacs from the family of Rakesh Kumar and due to non-payment of the same the occurrence had taken place. It is evident from the deposition of PW-1 that he has not stated about the actual place of occurrence and presence of the other witnesses either at the place of occurrence or in the neighbouring places. He has stated that he was in his house and had heard the sound of firing. In his cross-examination, this witness has stated that place of occurrence is '*Khalihan*' of Pintu Yadav where cleaning of wheat were going on and there were 300-400 bundles. He has stated that '*Khalian*' of Pintu is situated at a distance of 20 *Lagga* and one *Lagga* is equivalent to 5 ½ hands. He has stated that occurrence had taken place on the other side of Ganga and the width of the river would be 10 *Lagga*. This witness has stated that his statement was recorded after two days of the occurrence and he had not talked about this occurrence with anyone from the next day of the



occurrence till recording of his statement before the police.

Demand of Rangdari has not been established in course of trial.

21. Sangin Yadav (PW-2) has stated that on 18.11.2011 at 5.00 PM, he was in his '*Khalihan*', 25-30 people came from eastern side and started firing. He had seen that firing was taking place in the '*Khalihan*' of Rakesh Yadav. They have fled away after firing. They had demanded a *Rangdari* of Rs. 5 lacs from Rakesh Yadav. In his cross-examination, this witness has stated that Pintu is his cousin brother and Bipin Yadav (deceased) is his full brother. He has stated that the place of occurrence is at a distance of 1 ½ *Rassi* (rope) towards the western side from '*Khalihan*'. One *Rassi* (rope) would be little more than 100 hands. In paragraph '5' of his cross-examination, he has stated that after two days of the occurrence, police came and had recorded his statement in the '*Khalihan*'. He had not discussed the occurrence with anyone during this period. In paragraph '8', he has stated that after hearing the sound of firing, he had placed himself behind the bags and bundles and after darkness prevailed, he left the place and reached his house. In paragraph '9', he denied the suggestion that there was a police encounter for which Gogri P.S. Case No.42 of 2011 has been registered. He was suggested that he had not seen the occurrence and the deceased were killed in the police



encounter. According to this witness, at the place of occurrence people present were the co-villagers but this Court finds that no co-villager and independent witness claims his presence at the place of occurrence at the time of occurrence.

22. Gyani Kumar (PW-3) has stated that on the date and time of occurrence, he was in his '*Khalihan*' which is situated besides the '*Khalihan*' of Rakesh Yadav. According to him, 30-40 criminals came from eastern side and they said to kill Pintu and Rakesh, all were armed with rifle. Maheshwar Singh fired which hit Bipin into his abdomen and all started firing. Pintu received firing and the criminals had taken away Randhir Yadav. This witness also says that he had concealed himself in his '*Khalihan*' and from there he was watching the occurrence. After occurrence stopped, on prevailing night he went to his house and again went there on the next day where the dead body of Pintu Yadav, Randhir Yadav and Bipin Yadav were found. In his cross-examination, this witness has stated that he cannot say the *Khata*, *Khesra* and area of his '*Khalihan*'. He has stated that his '*khalihan*' is in approximately 5-7 *bighas* but he cannot say the area of '*khalihan*' of Rakesh. He has stated that '*khalihan*' of Rakesh is situated west to his '*khalihan*'. He cannot say that whose lands are there in east and southern side. In north, there is river. He



has stated that he was alone in his '*khalihan*'. He has stated that he had not seen any paper of his '*khalihan*'. In Paragraph '14' of his deposition, he denied the defence suggestion that on the date of occurrence itself Krishna Kumar Yadav was caught at 4.00 PM with pistol and cartridges for which Maheshkhut P.S. Case No. 43 of 2011 has been registered. He has stated that his first statement was recorded on 20.05.2011 before the police at Munger in Kotwali police station. In his cross-examination, he has stated that he cannot say whether all the criminals had surrounded from all the four sides because he had concealed himself after hearing the sound of firing. It is evident from the deposition of PW-3 that he claims himself present in his own '*Khalihan*' besides the '*Khalihan*' where the occurrence took place but he cannot give the *Khata* and *Kheshra* of his '*khalihan*', moreover his statement that his '*khalihan*' is in 5-6 *bighas* cannot be believed and further it is evident that he had concealed himself immediately after hearing the sound of firing, therefore, he had not seen whether the criminals had surrounded from all the four sides. His '*Khalihan*' is said to be situated east to the '*Khalihan*' of Rakesh Yadav and criminals had come from eastern side, therefore, they would pass through the '*Khalihan*' of this witness. It is, therefore, evident that on seeing the criminals coming this witness got frightened and



either concealed himself or fled away to save himself. He had not informed the police even after seeing the occurrence and had presented himself for statement after two days. The defence has suggested all the times that there was a police encounter in which all the three were killed, in this connection Maheshkhut P.S. Case No.41/2011 and 42 of 2011 were registered. His conduct is also unnatural as after the occurrence, in the night, he went back to his village but remain silent for next two days.

23. Lukho Yadav (PW-4) claims that he was present in his '*Khalihan*' and was storing bundles when 30-35 persons came from the eastern side in the '*Khalihan*' of Pintu Yadav, they were demanding Rs.5 lacs and also the licensee rifle of Pintu Yadav. He has stated that when Pintu Yadav did not give that, then Maheshwar Singh ordered to kill and fired which hit Bipin Yadav. When Pintu Yadav fled then Yogendra Yadav fired at him and Santosh also fired at him whereafter Pintu Yadav jumped into the river but his rifle fell on the bank of the river. He has stated that Mannu and Manish fired at Bipin and Kailu had also fired on Bipin. Guddu Yadav had taken away the rifle of Pintu and while proceeding they had taken away Randhir Yadav with themselves. This witness has stated that it was raining and he ran towards his house where he disclosed the occurrence to the people but nobody



came. On the next day, the dead body of Bipin was found in 'Khalihan' and the dead body of Pintu was found in the Jalkar. The dead body of Randhir was found at a distance of one *kosh* (1 *kosh* is approximately 2 miles). In his cross-examination, this witness has stated that nobody had fired at him and after 10-20 minutes of the occurrence rain started. In paragraph '8' of his deposition, he has stated that some of the criminals had concealed their face and some had kept it open. This witness has clearly stated that on seeing the criminals, he had concealed himself in the bundles of wheat which was up to the height of chest. He has stated that out of 8-10 persons, 4-5 persons had concealed themselves and some had fled away. This witness claims that police had not arrived and he had not met police but the defence suggested that Mansi police had reached there and asked the criminals to surrender but the criminals fired upon police whereafter police also resorted to firing in which the deceased were killed. This witness was suggested that he had knowledge of the case and he was suppressing that Maheshkhut P.S. Case No.41/2011, 42/2011 and 43/2011 have been registered. He was also suggested that before police he had stated that he had not seen the occurrence from his own eyes. This witness denied the suggestions. It is, however, evident from the evidence of PW-4 that he had concealed himself behind the wheat



bundles immediately after seeing the criminals and his subsequent conduct in saying that in the night he ran to his village home and then on the next day in the morning people came then the dead body of the deceased were found clearly show that he was neither present at the time of occurrence nor he had gone on the next day in the morning.

24. Rakesh Kumar (PW-5) is the informant of this case. He claims his presence on the date and time of occurrence. He is the brother of the Pintu @ Navin. He claims his presence along with three deceased and other labourers at the place of occurrence. The informant claims that all the accused persons had entered into his '*khalihan*' armed with rifle and they were hurling abuses and Maheshwar Singh demanded a *rangdari* of Rs. 5 lacs and the licensee rifle from his brother Pintu otherwise he threatened him to get ready to die. Thereafter, Maheshwar Singh fired from his rifle which hit Bipin on his thigh and on his order, Kailu Yadav fired which hit on the hand of the Bipin. Manish fired which hit Bipin into his eyes and the firing by Mannu hit into the eyes of Bipin. Pintu ran with his licensee rifle towards *Jalkar* but he was chased by Santosh Yadav who fired at him. Yogendra also fired at Pintu and Pintu died there. His rifle had fallen into the water which was taken away by Guddu Yadav.



25. From a bare perusal of the evidence of the prosecution witnesses discussed above, it appears that while PW-1 has stated about firing on Pintu and Bipin and then on the next day the dead body of Bipin was found in *Khalihan*, the dead body of Pintu was found in the water and dead body of Randhir was found second day of the said day at some distance, PW-2 has stated that Pintu, Bipin and Randhir were killed in the firing. He has not stated about the places from where the dead bodies were recovered, PW-3 has claimed that Pintu and Bipin were killed at the place of occurrence whereas Randhir was taken away and his dead body was found in the morning but he has not stated that from where the dead body of Randhir was found. The informant (PW-5) has on the other hand stated that Pintu had died while fleeing away towards *Jalkar* and his rifle had fallen down in the water. Thus, PW-5 does not say that the dead body of Pintu was found in the *Jalkar*. This witness denied the suggestion of the defence that Maheshwar had lodged a case being Maheshkhut P.S. Case No.41 of 2011 which is prior to the present occurrence and in the said case Pintu and others are accused. He was also suggested that on the basis of the said information police had encountered them and the then sub-inspector Pramod Kumar had registered a case being Maheshkhut P.S. Case No.42 of 2011. The



third case was registered by Arvind Singh vide Maheshkhut P.S. Case No.43 of 2011 against accused Krishna Yadav. This witness denied any knowledge of these cases on his part. But on perusal of the defence exhibits, it would appear that all the three occurrences which took place on 18.05.2011 before the present occurrence are duly reported and registered as F.I.R. This witness was suggested that in his deposition on the previous day he had stated about the firing by four persons only which this witness admitted.

26. PW-6 and PW-8 had conducted the autopsy of the dead body and they had found the following injuries on the body of the deceased. The injuries found by PW-6 and PW-8 are being reproduced hereunder:-

“Pintu Yadav

External Examination:-

- (1) Lacerated wound on 2” behind middle point of Rt pinna directing horizontally towards Left ear size – ¼” x ¼” muscle deep margin inverted blacking and charring which is wound of entry.
- (2) Lacerated wound on 1” behind injury no. 1 size ¼” x ¼” present behind Rt pinna about 3” margin inverted blacking and charring which is wound of entry.
- (3) A wound of exist oval in shape ½” in diameter margin inverted present about 3” behind lower part of Rt Pinna.

Internal Examination :-

- (1) fracture of Left temporal bone.



(2) Fracture of Right temporal bone, Lower part of brain was lacerated. Skull cavity was full of blood. Both lungs were pale. Heart was empty. Urinary bladder empty, Liver spleen pale kidney pale. Semi digestive food is about 2 ounce.

Cause of death- C. R failure due to shock and hemorrhage due to fix arm injury

Time since death within 24 hours 48 hours (Twenty four hrs to forty eight hour) of P.M. examination.

Bipin

External Examination :-

(i) Face disfigure, right eye ball lacerated. A wound of entry in right eye 1" in diameter. in size directing middle and found right ear with blackening and charring.

(ii) A wound of exit present in front of right ear 3" x 1 ½" in shape margin inverted full of blood clots in brain matter.

(iii) Lacerated wound on upper third back of right back of right thigh directing forward blackening and charring.

(iv) A wound of exit present on front of right thigh in the middle part ½" in diameter oval in shape.

(v) A wound of entry on the right thumb round in shape 1" in diameter margin inverted blackening and charring.

(vi) A wound of exit on right hand and palm near 3" in diameter margin inverted bone and ligaments protruding out of wound.

Internal Examination :-

Fracture of frontal bone and Parietal bone skull. Brain was lacerated. There was fracture of nasal bone and maxillary. Fracture of Rt thumb bone. Fracture of Rt femur bone. Lungs liver- pale, spleen kidney, Heart empty, urinary bladder empty, semi-digestive food about 2 ounce.



Cause of death- C.R. failed due to above mentioned injury, due to shock and hammerage due to fire arm injury.

Time elapse since death – 24 hours to 48 hours.

Randhir Yadav

External Examination:-

Hair black, Mouth open, tooth intact. Tongue was not protruded.

Right Eye was absent from Eye socket, Left side of temporal region shows entry wound approx 2cm x 2cm with inversion of muscle, skull and Hair of Fractured temporal Bone part of the wound. Charring noted over the injury side.

Right side of temporal region of scalp shows Fractured Bone approx. 4 cm x 3cm with External Fractured bone along with protrusion of Brain Matter and Blood.

A lacerated wound approx. 1 x ½ and 1 x ½ cm in the left chest wall near 3rd intercostal space with charring noted over the wound side.

Left hand of palmer surface muscle was exposed approx. 4 cm x 3 cm in size.

Right hand of the palmer surface muscle was exposed approx. 3cm x 3cm in size.

5 cm x 4cm in size lacerated wound was found on the back near left para spinal region at T6 vertebra with everted margin.

On Internal Examination :-

Mouth, Tongue, Oesophagus, Small Intestine, Large Intestine, Rectum and Anal Canal were intact. Pharynx, Larynx, Trachea, were found intact. Liver was pale in colour, Kidney, Spleen, Bladder were Normal. Left Chamber of Heart was empty Right chamber of Heart contained approx. 250cc Blood. Both lungs were col-



lapsed and left lunge shown laciraed injry approx 3cm x 2cm in size near middle lobe.Large vesseles was collapsed.

Skull- a wound of entry noted on the left temporal region with charring with fractured temporal bone. Approx 2cm x 2cm in size along with inversion of skin muscle and hair.

A wound of exit noted on right temporal region with protusion of Brain Matter and blood with the size of 4cm x 3cm with exposed temporal Bone.

Cause of Death

Haemorrhagix shock leads to cardio pulmonary arrest caused by fire-arm injury as mentioned above.

Time since Death – within 48 hours of the P.M. Examination.”

27. Satyendra Kumar (PW-7) is the I.O. of the case who had registered Muffasil P.S. Case No.96 of 2011 (the present case). He had received the written application on 20.05.2011 at 2.05 PM. He had received the inquest report from Chitragupta Nagar police station, Khagaria. He reached the place of occurrence. He has stated in his cross-examination that he had not found any blood mark at the place of occurrence. He has stated in his cross-examination that he had received the supervision note from the Superintendent of Police and had conducted the investigation as per his direction. He had recorded in paragraph ‘19’ that in course of investigation it has come in light that on the date of occurrence between 10.00 AM and 5.00 PM three occurrences had taken place



near the place of occurrence in respect of which three separate cases were registered in Maheshkhut police station. He has stated that Chano Yadav (PW-1) had not stated that firing was taking place upon Pintu and Bipin and Maheshwar had fired upon Bipin. He has also stated that Gayani has said that his '*khalihan*' is beside the place of occurrence but he had not stated that Maheshwar had shot at Bipin which hit his leg. In paragraph '12' of his deposition, PW-7 has stated that at the place of occurrence he had not found any cartridge.

28. In this case, the defence has also examined two witnesses. Abodh Mahto (DW-1) has stated that at the time of occurrence, he was in Sirjua-Mauja in his field. Pintu along with 40-50 persons came and started searching Maheshwar Singh. On seeing, Maheshwar Singh ran and reached Maheshkhut police station. He has further stated that from Maheshkhut police station and Mansi police station police reached at the place of occurrence where cross-firings took place between police and Pintu Yadav gang in which all the three were killed. In his cross-examination, this witness has stated that the place of occurrence would fall in Maheshkhut police station and it would not be correct to say that place of occurrence would fall within Muffasil police station. He has stated that police had not taken away the dead body of the



three deceased. He denied the suggestion that Maheshwar Singh and his party came at the '*Khalihan*' of Rakesh and had made firing in which his three brothers were killed.

29. Umesh Singh (DW-2) is another defence witness, who has stated in his cross-examination that he had not made statement before police. In his examination-in-chief, however, he has stated that three persons were killed in the police encounter.

30. In his statement under Section 313 Cr.P.C. the accused-appellant has denied his involvement and pleaded innocence.

31. The defence has brought on record, the certified copy of FIR of Maheshkhut P.S. Case No.41 of 2011, certified copy of FIR of Maheshkhut P.S. Case No.42 of 2011 and certified copy of Charge-sheet of Maheshkhut P.S. Case No.43 of 2011 which were registered on 18.05.2011 at 13.30 hours, 22.00 hours and 22.00 hours respectively. These FIRs have been marked Exhibit-A, Exhibit-B and Exhibit-D respectively. A charge-sheet filed by Maheshkhut police vide charge-sheet no.186 of 2013 in connection with Maheshkhut P.S. Case No.43 of 2011 has been brought on record and marked Exhibit-C on behalf of the defence.

32. On perusal of these FIRs and the charge-sheet, it is evident that Maheshwar Singh had lodged Maheshkhut P.S. Case



No.41 of 2011, in which he alleged that when he was loading the bags of his wheat on the tractor, Pintu Yadav, Krishna Yadav, Rajesh Yadav, Fudo Yadav and Bipin Yadav all of village Taufir Diara along with other fifteen unknown persons armed with weapons started indiscriminate firing and confined some persons and had snatched money and mobile from them. On the basis of this information, police registered a case and then proceeded to the place of occurrence with police force at 13.45 hours. It is evident from the charge-sheet (Exhibit-C) that when the police force reached Sirjua Diara, they saw that firing was taking place between Pintu Yadav gang and the villagers whereafter the members of the gang armed with weapon attacked the villagers and the police force. Maheshkhut P.S. Case No.42 of 2011 was registered on the basis of the statement of sub-inspector of police Pramd Kumar. There is another case which lodged by Arvind Singh, son of late Ruplal Singh of village-Hardayal Nagar Banni under Maheshkhut police station against Krishna Yadav, son of Baso Yadav. This Krishna Yadav is the father of Pintu Yadav and Rakesh Yadav. Arvind Singh has stated that Krishna Yadav had left one country made pistol and cartridge in his field and he was fleeing away towards southern side, on suspicion that he is trying to falsely implicate the informant Arvind Singh, he went there,



picked up the arm and cartridge and thereafter caught hold of Krishna Yadav after chasing him and he was brought to Sirjua Bahiyar before police.

33. From the documents exhibited by the defence, it is evident that three occurrences had taken place on 18.05.2011 near the place of occurrence and the case of the defence that in the cross-firing the three persons, namely, Pintu Yadav, Bipin Yadav and Randhir Yadav were killed has some basis in form of contemporaneous documents in form of three F.I.Rs. The circumstances which have been brought on record by the defence creates huge doubt over the authenticity of the prosecution case. The trial court has already disbelieved the other charges including that of demanding Rangdari by this appellant.

34. This Court is of the considered opinion that the learned trial court has miserably failed to appreciate the evidences available on the record and has convicted the appellant without any legal evidence on the record.

35. The appellant has made out a case for interference. The impugned judgment and order are, therefore, set aside giving benefit of doubt to the appellant.

36. The appellant is on bail. He and his sureties are discharged from the liability of the bail bonds.



37. A copy of this judgment with the trial court records
be sent down to the court.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

rishik/arvind-

AFR/NAFR	
CAV DATE	
Uploading Date	21.02.2025
Transmission Date	21.02.2025

