

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 237 of 2018

Arising Out of PS. Case No.-29 Year-2004 Thana- BAUNSI District- Banka

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Lalu Singh S/o Late Ganga Singh @ Godo Singh, R/o Village- Bhorniya,
P.S.- Baunsi, District- Banka.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 967 of 2017

Arising Out of PS. Case No.-29 Year-2004 Thana- BAUNSI District- Banka

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Pradip Yadav @ Pradeep Kumar Yadav, Son of Sambhu Yadav, resident of
village- Salaiya, Police Station- Bounsi, District- Banka

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 1074 of 2017

Arising Out of PS. Case No.-29 Year-2004 Thana- BAUNSI District- Banka

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Manoj Rai @ Manoj Kumar Rai @ Manoj Singh, son of Badri Rai, resident
of Village- Koyla, P.S. Podaiyahat, District- Dumka.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with

CRIMINAL APPEAL (DB) No. 63 of 2018

Arising Out of PS. Case No.-29 Year-2004 Thana- BAUNSI District- Banka

- =====
1. Mikal Tuddu Son of Grabrial Tuddu, resident of Village- Gangati, P.S.-
Baunsi, District- Banka.
 2. Munna Ansari, Son of Md. Siparat Ansari, resident of Village- Fatehpur,
P.S.- Baunsi, District- Banka.



3. Mahesh Yadav, Son of Nunulal Yadav, resident of Village- Salaiya, P.S.-
Baunsi, District- Banka.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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(In CRIMINAL APPEAL (DB) No. 237 of 2018)

For the Appellant/s : Mr. Ajay Mukherjee, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 967 of 2017)

For the Appellant/s : Mr. Rajesh Ranjan, Advocate

Mr. Mohammad Farooq, Advocate

Mr. Akshay Tripathi, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 1074 of 2017)

For the Appellant/s : Mr. Ajay Mukherjee, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 63 of 2018)

For the Appellant/s : Mr. Ajay Mukherjee, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE NANI TAGIA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 17-04-2025

The aforesaid appeals preferred under Section 374 (2)
read with Section 389(1) of the Code of Criminal Procedure,
1973 (hereinafter referred to as the “Cr.P.C.”), arise out of the
same judgement of conviction and the order of sentence dated
11.07.2017, passed by the learned Presiding Officer, Fast Track
Court-I, Banka (hereinafter referred to as the “learned Trial
Judge”) in Sessions Trial No. 1157 of 2004 (arising out of
Bounsi P.S. Case No. 29 of 2004, T.R. No.314 of 2017), hence



these Appeals have been heard together and are being disposed off by the present common judgment and order. By the said judgment dated 11.07.2017, the learned Trial Judge has convicted the appellants of all the aforesaid appeals for commission of offences under Section 302/120-B of the Indian Penal Code (hereinafter referred to as the “IPC”) and Section 27 of the Arms Act, 1959 and they have been sentenced to undergo rigorous imprisonment for life under Section 302 of the IPC, rigorous imprisonment for two years under Section 120-B of the IPC and rigorous imprisonment for three years under Section 27 of the Arms Act, 1959. All the sentences have been ordered to run concurrently.

2. The short facts of the case are that on 13.04.2004 at about 22:00 hours, the *fardbeyan* of the informant, namely, Nakul Yadav @ Nawal Kishore Yadav (PW 6) was recorded by the Officer-in-charge, Bounsi Police Station. In his *fardbeyan*, Nakul Yadav @ Nawal Kishore Yadav has stated that on the said day in the morning at about 10:00 a.m. he had gone to participate in the nomination function of Shri Sushil Modi at Bhagalpur and after filing of nomination, while he was coming back to his house in a Maruti car belonging to his brother and had reached at Aagra bridge at about 08:30 p.m., many co-



villagers and his elder son, namely Surendra Yadav (PW 2) met him and told him that Lalu Singh (appellant of the first case) and 2-3 other accused persons had together killed his son, namely Ashok Yadav by firing on him at about 08:00 p.m., whereafter he was being taken to Gangati more to the clinic of Dr. Bhola Babu for treatment. Thereafter, the informant is stated to have turned his Maruti car and had gone along with the said people to the clinic of Dr. Bhola Babu, where the doctor had declared his son to be dead. The informant had then returned to his village along with the dead body of his son and then the co-villagers had informed the police station by telephone, whereafter the police had arrived at the house of the informant. The informant has further stated that his son was a teacher and used to take interest in social work as also used to oppose the miscreants and this is the reason that Lalu Singh along with his accomplice had fired gun shot on his chest and killed him. He has also stated that his son sustained gunshot injury on the right side of his chest. Lastly, the informant stated that it is his claim that Lalu Singh along with his three accomplices had fired gunshot on his son and killed him.

3. On the basis of the aforesaid *fardbeyan*, a formal FIR, bearing Bounsi P.S. Case No. 29 of 2004 was registered under



Section 302/34 of the IPC and Section 27 of the Arms Act, 1959 on 14.04.2004 at 00:30 a.m. against Lalu Singh and unknown accused persons. After investigation and finding the case to be true qua the aforesaid appellants, namely Lalu Singh, Mahesh Yadav, Manoj Rai, Pradeep Yadav and Mikal Tuddu, the police had submitted charge-sheet on 12.07.2004 under Section 302/34 and 120-B/34 of the IPC and Section 27 of the Arms Act, 1959. Thereafter, the police had also submitted charge-sheet on 27.01.2005 against Mahesh Yadav, Lalu Singh and Mikal Tuddu under Section 302/120B of the IPC and Section 27 of the Arms Act, 1959. The learned Trial Court had then taken cognizance of the offence under Section 302/120-B of the IPC and Section 27 of the Arms Act, 1959, vide orders dated 19.07.2004 and 28.01.2005. The case was then committed to the Court of Sessions and was numbered as Sessions Trial No.1157 of 2004. After taking into consideration the charge-sheet and the materials collected during the course of investigation, the learned Trial Judge framed charges under Section 302/34 and 120-B of the IPC and Section 27 of the Arms Act against the appellants of the aforesaid appeals, vide order dated 08.03.2006 to which they pleaded not guilty and claimed to be tried.

4. During the course of trial, 12 witnesses have been



examined on behalf of the prosecution. While PW-1 Vakil Yadav is the uncle of the deceased, PW-2 Surendra Yadav is the brother of the deceased as also witness to the inquest report, PW-4 Shyam Yadav is the uncle of the deceased, PW-5 Godawari Devi is the wife of the informant, PW-6 Nawal Kishore Yadav @ Nakul Yadav is the informant of the present case and the father of the deceased, PW-11 Dr. Arun Kumar is the doctor, who had conducted postmortem of the dead body of the deceased Ashok Yadav and PW-12 Raj Kishore Singh is the investigating officer of the present case. As far as, PW-3 Bhim Yadav, PW-7 Shankar Yadav, PW-8 Prasadi Yadav, PW-9 Company Ram and PW-10 Gulabi Ram, are concerned, they have been declared hostile.

5. Mr. Ajay Mukherjee, the learned counsel for the appellants of first, third and fourth case, has submitted that the evidence on record would show that none of the prosecution witness is an eye witness to the alleged occurrence. As far as PW-3 and PW-7 to PW-10 are concerned, they have been declared hostile, hence their evidence is of no value for the purposes of proving the guilt of the appellants. He has next submitted that as far as PW-1, Vakil Yadav is concerned, he was not examined by the investigating officer and is merely a witness to the inquest report. It is further submitted that the



investigating officer has stated in paragraph No.28 of his evidence that Shankar Yadav (PW-7) and Prasadi Yadav (PW-8) are the only eye witnesses to the occurrence in question and the rest are hearsay witnesses. PW-12 has stated in his evidence that he had not recorded the statement of PW-1. Thus, it is submitted that the prosecution has tried to introduce a new witness for the purposes of bringing about material improvement in the case of the prosecution, hence the same is not admissible as evidence. It is next submitted that PW-1 has stated in paragraph No.12 of his evidence that he cannot see clearly from his eyes, thus the probability of identifying the accused persons, in the dead of dark night is NIL. As far as PW-2 Surendra Yadav is concerned, it is submitted by the learned counsel for the appellants that he is also not an eye witness and he is merely a witness to the inquest report.

6. At this juncture, Mr. Mukherjee, the learned counsel for the appellants has referred to the *fardbeyan* to submit that the informant has stated that he was informed about the incident by PW-2, however, PW-2, in his evidence has nowhere deposed that he had informed the informant Nawal Kishore Yadav about the incident in question, hence admittedly he is not an eye witness. As far as PW-4 Shyam Yadav is concerned, he has



stated in his evidence that he saw the accused persons in the light of his motorcycle, who were at a distance of 150 yards. It is stated that the investigating officer (PW-12) has stated in paragraph No.34 of his deposition that the witness Shyam Yadav (PW-4) had not told him that his house is situated at Salaiya and in his presence, the statement of Vakil Yadav was recorded, wherein it has been stated that they were at a distance of 200 yards from Gangti More when sound of gunshot firing was heard and further they had not told PW-12 about the name of the accused persons, thus it is submitted that PW-4 is also not an eye witness. The learned counsel for the appellants has next referred to paragraph No.9 of the evidence of PW-4, to submit that he has stated therein that he was 200 yards behind Gangti More when he heard the sound of gunshot firing and he had made such statement before the police whereafter, he had seen the accused persons fleeing away, which was also stated by him before the police. Reference has also been made to paragraph No.10 of the evidence of PW-4 to submit that PW-4 has admitted that he has stated that when he asked the deceased Ashok, he disclosed before him that Lalu Singh had killed him and had fled away, thus it is submitted that firstly, PW-4 is not an eye witness and secondly, he has exaggerated the incident in



question to make it more serious in nature. Now coming to PW-5 Godawari Devi, it is submitted that she has stated in paragraph No.2 of her evidence that she was at her home and after hearing the sound of gun shot, she went to the place of occurrence. In fact, reference has also been made to paragraph No.35 of the evidence of PW-12 to submit that PW-12 has stated in his evidence that witness Godawari Devi (PW-5) did not make any statement before him to the effect that her son was shot at Gangti More and upon asking the injured, he told that he has been shot at from point blank while Mahesh, Mikal and Manoj had caught hold of him, thus it is submitted that admittedly, the said witness, i.e. PW-5 is also not an eye witness. As far as PW-6 Nawal Kishore Yadav (informant) is concerned, it has been submitted that he has himself admitted in his *fardbeyan* that he was informed about the incident by PW-2 Surendra Yadav, i.e. his son, hence he is admittedly not an eye witness to the said occurrence.

7. The learned counsel for the appellants Sri. Mukherjee, has further submitted that as far as PW-12 Raj Kishore Singh is concerned, he has not stated in his evidence that the appellants were having any criminal antecedent or there was any enmity in between the appellants and the deceased, therefore it is



submitted that though there was no enmity in between the deceased and the appellants, nonetheless motive exists for falsely implicating the appellants of the aforesaid three cases, inasmuch as land dispute was existing in between the deceased and the appellant of the first case as also political dispute was existing in between the appellants and the members of the prosecution party. Finally, it is submitted that not only there are grave contradictions in the statement of the witnesses, who have not consistently deposed before the learned Trial Court, but none of them are eye witness to the aforesaid occurrence apart from the fact that the prosecution has also failed to produce any corroborative evidence to prove the complicity of the appellants in the alleged crime.

8. Sri Rajesh Ranjan, the learned counsel appearing for the appellant of the second case has at the outset adopted the submissions advanced by the learned counsel for the appellants of the first, third and fourth case, however has added that the prosecution has tried to fabricate and concoct a story with the sole object of falsely implicating the appellant of the second case right from recording of the FIR, which would be apparent from the fact that though the informant, namely Nawal Kishore Yadav, i.e. PW-6 has stated that his son Surendra Yadav (PW-2)



had informed him about the incident in question, however PW-2, in his evidence has not stated that he had informed the informant about the incident in question, hence there is material inconsistency in the statement of the informant and PW-2. It is further stated that the statements made by the witnesses under Section 161 of the Cr.P.C. were put to the investigating officer, i.e PW-12 to elicit contradiction and the evidence of PW-12 would show that the defence has been successful in eliciting grave contradictions in the statements made by the witnesses before the police *vis-a-vis* their testimony made before the learned Trial Court, thus the witnesses are not trustworthy, hence their evidence cannot be relied upon to prove the guilt of the appellants.

9. Finally, it is submitted by the learned counsel appearing for the appellant of the second case that as far as PW-1, Vakil Yadav is concerned, he has not been examined by the police, hence PW-12 could not be confronted with his statement made before the police so as to elicit contradictions, thus his evidence would not be admissible for the purposes of proving the guilt of the appellants. Reference in this connection has been made to a judgment rendered by the Hon'ble Apex Court in the case of *Alauddin & Ors. vs. State of Assam & Anr.*, reported in 2024



SCC OnLine SC 760, to submit that if a witness admits to have made such a prior statement, that portion can be treated to be also proved, however if the witness does not admit a given portion of his prior statement with which he is confronted, it can be proved through the investigating officer by asking whether the witness made a statement that was shown to the witness or not. It has been further held in the said judgment that the object of such requirement in Section 145 of the Indian Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction, however in case the evidence of the witness is inconsistent with his prior/formal statement, the credibility of the witness would stand impeached under Section 145 of the Indian Evidence Act. It is further submitted that there is no material exhibit on record to corroborate the incident as neither any blood-soaked cloth/mud has been seized nor the bullet recovered from the dead body of the deceased has been exhibited nor the motorcycle of the deceased was seized. Moreover, the investigating officer has also not found any proof of violence at the place of occurrence. Thus, it is submitted that the appellant of the second case has got no role to play in the alleged occurrence and the prosecution has miserably failed to



prove his guilt, hence the judgment of conviction and the order of sentence passed by the learned Trial Judge is perverse and fit to be set aside.

10. *Per contra*, the learned APP for the State has submitted that PW-1 has consistently deposed and moreover, there is no inconsistency in his version and the version of the informant in the *fardbeyan*. It is also submitted that there is no bar under the law that a witness, who has not been examined by the police during the course of investigation, cannot be produced as a witness during the course of trial. It is thus, submitted that solitary evidence of PW-1 is enough to hold the appellants guilty for the crime they have committed. It is next submitted that almost all the witnesses have consistently deposed that since the deceased used to oppose the criminal activities of the appellants, the appellants had got together and killed the deceased. The learned APP for the State has next contended that the ocular evidence is well supported by the medical evidence and the same is enough to prove the guilt of the appellants, thus it is submitted that the impugned judgement of conviction and the order of sentence passed by the learned Trial Judge does not suffer from any infirmity and the same is fit to be upheld.

11. Besides hearing the learned counsel for the parties, we



have minutely perused both the evidence, i.e. oral and documentary. Before proceeding further, it is necessary to cursorily discuss the evidence.

12. PW-1 Vakil Yadav is the uncle of the deceased and he has stated in his deposition that the occurrence dates back to two years at about 08:00 p.m. in the night, when Ashok Kumar @ Amit Kumar Nirala was going to his house at Salaiya from Shyam Bazaar. PW-1 has stated that he had left Shyam Bazaar on a cycle for his house and after 5-6 minutes Ashok Kumar had gone ahead of him on his motorcycle. In the light of the motorcycle of Ashok Kumar, PW-1 saw Lalu, Pradeep, Mahesh, Mikal, Manoj and Munna Khan sitting on the bridge and when he reached near the bridge, Lalu Singh had fired gun shot on Ashok Kumar, whereupon Ashok Kumar had shouted that Lalu has fired gun shot on him, whereafter all the miscreants fled away. PW-1 has also stated that while he was near Ashok Singh, Bhim Yadav (PW-3) had also arrived there for giving water to him but Ashok became unconscious and with the help of co-villagers, he was put on the Marshal vehicle of Anirudh Yadav and taken to Dr. Bhola Prasad's clinic, situated at Bounsi. The doctor had then examined Ashok and stated that he has died, whereafter he was taken to his house where the police had



arrived and in presence of PW-1, the inquest report was prepared, which was signed by him and the same was written by R.K. Singh, the then Officer-in-charge of Bounsi Police Station. The inquest report was also signed by Surendra Yadav. PW-1 had identified his signature made over the inquest report, which has been marked as Exhibit-1. PW-1 had recognised six accused persons standing in the dock.

13. In cross-examination, PW-1 has stated that his statement was recorded by the police on 13.04.2004 at his house at 06:00 a.m. in the morning. PW-1 has also stated that in his presence, the police had also recorded the statement of Surendra (PW 2), Nawal Kishore Yadav (PW 6) and Shyam Sundar Yadav (PW 4). He has next stated that a police officer had come in the night at about 08:15-08:30 p.m, and the dead body was taken by the police for postmortem at about 08:30 p.m., however he had not gone with them and he cannot say as to whether any family member had gone or not. The occurrence dates back to two years at about 08:00 p.m. in the night. PW-1 has stated that he had told the police that Ashok Kumar @ Amit Kumar Nirala was going on his motorcycle from Shyam Bazaar to his house situated at Salaiya and he had also left Shyam Bazaar for his house on cycle and after 5-6 minutes Ashok Kumar had



overtaken him on a motorcycle and in the light of the motorcycle of Ashok Kumar, PW-1 had seen Lalu Singh, Pradeep, Mahesh, Mikal, Manoj and Munna Khan sitting on the bridge. In his cross-examination, PW-1 has also stated that as soon as he reached near the bridge, Lalu Singh had fired gun shot on Ashok Kumar whereupon Ashok Kumar had shouted that Lalu Singh has hit him by gunshot firing, whereafter all the miscreants had fled away. PW-1 has also stated that he had told the police that Ashok had then become unconscious, whereafter with the help of co-villagers, Ashok Kumar was put on the Marshal vehicle of Anirudh Yadav and taken to the clinic of Dr. Bhola Prasad at Bounsi, where the doctor had examined Ashok Kumar and declared him to be dead. PW-1 has stated that he cannot say as to how many copies of inquest report were prepared and he had put his signature, after he was asked to put his signature on the inquest report but the inquest report was not read over to him. He has also stated that he cannot see clearly from his eyes.

14. PW-1 has stated that the distance in between Salaiya and Bounsi Police Station is 9 kilometers and the clinic of Dr. Bhola Prasad is situated at Bounsi. He has also stated that 10-15 people had accompanied Ashok on the Marshal vehicle,



however, firstly he stated that he cannot say as to who all had accompanied Ashok on the Marshal vehicle but later on, he said that Ashok was accompanied by Surendra Yadav (PW-2), mother of Ashok, namely Godawari Devi (PW-5), his sisters Soni and Moni, his aunt i.e. wife of PW-1. PW-1 has also stated that at the clinic of doctor, police from Bounsi Police Station had arrived, however the police had not recorded the statement of any person. PW-1 has stated that the dead body was then brought to the house of Ashok, where they reached from Bounsi at around 09:00-09:30 p.m. in the night and at that time, Shyam Sundar Yadav, Nawal Yadav, Surendra Yadav and other family members were present there. He has also stated that forty houses are situated in Salaiya village and his house as also the house of Nawal Kishore is situated adjacent to each other. PW-1 has also stated that Nawal Kishore has two sons, one is Ashok who has died and the other one is Surendra Yadav. PW-1 has also stated that the father of Pradeep is Shambu and his grandfather's name is Baijnath. He has stated that his brother Nawal Kishore had filed a case before the Land Acquisition Officer against Baijnath. PW-1 has also described the location of the house of the accused persons. PW-1 has further stated in his cross-examination that his land is situated at Purnea Mohalla,



admeasuring about 109 bigha. He has stated that accused Lalu Singh is a resident of said Purnea Mohalla and his vegetable field is situated adjacent to the house of Lalu Singh. PW-1 has also stated that he has given some of his land on contract basis for ploughing. PW-1 has denied that Lalu Singh has taken his five bigha land on contract basis for ploughing. PW-1 has further stated in his cross-examination that he was going alone on his cycle after purchasing vegetables from Shyam Bazar and on the said road, plowmen (*harwaha*) were also going. PW-1 has stated that when he started, he heard the sound of gunshot firing, which he saw himself and after hearing the sound of gunshot firing, he had gone to the place where Ashok was shot and saw that blood was oozing out from the body of Ashok. He has also stated that he had not informed the chaukidar, but the police had arrived.

15. PW-2 Surendra Yadav is the brother of the deceased, who is a witness to the inquest report and he has stated in his deposition that his brother Ashok Yadav was murdered on 13.04.2004 in the evening at Gangti More bridge. He has also stated that the inquest report was prepared in his presence over which he had put his signature, which he has identified and the same has been marked as Exhibit-2. In his cross-examination,



he has stated that his statement was not recorded by the police.

16. PW-3 Bhim Yadav has stated in his deposition that the occurrence dates back to 2-2 ½ years at about 07:00-8:00 p.m. in the evening when he was at Gangti More. There, he had heard the sound of gunshot firing as also he had heard someone shouting, whereafter he had gone to Gangti More along with his co-villagers and saw that Ashok Yadav has been hit on his chest by bullet and blood was oozing out as also his motorcycle had fallen down. Ashok Yadav was unconscious, whereafter the people present there had taken him to Bounsi. PW-3 had denied either having seen anything about the incident in question or hearing about the same, hence he was declared hostile by the prosecution.

17. PW-4 Shyam Yadav is the uncle of the deceased and he has stated in his deposition that the occurrence dates back to two and a half years, day-Tuesday, i.e on 13.04.2004 at about 08:00 p.m. in the night when he was going from Shyam Bazaar to his house. The place of occurrence was Gangti More and he was 200 yards from the said place of occurrence when he heard sound of gunshot firing and saw Lalu Singh, Manoj Singh, Mikal, Pradeep Yadav and Mahesh Yadav running away, whom he had recognized in the light of his motorcycle as also had seen



them from a distance of 150 feet ahead of Gangti More. PW-4 had then gone to the place of occurrence and had seen that one Rajdoot motorcycle had fallen on the ground and on the side Ashok Yadav was quivering in pain, he was perspiring, he had been shot on his right side armpit and when he had enquired from him, he said that Lalu Singh had shot him, whereafter he had run away. Ashok Singh is also stated to have taken the name of Mikal, Manoj Singh, Pradeep and Mahesh. Thereafter, family members of PW-4, including Vakil Yadav, Godawari Devi, Prasadi Yadav and many other people had arrived there and then Ashok Yadav was put over a Marshal vehicle and while they were taking Ashok Yadav to Bounsi, his father Nakul Yadav was returning from Bhagalpur, who met them at Aagra bridge. Dr. Bhola Prasad Singh had declared Ashok Yadav to be dead. Ashok Yadav was then taken to his house at Salaiya village. Ashok Yadav was a Shiksha Mitra at village-Bangwaria and used to protest the wrongs being committed by the accused persons, hence he was killed. PW-4 had recognized the six accused standing in the dock.

18. In his cross-examination, PW-4 has stated that his statement was recorded by the police on 13.04.2004 at 11 p.m. in the night at his house at Salaiya village and the statement of



Vakil Yadav was also recorded in his presence, however he had not put his signature or thumb impression on the statement recorded by the police official. PW-4 has also stated that he was 200 yards behind Gangti More when he heard the sound of firing of gun shot and he had made the same statement before the police. He had also stated before the police that he had seen Lalu Singh, Manoj Yadav, Mikal, Pradeep Yadav and Mahesh Yadav running from the place of occurrence. PW-4 has also stated that when he had asked Ashok, he had told him that Lalu Singh has shot him and then he had fled away. On that day, he had not met Shankar Yadav but he had met Prasadi Yadav, who had also told that people had fired gun shot and had then fled away. PW-4 has stated in his cross-examination that he has not given his land to anyone on contract basis for ploughing but they themselves plough their land and it is not a fact that Lalu Singh ploughs 5 bigha of their land on contract basis. PW-4 has also stated in his cross-examination that he had gone to Shyam Bazaar at 10:00 a.m. in the morning where he stayed upto 07:30 p.m. He has also stated that he had not met his brother Surendra at Shyam Bazaar nor he had met his brother Vakil at Shyam Bazaar. In paragraph No.34 of his cross-examination, PW-4 has stated that he was driving his vehicle on his own and he had not



met anyone at Dumka road though bus, truck and cycle were plying on Dumka road and no motorcycle of anyone known to him was plying either behind him or in front of him. In paragraph No.36 of his cross-examination, PW-4 has stated that the accused persons were present at a distance of 150 feet ahead on the road and subsequently, Lalu Singh and other accused persons had fled away, however he had not followed them.

19. In paragraph No.41 of his cross-examination, PW-4 has stated that he had contested the Mukhiya election in the year 2000 from Sarua Gram Panchayat in which Babu Ram Basuki had won though Gopal Singh had also contested the same and whether mother of accused Mikal Tuddu had contested or not, he does not remember. He has also denied that mother of Mikal Tuddu had contested election against him. He has admitted that he had lost the said election. In paragraph No.44 of his cross-examination, PW-4 has stated that the accused persons were coming from east to west over a road which is 12-14 feet wide and they were moving over the same in middle of the road and in front Lalu Singh was going followed by Manoj Singh, Mikal Tuddu, Munna, Mahesh and Pradeep. He has stated that the accused persons had not kept any cloth with them to cover their face and all the accused persons were at a distance of 2-4 feet



from each other, however he had not talked with the accused persons. In paragraph No.47 of his cross-examination, PW-4 has stated that when he had reached Gangti More, ten people had arrived thereafter, namely Vakil Yadav, mother of Ashok, Prasadi Yadav, Devan Tuddu etc. Subsequently, the Santhalis from Gangti mohalla had arrived there, apart from people from nearby mohallas having also arrived there. PW-4 has also stated that he had stayed for 20 minutes at the place where Ashok Yadav had fallen down i.e. towards the eastern side of Gangti More and there was sign of one gunshot on the body of Ashok Yadav, who was conscious at that time and PW-4 had also given water to him, which he had brought from Gangti at a distance of 150-200 feet. He has also stated that he had brought water from the house of Mangal Tuddu where his son Shyam Lal was present and then they had also come to the place of occurrence.

20. PW-4 has stated that Mangal Tuddu, Shyam and 7-8 other persons had also arrived at the place of occurrence and they were present when he had made Ashok Yadav drink water. PW-4 has also stated in his cross-examination that Ashok was then lifted and taken to Bousi and at that time the police was not informed, however the police had come later on. He has further stated that Ashok was brought from Gangti More to the main



road on a motorcycle belonging to him, while he had been made to sit at the back of the motorcycle, while blood was oozing out from his body, which had also fallen on his motorcycle as also on the ground. PW-4 has stated that the registration number of his motorcycle is BR-40/8412 (Hero Honda Splendour). PW-4 has further stated in paragraph No.54 of his cross-examination that they had reached Bounsi at about 09:15 p.m. in the night, where they had gone to the house of Dr. Bhola Prasad Singh, who stays in the house of Kailash Singh, which is at a distance of 200-300 feet from the police station. They had stayed at the house of Dr. Bhola for about half an hour where 20-25 people were present, including the entire family of PW-4. At that place, Anirudh Yadav, Nand Kesar Sah, Sanjay Yadav, Prakash Yadav, Narayan, Pardeshi and several other persons were present there whose name he does not remember. The doctor had declared Ashok dead. He has stated that Ashok was conscious from Gangti More to Bounsi Bazaar. In paragraph No.57 of his cross-examination, PW-4 has stated that his elder brother Nakul Yadav had informed the police at the police station and many other persons had also gone along with him to the police station. The dead body of Ashok was kept outside the house of the doctor near the mango tree and at that place the police officer had not



prepared any inquest report, however the police officer had arrived there and stayed for 10 minutes.

21. PW-4 has also stated that he had not gone to the hospital and some other persons had brought his motorcycle to Bounsi, which he had shown to the police officer, whereafter the police officer had told them to go with the dead body and he would come, thereafter. They had crossed Gangti More along with the dead body at about 10:00 p.m. in the night and the dead body was taken to home where it was kept and lot of people had assembled there. The police officer had arrived there at 11:00 p.m. in the night and had stayed there for 1½ -2 hours, however the dead body was not taken by him and after the police officer had left, they were keeping a watch over the dead body. PW-4 has further stated that they had then left the house at 06:00 a.m. in the morning along with the dead body and 10 other persons including his brother Vakil, Nakul, Nand Kishore Sah, Sanjay, Gopal and others and had gone to the police station and kept the dead body near the road where the dead body was laden on a vehicle, whereafter the police officer had seen the dead body and given a slip at about 07:00 a.m., which was taken by Gopal Yadav, whereupon they had taken the dead body on a vehicle to the postmortem room of the hospital where Gopal had given the



slip to the doctor and then the postmortem was conducted, where they had stayed upto 09:30-10:00 a.m. in the morning and then they had brought the dead body back to their house, where they had reached at about 11:00-12:00 hours in the afternoon. PW-4 has also stated that the police officials had not come to the house and recorded the statement, however his elder brother had disclosed before the police about the incident but he does not know whether the police officer had recorded his statement or not. In paragraph No.66 of his cross-examination, PW-4 has denied that he has stated before the police that at about 08:30 p.m. he had seen Manoj Singh and Mikal crossing the road in the light of his motorcycle and they appeared to be quite scared as also along with them one unknown person was fleeing away.

22. PW-5 Godawari Devi is the wife of the informant, i.e. PW-6 and the mother of the deceased. She has stated in her deposition that the occurrence dates back to two and a half years at about 08:00 p.m. in the night. She has stated that her son deceased-Ashok Yadav was a teacher and he used to return to his house at around 05:00-06:00 p.m. in the evening and on that day it was Vishnu festival and when she was at her home, she heard sound of gunshot firing near Gangti bridge, whereafter she rushed to the said place of occurrence. The occurrence had



taken place at 08:00 p.m. and after she had reached at Gangti bridge, she saw that her son Ashok was shouting- "*mother save me*". PW-5 saw blood oozing out from right side of the chest of her son and when she asked him as to who had fired gun shot on him, he told her that Lalu had shot him by firearm while Mahesh, Pradeep, Mikal, Manoj and Munna had caught hold of him. PW-5 has further stated that her brother-in-law Shyam Jee was present there from before, whereafter a vehicle was arranged and the son of PW-5 was taken to Bounsi while she came back to her house. PW-5 had recognized the five accused standing in the dock.

23. In her cross-examination, PW-5 has stated that her statement was not recorded by the police, however again she has stated that she had given her statement before the police, nonetheless, she has stated that she had not told the police that Vishnu festival was on that day. She has also stated that she had not told the police that after she heard the sound of gunshot firing, she had gone to Gangti bridge. Again, she has said that she had become unconscious, hence she cannot say what she told the police. She has also stated that she had not told the police that seven days back, Pradeep had climbed on the vehicle of her son, however she has stated that she had told the police



that at Gangti bridge, her son was shouting to save his life. She has also stated that she cannot recall as to whether she had told the police that upon asking his son as to who had committed the crime, he had told that Lalu had fired gun shot while Mahesh, Pradeep, Mikal, Manoj and Munna had caught hold of him. She has said that she had given statement before the police that her brother-in-law Shyam Jee was present at the place of occurrence from before. She has also stated that she has not told the police that after hearing noise/*hulla*, she had come outside her house. She has also stated that nobody had come to her house and told her about her son being killed. PW-5 has also stated that she has got two sons; Surendra and Ashok and Surendra was at the house, at the time of occurrence. In paragraph No.15 of her cross-examination, PW-5 has stated that her house is situated towards south of Gangti More after 2-4 fields and in between, no house is situated and the houses of Rai Community are situated both towards north and south of her house, which are 15-20 in number.

24. In paragraph No.17, PW-5 has stated that when she left her house, she did not meet anyone and it was a dark night. She has also stated that she did not tell the police that she had seen the co-villagers going towards Gangti More. PW-5 has also



stated that when she reached Gangti More, neighbors were present there, however she did not recognize anyone, nonetheless they were 100-125 in number but she did not talk with anyone at that place. PW-5 has further stated that her son had fallen down and blood was oozing out as also he was shouting, whereafter her son was loaded on a vehicle and taken away, however she did not go with her son and thereafter, she came to her house for arranging money, which took 2-4 hours. She has also stated that she did not give money to anyone since her son had died and she did not go to Bounsi. PW-5 has stated that she had seen her son again but he was dead at that time when he had been brought to her house and at that time the police had also arrived. The dead body was kept during the night at the door of the house of PW-5 and chaukidar and dafadar were also present there. On the next day, at about 06:00 a.m. in the morning, the police had taken away the dead body but PW-5 had not gone along with the dead body and then she did not meet the police official. She has also stated that she does not know regarding any dispute with Pradeep pertaining to acquisition of land for railway track.

25. PW-6 Nawal Kishore Yadav @ Nakul Yadav is the informant of the present case and the father of the deceased-



Ashok Yadav @ Amit Kumar Nirala. He has stated in his deposition that the occurrence dates back to 13.04.2004, day-Tuesday, at about 07:45 p.m. in the evening when he was coming back from Bhagalpur. He has further stated that when he had reached at Aagra bridge at about 08:30 p.m. in the night, he saw many people coming on motorcycle and Marshal vehicle from Dumka-Bhagalpur road, where his elder son Surendra Yadav had got his Maruti van stopped and had told him that his son Ashok @ Amit had been shot at Gangti bridge by Lalu Singh and his accomplice, namely Mahesh, Pradeep, Mikal, Munna and Manoj Rai. PW-6 has then sat on the vehicle on which his son Ashok Yadav was sitting and then they had gone to the private clinic of Dr. Bhola at Bounsi where the doctor had checked his son Ashok by stethoscope and B.P. machine and had then declared him dead, whereafter he had brought the dead body of his son to village-Salaiya and in the meantime, somebody had informed the police, whereupon the police had come to his house and his statement was recorded by the police, which is his *fardbeyan* and on the same he had put his signature, which he has identified and the same has been marked as Exhibit-3. PW-6 has further stated that the accused persons are engaged in committing crime of stealing vehicles since 5-7



years. PW-6 has stated that his son, Ashok was a teacher at Bangbaria Sarha More Middle School and he used to see the accused persons looting the people passing by and this is the reason for the present occurrence. He has also stated that 2-3 days back, the accused persons had threatened his son that if he informed the police, they would kill him. In fact, the accused persons had also assaulted one chaukidar sometime back, which was protested to by the son of PW-6. PW-6 had recognized the accused persons standing in the dock.

26. In cross-examination, PW-6 has stated that his *fardbeyan* was recorded by the police at his house and at that time many people were present there including his brother, his family members and co-villagers, namely Dinesh Yadav, Bharat Yadav, Manoj Yadav, Dasrath Yadav, Bhim Yadav and Uday Yadav etc. After the *fardbeyan* of PW-6 was recorded, the Dy. SP had also recorded his statement in the morning, however he had not got his signature made on any paper and the Officer-in-charge had only got his signature on his *fardbeyan* in the night. The Dy. SP had arrived at 07:00 a.m. in the morning, however, again he has stated that he cannot state the exact time when the Dy. SP had come to his house, however when the Dy. SP had come to his house, the dead body of his son was present there. Thereafter,



the dead body was taken on a vehicle and along with the dead body, PW-6, Ajay, Sanjay and Manoj had also gone to Banka. He has also stated that on the previous night, a constable and a chaukidar were present there, however he cannot state their names. PW-6 has also stated that they had reached Banka at about 08:30 a.m. in the morning and had gone to the hospital at Banka for postmortem examination of the dead body of the deceased, which was conducted at 10:00-10:30 a.m. in the morning, whereafter the dead body was given to PW-6 and then they had reached their home along with the dead body at about 12:00-12:30 hours in the afternoon. PW-6 has also stated in his cross-examination that his son told him that Lalu Singh, Mahesh, Pradeep, Mikal, Munna and Manoj Rai had fired gun shots and this statement was made by PW-6 before the police. PW-6 has denied that he had disclosed the name of only Lalu Singh before the police. PW-6 has also stated that he had told the police that the doctor had examined his son by Stethoscope and BP machine. PW-6 is also stated to have disclosed before the police that the accused persons are engaged in stealing vehicles since 5-7 years. PW-6 has stated that he had disclosed before the police that his son Ashok is a teacher at Bangbaria Sarha More Middle School and he used to see the accused



persons looting the passers-by and this is the reason for the occurrence in question. PW-6 has also stated that he had disclosed before the police that 2-3 days back the accused persons had threatened his son that if he informed the police, he would be killed. PW-6 is also stated to have told the police that sometimes back one chaukidar was beaten by the accused persons, which was protested to by his son. PW-6 has also stated in his cross-examination that no case pertaining to extortion is pending against him.

27. PW-6 has stated that he has not filed any case against Baijnath Yadav, grand-father of accused Pradeep. PW-6 has next stated that it is not a fact that he has encroached upon the land of accused Pradeep and constructed his house. PW-6 has stated in paragraph No.34 of his cross-examination that Lalu Singh used to cultivate five bigha land of his brother on contract basis. PW-6 has stated that when he had gone to Bhagalpur to participate in the nomination ceremony of Sushil Modi, the persons travelling in his car were Sone Lal Mishra, Nakul Thakur, Ravi Bhagat and Nandkeshar and in other cars, other party workers were travelling, namely Vijay Mandal and others, however the said persons had not gone to his village. PW-6 has stated that he had left his house to go to Bhagalpur at 09:00 a.m. in the morning



and had started from Bhagalpur at 06:00 p.m. in the evening for Bounsi where he reached at 08:00 p.m. in the night. He has stated that the distance between Bounsi and Shyam Bazaar is 8 kilometre and from Bounsi to Aagra bridge, it is 3 kilometre and from there Nayagaun is at a distance of about one kilometre towards the east. PW-6 has further stated that while returning, he and Nandkeshar were only present in the car and rest of the party workers had got down at Bounsi, however the driver, Vijay Singh was also present in the car. He has stated that towards the north of Aagra bridge, he had met Surendra Yadav and others who were taking his son while one person was on a motorcycle, which was being driven by Sanoj Choudhary and his son was also riding on the said motorcycle apart from there being 3-4 other motorcycles. PW-6 has also stated that since Referral Hospital is at some distance, they had gone to the private clinic of Dr. Bhola Babu, which is situated at a distance of 300-400 feet from the police station. PW-6 has next stated that Ashok was brought down from the vehicle and the doctor had not got up on the vehicle for examining Ashok, however Ashok was kept outside the clinic of the doctor on a bench, where blood had also spilled and the clothes of Ashok were soaked with blood.



28. PW-6 has stated in paragraph No.42 of his cross-examination that he had not informed the police at the police station nor the doctor had sent anybody to the police station and at the clinic the doctor had simply declared Ashok to be dead but he had not engaged in any paper work. He has also stated that he was not conscious of the fact as to who had returned along with him from the clinic and he had also fallen unconscious on the way and regained consciousness at Shyam Bazaar. PW-6 has also stated that on the next day also, he had become unconscious in the evening. PW-6 has also stated that when they were returning back to their house from the clinic, the motorcycle of his son Ashok was not lying at the place of occurrence and the same had been kept at his house. PW-6 has also stated that there is no chaukidar present in the village, however in the night the chaukidar and the police force had come to their house but he had not informed the police. The Officer-in-charge had removed everyone and had then seen the dead body kept at the house of PW-6, whereafter he had made some papers at about 10:00-10:30 p.m. in the night and the same was also signed by PW-6, whereupon the Officer-in-charge had left after posting chaukidar and constable at the house of PW-6. The name of Officer-in-charge is R.K. Singh, who had also



come in the morning at about 06:00-06:15 a.m. and had then taken the dead body, whereafter PW-6 had not met the Officer-in-charge, however he had made enquiries from his brother Shyam Yadav, his wife Godawari Devi, Vakil Yadav and Surendra Yadav as also had taken their signature and then had taken away the dead body.

29. PW-7 Shankar Yadav has stated in his deposition that he does not know about the incident, hence he was declared hostile. In his cross-examination, PW-7 has stated that at the time of incident, he was sitting in his house, when he suddenly heard sound of gunshot firing and then he went to the place of occurrence along with his brother at about 08:00 hours, where 4-5 people were standing at Gangti More and then he lit his torch and saw some persons, namely Lalu Singh, Mahesh Yadav, Pradeep Yadav, Manoj Singh and Mikal Tuddu running towards Dumka road, however he has stated that he had not given such statement before the police. He has also stated that he had seen the deceased Ashok Kumar soaked with blood and when he was taken to Bounsi for treatment, he was declared dead. He has also stated that Lalu Singh, Pradeep Yadav and others are having criminal background and the deceased used to protest their activities, hence his murder has taken place, however he had not



told the police about the same.

30. PW-8 Prasadi Yadav has also stated in his deposition that he does not know about the incident, hence he was declared hostile. In his cross-examination, he has stated that at about 08:00 hours in the evening, he suddenly heard sound of gunshot firing, whereafter he went to Gangti More where he saw 4-5 people standing and in the light of torch, he recognized Lalu Singh, Mahesh Yadav, Manoj Singh, Pradeep Yadav and Mikal as also saw that Ashok Yadav has been shot at on his chest and he was soaked with blood, whereafter he was declared dead by the doctor, however he has stated that he has not made such statement before the police.

31. PW-9 Company Ram has also stated that he does not know much about the incident and he had not given any statement before the police, hence he was declared hostile. In his cross-examination, he has stated that on the date of occurrence, after hearing noise and commotion, he went to the place of occurrence, where he saw that deceased Ashok Yadav had been shot and had fallen down on the ground in an injured condition, whereafter co-villagers had taken him to Bounsi for treatment, where he was declared dead by the doctor. He has also stated that Lalu Singh and his gang used to commit loot on



the road, which used to be opposed by Ashok Yadav, hence Lalu Singh, Mikal, Mahesh Yadav, Manoj Singh and Pradeep have together killed Ashok by firing gun shot on him, however he had not given such statement before the police.

32. PW-10 Gulabi Ram has stated in his deposition that he does not know much about the incident and his statement was also not recorded by the police, hence he was also declared hostile. In his cross-examination, he has stated that upon alarm being raised, he had gone to the place of occurrence and had seen Ashok Yadav having fallen down after being shot at, whereafter he was taken to Bounsi for treatment but he was declared dead by the doctor, however he has stated that he had not given such statement before the police. PW-10 has further stated in his cross-examination that Ashok Yadav was a social person, who used to prevent the criminals from doing wrong work and for the aforesaid reason, Lalu Singh, Mikal, Mahesh Yadav, Manoj Singh and Pradeep Yadav have together killed him, however he had not given such statement before the police.

33. PW-11 Dr. Arun Kumar is the doctor who has conducted postmortem of the dead body of the deceased Ashok Yadav. He has stated in his deposition that on 14.04.2004, he was posted as the Deputy Superintendent, Sub-Division-Banka and on that day



at 08:35 a.m. he had conducted postmortem of the dead body of the deceased Ashok Yadav and found the following ante-mortem injuries on his person externally:-

“One lacerated hole cavity deep $\frac{3}{4}$ " x $\frac{1}{2}$ " on upper border of right nipple with deep blackening in area of 2" diameter around wound and scattered blackening in diameter of 4" around the wound. The wound directed towards left side and going into left chest cavity.”

The findings of PW-11, on dissection, are as follows :-

“There was extravasaling of blood clots under the wound. The muscles underlying were lacerated. 5th rib under the wound were fractured, pleura lacerated and ruptured. Right middle lobe of lungs lacerated. The mediastinum was ruptured. Aortic notch lacerated. Left middle lobe of lungs lacerated. The 7th & 8th rib on left lateral side fractured. One part of metallic bullet was found lodged between 7th and 8th rib on left side which was taken out and kept in viol and sealed for forensic examination. All chambers of heart were empty. Cavity was full of blood and clots.”

The cause of death, according to PW-11, is shock and hemorrhage from above injury caused by firearm and he has stated that death had taken place within 18 hours of examination. PW-11 has further stated that the report was prepared in his writing and bears his signature, which has been marked as Exhibit-4. In his cross-examination, PW-11 has stated



that the bullet recovered from the dead body was given to the police for forensic examination, however the forensic report is not before him. He has stated that blackening and tattooing are same thing. He has also stated that in his opinion, the shooting was done from within four feet. He has also stated that after four feet, blackening and tattooing is rare. PW-11 has next stated that *rigor mortis* starts after four hours and remains present upto 24 hours. He has stated that the dead body was received at 08:15 a.m. on 14.04.2004.

34. PW-12 Raj Kishore Singh is the investigating officer of the present case and he has stated in his deposition that on 13.04.2004 he was posted as Officer-in-charge of Bounsi Police Station, on which day he had received information on telephone that one person has been shot at Gangti More and is grievously injured. For verification of the said information and for taking necessary action, he along with ASI, Nand Jee Yadav, ASI, K. D. Rai, ASI T. N. Ram as also with reserved guard of the police station had left the police station and had reached village-Salaiya at 09:30 p.m. by which time the injured had died. Thereafter, the *fardbeyan* of Nakul @ Nawal Kishore Yadav was recorded, which was sent through dafadar to the police station for registration of a formal FIR and then PW-12 had himself



assumed the investigation of the case. PW-12 has identified the *fardbeyan*, which is in his writing and bears the signature of the informant, who had put his signature after finding the *fardbeyan* to be correct and the same has been exhibited as Exhibit-5. PW-12 has next stated that he had recorded the restatement of the informant and had also endorsed the *fardbeyan*, in his writing, which he has identified as also he has identified the signature of Sidheshwar Prasad Jha on the FIR and the writing of literate constable Uday Singh, in whose writing FIR has been written and the same has been marked as Exhibit-6. The FIR has been marked as Exhibit-7. PW-12 has stated that during the course of investigation, he had recorded the restatement of the informant as also had recorded the statement of witnesses, namely Nawal Yadav (PW-6), Godawari Devi (PW-5), Shankar Yadav and Prasadi Yadav (PW-8). In the morning, on the second day, he had prepared the inquest report, which is in his writing and he had also prepared a carbon copy, which has been marked as Exhibit-8. PW-12 had also inspected the place of occurrence and in paragraph No.9 of his examination-in-chief, he has described the place of occurrence. PW-12 had arrested Pradeep Yadav from Shayam Bazaar and upon investigation, he confessed his complicity in the said occurrence, whereafter his confessional



statement was recorded and one carbon copy was also prepared which he has identified and has stated that the same is in his writing, which has been marked as Exhibit-8 (under protest). PW-12 has next stated that he had arrested Manoj Singh @ Manoj Rai and recorded his confessional statement in his writing and made carbon copy of the same which he has identified and the same has been marked as Exhibit-8/1 (under protest). PW-12 had also received the postmortem report of the deceased as also the supervision note of SDPO. PW-12 had then recorded the statement of independent witnesses, namely Bhim Yadav and Gulabi Ram. PW-12 had filed charge-sheet against Manoj and Pradeep Yadav on completion of investigation of the case in question. PW-12 is also stated to have recorded the statement of independent witnesses, Ghanshyam Panjiyara, Natwar Mandal, Kapil Singh, whereafter final charge-sheet was submitted against the accused persons. PW-12 had recognized the accused persons standing in the dock.

35. In cross-examination, PW-12 has stated that as far as the information given to him on telephone is concerned, the name of the accused persons was not disclosed and he had also not enquired about the name and number of the person who had given information to him on telephone. PW-12 has stated that in



paragraph No.3, he has written that *fardbeyan* was recorded at 22:00 hours, however he has rectified and stated that he had recorded the statement at 21:30 hours. He has also stated that the informant Nawal Yadav had taken the name of only Lalu Singh in his statement made before him and he had referred to three other accused persons, however he had not disclosed their names. PW-12 has next stated in his cross-examination that he had gone to the place of occurrence in the night of 13.04.2004 at 09:00 p.m. and then he had again gone to the said place on the next day morning, i.e. on 14.04.2014 at 06:00-06:15 a.m. and delay of about nine hours had taken place since it had become dark in the night. He has stated that he had seen the dead body in the light of torch and had prepared documents on the next day morning in the day light. PW-12 has also stated that he had recorded the statement on the spot and then upon receipt of the *fardbeyan* the case was registered and on that day the statement of the informant and other witnesses was also recorded. PW-12 has also stated that he had prepared the inquest report at the place where the dead body was lying. PW-12 has also stated that in paragraph No.26 of the case-diary, he had not written about recovery of blood but had referred to white vest. In paragraph no.5 of the case-diary, PW-12 had though not referred to



presence of blood on the cloth but he had referred about blood. He has also stated that he had not seized any cloth and left the same with the dead body. PW-12 has also stated that witnesses Shankar (PW-7) and Prasadi Yadav (PW-8) are the only eye witness and others are hearsay witness. PW-12 has next stated that he had not recorded the statement of witness, Vakil Yadav (PW-1) and Surendra Yadav (PW-2) in the case-diary and had in fact not taken their statement, however Shankar Yadav (PW-7), Prasadi Yadav (PW-8), Company Roy (PW-9) and Gulabi Ram (PW-10) had given their statement before him. He has also stated that he did not find blood at the place where the dead body was found and he had not got any photography conducted as far as the place of occurrence is concerned as also he had not written in the case-diary about finding of footprints or blood at the place of occurrence.

36. PW-12 has next stated that he had recorded the statement of witness Manoj Rai, wherein he has stated that Ashok Yadav was made to elite from the motorcycle, whereafter cloth was inserted in his mouth, however he had not seized any motorcycle. He has also stated that Dr. Bhola Das had declared the deceased to be dead at Bounsi from where the police station is situated at a distance of five minutes on foot, however in the



night of the said day no information was given at the police station nor the doctor had informed the police. He has also stated that the informant has got no criminal history. PW-12 has further stated that witness Shyam Yadav had not stated before him that his house is situated at Salaiya, his statement was recorded there and in his presence the statement of Vakil Yadav was also recorded to the effect that when he was at a distance of 200 yards from Gangti More, he had heard the sound of gunshot firing but he had not disclosed the name of the accused persons, who were fleeing away. PW-12 has next stated that witness Godawari Devi had not told him that his son was shouting at Gangti More to save him and upon being asked, he had disclosed that he was shot from point blank and that Munna Mahesh, Mikal and Manoj had caught hold of him. PW-12 has next stated that witness Nawal Kishor Yadav @ Nakul Yadav (PW-6) had told him that his son had told him that Lalu Singh, Mahesh, Pradeep, Mikal, Munna and Manoj have shot the deceased. PW-12 has next stated that witness Nakul had not told him that somebody had sat on the motorcycle of Ashok and the accused persons used to loot vehicles since 5-7 years. PW-12 has also stated that witness Company Rai (PW-9) and Gulabi Ram (PW-10) had made similar statements before him which



was recorded by him jointly. PW-12 had not found any empty shell of bullet (*khokha*) at the place of occurrence, however he had seen the postmortem report and gunshot had hit only one person, however he had not seized any material exhibit. PW-12 has also stated that no Test Identification Parade was conducted.

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

38. The trial Court, upon appreciation, analysis and scrutiny of the evidence adduced at the trial, has found the aforesaid appellants guilty of the offences and has sentenced them to imprisonment and fine, as noted above, by its impugned judgment and order.

39. We have perused the impugned judgement of the learned Trial Court, the entire materials on record and have given thoughtful consideration to the rival submissions made by the learned counsels for the appellants as well as the learned APP for the State.

40. A bare perusal of the evidence led by the prosecution would show that PW-3 and PW-7 to PW-10 have been declared



hostile, while PW-2 Surendra Yadav, PW-4 Shyam Yadav, PW-5 Godawari Devi and PW-6 Nawal Kishore Yadav (Informant) are not eye witnesses to the said occurrence, hence their testimony is not sufficient to prove the guilt of the aforesaid appellants beyond all reasonable doubt. Even otherwise, as far as PW-2 Surendra Yadav is concerned, he has merely stated that he came to know that his brother Ashok Yadav was murdered on 13.04.2004 in the evening at Gangti More bridge, thus he is not an eye witness to the alleged occurrence. As far as PW-4 Shyam Yadav is concerned, he has stated in his evidence that he was 200 yards from the place of occurrence, i.e. Gangti More when he heard gunshot firing and then he saw Lalu Singh, Manoj Singh, Mikal, Pradeep Yadav and Mahesh Yadav fleeing away whereafter, he had gone to the place of occurrence, where he saw that Ashok Yadav has been shot on his right side armpit as also he was quivering in pain and upon enquiry made from him, he said that Lalu Singh has shot him, however PW-12 (Investigating Officer) has on the other hand, specifically stated in his evidence that PW-4 had not stated the names of the accused persons before him. Thus, the testimony of PW-4 suffers from grave contradictions, hence is not trustworthy. It is also apparent from the evidence led in the present case that



while some witnesses have stated that the deceased was put in a Marshal vehicle and taken to the clinic of Dr. Bhola Prasad, but PW-4 has, on the contrary stated that he had brought the deceased on his motorcycle from Gangti More to the main road which is also a major inconsistency in his statement.

41. Now coming to the evidence of PW-5 Godawari Devi, she has stated that upon hearing the sound of gunshot firing, she had rushed to the place of occurrence, i.e. Gangti More, whereafter she saw that her son was shouting- "*mother save me*" and when she went near him, she saw that blood was oozing out from the right side of the chest of her son and when she asked him as to who had fired gunshot on him, he had told her that Lalu had fired gunshot, however in her cross-examination she has stated that she had become unconscious at the relevant time, hence she does not remember as to what she had told the police, but on the contrary, PW-12 (Investigating Officer) has stated in his evidence that PW-5 had not told him that his son was shouting at Gangti More to save him and upon being asked, he had disclosed that he was shot from point blank range by Lalu while Munna, Mahesh, Mikal and Manoj had caught hold of him, which is a major contradiction, which the defence has been able to elicit from the cross-examination of PW-12, hence the



testimony of PW-5 is also not trustworthy. As far as PW-6 Nawal Kishore Yadav (Informant) is concerned, he is admittedly not an eye witness and he is stated to have come to know about the occurrence from his elder son Surendra Yadav, thus his evidence cannot also be used to prove the guilt of the appellants.

42. As far as PW-11 is concerned, he is the doctor who had conducted the post-mortem examination of the dead body of the deceased, while PW-12 Raj Kishore Singh is the Investigating Officer of the present case. Thus, we are left with PW-1 Vakil Yadav, who claims to be an eye witness, however, the impediment is that his statement was not recorded under Section 161 of Cr.P.C. by the police. The role of the provision contained under Section 161 of Cr.P.C. is to acquire evidence that can be subsequently, used in the Court to nail the accused persons. Though, it is a settled law that the testimony of a witness is not automatically invalidated or rendered inadmissible simply because he was not examined by the police during the course of investigation, but then it is also true that absence of police examination can affect the credibility of the testimony of such witness as also the ability of the prosecution to use his earliest statement for corroboration and other purposes.

43. Now coming back to PW-1, we find that since PW-1 was



not examined by the police, he could not be confronted with his statement made before the police so as to elicit contradictions in terms of the provisions contained under Section 145 of the Indian Evidence Act and moreover, though the incident in question took place in the year 2004, however, PW-1 was examined by the learned Trial Court only in the year 2006, i.e. after more than two years, hence, possibility of him being tutored cannot be ruled out, thus the credibility of the testimony of PW-1 definitely stands affected. We further find from the evidence of PW-1 that he has stated that when he had started from Shyam Bazaar, he had heard the sound of gunshot firing and had then gone to the place where the deceased was shot, meaning thereby that he is not an eye witness to the alleged occurrence and moreover, his evidence is full of inconsistencies, inasmuch as he has stated in his testimony that after the deceased had become unconscious, he was put on the Marshal vehicle of Anirudh Yadav and taken to the clinic of Dr. Bhola Prasad, however the other witnesses, especially PW-4 and PW-6 have stated that the deceased was made to sit on a motorcycle and taken to the clinic of Dr. Bhola Prasad. In fact, PW-12 Raj Kishore Singh (Investigating Officer) has stated in his evidence that he had not recorded the statements of PW-1 and PW-2 and



only PW-7 and PW-8 are eye witnesses to the alleged occurrence, however, the said witnesses have turned hostile during the course of trial. Therefore, the evidence of PW-1 is neither trustworthy nor can be used to prove the guilt of the appellants, beyond all reasonable doubt.

44. We thus find from the evidence led in the present case, especially considering the fact that PW-1 is not a trustworthy witness, as has been discussed by us hereinabove that none of the prosecution witnesses are eye witness. Therefore, in absence of eye witness to the alleged crime, circumstantial evidence becomes essential to establish the guilt or innocence of an accused. It is a well settled law that the basic requirements for Circumstantial Evidence are that the circumstances from which guilt is inferred must be firmly established and not open to doubt, the circumstances must clearly point towards the accused's involvement and not be susceptible to alternative explanations, the circumstances must form a complete chain, linking the accused to the crime without any gaps or inconsistencies and the circumstances should not be explainable by any hypothesis other than the guilt of the accused. As far as the present case is concerned, we find that neither the arms used for firing gunshot on the deceased has been seized nor any



blood soaked mud/clothes have been seized much less sent for FSL examination nor the motive for occurrence has been established. PW-12 Raj Kishore Singh (Investigating Officer) has admitted in his evidence that nothing was seized during the course of investigation, no arms was recovered, no blood was found at the place where the dead body was lying, no empty cartridge (*khokha*) was recovered from the place of occurrence and no blood was found at the place of occurrence. Thus, the mode and manner of occurrence as also the place of occurrence has also not stood proved. In such view of the matter, we are of the view that circumstances from which the conclusion of guilt is to be drawn are non-existent in the present case, hence the evidence on record does not lead to the conclusion that the appellants have committed the crime.

45. Therefore, taking into account an overall perspective of the entire case, emerging out of the totality of the facts and circumstances, as indicated hereinabove and having perused the entire evidence on record, we find that the prosecution has failed to lead cogent, credible and trustworthy evidence to establish the commission of offence and has failed to prove beyond all reasonable doubts the commission of offence, as aforesaid. Therefore, we find that the learned Trial Judge has



committed a gross error in coming to a finding that the prosecution witnesses have supported the prosecution story, the Investigating Officer has proved the place of occurrence and that the prosecution has proved its case beyond shadow of reasonable doubts.

46. Thus, in the facts and circumstances, as discussed hereinabove and for the foregoing reasons, we are of the view that there are compelling reasons in the present case, which necessitate that the appellants of the aforesaid four cases be given the benefit of doubt.

47. Accordingly, we find that the finding of conviction recorded by the learned Trial Judge, in our opinion, is not sustainable and requires interference. Therefore, the judgement of conviction and the order of sentence dated 11.07.2017, passed by the learned Presiding Officer, Fast Track Court-I, Banka in Sessions Trial No. 1157 of 2004 (arising out of Bounsi P.S. Case No. 29 of 2004, T.R. No.314 of 2017), are set aside. The appellants of the aforesaid appeals are acquitted of the charges levelled against them.

48. The appellant of the first case, i.e. Lalu Singh (in Criminal Appeal (DB) No. 237 of 2018), who is in custody, is directed to be released from jail, forthwith unless required in



any other case. As far as the appellants of the other appeals, i.e. Pradip Yadav @ Pradeep Kumar Yadav, Manoj Rai @ Manoj Kumar Rai @ Manoj Singh, Mikal Tuddu, Munna Ansari and Mahesh Yadav are concerned, they are already on bail, hence they are discharged from the liabilities of their bail bonds.

49. Accordingly, the aforesaid appeals, i.e. Criminal Appeal (DB) No.237 of 2018, Criminal Appeal (DB) No.967 of 2017, Criminal Appeal (DB) No.1074 of 2017 and Criminal Appeal (DB) No. 63 of 2018 stand allowed.

(Mohit Kumar Shah, J)

I agree.
Nani Tagia, J :

(Nani Tagia, J)

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AFR/NAFR	NAFR
CAV DATE	03.03.2025
Uploading Date	17.04.2025
Transmission Date	17.04.2025

