

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**GOVT. APPEAL (DB) No.7 of 2024**

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

The State of Bihar through the Dist. Magistrate, Patna Bihar  
... .. Appellant  
Versus  
Rit Lal Yadav S/O Late Ramashish Rai Resident of Kothwan, P.S.- Khagaul,  
District- Patna, Bihar  
... .. Respondent

with  
**CRIMINAL APPEAL (DB) No. 952 of 2024**  
Arising Out of PS. Case No.-200 Year-2003 Thana- DANAPUR District- Patna  
Most Asha Devi Wife of Late Satyanarayan Sinha Resident of Village- Sarari,  
PS- Shahpur, District- Patna, Bihar  
... .. Appellant  
Versus

1. The State of Bihar
  2. Rit Lal Yadav Son of Late Ramashish Rai Resident of Kothwan, P.S.-  
Khagaul, District- Patna, Bihar.
- ... .. Respondents

**Appearance :**  
(In GOVT. APPEAL (DB) No. 7 of 2024)  
For the Appellant/s : Mr. Ajay Mishra, APP  
For the Informant : Mr. Apurv Harsh, Advocate  
For the Respondent : Mr. P.N. Shahi, Sr. Advocate  
Mr. Ghanshyam Tiwary  
Mr. Amit Anand, Advocate  
(In CRIMINAL APPEAL (DB) No. 952 of 2024)  
For the Appellant/s : Mr. Apurv Harsh, Advocate  
For the State : Mr. Ajay Mishra, APP  
For the Respondent : Mr. P.N. Shahi, Sr. Advocate  
Mr. Ghanshyam Tiwari, Advocate  
Mr. Amit Anand, Advocate

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

**Date : 25-09-2025**

Both the appeals have been preferred by the State and  
the informant respectively for setting aside the judgment dated  
14.05.2024 (hereinafter referred to as the ‘impugned judgment’)



passed in Sessions Trial No. 246A of 2006 arising out of Danapur P.S. Case No. 200 of 2003 passed by the learned Additional Sessions Judge-III-cum-Special Judge MP/MLA, Patna (hereinafter referred to as the 'learned trial court) by which the learned trial court has been pleased to acquit Rit Lal Yadav (respondent no. 2) for the offences punishable under Sections 148, 307 and 302 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act.

### **Prosecution Case**

2. The prosecution story is based on the written application of Asha Devi (PW-1), Wife of Satyanarayan Sinha, Resident of Village- Sarari, PS- Shahpur, District- Patna in which she has stated that on 30.04.2003 in between 11.00-11.30 AM, she was going for her treatment along with her husband Satyanarayan Sinha, Jivan Yadav, Sanjay Kumar, Nageshwar Prasad, Dheeraj Kumar, Arun Kumar to Khagaul by her vehicle bearing Registration No. BR1T-0222. As soon as they reached near the house of Rambabu Pathik, a Maruti Van was standing in front of the house of Rambabu Pathik in such a way that her vehicle could not proceed further. The vehicle was being driven by informant's husband. He took his head outside and asked for giving passage. It is alleged that three persons came out of the vehicle and shouted



“*Satya Narayan Aa Gaya*”. They all were armed with weapons. After hearing the *hulla*, Rambabu Pathik, Ritlal Yadav, Sunil Yadav @ Kana, Ranjan Kumar Benga and 8-10 others variously armed with weapon came from the house of Rambabu Pathik. Rambabu Pathik while saying “*Sala Barka Neta Banta Hai Jaan Se Maar Do*”, pulled her husband outside, Ritlal Yadav, Sunil Yadav and Ranjan Kumar fired on her husband due to which, he fell down. Thereafter, at the instance of Rambabu Pathik who said “*Gari Me Baithe Logon Ko Maar Do*”, all the 10-12 criminals started firing but the informant and all were saved by hiding themselves under the seat of the vehicle. Sanjay and Dheeraj were injured. There were dozen of marks of bullet on the vehicle. The accused persons assuming them dead entered into house of Rambabu Pathik. The informant identifies the other accused persons but does not remember the names. It is the claim of the informant that the accused persons namely Rambabu Pathik, Ritlal Yadav, Sunil Yadav @ Kana, Ranjan Yadav @ Benga and other criminals had killed her husband Satya Narayan Sinha, due to enmity.

3. On the basis of the written report of the informant (Exhibit '1'), Danapur P.S. Case No. 200 of 2003 dated 01.05.2003



was registered under Sections 147, 148, 149, 323, 307, 324 and 302 IPC and Section 27 of the Arms Act.

4. After investigation, police submitted charge-sheet bearing no. 102 of 2004 dated 26.10.2004 under Sections 147, 148, 149, 323, 324, 307 and 302 of the IPC and Section 27 of the Arms Act against four accused persons including respondent Rit Lal Yadav. On submission of charge-sheet, cognizance was taken and record was committed to the court of Sessions on 31.01.2006 where Sessions Trial No. 246 of 2006 was registered on 27.02.2006.

5. In Sessions Trial No. 246 of 2006, the respondent no. 2 filed a discharge petition which stood rejected *vide* order dated 07.07.2007. Thereafter, he absconded and remained absconding for more than three years. On 12.04.2012, the charges were explained to him in Hindi which he denied and claimed to be tried. Accordingly, charges were framed against him for the offence punishable under Sections 148, 307 and 302 IPC and Section 27 of the Arms Act.

6. On behalf of the prosecution, as many as nine witnesses deposed and some documentary evidences were also marked exhibits. The complete description of the prosecution



witnesses and the documents marked exhibit are being provided  
hereunder for a ready reference:-

List of Prosecution Witnesses

|      |                          |
|------|--------------------------|
| PW-1 | Asha Devi                |
| PW-2 | Kalawati Devi            |
| PW-3 | Sanjay Kumar             |
| PW-4 | Nageshwar Prasad Yadav   |
| PW-5 | Dheeraj Kumar            |
| PW-6 | Rintu Singh              |
| PW-7 | Dr. Narendra Kumar Singh |
| PW-8 | Arshad Jaman             |
| PW-9 | Umesh Kumar              |

List of Exhibits on behalf of the prosecution

|           |                                                           |
|-----------|-----------------------------------------------------------|
| Ext. 1    | Written information of Asha Devi                          |
| Ext. 1/11 | Signature of 1.0 Arshad Jaman on the seizure list         |
| Ext. 1/12 | Signature of 1.0. on the seizure list.                    |
| Ext. 2    | Signature of the informant on the protest petition        |
| Ext. 3    | Signature of the informant on the seizure List            |
| Ext. 3/1  | Signature of the witness Sanjay Kumar on the seizure List |
| Ext. 3/2  | Signature of witness Rajesh Kumar on the seizure list     |
| Ext. 3/3  | Signature of witness Sanjay Kumar on another seizure list |
| Ext. 3/4  | Signature of witness Ramanand Rai on another seizure list |
| Ext. 4    | PM report                                                 |
| Ext. 5    | Injury report of Dhiraj Kumar                             |



7. On 01.09.2015, statement of the accused-respondent no. 2 was recorded under section 313 CrPC. The defence sought time to lead evidence. On 22.09.2015, the defence filed some documents for exhibiting which were allowed *vide* order dated 29.09.2015. Accordingly, Exhibit ‘A’ to Exhibit ‘P’ were marked. The records were kept pending awaiting the production of defence witnesses but no defence witness turned up on several dates whereafter on the request of the accused, the defence evidence was closed on 08.03.2016. In this case, the prosecution started its argument on 04.02.2017 and concluded it on 28.02.2017. On behalf of the accused, the arguments were concluded on 12.07.2017 and thereafter again on various dates the records were kept for argument of the public prosecutor. He ultimately concluded his arguments on 21.07.2017.

The following documentary evidences were marked exhibits on behalf of Defence:-

|          |                                                                                                       |
|----------|-------------------------------------------------------------------------------------------------------|
| Ext. A-1 | Certified copy of judgment of ST Case No. 1795/2011                                                   |
| Ext. B-1 | Certified copy of the written information and FIR of Danapur P.S. Case No. 198/2003, dated 30.04.2003 |
| Ext. C-1 | Certified copy of Charge-sheet of Danapur P.S. Case No. 198/2003                                      |
| Ext. D-1 | Certified copy of supplementary Charge-sheet of Danapur P.S. Case No. 198/2003                        |
| Ext. E-1 | Certified copy of FIR of Khagaul P.S. Case No. 55/1996                                                |



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

8. At this stage, it is worth mentioning that Sanjay Kumar (PW-3), Nageshwar Prasad (PW-4) and Dheeraj Kumar (PW-5) were though examined by the I.O. and their statements were recorded in paragraph ‘65’, ‘93’ and ‘98’ of the case diary but they were not specifically made chargesheet witnesses, though the I.O. stated in the chargesheet that other witnesses may be examined apart from the chargesheet witnesses. Thus, the prosecution filed a petition in the trial court to allow the



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

9. One of the witnesses, Rintu Singh (PW-6) was allowed to be examined by the trial court *vide* order dated 27.05.2013 after noting that PW-1 to PW-5 all had stated about the presence of Rintu Singh at the time of occurrence. A criminal revision bearing number 606 of 2013 was preferred by the accused-respondent no. 2 in the High Court which was rejected. Again, on the request of the prosecution, the court allowed the prosecution petition calling for the injury reports of Dheeraj (PW-5) and summons were issued to the treating doctor Dr. N. K. Singh (PW-7), Dr. H. K. Jha (not appeared despite issuance of warrant) and Dr. R. N. Prasad (not appeared despite summons and warrant).

10. One more fact which is important to take note is that the trial court was able to secure the appearance of Arshad Jama, the I.O. (PW-8) only after issuance of aailable warrant against him and Dr. Umesh Kumar (PW-9) was brought in court after issuance of a non-ailable warrant only.

11. On 05.02.2015, the defence filed a petition in the trial court with a request to stop the cross-examination of the prosecution witness in order to bring case diary of Danapur P.S. Case No. 198 of 2003. The prosecution alleged that police lodged



Danapur P.S. Case No. 198 of 2003 to help the accused. It was also pointed out that the informant had filed a protest petition against the conduct of the police. The accused filed a petition for amalgamation of this case with Danapur P.S. Case No. 198 of 2003 but vide order dated 31.03.2015, the learned trial court rejected the said prayer of the accused.

**12.** On perusal of the records, this Court finds that for about four months thereafter the judgment was not delivered by the learned trial court. On 20.11.2017, the records were transferred to the court of ADJ-IV, Patna and again the records were transferred on 05.03.2018 to FTC-II Court, on 21.05.2018, it was transferred to ADJ-IX-cum Special Court. The records were sent without the case diary on 07.08.2018, argument started once again but on 18.12.2018, the records were transferred to ADJ-IV-cum-MP/MLA Court. The records were again transferred on 18.01.2019, 05.03.2019, 05.04.2019, 06.04.2019, 27.05.2019, 05.09.2019 and 10.12.2019. The accused was earlier granted bail by the High Court vide order dated 14.11.2013 in Criminal Miscellaneous No. 10186 of 2013 but he had not submitted his bail bond as he remained in jail in connection with another case. On 20.01.2020, the accused filed a bail bond in this case after he was granted provisional bail in another case. On 12.02.2020, his bail



bond was cancelled and production warrant was issued for his production from jail where he was lodged since 10.02.2020 in connection with another case (Special 271 of 2018). His bail bond was restored vide order dated 04.06.2020. Again on 18.08.2020, the records were transferred to ADJ-XXI, Patna. On 29.09.2020, the records were transferred to the court of ADJ-X, Patna citing Standing Order No. 36 of 2020 dated 26.09.2020. On 09.01.2021, the records were transferred to ADJ-III, Patna-cum Special Court MP/MLA. On 13.01.2021, records were transferred to ADJ-XII Patna citing Standing Order No. 05/21 dated 12.01.21. It appears from the records that the original LCR and the case diary in this case went missing. On 15.06.2022, a show cause was issued to the Bench Clerk namely Mr. Rajiv Kumar and on 24.06.2022, a direction was issued to initiate a proceeding against him. The informant moved High Court in Criminal Writ Jurisdiction Case No. 1124 of 2021 and brought it to the notice of the High Court that the records are missing and it is being deliberately done to further delay the trial. The writ court vide its order dated 12.07.2022 issued certain directions which are being reproduced hereunder for a ready reference:-

“Call for a report from the District Judge Incharge, Patna as to why the records of Sessions Trial No. 246 and Sessions Trial No. 246A of 2006 arising out of



Special Case No. 122 of 2018 (Danapur P.S. Case No. 200/2003) have not been sent to the Special Court of A.D.J.III-cum-M.P./M.L.A. Court. There are serious allegations that the order of this Court passed as back as on 13.05.2016 in Cr. Misc. No. 18493 of 2016 and the order dated 17.01.2017 in Cr. Misc. No. 908 of 2017 have not been complied with.

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

Let a comprehensive report be sent to this Court.

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

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

#### **Findings of the learned Trial Court**

14. The learned trial court having analysed the evidences adduced on behalf of the prosecution and the defence recorded in



paragraph '22' of its judgment that the trial of Trial No. 246 of 2006 and 246A of 2006 have originated from the same P.S. case i.e. Danapur P.S. Case No. 200 of 2003, so both the records will be perused for the ends of justice as well as for the better appreciation of the evidences. The trial court noted that the prosecution witnesses and the informant have stated that the occurrence took place near the house of Ram Babu Pathik, he had also been made an accused in this case by the informant but after investigation, the police did not find his role in the alleged occurrence, therefore submitted a closure report against him which has been accepted by learned ACJM, Danapur. The prosecution never challenged that order, therefore, it will be deemed to have been accepted by the prosecution. The trial court further noted that the prosecution did not draw the attention of the trial court towards Section 319 CrPC. The trial court observed that Ram Babu Pathik was said to be an order giver and it is stated that all the accused persons came from his house, this becomes more relevant when there is another case for the occurrence on the same day for which Danapur P.S. Case No. 198 of 2003 had been lodged (Exhibit 'B').

**15.** As regards the place of occurrence, the trial court noted that the I.O. has stated a different place of occurrence from that of the informant and other prosecution witnesses, therefore,



the testimony of the prosecution witnesses are required to be perused carefully. After saying so, the trial court proceeded to consider the evidence of PW-1. It is noted by way of observation that PW-1 had never stated in her written information about Rintu Singh. Rintu Singh has been examined as PW-6 but he was not mentioned in the witness column of the chargesheet.

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

**16.** As regards the evidence of the injured witnesses, the trial court noted that the informant has laid stress on their evidence, the court proceeded to consider the evidence of PW-3 and PW-5. It has been observed that PW-3 has nowhere stated in



his examination-in-chief regarding the injuries sustained in the occurrence. Likewise Dheeraj Kumar (PW-5) has stated in his evidence that he and Sunil ji were injured but he has stated a different story then that of as stated by the informant. The trial court took a view that PW-3 has stated that bullet crossed his hand, in paragraph '7' of his cross examination, he had stated that it is not true that there is no mark of firearm injuries on his hand, but he had not shown any mark of injury to the court during the evidence. The trial court took a view that his statement does not find any objective corroboration from the evidence of Dr. Umesh Kumar (CW-1) who brought the alleged injury report of Dheeraj Kumar (Exhibit '5'). The injury report did not show any firearm injury on his hand. The trial court, therefore, held that these are the material contradictions in the statement of this witness and the I.O.

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



occurrence so the prosecution failed to establish the exact place of occurrence of this case.

The trial court has further held that the I.O. has stated in his evidence in paragraph '9' of his cross-examination that after the occurrence when he tried to take the statement of the informant, she did not give the same. He again tried to take the statement of the informant and the other witnesses, they did not turn up before him. He came to know the fact that witness Arun Kumar had died in Danapur P.S. Case No. 198 of 2003. The trial court has relied upon the evidence of the I.O. Arshad Jama and recorded that he had taken statement of the informant on 14.06.2003, on that day he had taken the statement of Munna Kumar and after that he recorded the statement of other witnesses like Nageshwar Prasad and Sanjay Kumar. These witnesses had given their statement before police after fifteen days of the occurrence. Prior to recording of their statement, the I.O. had taken the statement of several other witnesses.

According to the trial court, the prosecution had not examined them rather seventeen witnesses have been given up for their examination by the prosecution and the same was allowed vide order dated 11.02.2013 by the predecessor court.



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

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



accused have fired on the vehicle from the front side and several marks had occurred on the vehicle. The trial court disbelieved the manner of occurrence saying that while informant has stated that the accused fired on her husband when he was in the vehicle, the other witnesses have stated that her husband was dragged from the vehicle and was murdered by the accused persons on being shot to him.

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



learned trial court, it cannot be said that the I.O. was in collusion with the accused.

**19.** In ultimate analysis, the learned trial court held that the prosecution has only proved the death of Satyanarayan Sinha by adducing the evidence of Dr. Narendra Kumar Singh (PW-7) but failed to prove the fact as to who murdered the deceased. In such circumstance, the benefit of doubt will go in favour of the accused persons. The trial court, therefore, acquitted the accused-respondent no. 2 of all the charges giving him benefit of doubt.

**Submissions on behalf of the Appellants**

**20.** Mr. Ajay Mishra, learned Additional Public Prosecutor for the State, submits that in this case, PW-1, PW-4, PW-5 and PW-6 are the eyewitnesses of the occurrence.

**21.** The trial court has recorded in its finding that the prosecution failed to prove the place of occurrence. Much significance and evidentiary value has been attached to the statement of the I.O. This finding of the learned trial court is not correct inasmuch as it may be found from the evidences available on the record that the I.O. (PW-8) had taken charge of the investigation only on 03.05.2003. According to him, the earlier I.O. had inspected the place of occurrence on 02.05.2003 and he had recorded that the place of occurrence is the *Pakki Road*



adjacent to Khagaul and at the place of occurrence, the road had gone from east to west. In paragraph '12' of the case diary he had not mentioned of anything found at the place of occurrence. It is evident that the first I.O. had not gone to the place of occurrence even on 02.05.2003 which may be found from the fact that when PW-8 went to the place of occurrence on 03.05.2003, he found blood-stained soil and the piece of broken glasses. It is evident that police was trying its best to save the accused persons who were close to the power as one of the accused in this case, Ram Babu Pathik, happened to be the *samdhi* of the then Chief Minister of Bihar. It is submitted that a close perusal of the evidences on the record would prove that there is no contradiction between the statement of the informant and that of the I.O. (PW-8) as regards the place of occurrence. In paragraph '8' of his deposition, the second I.O. Arshad Jama (PW-8) has admitted that the place of occurrence, time of occurrence and the date of occurrence of the present case and that of Danapur P.S. Case No.198 of 2003 is the same and one.

**22.** Learned counsel submits that the testimony of Asha Devi (PW-1) is very consistent and the prosecution has been able to prove the place of occurrence, date of occurrence, time of occurrence and manner of occurrence.



**23.** As regards the delay in registration of FIR, PW-1 has stated that police did not take her written information and the plea of PW-1 finds support from the fact that ultimately she had to file a protest petition in the court of learned Jurisdictional Magistrate complaining about indifferent attitude of police in the matter of investigation of the case. It is submitted that the first I.O. Indrajeet Tiwary has not been examined in this case which only strengthens the submissions of the appellant that the investigation of the case was thoroughly neglected under political pressure. In this regard, attention of this Court has been drawn towards paragraph (iv) and (v) of the deposition of Asha Devi (PW-1).

**24.** Learned counsel further submits that on perusal of paragraph '20' of the impugned judgment, it would be found that the learned trial court has taken into consideration the evidences adduced by the parties in original trial no.246 of 2006 also on the ground that the same has also originated from Danapur P.S. Case No.200 of 2003. It is submitted that the consideration of the evidence of another trial was impermissible. The learned trial court has completely erred in looking into the records of another trial. It is submitted that the reasoning and rationale provided in paragraph '20' of the judgment in this case is the copy and paste of paragraph '22' of the judgment in original Trial No. 246 of 2006.



**25.** Learned counsel further submits that the I.O.s of this case tried to save the accused persons from beginning. In this connection, it is pointed out that Khagaul P.S. Case No.6 of 2004 was registered for recovery of the firearms from the house of Ritlal Yadav in course of investigation of this case but no seizure list of arms was brought on record in this case.

**26.** Learned Additional Public Prosecutor has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ganesha vs. Sharanappa and Another** reported in **(2014) 1 SCC 87** and **Rajeswar Prasad Misra v. State of W.B. and Another** reported in **AIR 1965 SC 1887** to submit that where the trial court has recorded an order of acquittal by misreading of the evidence or non-consideration of evidence or perverse appreciation of evidence, the appellate court would be competent to direct fresh disposal on merit by the trial court.

**Submissions on behalf of the Informant**

**27.** Mr. Apurv Harsh, learned counsel for the informant has submitted that the judgment of the learned trial court is perverted for the reason that the learned trial court says that the place of occurrence is in question and the learned court has drawn adverse inference from the fact that the final form submitted against Ram Babu Pathik was not challenged by the prosecution. It



is further submitted that the trial court has recorded that the I.O. has not been declared hostile but no reason has been provided as to why the I.O. should have been declared hostile.

**28.** Learned Counsel further submits that the learned trial court has taken an adverse view for the reason that PW-1 did not disclose the name of the doctor to whom she was going with her husband. Further, the trial court has taken a view against the prosecution for the reason that even the children of the deceased have not been examined. In this connection, it is submitted that what is important is the quality and not the quantity of the witnesses. Learned Counsel further submits that in the case of **Shahaja @ Shahajan Ismail Mohd. Shaikh vs. State of Maharashtra** reported in **(2023) 12 SCC 558**, (paragraph '29' and '30), the Hon'ble Supreme Court has been pleased to discuss the principles governing the appreciation of ocular evidences. The same has been further discussed in the case of **Edakkandi Dineshan and Others vs. State of Kerala** reported in **(2025) 3 SCC 273**. Attention of this Court has been drawn towards paragraph '25' to '27' of the judgment in the case of **Edakkandi Dineshan** (supra) wherein the Hon'ble Supreme Court has held that lapses on the part of the Investigating Officer should not be taken in favour of the accused because such lapses may be



committed designedly or because of negligence. In such situation, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidences are reliable or not. The accused would not be entitled to claim acquittal on the ground of faulty investigation done by the investigating agency.

29. Learned counsel for the informant has pointed out from the impugned judgment that on behalf of the prosecution, the judgments of the Hon'ble Supreme Court in the case of **Shahajan Ismail** (supra), **Manoj Suryavanshi vs. State of Chhattisgarh** reported in (2020) 4 SCC 451, **Bhagchandra vs. State of M.P.** reported in (2021) 18 SCC 274, **Balu Sudam Khalde and Another vs. State of Maharashtra** reported in (2023) 13 SCC 365 and **Harendra Rai vs. State of Bihar** reported in (2023) 13 SCC 563 were cited to submit that there is no fixed or strait jacket formula for appreciation of ocular evidences and where there is inherently improbable minor discrepancies on trivial matters not touching the core of the issue, the witness cannot be discredited and a faulty investigation would not render the prosecution case weak. The trial court, however, did not even discuss those judgments while taking a final view on the matter in paragraph '20' of its judgment.



**30.** Learned Counsel further submits that by catena of judgments, the Hon'ble Supreme Court has held that evidence of related or interested witness does not suffer from any infirmity, the only requirement is to apply a rule of prudence that the evidence of such witness should be scrutinised with little care.

**31.** It is submitted that while examining the ocular evidences, the assessment of the value of the evidence of an eyewitness is to be done on two principal considerations - (i) Is it possible to believe the presence of the witness at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by the witness and (ii) whether there is anything inherently improbable or unreliable in their evidence. Pointing out to the judgment of the Hon'ble Supreme Court in the case of **Shahajan Ismail** (supra), learned Counsel submits that the Hon'ble Supreme Court held that in respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements will have a bearing upon the value which a court would attach to their evidence.

**32.** Learned Counsel submits that in this case, the conduct of the I.O. (PW-8) may be found from his deposition. He



has stated that he was posted as Dy.S.P. Sachivalaya in the year 2003. He was ordered to take charge of the investigation of the Case No. 200/03. He has stated in paragraph '5' of his deposition that he had conducted raid in the house of Sunil Yadav and Ritlal Yadav and had effected attachment (*kurki-japti*). He has stated that from the place of Ritlal Yadav, firearms were recovered. However, this witness has not stated that he had prepared any seizure list or sent the said arms recovered from the house of Ritlal Yadav to FSL. PW-8 has not even recorded the statement of the earlier I.O. and had not even perused the case diary written by the earlier I.O. About the first I.O., PW-8 has stated that he had inspected the place of occurrence on 02.05.2003 i.e. after three days of the occurrence. He has further stated that he had taken over investigation of Danapur P.S. Case No. 198 of 2003, the said case was registered on the statement of Pramod Kumar, Inspector and in the said case, the place of occurrence, date of occurrence and time of occurrence is the same. It is submitted that in such circumstance where the place of occurrence, time of occurrence and the date of occurrence is the same and one, the conduct of Pramod Kumar, Inspector in not recording a case of murder of Satyanarayan Sinha on 30.04.2003 is nothing but a proof of fact that right from beginning, the police was under immense pressure



to give this case a different colour and delayed the lodging of the case for killing of Satyanarayan Sinha. This was not unusual because the police was dealing with the case in which *samdhi* of the then Chief Minister of Bihar was an accused. In such circumstance, it was submitted that the lacuna on the part of the prosecution and the deficiencies on the part of the I.O.s of the case would not prove fatal to the prosecution.

**33.** Learned Counsel further submits that the judgment of the learned trial court is full of perversity which may also be found from the fact that the trial court has wrongly held that the seizure list of car does not show any bullet mark. It is submitted that in fact the I.O. (PW-8) had not mentioned anything like this in the seizure list. In paragraph '14' of his deposition, the I.O. (PW-8) has stated that he had not produced the seized vehicle in court. He has stated to have seized one towel (*gamcha*) and blood scratch but he had not mentioned about any other mark in the case diary. Learned Counsel submits that the I.O. (PW-8) had not taken any photograph of the vehicle. In such circumstances, the learned trial court has recorded a perverse finding. The doctor (PW-7) has clearly stated that the firing was resorted to from a close range. On these grounds, learned Senior Counsel submits that the trial court



judgment is liable to be upturned and the accused-respondents are liable to be convicted.

**Submissions on behalf of the Accused-Respondent No. 2**

34. These appeals have been contested by Mr. P. N. Shahi, learned Senior Counsel assisted by Shri Ghanshyam Tiwari, learned Advocate. It is submitted that in this case, the genesis of occurrence has not been established by the prosecution. The story narrated by the informant that she was going to the doctor for the medical check-up would not inspire confidence as she did not disclose of what kind of disease she was suffering from and who was the doctor to whom she was going. It is submitted that the informant was going for her treatment but being a lady she was not being accompanied by her family members, especially female members although on the day of the alleged incident, there were several female members present in the family creates doubt over her statement. In this regard, attention of this Court has been drawn to paragraph '11' of the evidence of PW-1.

35. Learned Senior Counsel submits that the statement of PW-1, that when she was giving written information to police in the village police did not take it whereafter she filed an application in the court, is highly doubtful. Her written report does not bear the date of application nor the informant has mentioned any date



on the written report. Referring to some of the paragraphs of the evidence of PW-1, learned Senior Counsel submits that during trial, the prosecution failed to establish that the alleged written report which is the basis of the case was written by Rajnish. It is submitted that Rintu Singh (PW-6) has stated in paragraph '10' that FIR was written by Asha Sinha (PW-1) in his presence which he had read and had put his signature thereon. It is submitted that the evidence of Rintu Singh (PW-6) falsifies the statement of Asha Devi (PW-1). It is submitted that the written report was not written by Rajnish, the informant very cunningly to hide the truth committed murder of Rajnish, the scribe of the alleged written report which has been proved by the defence side through Exhibit 'G-1' which is Khagaul P.S. Case No. 86 of 2005 in which PW-4 Nageshwar Prasad and Ashok Rai, brother of the deceased and *bhaisur* of the informant, Sonu Kumar and bhagina of the deceased are accused. Learned Senior Counsel has argued that the informant was not present in the vehicle at the time of occurrence. In this regard, it is submitted that in her written report, the informant has not stated about the presence of Rintu Singh but in examination-in-chief in paragraph '1' she has stated that Rintu Singh was sitting at the front side of the Bolero vehicle. PW-1 did not mention about the presence of Arun Kumar in her



examination-in-chief although in written report, the name of Arun Kumar has been mentioned. It is, thus, submitted that it would throw doubt over the prosecution story. Referring to the evidence of PW-5, learned Senior Counsel submits that he has stated that he was standing near *gumti* when his uncle came in the vehicle then he and Sugriv had boarded the vehicle. He has not stated about the presence of PW-1 in the Bolero vehicle. It is also submitted that Kalavati Devi (PW-2) has stated in her cross-examination in paragraph '3' that perhaps she would have stated to Drogaji that if her *bhabhi* would not have reached then many people would have been killed. Learned Senior Counsel submits that the I.O. has stated in paragraph '17' of his cross-examination that independent witnesses denied the presence of PW-1 with Satyanarayan Sinha (the deceased).

**36.** It is lastly submitted that the informant has herself failed to establish the presence of Bolero vehicle at the place of occurrence because Asha Devi (PW-1) has stated in her examination-in-chief that somehow they reached their village Sarari by a vehicle. The vehicle was produced after eleven days of the occurrence.

**37.** It is submitted that there are contradictory statements of the prosecution witnesses. The witnesses have stated that firing



had taken place from the front side of the vehicle. PW-6 says that firing had taken place for five minutes. PW-6 is one of the eyewitnesses of the seizure list but the statement of the informant and PW-6 are contradictory. Learned Senior Counsel further submits that the informant has failed to explain the delay of 24 hours in lodging of the FIR. The date of occurrence is said to be 30.04.2003 at 11:30 AM but the information was given to the police on 01.05.2003 at 11:45 AM. It is his submission that although PW-1 claimed that she had filed application in the court but she had not produced the copy of the application.

**38.** Learned Senior Counsel has submitted that the arguments advanced by the prosecution-appellant are baseless, the judgment of the learned trial court does not suffer from perversity and in view of the settled judicial pronouncements on the subject, this Court need not interfere with the judgment of acquittal unless it is found to be perverted and the one and only irresistible conclusion is reached that the accused-respondent is guilty of committing the offence.

**39.** Learned Senior Counsel submits that the prosecution has failed to produce the injury report of Sanjay @ Chunnu Sharma and further the injury of Dheeraj Kumar is not a reliable piece of evidence. Dr Umesh Kumar (PW-9) who produced the



papers has stated that he had brought the papers from the record of the hospital but he could not name the doctor who had written these papers. Thus, the doctor who had examined the injured Dheeraj Kumar has not been examined. It is also pointed out that the document produced by PW-9 is Exhibit '5' which does not disclose any kind of firearm injury rather the paper discloses complain of pain.

40. Learned Senior Counsel has relied upon the judgments of the Hon'ble Supreme Court in the case of **Satguru Singh vs. State of Punjab** reported in **AIR 1995 SC 2449**, **State of Punjab vs. Ajaib Singh and Ors.** reported in **(2005) 9 SCC 94** to submit that in case of an unexplained delay in lodging of the FIR, the prosecution case becomes doubtful. He also relied upon the judgment of the Hon'ble Supreme Court in the case of **Ganesh Bhavan Patel and Another vs. State of Maharashtra** reported in **AIR 1979 SC 135** to submit that despite repeated request, the informant and the witnesses did not give their statements under Section 161 CrPC but after a long delay i.e. on 14.06.2003, the witnesses gave their statement. However, Rintu Singh (PW-6) never appeared before police to give his statement under Section 161 CrPC and this witness lastly appeared in the court which would be evident from paragraph '3' of his cross-examination.



Thus, there is a long delay in the statements of the witnesses hence they are not trustworthy witnesses and no reliance can be placed on them.

41. Learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Babu Sahebagouda Rudragoudar and Ors. vs. State of Karnataka** reported in (2024) 8 SCC 149 to strengthen his submissions that where the order regarding acquittal of an accused is based on a plausible and justifiable view emanating from the discussion of the evidence available on the record, the trial court's judgment cannot be said to be suffering from any infirmity or perversity. He has further relied upon the judgment in the case of **Ram Laxhan Singh and Others vs. State of U.P.** reported in (1977) 3 SCC 268 to submit that some of the prosecution witnesses were not examined by the police nor were they cited in the charge-sheet, in a grave charge of murder, it will not be proper to place reliance on a witness who never figured during the investigation and was not named in the charge-sheet. In this case, it is submitted that Rintu Singh (PW-6) was neither examined by police nor he was named in the charge-sheet, thus no reliance may be placed on his evidence.



**Analysis of the evidences**

42. Asha Devi (PW-1) is the informant of this case. In her deposition, she has stated that the deceased was her husband. The occurrence is of 30.04.2003 between 11:00-11:30 AM. At that time, she was going to a doctor for her treatment. She was going in her own vehicle of which the Registration No. is BR1T 0222. The vehicle was being driven by her husband, on the front seat, Rintu Singh was sitting, in the middle seat, Sanjay and Jeevan were sitting and on the backseat, Nageshwar and Dheeraj were sitting.

She has stated that when the vehicle reached Jamaluddin Chak, near the house of Ram Babu Pathik, there one Maruti vehicle was standing in such a manner that her vehicle could not have moved, then her husband took out his head outside the vehicle and asked the said Maruti vehicle driver to give side. PW-1 has further stated that three persons came out from the said vehicle and shouted that “*Satya Narayan aa gaya*”. On hearing their shouts, Ram Babu Pathik, Ritlal Yadav, Sunil Yadav @ Kana, Ranjan @ Benga and 8-10 persons armed with weapon came out from the house of Ram Babu Pathik. Ram Babu Pathik said “*sala barka neta banta haa jaan se maar do*”, in the meantime, Ritlal, Sunil and Benga pulled out the husband of the informant and started firing. Her husband fell down after receiving firearm injury.



Ram Babu told to kill all who were sitting in the vehicle, whereafter Ritlal, Sunil and Benga started firing but the informant and others concealed themselves under the seats of the vehicle. PW-1 has stated that Dheeraj and Sanjay got injured in the firing and the vehicle had also marks of several firings. All the accused persons fled away thinking that all had died. She has specifically stated in her examination-in-chief that police came in the village, she was giving a written complaint but police did not take it whereafter she had filed an application in the court. At her instance, the written information was submitted to the Officer-in-Charge which was in the handwriting of Rajnish, it has been marked Exhibit '1'. The protest petition submitted by PW-1 in the court has also been brought on record and marked Exhibit '2'. This witness has further stated that Ram Babu Pathik happened to be the *samdhi* of the then Chief Minister, therefore, police was not taking up the case in proper direction/proper way. She has also stated that one of the witnesses of this case namely Sanjay @ Chunnu has been murdered in the year 2009 by the accused Ritlal Yadav.

In her cross-examination, she has admitted this suggestion that on that day there was a "*Tel Pilawan Lathi*" rally of Rashtriya Janata Dal. The place of rally was Gandhi Maidan. She denied any



knowledge as to whether the fact that there was a rally that day was known to her husband or the persons sitting in the vehicle or not. The defence suggested as to whether any of the villagers did not tell them not to go because a rally/procession had been marching out. The witness said that nobody had told her and she had not made any statement before the I.O. that many people had told her not to go out because procession was going on.

This witness has further stated that one Rajnish aged about 21-22 years of a neighbouring village had written the FIR on her asking at her house. Many villagers were present in the house, the dead body of her husband was kept in the *gosala* and the vehicle was standing outside. She denied her awareness that with regard to the same occurrence, Danapur P.S. Case No. 198 of 2003 had been registered or not. In her cross-examination, she has further stated that when she had started from Sarari, Rintu Singh was with her, he was known but she did not know his village and father's name. She has further stated that Sanjay @ Chunnu Sharma, Jeevan Yadav and Arun Kumar were also with her. About Arun Kumar, she has stated that he died as he was killed. She has stated that he was her co-villager. She expressed her unawareness that whether Santosh was injured that day in any occurrence. She knew that Arun had got injured. About the presence of the persons who were



in the vehicle, she has stated that they were not called but they were occasionally visiting her house. In her house, there were about 20-21 persons. In her written application and protest petition, she had not written that for treatment of which disease she was going. The defence has questioned this witness with regard to the criminal antecedents of Chunnu Sharma and Rintu Singh suggesting that they were having criminal antecedents of serious offences. The defence has also questioned the antecedent of the deceased husband of the informant. The informant has stated that she was not aware of the number of cases pending against her husband. She was married in the year 1986 and after her marriage, her husband had gone to jail once for 4-5 months but in which case he had gone to jail was not known to her. She denied her knowledge that her husband was accused in Danapur P.S. Case No. 238 of 1994 under Section 302 IPC, Shahpur P.S. Case No. 44 of 1996 under Section 307 IPC, Shahpur P.S. Case No. 64 of 1996 under Section 302 IPC and Shahpur P.S. Case No. 76 of 1997 under Section 25(i) B of the Arms Act. In her cross-examination, she has further stated that her protest petition was filed on 13.06.2003. She did not know that the witnesses named in the protest petition were accused or not in P.S. Case No. 198 of 2003. She did not remember whether the I.O. had recorded the statement



of her children during investigation or not. The defence suggested PW-1 that she was not in the vehicle rather she was with her children but this witness denied the suggestion. The witness also denied the suggestion that for this reason, the children were not produced for their statement. She denied the suggestion that she was seen going to the place of occurrence after the occurrence.

**43.** PW-1 has stated that in her written application she had mentioned the name of Rintu Singh but she did not remember whether she had mentioned his name in the protest petition or not. She had mentioned the name of Arun in written application as well as in the protest petition and had also given name of Amar Rai. She was not aware that her brother Abhay was accused in the murder case of Sanjeet in Khagaul P.S. Case No. 3/04. PW-1 has further stated that her witness Rajnish was killed in the year 2005. She was not aware that in the said case Nageshwar Rai who is witness in this case, Ashok Rai who is her *bhaisur*, Sonu, his son and her *bhagina* were accused. The defence suggested that because he was not ready to depose falsely in this case so he was killed.

**44.** In paragraph '18' of her deposition, PW-1 has stated that she did not remember that in the past in Sessions Trial No. 246/08 she had stated about her knowledge of Danapur P.S. Case No. 198 of 2003. She did not remember that with regard to this



occurrence, Danapur P.S. Case No. 198 of 2003 was registered and the said case was lodged against 1000-1500 unknown people. She did not remember to have stated in the said case in court that there was an exchange of firing between police and accused persons in which Arun had become injured. She did not remember to have stated in the said case that Arun was also an accused in the said case. In paragraph '19' she has stated that her husband was a candidate in the Assembly Election of the year 2002 from Danapur Constituency as candidate of Bharatiya Janata Party and Dr. Ramanand Yadav was a candidate of the Rashtriya Janata Dal. In the said election accused Ritlal Yadav, Sunil, Benga and others were the supporters of RJD. Dr. Ramanand Yadav had won the election and at that time the accused was *mukhiya* of Kothwa Gram Panchayat. After this election, the said procession was taken out by RJD. The witness was suggested that in the said procession, the supporters of RJD were going in the rally, this witness denied her awareness about the same. While answering the question of the defence, PW-1 has stated that from Sarari *via* Kothwa to Gandhi Maidan there is no route for going from Kothwa to Sarari. There is a *pakki* road going from Kothwa to Bailey Road which is passing north-south. This road connects the road going to Patna at the canal. The place of occurrence is 5-6 kilometre west-south from



Kothwa. She has stated that Jamaluddin Chak village is situated on the both sides north and south of the railway line. Straight south in Sarari there is a railway *gumti* and after crossing the *gumti*, Jamaluddin village is reached. This is a *pakki* road which goes to Patna *via* Khagaul, in between there is DRM Office. There is two route one from Lakhpatt road and another passing through DRM Office.

45. PW-1 has further stated that at the time of occurrence, she had concealed herself under the seat and she had stated this in her protest petition also. She denied the suggestion that she could not have concealed herself under the seat. She has stated that she was lodging the case on the same day but police registered the case on the other day. She denied the suggestion of the defence that the case was lodged after much deliberation. The defence suggested to this witness that her husband had assembled the criminals to make the procession/rally unsuccessful. The witness denied this suggestion. Then the defence further suggested that about 150-200 persons armed with weapons along with her husband had attacked the house of Pathik Ji and the criminals had attacked with bricks, stones and firearms. This suggestion was also denied. The defence then suggested that the guard had informed the Officer-in-Charge whereafter he had called commandos as



there was a threat to his life. This witness denied the suggestion of the defence that for saving the life of Pathik Ji and others, firing was made and despite that when they did not disperse then police had fired on the criminals and eight police personnel were injured in the occurrence. This suggestion was also denied by this witness. This witness was suggested that in this encounter only her husband and the co-villager Santosh had got injured. The witness further denied the suggestion that after looking into the FIR of Thana Road P.S. Case No. 198 of 2003, she had lodged the FIR. She denied the suggestion that in the earlier application no name was mentioned. She also denied the suggestion that to defame Lalu Ji, house of Pathik Ji was chosen.

The witness denied the suggestion that in her earlier statement she had not stated that her husband was pulled out. She has stated to have made statement that Ritlal, Sunil and Benga had pulled out her husband and she had also stated that they were involved in firing upon her husband.

**Observations of this Court**

46. On perusal of the evidence of PW-1, it appears that as regards the place of occurrence, this witness has stated in her examination-in-chief that when her vehicle reached near the house of Rambabu Pathik in Jamaluddin Chak, there was a Maruti Car



standing on the road in such a way that her vehicle could not have moved. It is this place where the accused persons came out from the house of Rambabu Pathik, pulled out her husband and killed him. Even the defence has suggested to this witness that the husband of this witness along with 1000-1500 persons had attacked the house of Pathik Ji and there the guard had informed the police whereafter police had come and then there was a firing firstly for saving the life of Pathik Ji and others and thereafter when the people did not disperse, police had made the firing in which the criminals and eight police personnel were injured. This Court, therefore, finds that the occurrence near the house of Pathik Ji has not been contested by the defence rather suggestions have been given by the defence in this regard making the place, i.e. the house of Pathik Ji, as the place of occurrence where firing had taken place. The learned trial court has recorded in its finding that the prosecution has not been able to prove the place of occurrence. The court has noticed that while informant has stated that the place of occurrence is near the house of Rambabu Pathik situated in Jamaluddin Chak, the I.O. has mentioned the place of occurrence on the Khagaul-Neora Main Road. Taking note of this, the trial court has raised doubt and said that the prosecution has not proved the place of occurrence. In order to conclude as to the place of



occurrence, we will take a view after taking note of the evidence of the I.O. (PW-8).

47. Kalavati Devi (PW-2) is the sister of the deceased Satyanarayan Sinha. She has supported the prosecution case. She had gone to Jamaluddin Chak where she had seen the dead body of her brother and found that his wife was weeping. She had heard that Ritlal, Benga, Sunil and Shravan had killed her brother. We find that so far as this witness is concerned, she is not an eyewitness of the occurrence.

48. Sanjay Kumar (PW-3) is one of the witnesses of the production-cum-seizure list. He has identified his signature on the same which has been marked Exhibit '3/1'. He has also identified the signature of the another witness, Rajesh, which has been marked Exhibit '3/2'. He has stated that there was a blood-stained *gamcha* (towel) which was seized and blood was also there in the vehicle, there were also marks of firing on the vehicle. He has identified his signature on the another seizure list which has been marked Exhibit '3/3'. He has also identified the signature of Ramanand Rai, who is another witness, as Exhibit '3/4'. In his cross-examination, he has stated that the seizure list was prepared on 10.05.2003 after 15-20 days and after looking to the seizure list, he has stated that in the seizure list it is not stated that there was a



towel on the driving seat. There was also no writing in the seizure list that on which part of the vehicle there were marks of firing.

49. Nageshwar Prasad Yadav (PW-4) has stated in his examination-in-chief that he was in the vehicle on 30.04.2003 in between 11:00-11.30 AM. Satyanarayan Sinha was driving the vehicle and in the said vehicle there were other people. He had left the house for going to the doctor. He has stated that in the western side when came in front of the house then they saw one Maruti parked from which 3-4 persons came out and shouted that “*Satya Narayan aa gaya*”. From the house of Pathik Ji, Ritlal Yadav, Sunil Yadav and Ranjan Yadav came out and Pathik Ji said that “*sala barka neta banta hai jaan se maar do*”. On this Ritlal Yadav, Sunil Yadav and Ranjan Yadav all the three started firing. After suffering the bullet, Satyanarayan Sinha fell down at the place of occurrence. He has stated that Sanjay Sharma @ Chunnu Sharma and Dheeraj had also suffered bullet. This witness has stated that Satyanarayan Sinha had died, they had brought the vehicle driving to the village. The defence has cross-examined this witness with regard to the distance. He has stated that he got acquainted with Satyanarayan Sinha in the year 2003. He first met him in Lakshmi Chak village in the house of Badri Rai who is his *bhagina*. This witness was suggested that he was accused with Sinha in Khagaul



P.S. Case No. 86 of 2005 and he was also accused in Khagaul P.S. Case No. 4 of 2004, Khagaul P.S. Case No. 59 of 2003 and some other cases but the witness denied his knowledge about those cases. He denied the suggestion that he was knowingly suppressing that he was an accused in those cases.

This witness has stated that he had gone to Sarari village by a motorcycle. The said motorcycle is registered in the name of his brother Mahendra Kumar. He has stated that the place of occurrence is in Danapur Sub-Division. This witness has also stated that on the date of occurrence there was a procession/rally of RJD which was arranged in the Gandhi Maidan. This witness has stated that he had correctly recorded his statement before Daroga Ji. He has stated that he had not given his statement in the chamber of DIG. He has stated that he had given his statement in the house of Sinha Sahab. He denied the suggestion that he had gone to DIG for the first time on 19.06.2003. He has also denied the suggestion that on the said day, Asha Devi, Chunnu Sharma and Dheeraj had gone. He has stated that he did not remember that the dead body was taken out after two days, but he has stated that the dead body was lifted from the Sarari house and postmortem was done in Danapur from where they had gone to the burning *ghat*. He has denied the various suggestions given by the defence. He also



showed his unawareness that for the occurrence of the same day, police had registered Danapur P.S. Case No.198 of 2003. He denied the suggestion that police was regularly searching the witnesses. He has stated that he has given the same statement in court which he had given before police. He has stated that he had not stated before police that west to the house a Maruti car was seen parked rather he had stated that from the Maruti 3-4 persons had come out and they were saying that “*Satya Narayan Aa Gaya*”, from the house of Pathik Ji, Ritlal Yadav, Sunil Yadav and Ranjan Yadav came out and on the asking of Pathik Ji, Ritlal Yadav, Sunil Yadav and Ranjan Yadav all the three had fired upon Satyanarayan Sinha as a result whereof he fell down on the place of occurrence. He has stated that the 3-4 persons who had come out of the Maruti car could not be identified. He denied the suggestion that Satyanarayan Sinha had come to disturb the rally and he was planning it for 3-4 days. He denied the suggestion that people had attacked the house of Pathik Ji. He also denied the suggestion that unknown people had killed Satyanarayan Sinha. He has stated that he was not aware that in the neighbourhood of the place of occurrence there is any Railway Hospital or not. He has stated that he had not gone to the Railway Hospital. He denied the suggestion that arms and ammunition were kept in the vehicle



for using the same in case of need. He also denied the suggestion that the vehicle was kept concealed for nine days. The defence suggested this witness that the house of Pathik Ji was attacked and police was compelled to fire in which two persons of Sarari village were killed and police personnel were also got injured, the witness said that he was not aware of this.

**50.** Dheeraj Kumar (PW-5) is the nephew of the deceased who claims that he was accompanying the deceased in the Bolero vehicle which was being driven by Satyanarayan Sinha. Regarding the place of occurrence, this witness has also stated that when near the house of Pathik Ji, the vehicle reached then a white colour Maruti was found standing there and his uncle asked them to keep the vehicle in a side whereafter they shouted that “*Satya Narayan Aa Gaya*”. This witness has stated that from the house of Pathik Ji, Ritlal Yadav, Sunil Yadav and Benga Yadav with 8-10 persons came out and on the asking of Pathik Ji, Satyanarayan Sinha was pulled out and three persons namely Ritlal, Sunil and Benga had fired at him as a result whereof he got injured and fell down. He has stated that he was treated in Railway Hospital and PMCH. He identified Ritlal and other accused persons.

In his cross-examination, this witness has stated that after the occurrence, he had not gone to the Primary Health Center in Sarari



village which is situated at a distance of one kilometer from the village. He had not given statement before police that he had got treatment of the firearm injury at Saguna More. He had not shown the treatment papers to the I.O. He has stated that the I.O. had told him that he would himself collect the papers. He has stated that at the time of occurrence, he was a student and he was studying in class 8<sup>th</sup> or 9<sup>th</sup> in a government school. He had left the school in the year 2006 and had done his Matriculation from the Maner area. He has denied the suggestion of the defence that he was standing near Sarari *Gumti*. He also denied the suggestion of the defence that he had been waiting at Sarari *Gumti* for a long time because there was no vehicle that day and on the same day when his uncle came in vehicle near the *gumti*, then he and Sugriv boarded the vehicle. He had shown his unawareness that his uncle had ever gone to jail.

The defence has cross-examined this witness on the point of his treatment for the injury. This witness has stated that he was not aware that who had got him admitted in the hospital and he was not aware that in the paper what is the date of admission and what is the date of discharge. He denied the suggestion of the defence that he had made statement before police that while trying to flee away, he had suffered the firearm injury. He denied the suggestion that there was no mark of firearm injury on his hand. He denied



the suggestion that he had stated about suffering of firearm injury only to become a witness. He also denied the suggestion that he was deposing as tutored by Asha Ji and Nageshwar Ji. He has further stated that he had made statement before police that when their vehicle reached near the house of Pathik Ji in Jamaluddin Chak, then Satyanarayan Ji told to give side to the Maruti vehicle from which three persons came out and they shouted that “*Satya Narayan Aa Gaya*” and then from the house of Pathik ji, Ritlal Yadav, Sunil Yadav, Benga and 8-10 persons had come out and then they had pulled out Satyanarayan Sinha and fired upon him. He has then stated that he and Chunnu had suffered firearm injury and he was treated in Railway Hospital and PMCH. He denied his knowledge that in the FIR of Danapur P.S. Case No.198 of 2003 many persons from his village and Jamaluddin Chak were accused. In the said occurrence, Arun and Santosh had suffered firearm injury in which Arun had died. He was not aware that eight police personnel had received injuries. He denied the suggestion that his uncle along with 200-250 people had attacked the house of Pathik Ji, police had tried to stop them and ultimately 104 rounds of firing were made in self-defence in which the people in the crowd and police personnel became injured.



**Observations of this Court**

**51.** This Court has noticed from the pattern of cross-examination of the defence that there is no suggestion to the prosecution witnesses that Satyanarayan Sinha or people with him had made firing on the house of Pathik Ji rather the suggestion is that police had made 104 rounds of firing in self-defence in which people in the crowd and police personnel had got injured. Thus, the defence has itself suggested that police personnel got injured in the firing which had been done by police. On record, there is no injury report of any police personnel. No one of them is a witness in this case.

**52.** Rintu Singh (PW-6) has also supported the prosecution case and he has given the same place of occurrence and the manner of occurrence in his examination-in-chief. He has stated in his cross-examination that his statement was not taken, his name is there in the FIR but he had not recorded his statement before any police officer. He has been cross-examined by the defence and the defence has questioned his presence at the place of occurrence.

**53.** Dr. Narendra Kumar Singh (PW-7) was posted at Sub-Division, Danapur as Deputy Superintendent. He has stated that a Medical Board was constituted for the postmortem



examination of Satyanarayan Sinha and his dead body was brought from Gosala at Village Sarari. The body was brought and identified by the *Havaldar* Lalan Singh, Ashok Rai and Rameshwar Rai. He had found the following injuries:-

- (i) Lacerated wound 2½” x 2” depth continued inside plus blackening around below the right ear. There was partial laceration over right ear lobule. It was the entry wound.
- (ii) Lacerated wound 5” x 3” depth continued with injury no. (i) in front of left ear and left side of face. This is exit wound. There is fracture of right side of mandible, left side of mandible and maxilla.
- (iii) Lacerated wound 3½” x 3½” depth continued inside in front and below right shoulder joint plus slide blackening around. It was the entry wound.
- (iv) Lacerated wound 5” x 3” depth continued with injury no. (iii) on the back of the neck. This is exit wound.
- (v) Lacerated wound 1” x 1” omentum sprouting outside of right side of abdomen plus blackening around the entry wound.

External Examination:-

Scalp – Meningal surface pale

Thorax – There is slight laceration of right upper lobe of lung and blood collection in thoracic cavity. Right chamber full, left empty

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

Urinary bladder is empty. Stomach contained undigested food.

Small gut – Liquid, semidigested food and gas. Large gut contained faeces of gas. Fragments of bullet are found in the wall of abdomen and inside the wall of pidium which was handed over to the constable.



- (4) Time elapsed since death – 36 hours
- (5) Injuries from (i) to (v) were firearm injuries causing hemorrhage, shock and death.
- (6) This P.M. report in in the handwriting of Dr. H.K. Jha and written in my presence. It bears the signature of Dr. H.K. Jha, Dr. Ram Niwas Pd. And mine. The P.M. report was marked Exhibit – 4
- (7) Blackening around injury suggests that firing was resorted to from close range.

### **Observations of this Court**

**54.** On perusal of the evidence of doctor (PW-7), it is found that Satyanarayan Sinha had suffered at least three firearm injuries. A fragment of bullet was found on the wall of abdomen and inside the wall of pidium which was handed over to the Constable. The time elapsed since death is recorded as ‘36’ hours and the cause of death were the injuries from 1 to 5 causing hemorrhage, shock and death. He has further stated that blackening around the injury suggested that firing was resorted to from close range. The injuries present on the body of the deceased and the fact that there were blackening around the injury only corroborates the manner of occurrence as stated by the informant and the other prosecution witnesses.

**55.** Arshad Jama (PW-8) was posted as Dy.S.P. Sachivalaya in the year 2003. He got the charge of investigation of Danapur P.S. Case No. 200/03 vide Memo No. 3007/XL dated



02.05.2003. After taking charge of the investigation, he had inspected the place of occurrence. He has stated that the place of occurrence is the main road going from Danapur Station to Shivala. At a distance of 1200 yards there is Danapur Railway Station, in the west at 350 yards, there is Sarari Gumti and a chauraha where on the road in the diameter of 18 inch blood was found lying. He had seized the blood-soaked soil from there. He had also found broken glass pieces. He has stated that about 25 yards east to the place of occurrence, there is a 10-feet wide road which goes to Lanka Colony towards north and on the west side road culvert, he had found two scooter and one Maruti van in burnt condition. He has stated that about 30 yards east from the place of occurrence and north to the main road, there is house of Shri Mahendra Prasad Sinha, thereafter the house of Gauri Lal and behind the house of Mahendra Prasad Sinha and Gauri Lal, there is the house of Rambabu Pathik. According to this witness, at the time of occurrence, the people going to the rally were coming to Lanka Colony More from west Sarari-Gumti towards Jamaluddin Chowk. From the description of the place of occurrence given by the I.O., we find that the house of Rambabu Pathik is very close to the place of occurrence. Thus, the prosecution case with regard to the place of occurrence is, in fact, getting corroborated from the evidence of the



I.O. (PW-8). The I.O. had found blood marks there and he had prepared the seizure list. It is evident from the postmortem report (Exhibit '4') of the deceased that apart from the three firearm injuries, he had not suffered any other injury on his body, therefore, it cannot be said that he was attacked by the people going in the rally. The defence has suggested that he was killed in the firing made by police, but the bullet recovered from the body of the deceased was not sent to the Forensic Science Laboratory and no matching of the bullet was done with the firearm by which the firing had been done by police. The learned trial court has not considered these aspects of the matter. The I.O. has proved the seizure list (Exhibit '1/11'). He has stated about a second place of occurrence from where he had seized the Bolero Jeep and prepared the seizure list (Exhibit '1/12'). He has stated to have sent the seized material from the place of occurrence to the FSL and got 82-83 process against Ritlal Yadav. He had taken Ritlal Yadav into custody after he surrendered.

He has stated in paragraph '6' that prior to his taking over the investigation, the earlier I.O. had done the investigation. He had taken over charge of the investigation on 03.05.2003 but he had not recorded in the diary that he had perused the case diary recorded by the earlier I.O. This witness has stated that the earlier I.O. had



inspected the place of occurrence on 02.05.2003 and he had recorded that the place of occurrence is the *pakki* road adjacent to Khagaul and at the place of occurrence, this road has gone from east to west. At this place only, Satyanarayan Sinha was shot at. In paragraph '12', the I.O. had not recorded as to finding of anything at the place of occurrence.

**Observations of this Court**

56. An analysis of the evidence of the I.O. (PW-8) would show that even though the occurrence had taken place on 30.04.2003, the earlier I.O. had not gone to the place of occurrence and though PW-8 has stated that the earlier I.O. had gone to the place of occurrence on 02.05.2003, i.e., on the third day after the occurrence, he had not found anything at the place of occurrence but when PW-8 went to the place of occurrence, he found blood-stained soil and the pieces of broken glasses. To this Court, it appears that the police was completely indifferent to the occurrence of killing of Satyanarayan Sinha, the prosecution witness, particularly PW-1, has clearly suggested that Rambabu Pathik happened to be the *samdhi* of the then Chief Minister of the State, therefore, police was not doing proper investigation of the case. We find that the evidence of PW-8 clearly suggests and demonstrates



that the police had not done anything after the occurrence to register the case and collect the evidences.

**57.** At this stage, we find that the informant (PW-1) filed a protest petition in the court of the learned jurisdictional Magistrate. The said protest petition has been brought on record in evidence. In the protest petition, she has alleged that the police was in collusion with the accused persons and the senior police officers of the Government of Bihar and the I.O. were not taking any legal action in the matter. The I.O. had not recorded the statement of the informant (PW-1) and that of the witnesses. This protest petition was filed in the court of learned Additional Chief Judicial Magistrate, Danapur on 13.06.2003, whereafter only the I.O. (PW-8) recorded the statement of PW-1. In his statement, in course of trial, the I.O. (PW-8) has recorded that he reached Sarari village and wanted to take statement of Asha Devi (PW-1) but she was not willing to give her statement. In paragraph '14' of the case diary, he had recorded that the earlier I.O. had reached Sarari and wanted to record the restatement of the informant and other witnesses but nobody appeared. There is no such recording by earlier I.O. This statement of PW-8 cannot be believed by this Court. The protest petition clearly states that police was not taking any action in the matter and only at a belated stage, a case was developed that PW-1



and other witnesses were not willing to record statement. He had not even examined the earlier I.O. but has on his own recorded in paragraph '14' of the case diary that the earlier I.O. had tried to take statement of the informant but informant had denied to give statement. The I.O. has stated in paragraph '12' of the deposition about the recording in paragraph '80' and '81' of the case diary. He has stated that the informant had told him that she would give her statement on 14.06.2003. This date of 14.06.2003 is to be read keeping in mind that the informant (PW-1) had filed her protest petition in the court on 13.06.2003 which came to the notice of the I.O. (PW-8) and thereafter in order to save himself he recorded that the informant (PW-1) had stated that she would make her statement on 14.06.2003.

This Court further finds that in paragraph '13' of his cross-examination, the I.O. (PW-8) has stated that in course of investigation he had not recorded in the case diary any report of the Forensic Science Laboratory. He had not recorded the statement of the earlier I.O. Indrajeet Singh was the I.O. of the Danapur P.S. Case No. 198 of 2003 but this witness (PW-8) had not recorded the statement of Indrajeet Singh because he did not think it proper to record his statement.



It is evident from the statement of PW-8 that he was not at all taking interest in the investigation and he did not think it proper to even record the statement of the earlier I.O. of this case and that of the I.O. of Danapur P.S. Case No. 198 of 2003. He has stated to have recorded in paragraph '124' of the case diary that he had submitted an application in the court of learned A.C.J.M., Danapur for amalgamation of Case No. 198/03, 199/03 and 200/03 on the direction of the Inspector General of Police. This witness had not done any photography of the place of occurrence, he had not prepared any sketch map of the place of occurrence. He has stated that the independent witnesses had denied to have seen PW-1 in the vehicle with Satyanarayan Sinha but no such witness has been examined on behalf of the defence.

**58.** This Court finds that the defence has suggested that the house of Rambabu Pathik was attacked by Satyanarayan Sinha and the people assembled with him but the I.O. (PW-8) has stated that he had not recorded the statement of the guards who were present at the house of Rambabu Pathik. He has admitted that at his house, the guards were on duty. This Court, therefore, finds that the defence has, though, suggested to the prosecution witnesses that the house of Rambabu Pathik was attacked but on this point no material at all has come. The I.O. (PW-8) has not stated in his examination-



in-chief that there was any occurrence of attack on the house of Rambabu Pathik. He has, in fact, categorically admitted in paragraph '8' of his deposition that the place of occurrence, time of occurrence and the date of occurrence of the present case and that of Danapur P.S. Case No. 198 of 2003 is the same and one.

**59.** This Court is of the opinion that the I.O. of this case had not at all done proper investigation of the case, he left several lacuna in the investigation but notwithstanding those lacunae, the prosecution has been able to prove the place of occurrence, date of occurrence and time of occurrence as also the manner of occurrence. The defence cross-examined I.O. (PW-8) with regard to the earlier statement of witness Asha Devi (PW-1). The I.O. has stated that PW-1 had not stated before him that she had hidden herself under the seat and she had not made a statement that Ritlal, Sunil and Benga were firing then she had hidden herself under the seat. She had stated that Sinha Ji had fallen down in the vehicle itself. This Court finds that the statement of the I.O. (PW-8) with regard to the statement of Asha Devi before him in course of investigation would not create any doubt over the prosecution case and it would not discredit the prosecution witness number 1. It is her consistent case that she was present in the vehicle with her husband when her husband was killed, there is no change in her



statement and even in the protest petition the informant (PW-1) has stated that the accused persons had pulled out her husband and Ritlal Yadav, Sunil Yadav and Ranjan Kumar had fired upon her husband as a result whereof he had become injured and fallen down. She has, then stated that again Rambabu Pathik told them to kill the people sitting in the vehicle whereafter all the 10-12 criminals started firing but she had hidden herself in the vehicle under the seat. She had stated that the vehicle had several marks of firearm injuries but this I.O. (PW-8) had not sent the vehicle to the FSL. This witness has stated that the vehicle was produced by the informant after eleven days but he had not produced the vehicle seized in the court. He has admitted that from the vehicle one *gamcha* (towel) and blood scratch were found but he had not sent the said *gamcha* to the FSL.

**60.** Umesh Kumar (PW-9) was the doctor posted at Danapur Railway Hospital on 30.04.2003. He brought the treatment paper of Dheeraj Kumar (PW-5). He has stated that Dheeraj Kumar was kept in observation in the hospital on 30.04.2003 at 1:15 PM. He has stated that on treatment paper it is written that there is an injury on the right forearm. He was administered medicine and injection on an other paper name Dheeraj Kumar is written which is the record of hospital. He has identified his signature and writing on



the paper which has been marked Exhibit '5'. In his cross-examination this witness has stated that one page is in his handwriting and no case number is mentioned on the injury report. He had not recorded about police requisition and Dheeraj Kumar had not put his signature in his presence. The evidence of the doctor (PW-9) could go on to demonstrate that Dheeraj Kumar (PW-5) was very much admitted in the Railway Hospital immediately after the occurrence on 30.04.2003 and he had received treatment there. Thus, the presence of PW-5 at the place of occurrence and his statement that he had suffered injury cannot be discarded.

### **Consideration**

**61.** A perusal of the entire evidence available on the record would lead this Court to take a view that the learned trial court has not properly appreciated the ocular and the documentary evidences available on the record. The evidence of the I.O. (PW-8) is that the place of occurrence of this case is the same and one which is the place of occurrence of Danapur P.S. Case No. 198 of 2003. It is near the house of Rambabu Pathik. The trial court has completely missed out to see that for the occurrence which took place immediately after murder of Satyanarayan Sinha, Shri Pramod Kumar, Inspector of Police, Danapur had registered Danapur P.S. Case No. 198 of 2003 on the basis of his self-



statement. The FIR has though been shown registered on 30.04.2003 but it was sent to the court of learned ACJM, Danapur only on 02.05.2003, therefore at the time of sending the FIR of Danapur P.S. Case No. 198 of 2003, the police was fully aware of the case disclosed by the informant (PW-1) in her written information. The investigation of Danapur P.S. Case No. 198 of 2003 was entrusted to one Indrajeet Sinha, Sub-Inspector. For no plausible reason, neither Pramod Kumar, Inspector of Police nor Indrajeet Sinha the I.O. of the case were examined by the second I.O. (PW-8). PW-8 had taken charge of the investigation of Danapur P.S. Case No. 198 of 2003, 199 of 2003 and 200 of 2003 on 02.05.2003 and had visited the place of occurrence on 03.05.2003.

**62.** PW-8 has given the description of the place of occurrence in paragraph '1' of his examination-in-chief. He had found blood in 18" inch diameter in the middle of the road, he says about presence of the broken glass pieces and he had also found two scooters and one Maruti van in burnt condition near the place of occurrence. He has also stated that at the time of occurrence people going to the rally were coming from different vehicles to Lanka Colony More and from Western Sarari Gumti to Jamaluddin Chak. There are ample evidences on the record to show that on 30.04.2003, the ruling party in the state had organised a rally named



and styled as “*Tel Pilawan, Lathi gumawan*” rally. From the deposition of the I.O. (PW-8) it is evident that near the place of occurrence, a Maruti van was found in burnt condition. It is the prosecution case that on 30.04.2003 at about 11:30 AM when Satyanarayan Sinha was going on in his Bolero vehicle and reached near that place, he found that a Maruti vehicle was standing on the way in such a position that his vehicle could not have moved ahead, on this he asked the persons to park the Maruti in one side and allow him to move. At this stage, some people came outside the Maruti and they shouted that “*Satya Narayan aa gaya*”. Thereafter, the accused persons came outside the house of Ram Babu Pathik and then the occurrence took place. Presence of blood at the place of occurrence has been found by the I.O. with broken glass pieces. It is evident that the first I.O., who was in charge of the case from 30.04.2003 to 02.05.2003, did not take any step save and except to register one FIR being Danapur P.S. Case No.198 of 2003 dated 30.04.2003 but the same was sent to the learned A.C.J.M. Court only on 02.05.2003, therefore, the informant has contended that P.S. Case No. 198 of 2003 was lodged to help the accused. A perusal of the formal FIR of Danapur P.S. Case No.198 of 2003 (Exhibit ‘B’) would show that the said case was registered on the basis of self-statement of Pramod Kumar, Inspector of Police. In connection with



the said case, the informant prepared a seizure list on 30.04.2003 at 14:45 Hrs. Regarding the place from where the seizure was made, the seizure list says Khagaul-Neora Road, Village Jamaluddin Chak situated "Additional Primary Health Center, in front of Sarari Gumti Southern Road - found in scattered conditions here and there. It shows (i) seizure of nine 12 bore empty cartridges (ii) Two KF 8 mm cartridges and (iii) Three sacks of brick and stone pieces. In the chargesheet bearing No. 101/04 dated 26.04.2004, Rintu Singh @ Ravi Kamal Kishore Singh and Sanjay Kumar @ Chunnu Rai have been shown as accused persons. A perusal of the chargesheet/final form (Exhibit 'D-1') would show that the said case was registered under Sections 147, 148, 149, 307, 353, 337, 338, 435, 431 and 397 IPC read with Section 27 of the Arms Act and 26A of the Indian Railways Act. The investigation was initially handed over to Indrajeet Tiwari and in this case, twelve named and 1000-1500 unknown persons were made accused. Ultimately, the charge-sheet was filed against two accused persons as stated above and the investigation was kept pending against others.

**63.** On record, the copy of the written information giving rise to Danapur P.S. Case No. 198 of 2003 registered on 30.04.2003 by Pramod Kumar, Inspector is not available. In fact, the certified copy of the formal FIR of P.S. Case No. 198 of 2003 together with a



written information submitted by Havaladar M.M. Sattar Sheikh of Bihar Military Police-9 dated 01.05.2003 is on the record. From this written information (Exhibit 'B-1'), it appears that a force of 1-4 of Bihar Military Police-9, Jamalpur was placed at the house of Sri Rambabu Pathik, the *samdhi* of the then Chief Minister of Bihar, situated at Jamaluddin Chak, Danapur. He has alleged that on 30.04.2003 at about 12 noon, two criminals had an encounter with each other on Khagaul-Neora Road near Jamaluddin Chak. In this occurrence, 500-600 unknown persons attacked the house of Rambabu Pathik, they started throwing stones and bricks and firing from behind, the informant claimed that he tried to stop them by shouting but the crowd was agitated and they started burning the vehicles which were passing through the road, they also attacked on the informant and the force. On his order, the Constable 672 Sukhlal Tudu fired one round in the air for safety, in the meantime the police force from Danapur Police Station reached there. Havaladar M.M. Sattar handed over one empty cartridge shell. This Exhibit 'B-1' is addressed to the Officer-in-Charge of Danapur Police Station. It is evident that the application has been written by Havaladar on 01.05.2003 and it was sent to the court of learned ACJM, Danapur on 02.05.2003. The copy of the formal FIR of this case has not been exhibited but on perusal of the case diary of the



present case, this Court finds that this was the second case which was registered in connection with an occurrence giving rise to Danapur P.S. Case No. 199 of 2003 and the investigation of this case was also handed over to PW-8.

**64.** The prosecution in this case has established that the killing of Satyanarayan Sinha took place on 30.04.2003 at 11:30 AM. Perusal of the written information of Havaladar M.M. Sattar would indicate that the occurrence reported by him took place soon after the killing of Satyanarayan Sinha. Although according to the Havaladar, the occurrence took place at 12 noon, but he submitted a written application in this regard only on the next day i.e. on 01.05.2003. Be that as it may, according to him, Sipahi Tudu had resorted to one round of firing only and the empty cartridge shell was handed over by him to the Officer-in-Charge of Police Station. The informant or the I.O. of P.S. Case No. 198 of 2003 have not been examined. PW-8 does not say that police force which arrived from Danapur resorted to the firing on the crowd. In that circumstance, a question would arise as to who were the persons who resorted to firing. Havaladar Sattar has said in Exhibit 'B-1' that two criminals had a fight with each other, he was required to be examined, but the I.O. (PW-8) neither examined him nor he examined any of the guards who were posted at the house of



Rambabu Pathik. In this connection, he has stated in paragraph '17' of his deposition that in paragraph '114' of the case diary, he had recorded that Satyanarayan Sinha was killed in the position of sitting on the driver's seat but he had not recorded the statement of the guards who were present at the house of Rambabu Pathik. PW-8 has admitted in paragraph '17' of his deposition that the guards were on duty at the house. The defence suggested to this witness (PW-8) that whatever murder took place, it took place in the police encounter but the accused was falsely implicated, the I.O. (PW-8) denied this suggestion of the defence. This deposition of PW-8 would show that PW-8 has denied that the murder took place in the encounter with the police. In the above-mentioned background of the facts emerging from the records, the first seizure list dated 30.04.2003 prepared at 14:45 Hrs. received in the court of learned ACJM, Danapur on 02.05.2003 is important. This seizure list has been prepared in connection with Danapur P.S. Case No. 198 of 2003. The certified copy of the same has been brought on record.

We would reproduce the seizure list hereinbelow:-

“जप्ती सूची

प्रसंग — दानापुर थाना कांड संख्या — 198/03 दिनांक 30/04/03 धारा —147/148/149/307/322/353/337/338/435/431/427 भा0द0वि0, 27 आर्म एक्ट एवं 126A(2)इंडियन रेलवे एक्ट

1 जप्ती की तिथि एवं समय:-

दिनांक 30.04.03 को 14:45 बजे



- 2 स्थान जहाँ जप्त किया गया :- खगौल नेउरा रोड में ग्राम जमालुद्दीन चक स्थित "अतिरिक्त प्राथमिक स्वास्थ्य केन्द्र सरारी गुमटी" के सामने दक्षिण रोड पर जहा तहाँ गीरा हुआ, थाना दानापुर जिला पटना।
- 3 गवाहों का नाम पता जिनके समक्ष जप्ती की गई। :- (1) नवीन चन्द्र पे0 श्री राम चन्द्र प्रसाद मु0- शीवपुरी, अभय कार्बन फैक्ट्री के पास थाना शास्त्री नगर जिला - पटना A/P -फार्मा सिस्ट, अतिरिक्त प्राथमिक स्वास्थ्य केन्द्र, सरारी गुमटी जमालुद्दीन, थाना दानापुर, पटना।  
(2) महादेव राय पे0 लोटन गोप सा0- जमालुद्दीनचक, थाना दानापुर, जिला - पटना।
- (4) जप्त सामानों का विवरण :- (i) 12 बोरा का खोखा - 9 (नव)  
(ii) K.F. 8 M.M. पेटी पर अंकित खोखा -2 (दो)  
(iii) तीन बोरा ईट पत्थर के टुकड़े
- (5) गवाहों का हस्ताक्षर :- (i) नवीन चन्द्र  
30-04-03  
(ii) महादेव राय  
30-04-03
- (6) पुलिस पदाधिकारी का हस्ताक्षर :- ह0 / -  
30 / 04 / 03  
आ0 नि0 सह था0 प्र0  
दानापुर थाना जमालुद्दीन ”

65. The I.O. (PW-8) has deposed in paragraph '5' of his deposition that he had conducted a raid at the places of Sunil Yadav and Ritlal Yadav, had seized firearms from the place of Ritlal Yadav. He had also recorded the criminal antecedent of Ritlal Yadav, Shravan Yadav and Sunil Yadav. In this connection, a perusal of the case diary would show what has been stated by the I.O. (PW-8) with regard to the criminal antecedents of the accused may be found in paragraph '162' of the case diary wherein the following criminal antecedents of Ritlal Yadav (respondent no.2) have been recorded:-

- "1- खगौल थाना कांड संख्या 64/95 दिनांक 01-09-95 धारा 302/34 भा0दंवि0 एवं 27 आर्म्स एक्ट।  
2- खगौल थाना कांड संख्या 65/95 दिनांक 02-09-95 धारा 25(1-बी)ए/26/35 आर्म्स एक्ट।



- 3- खगौल थाना कांड संख्या 50/95 दिनांक 01-05-95 धारा 302/34 भा0दंवि० 25(1-बी)ए/26/27 आर्म्स एक्ट।  
4-खगौल थाना कांड संख्या 64/96 दिनांक 5-7-96 धारा 323/324/341/307/34 भा0दंवि०।  
5- खगौल थाना कांड संख्या 52/98 दिनांक 01-08-98 धारा 35..... भा0दंवि० 27 आर्म्स एक्ट।  
6- खगौल थाना कांड संख्या 54 / 98 दिनांक 06-08-98 धारा 302/34 भा0दंवि० एवं 27 आर्म्स एक्ट।  
7-— खगौल थाना कांड संख्या 10/99 दिनांक 04-02-99 धारा 302/34 भा0दंवि०, 27 आर्म्स एक्ट एवं 3/4 वि०पदा०अधि०"

**66.** It is important to note that the further part of paragraph '162' and then paragraph '163' are missing in the case diary. After page no. 1928180, the next page available in 1928182. The page no. 1928181 is missing in the case diary.

**67.** The respondent no.2 was absconding since the occurrence of 30.04.2003, on information that he had come to village Kothwa, the I.O. (PW-8) conducted a raid on 12.01.2004. He has stated about the seizure of firearms, the details of which may be found in paragraph '132' of the case diary. **Police had recovered two carbine, two magazine, fifteen live cartridges of 9 mm, one country-made pistol, 0.315 bore three live cartridges and five cartridges of 12 bore. In this connection, police registered Khagaul P.S. Case No. 6 of 2004 dated 22.01.2004 under Sections 25(1-b)a/26/35 of the Arms Act against respondent no.2 and others.**

**(emphasis supplied)**



**68.** In his deposition, PW-8 has stated that the I.O. of Danapur P.S. Case No. 198 of 2003 was Indrajeet Singh but he had not recorded his statement after taking over the charge of investigation because he did not think it necessary to do so. In paragraph '15', PW-8 has stated that there was no grievance with respect to the investigations done by him (Indrajeet Singh) in the two cases. In paragraph '8' of his deposition, PW-8 has stated that he cannot say as to from whom he had taken charge of Case No. 198/03.

**69.** In paragraph '9', PW-8 has stated that regarding Arun Kumar, he had come to know that witness Arun Kumar had died in the police firing in connection with Danapur P.S. Case No. 198 of 2003. From the deposition of PW-8 itself it is found that at the relevant time, the police was under immense pressure, otherwise there was no reason as to why a First Information Report giving rise to Case No. 198 of 2003 would not disclose about the murder of Satyanarayan Sinha in the occurrence which had already taken place at 11:30 AM on 30.04.2003. The Danapur P.S. Case No. 198 of 2003 was registered on 30.04.2003 at 16:00 hours and the time of receipt of information of the occurrence as shown in the formal FIR is 11:35 AM. The distance between police station and the place of occurrence has been shown as seven kilometer only, on that day as



has come in the deposition of the witnesses the ruling political party had called for a rally known as “*Tel Pilawan, Lathi gumawan*” and Rambabu Pathik, who was the *samdhi* of the then Chief Minister, had arranged for snacks and beverages for the people attending the rally at his house. In this connection, the I.O. has stated in paragraph ‘2’ of his deposition that the people going to rally were going by different vehicles to Lanka Colony More towards Jamaluddin Chak *vide* Western Sarari Gumti. Armed force of 1-4 was also posted at the house of Rambabu Pathik and I.O. has stated in paragraph ‘7’ of his deposition that the earlier I.O. had inspected the place of occurrence on 02.05.2003 and had recorded that the place of occurrence is Khagaul-Neora Pakki Road and at the place of occurrence this road had gone from east to west and on the date of occurrence, on this road itself Satyanarayan Sinha was shot at but in paragraph ‘12’ of his deposition he had recorded that the I.O. did not find anything at the place of occurrence. This statement of PW-8 in paragraph ‘7’ of his deposition clearly establishes that the I.O. of the case had not even visited the place of occurrence prior to 02.05.2003 and he had tried to mislead the investigation of the case by not recording that the place of occurrence of Danapur P.S. Case No. 198 of 2003 and that of the present case (Danapur P.S. Case



No. 200 of 2003) was the same and one, from where several rounds of fired cartridges shells were seized on 30.04.2003 at 14:45 Hrs.

**70.** It is also evident that from the place of respondent no. 2, 12 bore cartridges were seized in course of raid and from the place of occurrence also nine cartridges shells of 12 bore were seized. The seizure list was made in course of investigation of the present case, but the I.O. (PW-8) did not take any step to collect evidence by sending those firearms and seized cartridges to the FSL. In paragraph '15' of his deposition the I.O. has stated that in course of investigation the report of forensic science is to be entered in the case diary but in diary he had not entered forensic science report or any other report. In fact the I.O. (PW-8) has stated in paragraph '14' that he had not recorded in the case diary whether he had received the examination report of the seized blood.

**71.** The conduct of the investigation in this case has been done with completely indifferent attitude firstly by the first I.O. and then by PW-8. In the name of investigation, only some paper work in the nature of formalities have been done, still the learned trial court has rejected the prosecution case by pointing out the lacunas in investigation.

**72.** This Courts finds on perusal of the order dated 11.02.2013 that the prosecution had filed a petition dated



16.01.2013 to issue summons to the witnesses Sanjay Kumar, Dheeraj Kumar and Nageshwar Prasad which was allowed. It was the submission of the defence at that stage that the prosecution does not want to examine seventeen chargesheet witnesses saying that they are hearsay witnesses but this is factually incorrect and those witnesses are the eyewitnesses of the occurrence. The learned trial court accepted the plea of the prosecution and allowed the petition. This order attained finality, therefore no adverse inference could have been drawn by the learned trial court against the prosecution for not examining the seventeen chargesheet witnesses who according to the prosecution were not material witnesses and they were hearsay witnesses.

73. In the above background, the evidence of PW-1 in paragraph (v) that she had to submit an application-cum-protest petition in the court becomes important. In Exhibit '2' she had complained to the court that police was not conducting investigation properly, the statement of the witnesses were not being recorded and because the *samdhi* of the Chief Minister of the State is involved in this case, therefore, the senior police officer and the I.O. have not taken any legal action in the matter. Exhibit '2' was filed in court on 13.06.2003. PW-1 has stated that the vehicle had got dozens of marks of firing but this Court finds that when the



I.O. (PW-8) prepared the seizure list of the Bolero vehicle bearing registration no. BR-1T/0222, on 10.05.2003 in the description of the seized vehicle only the color, registration number, engine number and chassis number of the vehicle were written. PW-8 did not mention about the condition of the vehicle in which it was seized on 10.05.2003. The vehicle was not sent to the FSL for examination but in order to explain this inaction, in paragraph '10' of his deposition, PW-8 has stated that in paragraph '24' of the case diary he had recorded that when he contacted the informant to give her statement, she refused to give her statement and when he requested her to send the Bolero vehicle to the Forensic Science Laboratory, she refused to do it. She also refused to give the complete name and address of the witnesses of the FIR. This statement of the I.O. must be looked into with reference to the case diary in order to get a complete picture of the progress of investigation. Paragraph '24' and '25' are recorded on 03.05.2003, the time is not mentioned. The vehicle was seized on 10.05.2003 and it was in lawful possession of the I.O. From the case diary it appears that on or after 10.05.2003, the I.O. did not take any step to send the vehicle to the FSL. It is, therefore, evident that despite being in lawful possession of the vehicle at least on 10.05.2003, the I.O. (PW-8) did not send the vehicle to FSL. It only strengthens the



claim of the informant (PW-1) as stated in her protest petition (Exhibit '2') that the senior police officers and the I.O. of the case were not taking legal action in the matter, as one of the accused in the case was the *samdhi* of the then Chief Minister.

74. PW-8 has stated in paragraph '14' of his deposition that he had not produced the seized vehicle in the court, he had found one towel and blood scratch in the vehicle, but he had not mentioned about any other mark apart from these two things in the case diary. He had also mentioned about the release of the vehicle in the case diary. He had also not conducted any investigation that during the eleven days before seizure of the vehicle, the vehicle had gone to which place or places

75. This Court, while appreciating the evidences on the record, would rely upon the judgment of the Hon'ble Supreme Court in the case of **Shahajan Ismail** (supra). Paragraph '29' and '30' of the judgment are being reproduced as under:-

“29. The appreciation of ocular evidence is a hard task. There is no fixed or straitjacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

29.1. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in



the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

**29.2.** If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

**29.3.** When eyewitness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

**29.4.** Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

**29.5.** Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

**29.6.** By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

**29.7.** Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.



**29.8.** The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

**29.9.** By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

**29.10.** In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

**29.11.** Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

**29.12.** A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.



**29.13.** A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

[See *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*<sup>8</sup>, *Leela Ram v. State of Haryana*<sup>9</sup> and *Tahsildar Singh v. State of U.P.*<sup>10</sup>]

**30.** To put it simply, in assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.”

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8. (1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753  
9. (1999) 9 SCC 525 : 2000 SCC (Cri) 222 : AIR 1999 SC 3717  
10. 1959 SCC OnLine SC 17 : AIR 1959 SC 1012



**76.** In the case of **Edakkandi Dineshan** (supra), the Hon'ble Supreme Court held that the principle of "*falsus in uno, falsus in omnibus*" is not applicable to the Indian criminal jurisprudence. It has been held that the duty of the Court is to separate the grain from the chaff. While rejecting the contention of the appellants in the said case that the prosecution had not conducted investigation in a fair and impartial manner, the Hon'ble Supreme Court observed in paragraph '25', '26' and '27' of the judgment as under:-

“**25.** One more thrust of argument from the appellants was that the prosecution has not conducted the investigation in a fair and impartial manner as they have tried to rope in innocent persons who were not present at the spot. There was an attempt to rope in one Ashraf and there was a consistency in the statements of the eyewitnesses that they had seen Ashraf when the crime was taking place. Admittedly, there is a rivalry between the two groups so the possibility of exaggeration cannot be ruled out. When the fact that Ashraf was not at all present during the crime and that he was present in the hospital came to light of the prosecution, they had moved a report and sought deletion of his name.

**26.** A cumulative reading of the entire evidence on record suggests that the investigation has not taken place in a proper and disciplined manner. There are various areas where a proper



investigation could have strengthened its case.

In *Paras Yadav v. State of Bihar*<sup>8</sup>, the Supreme Court observed as under : (SCC p. 130, para 8)

“8. ... the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from *Ram Bihari Yadav v. State of Bihar*<sup>9</sup>: (SCC pp. 523-24, para 13)

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

27. Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the

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8. 1999 (2) SCC 126 : 1999 SCC (Cri) 104

9. (1998) 4 SCC 517 : 1998 SCC (Cri) 1085



eyewitnesses, medical report, etc. It has been a consistent stand of this Court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons. When the testimony of PW 1 Jitesh, PW 2 and PW 4 is seen cumulatively, their versions can be seen to be corroborating each other. All of them being eyewitnesses, what is material to be seen is their stand is consistent when they said that it was A-2 who was responsible for inflicting blows on both the deceased. It may not be out of place to mention that though the unfortunate incident took place at midnight around 1 a.m., it was a full moon night and as such, it was not pitch dark. This has also not been vehemently disputed by the defence counsel. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have been raised by the defence. There is no contradiction when it comes to assigning specific role to the above accused. Admittedly, there was an enmity between the witnesses as they were from different political groups. Moreover, it can be seen from the record that the accused and the witnesses were well acquainted with each other as PW 1, PW 2 and PW 4 had defected from CPI and had joined RSS. The witnesses could have tried to implicate anyone had they wished to take advantage of their past acquaintance and recent rivalry.”



77. In this case, we have pointed out in detail that how the investigation of this case has been carried out. The reason behind the indifferent attitude of the senior police officials and the I.O. of the case have been noticed by this Court and the reason behind that is apparent. In such circumstance, as has been held by the Hon'ble Supreme Court in the case of **Edakkandi Dineshan** (supra), the accused persons cannot get benefit of a defective investigation. This Court will consider the rest of the evidences which the prosecution has gathered and in this regard, the evidence of the prosecution witnesses, the evidence of the doctors and other materials on the record are required to be considered.

78. We are aware that some of the prosecution witnesses in this case are related or interested witnesses. As regards the evidentiary value of the evidence of the related and interested witnesses, the Hon'ble Supreme Court has held in the case of **Raju @ Balachandran and Others vs. State of Tamil Nadu** reported in (2012) 12 SCC 701 in paragraph '29' as under:-

“29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence



and not one of law, as held in *Dalip Singh*<sup>4</sup> and pithily reiterated in *Sarwan Singh*<sup>7</sup> in the following words: (*Sarwan Singh case*<sup>7</sup>, SCC p. 376, para 10) “10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration.”

79. We have noticed that one of the reasons for acquittal of the accused-respondent no. 2 as recorded in the impugned judgment is that according to the trial court, the prosecution witnesses have given different statement in the court than the statement to the police. The I.O. has not been declared hostile by the prosecution. The trial court has recorded a finding that the I.O. was Dy.S.P. at the time of the investigation and the statement of the informant and other prosecution witnesses were recorded by him in presence of the DIG, Central Range, Patna. In such situation, it cannot be said that the I.O. was in collusion with the accused. We, however, find that this finding of the learned trial court is not correct. A perusal of

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4. Dalip Singh versus State of Punjab, AIR 1953 SC 364 : 1953 Cri LJ 1465 : 1954 SCR 145

7. (1976) 4 SCC 369 : 1976 SCC (Cri) 646



the evidence of PW-8 would show that he has nowhere stated in his deposition that he had recorded the statement of the prosecution witnesses in presence of the DIG. The police officer in whose presence statement of the witnesses were recorded has not been named in course of trial and on perusal of the entire case diary, it does not appear that the I.O. was recording the statement of the prosecution witnesses in presence of any senior officer. Thus, the finding of the learned trial court on this score is completely baseless and unfounded.

**80.** We have noticed hereinabove the conduct of the police officers who were involved in the investigation of the case. The fact that first FIR was lodged giving rise to Danapur P.S. Case No. 198 of 2003 by Pramod Kumar, Inspector of Danapur Police Station on 30.04.2003 but it was seen by learned A.C.J.M. only on 02.05.2003. No reason explaining the delay in sending FIR to the jurisdictional court has been mentioned. In the column showing date of dispatch of FIR, it has been left blank. Moreover, the self-statement of Pramod Kumar which is the basis of FIR No. 198 of 2003 has not been exhibited though the formal FIR has been marked exhibit. The second FIR being Danapur P.S. Case No. 199 of 2003 was registered on the information of Havaladar M.M. Sattar and then the present FIR giving rise to Danapur P.S. Case No. 200 of 2003 was



lodged on 01.05.2003. There were house guards posted at the house of Rambabu Pathik, but in course of investigation of this case not a single police officer/guard was interrogated by the I.O. (PW-8). PW-8 was given charge of the investigation on 02.05.2003. He went to the place of occurrence on 03.05.2003 from where he seized blood-stained soil and one cartridge shell, this only shows that the first I.O. had done nothing but to do a formality on 30.04.2003. We take judicial notice of the fact that one of the accused in this case was the *samdhi* of the then Chief Minister of the State of Bihar, the informant (PW-1) has specifically stated so in her protest petition (Exhibit '2') and she has stated that the police officers were not taking any legal action in the matter.

**81.** The learned trial court has taken a view against the prosecution saying that the I.O. has not been declared hostile by the prosecution, this Court is of the opinion that the learned trial court has completely erred in taking such a view. We are of the opinion that no doubt the investigation of the case has not been done properly, there are huge lapses on the part of the investigating agency for obvious reasons that the investigating agency was under the ultimate control of the then Chief Minister of the State, however, in course of trial the I.O. (PW-8) has supported the prosecution case on certain aspects of the matter such that PW-8 has



stated that the place, date and time of occurrence in this case is the same as that of Danapur P.S. Case No. 198 of 2003. It was the duty of the learned trial court to consider as to whether the lapses on the part of the investigating agency may confer any benefit to the accused. In the case of **Harendra Rai vs. State of Bihar** reported in (2023) 13 SCC 563, the Hon'ble Supreme Court has observed *inter alia* that the failure of the State machinery and failure of the trial court to ensure a fair trial from the perspective of the victim side and the aspect of non-marking of the FIR and *bayan tahriri* as an exhibit, non-production of the formal witnesses in the trial would not vitiate the genuineness of the FIR and *bayan tahriri*. The Hon'ble Supreme Court observed "... We refuse to give any discount to the accused persons for non-exhibition thereof...."

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

"13. Before parting with this case, we consider it appropriate to observe that though the prosecution has to prove the case against the accused in the manner stated by it and that any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favour of the accused, yet in a case like the present one where the record shows that investigating officers created a mess by



bringing on record Ext. 5/4 and GD Entry 517 and have exhibited remiss and/or deliberately omitted to do what they ought to have done to bail out the appellant who was a member of the police force or for any extraneous reason, the interest of justice demands that such acts or omissions of the officers of the prosecution should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed to favour the appellant. In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.”

**83.** In view of the aforementioned judicial pronouncements, we are of the considered opinion that the learned trial court was obliged to examine the materials available on the record even though there was a mess created by the I.O.s of this case and there was a deliberate attempt to omit to do something which they ought to have done to bail out the accused.

**84.** In the case of **Edakkandi Dineshan** (*supra*), the Hon’ble Supreme Court has applied the principle of *Noscitur a sociis* a well-recognised principle used for interpretation of statutes. In paragraph ‘18’ of the judgment, Their lordships held as under:



“18. It is worthwhile to mention that in his examination-in-chief, PW 1, V.K. Jithesh had mentioned that Sunil was not seen. In his cross-examination, PW 1 had stated that he had told the police at the picket post that Sunil was missing. This was apparently in contradiction to the stand of the defence that death of Sunil was mentioned in the FIR at 3 a.m. itself while his body was found only at 7.30 a.m. in the morning. The statement of PW 1 to the police mentioning that Sunil is “missing” cannot be seen in an abstract. “*Noscitur a sociis*” is a well-recognised principle used for interpretation of statutes. It means that the meaning of a word can be determined by the context of the sentence; it is to be judged by the company it keeps. Though this principle is used for interpretation of words in a statute, the inherent principle can very well be applied to the facts of the present case which have been seen in the context of the entire set of events that had transpired that night. The High Court has also, in its well-reasoned judgment considered the fact that while struggling for his life, injured Sunil might have made some movements and while so he might have fallen into the slushy area and happened to be amidst the bushes which is the reason for him being allegedly “missing”.

**85.** Further, in the same judgment the Hon’ble Supreme Court held in paragraph ‘20’ and ‘21’ as under:-

“20. Either a partial, untrue version of one of the witnesses or an exaggerated version of a witness may not be a sole reason to discard the entire prosecution case which is otherwise supported by clinching evidence such as truthful version of the witnesses, medical evidence, recovery of the



weapons, etc. At this stage, it may not be out of place to refer to the principle called as “*falsus in uno, falsus in omnibus*”.

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

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

‘11. The counsel for the appellant lastly argued that once the witnesses had been disbelieved with respect to the co-accused, their testimonies with respect to the present accused must also be discarded. The counsel is, in effect, relying on the legal maxim “*falsus in uno, falsus in omnibus*”, which Indian Courts have always been reluctant to apply. A three-Judge Bench of this Court, as far back as in 1957, in *Nisar Ali v. State of U.P.*<sup>7</sup> held on this point as follows : (SCC OnLine SC paras 9-10)

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5. (2021) 15 SCC 241

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

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



*“9. ... This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded. ...*

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

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

(emphasis in original)”

**86.** Speaking on the effect of lapses on the part of the Investigating Officer, the Hon’ble Supreme Court in the case of **Paras Yadav vs. State of Bihar** reported in (1999) 2 SCC 126 observed in paragraph ‘8’ as under:-

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



**87.** Having said so, we will consider the evidence on the record to take a view as to whether the learned trial court has appreciated the evidence in a proper manner to acquit the accused.

**88.** Admittedly on 30.04.2003, the ruling political party in the state of Bihar had called for a rally under name and style “*Tel Pilawan, Lathi gumawan*”. It has come in evidence that the people who had come to attend the rally were coming to the house of Rambabu Pathik where there were arrangements for snacks and beverages for them. The deceased Satyanarayan Sinha had contested the assembly election against the candidate of the ruling party, he had lost the election. It is also an admitted position that there was a political rivalry between the deceased and the accused-respondent no.2 as it has come in evidence that the accused-respondent no.2 had contested election on the ticket of Bharatiya Janata Party against Dr. Ramanand Yadav of the ruling political party RJD. In paragraph ‘19’ of her deposition PW-1 has stated that at that time respondent no.2 was Mukhiya of Kothwa Gram Panchayat. She has also stated in her deposition that her husband was a Ward Commissioner. It has also come in evidence that in the said election, the accused-respondent no.2 and other accused persons were the supporters of the RJD, therefore the political rivalry between the two has been established by the prosecution.



**89.** The genesis of the occurrence is also established from the evidence on the record that on the date of rally when the deceased was going in his Bolero vehicle and was passing through the road near the house of Rambabu Pathik, a Maruti vehicle was parked there in such a way that the vehicle of the deceased could not have moved ahead. At this place, Satyanarayan was killed.

**90.** The learned trial court has while analysing the evidence in paragraph '20' of its judgment has taken into consideration the evidences adduced in Trial No. 246 of 2006 in the name of the ends of justice and for the better appreciation of evidences. This, in our opinion would not be a correct approach. In the case of **A.T. Mydeen and Another vs. Assistant Commissioner, Customs Department** reported in **(2022) 14 SCC 392**, the Hon'ble Supreme Court referred the judgment in the case of **State of Kerala and Others vs. Joseph @ Baby and Others** reported in **(2014) 16 SCC 385**. In the said case, the High Court had considered the evidence of one sessions case which tried some of the accused in another sessions case, which was trying another set of co-accused arising out of same offence and acquitted all the accused. The Hon'ble Supreme Court held that the High Court was not right in considering the evidence of one case for another case and accordingly set aside the judgment of the High Court and



remanded the matter to the High Court for fresh disposal. We, therefore, find that the learned trial court has erred on this count also.

**91.** We further notice from the judgment of the learned trial court that the trial court has relied upon the fact that Rambabu Pathik was not chargesheeted by the investigating agency, the final form submitted by police was accepted by learned jurisdictional Magistrate and even in course of trial, the prosecution did not invoke Section 319 CrPC to summon Rambabu Pathik. The trial court observed that the prosecution witnesses including the informant have stated in their evidence that Rambabu Pathik was order giver and prior to this, all the accused persons came from his house. The trial court observed that such things becomes more relevant. In our opinion, this finding of the trial court is completely perverted. The learned trial court had before it the statement of the prosecution witnesses and the court was aware of the provision of Section 319 CrPC. If the trial court was satisfied from the evidence that any person not being an accused has committed any offence for which such person could be tried together with the accused, the court could have proceeded against the said person and under subsection (2) of section 319 CrPC such person could have been



summoned. Instead of acting in accordance with law, the trial court drew an adverse inference against the prosecution case.

**92.** The trial court has referred the FIR of Danapur P.S. Case No. 198 of 2003 (Exhibit 'B') brought on record by the defence and held that the I.O. has stated a different place of occurrence from that of the one disclosed by the informant. This finding is completely perverse. On perusal of records, we find that Exhibit 'B' is the formal FIR of P.S. Case No. 198 of 2003, the actual self-statement of Pramod Kumar Inspector of Police, Danapur has not been brought on record through it should have been part and parcel of Exhibit 'B'. Instead the written statement of Hawildar Sattar which is the basis of P.S. Case No. 199 of 2003 is attached with the Exhibit 'B' and the same has been marked Exhibit 'B-1'. We have already recorded hereinabove that the I.O. has stated in his deposition that the place of occurrence in this case is the same and one which was the place of occurrence of Danapur P.S. Case No. 198 of 2003. Thus, the trial court has committed grave error on this point as well.

**93.** Further, the learned trial court has discussed the evidence of PW-1, it has been found that she had never stated in her written information the name of Rintu Singh as stated by her in the evidence. Rintu was not mentioned as a witness in the charge-sheet,



but has been examined as PW-6. It has been further noted by the trial court that PW-1 had not mentioned the name of Arun Kumar in her evidence though in her written information she had mentioned the name of Arun Kumar. The trial court held that from this it transpired that there is some hide and seek by the informant. This Court is of the considered opinion that raising doubt over the evidence of PW-1 for the reason stated by the trial court is not in accordance with the principles of appreciation of ocular evidences. We have already recorded in the beginning of the judgment itself that Rintu Singh (PW-6) was allowed to be examined by the learned trial court *vide* order dated 27.05.2013 after noting that PW-1 to PW-5 all had stated about presence of Rintu Singh at the time of occurrence. A criminal revision preferred against the said order of the trial Court was rejected by the High Court. Further, this Court has recorded that how some of the prosecution witnesses namely PW-3, PW-4 and PW-5 were though examined by the I.O. in various paragraphs of the case diary, but they were not made chargesheet witnesses. The trial court, however, allowed them to be examined. In our opinion, the fact that PW-1 did not give the name of Rintu (PW-6) in her written information or that she did not mention the name of Arun Kumar in her evidence cannot be taken to discredit the witness.



**94.** It is further evident from the judgment of the trial court that the evidence of PW-1 in Trial No. 246 of 2006 in which she has stated in paragraph '20' that Arun Kumar was injured in Danapur P.S. Case No. 198 of 2003 and other witnesses have stated that he had died, has been taken into consideration by the trial court to raise a question as to how it was probable that a man injured and died in another case was sitting along with deceased husband of the informant. The trial court, in the opinion of this Court, has completely missed out to correlate the sequence of events and seems to have gone by the date of registration of the cases. In this connection, the written information (Exhibit 'B-1') which is on the record gives one version that there was a fight among the two groups first and in the meantime, 500-600 unknown persons assembled at the house of Rambabu Pathik and they were throwing bricks and stones and there were firing also from behind. The I.O. (PW-8) has stated in paragraph '17' that in paragraph '114' of the case diary he had recorded that Satyanarayan Sinha was killed in the vehicle on the driver seat in sitting condition. I.O. has denied the suggestion of the defence that the murder took place in police encounter but the accused was falsely implicated. The occurrence which took place after murder of Satyanarayan Sinha led to firing by Sukhilal Tudu, Constable No. 672. The I.O. (PW-8) has deposed



that at the time of occurrence there was a Camp of BMP and thirty yards east from the place of occurrence, north to the main road there is house of Shri Mahendra Prasad Sinha whereafter house of Gauri Lal and at the north-western corner of the house of Gauri Lal and behind the house of Mahendra Prasad Sinha is the house of Rambabu Pathik. He had found the Maruti van and two scooters lying there in burnt condition nearby the place of occurrence. This statement of the I.O. (PW-8) leaves no iota of doubt that the crowd which had assembled after murder of Satyanarayan Sinha had thrown bricks and stones and also burnt the vehicles. In such circumstance, it was quite clear that Arun Kumar who was named in the FIR by PW-1 as a witness subsequently got injured in the occurrence which took place after murder of Satyanarayan Sinha and later on died. We have already found that Danapur P.S. Case No. 198 of 2003 was though shown registered by police on 30.04.2003 itself, but the FIR was sent to the jurisdictional court only on 02.05.2003. In such circumstance, the learned trial court was oblinded to consider the plea of the informant that police was in collusion with the accused and P.S. Case No. 198 of 2003 was lodged only to help the accused. In such circumstance, only because the present case has been lodged on 01.05.2003, it cannot be said that Arun Kumar who was an injured in Danapur P.S. Case No. 198



of 2003 and subsequently died so he could not have been a person sitting along with the deceased husband of the informant. Apparently, the learned trial court has completely failed to appreciate the materials available on the record which led to recording of an absurd finding.

**95.** The learned trial court thereafter proceeded to consider the evidence of the injured witnesses. According to the learned trial court, Sanjay Kumar (PW-3) and Dheeraj Kumar (PW-5) are the injured witnesses but the trial court found that Sanjay Kumar (PW-3) had nowhere said to have sustained firearm injuries. This Court found that the learned trial court has mistakenly treated Sanjay Kumar (PW-3) as an injured witness of this case. In fact, the perusal of the deposition of the prosecution witnesses would show that the said Sanjay who had suffered firearm injury was in fact Sanjay Sharma @ Chunnu Sharma who was murdered during pendency of this trial. His mother Usha Devi had lodged Bihta P.S. Case No. 280 of 2009 in which Rit Lal Yadav was made accused. The informant of the said case had alleged that her son Sanjay Sharma @ Chunnu Sharma was a witness in the murder case of Satya Narayan Sinha and he was often threatened by Rit Lal Yadav. Thus, Sanjay Kumar (PW-3) who is the formal witness and has proved his signature and production-cum-seizure list is not an injured witness. The trial court



has committed gross error in taking him as an injured witness. We find from the records that Sanjay Kumar (PW-3) has been examined only as a formal witness to prove his signature on the production-cum-seizure list. He has identified his signature (Exhibit '3/1') and that of another witness Rajesh (Exhibit '3/2'). He has also identified his signature on the seizure list of the blood-stained towel, he has stated that there were blood marks on the vehicle and there were marks of firing on the vehicle. He has identified his signature on the second seizure list which has been marked Exhibit '3/3'. He also identified signature of Ram Nandan Rai who is a witness on the second seizure list as Exhibit '3/4'. In this regard, we have noticed that Sanjay Kumar (PW-3) was not named in the chargesheet by the I.O. even though he was interrogated during investigation and his statements were present in the case diary in paragraph '65'. The case diary is available on the record and we have noticed that even though Sanjay Kumar (PW-4) was named in the written information of PW-1, the I.O. (PW-8) did not examine him as to the facts and circumstances of the case. The Public Prosecutor did not examine this witness on the point of his presence in the Bolero vehicle. These were the lapses on the part of the Investigating Officer and the Public Prosecutor from which no benefit will accrue to the accused (respondent no.2). Regarding Dheeraj Kumar (PW-5), the



trial court has observed that though this witness has stated that bullet crossed his hand and in paragraph '7' of his cross-examination, he has stated that it is not true that there is no mark of firearm injury on his hand, but he has not shown any mark of injuries to the court during the evidence.

**96.** We have noticed from the evidence of Dr. Umesh Kumar (Court Witness no.1) that he had brought the injury report of Dheeraj Kumar which has been marked Exhibit '4'. It was the duty of the I.O. (PW-8) to collect the medical examination report/injury report of PW-3 and PW-5 particularly of PW-5 when he was treated in PMCH also, but the I.O. failed to collect the injury report of the prosecution witnesses. In our opinion, the failure of the I.O. to collect the injury report would not prove fatal to the prosecution.

**97.** To this Court, it appears that the learned trial court has given much evidentiary value to the evidence of the I.O. (PW-8) to record that the I.O. has stated in his evidence that after the occurrence when he tried to take the statement of the informant, she did not give the same. The trial court could not appreciate that the I.O. (PW-8) was not even a competent witness to say so because he was not the first I.O. of the case. He had taken charge of the investigation by order dated 02.05.2003 only, therefore, for first three days of the occurrence I.O. (PW-8) had no opportunity to even



try to take the statement of the informant. It is reiterated that the first I.O. was not even examined by the second I.O. and has not been made a charge-sheet witness. This is how the investigating agency has tried to help the accused. This Court, therefore, rejects that part of the testimony of PW-8 where he has stated that after the occurrence, he tried to take the statement of the informant and the other witnesses. The trial court has not at all considered the protest petition (Exhibit '2') filed by the informant (PW-1) complaining about the indifferent attitude of the investigating agency in not recording the statement of the witnesses.

**98.** The learned trial court could not appreciate that only after filing of the protest petition (Exhibit '2') on 13.06.2003 in the court, the I.O. recorded the statement of the informant on 14.06.2003 and then he recorded the statement of other witnesses. Thus, no adverse inference may be drawn from the fact that the prosecution witnesses were examined after fifteen days of the occurrence. The trial court has recorded that prior to this, the I.O. had taken the statement of several witnesses and the names are mentioned by the learned trial court in its judgment but the prosecution had not examined them rather seventeen witnesses have been given up for their examination by the prosecution and the same was allowed *vide* order dated 11.02.2013 by the predecessor



court. This Court finds from the order dated 11.02.2013 passed by the learned trial court that while seeking to examine Sanjay Kumar, Dheeraj Kumar and Nageshwar Prasad, the defence submitted that the prosecution had filed petition praying that prosecution did not want to examine seventeen charge-sheet witnesses as they are not material witnesses because they are hearsay witnesses but according to the defence, this was factually incorrect as those witnesses were the eyewitnesses of the occurrence. The learned trial court, however, allowed the application of the prosecution and the order dated 11.02.2013 attained finality. Thus, giving up of seventeen witnesses by the prosecution cannot create doubt over the prosecution case. These are irrelevant considerations by the learned trial court.

**99.** The learned trial court has recorded another incorrect finding saying that the seizure list with regard to the vehicle did not mention marks of bullet on the vehicle and there is no FSL report on the record. To this Court, it appears that these are the laches on the part of the investigating agency. While preparing the seizure list on 10.05.2003, the I.O. (PW-8) did not mention the complete condition of the vehicle. He has, though, seized the vehicle but did not send the same to the FSL on or after 10.05.2003. Thus, non-availability of FSL report with regard to the condition of the vehicle



of the deceased is result of a failure of the investigating agency and the same cannot inure benefit to the accused. The prosecution witnesses have consistently said that the vehicle had marks of firearm firing. The I.O. (PW-8) has stated that when he had inspected the place of occurrence on 03.05.2003, he had found broken glass pieces at the place of occurrence. Further, from the vehicle, blood-stained towel was found and PW-8 had also found blood scratches which clearly proves that Satyanarayan Sinha (the deceased) was killed when he was going through his Bolero vehicle and reached the place of occurrence, which is nearby the house of Rambabu Pathik. The trial court had no reason to disbelieve the statement of the witnesses that the accused persons had fired from the front side of the vehicle and some marks of bullets were present on the vehicle also. The trial court seems to have fallen in error by taking a view that the vehicle was produced by the informant herself to the I.O., this Court found that though there is a production-cum-seizure list with respect to the vehicle prepared on 10.05.2003 but the circumstances under which the police officials were not taking prompt action to collect the evidences and the informant had to make a complaint to the court of jurisdictional Magistrate in this regard, the delay in seizure of the vehicle cannot be a ground to take a view that the vehicle did not have, had the



bullet marks. The fact that the vehicle was not sent for the FSL only proves that there was an attempt to weaken the prosecution case by the then police officials who were working directly under the command of the then Chief Minister of the State.

**100.** At this stage, we would also take note of the facts in issue in the present case. In the present case, the fact that the accused-respondent no.2 caused death of Satyanarayan Sinha (the deceased) is the fact in issue. The evidences available on the record are the statement of the witnesses in form of oral evidence and there are some documentary evidences as well to prove that Satyanarayan Sinha was killed by respondent no. 2 and his accomplices. Under the Indian Evidence Act (now 'Bhartiya Shakshya Adhiniyam'), a fact is said to be proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The word “proved”, “disproved” and “not proved” are defined under the Evidence Act in the following terms:-

**“Proved”.**—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.



**“Disproved”**.—A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

**“Not proved”**. — A fact is said not to be proved when it is neither proved nor disproved.

**101.** For purpose of appreciation of evidence, a court is required to bear in mind the setup and environment in which the crime is committed. The witnesses may narrate the same facts in different way. In the case of **Raj Kishore Jha vs. State of Bihar and Others** reported in **AIR 2003 SC 4664**, the Hon’ble Supreme Court held that the fact that the name of witnesses do not appear in the First Information Report by itself cannot be a ground to doubt their evidence. Paragraph ‘10’ of the said judgment reads as under:-

**“10.** A bare perusal of the judgment of the High Court shows that it has disposed of the appeal in a rather casual manner. Most of the conclusions arrived at by the High Court are per se not on sound footing. The appellate court will not abjure its duty to prevent miscarriage of justice by interfering where interference is imperative. Where doubt is based on irrelevant grounds or where the court allows itself to be deflected by red herrings drawn across the track, or where the evidence accepted by the trial court is rejected by the High Court after a perfunctory consideration or where the baneful approach of the court has resulted in vital and



crucial evidence being ignored or for any such adequate reason, the court should feel obliged to secure the ends of justice, to appease the judicial conscience, as it were. The High Court has noted that the names of witnesses do not appear in the first information report. That by itself cannot be a ground to doubt their evidence as noted by this Court in *Bhagwan Singh and Others v. State of M.P.* ( JT (2002) 3 SC 387), *Chittar Lal v. State of Rajasthan* (2003 AIR SCW 3466) and *State of Madhya Pradesh v. Man Singh and Others* (2003) 6 Supreme 202). There is no requirement of mentioning the names of all the witnesses in the first information report. No reason has also been indicated by the High Court as to why the evidence of PWs 3, 8, 11, 12 and 15 was to be obliterated merely because they were accused in the counter-case. ....”

**102.** In the present case, the defence has suggested to some of the witnesses that Satyanarayan Sinha had some criminal antecedent and even those witnesses had some criminal antecedents. The respondent no. 2 has also got several criminal antecedents of serious nature including murder cases. The defence has brought on record certified copy of the judgments passed in Sessions Trial No. 1795 of 2011 in which the respondent no. 2 and four other persons were made accused, they were charged for the offences under Sections 307/120B and 302/120B IPC. This case was filed for the murder of Chunnu @ Sanjay Sharma on 24.10.2009 i.e., during pendency of the trial and when respondent



no. 2 was absconding. The informant was mother of Chunnu Sharma who alleged that her son was an important witness against accused Ritlal Yadav and said Ritlal Yadav had murdered her son in connivance with the other accused persons. She claimed in her *fardbeyan* that her son was also a witness in the murder case of Satyanarayan Sinha and Ritlal Yadav was threatening her son not to adduce evidence in that case otherwise he would be killed. After investigation, Ritlal Yadav and other accused were also chargesheeted, in the said case there were eleven witnesses on behalf of the prosecution but in course of trial they resiled. Even the injured witness did not identify the accused persons who were standing in the dock. Some of the charge-sheet witnesses were declared hostile. The trial court though found that Chunnu Sharma was murdered, but the accused persons were not identified and even father and mother of the deceased and injured have not identified the accused. The certified copy of the judgment of the trial court in Sessions Trial No. 657 of 2011 (Exhibit 'A-1') is available on the record.

**103.** Section 56 under Part II of the Indian Evidence Act (now Section 51 of the Bharatiya Sakshya Adhiniyam, 2023) reads as under:-



**“56. Fact judicially noticeable need not be proved.—**No fact of which the Court will take judicial notice need be proved.”

**104.** In the case of **Harendra Rai** (supra), the Hon’ble Supreme Court had occasion to discuss in detail as to what would be the effect of taking judicial notice of certain facts. Paragraphs ‘72’, ‘73’ and ‘78’ of the judgment in case of **Harendra Rai** (supra) are quoted hereunder

**“72.** We are concerned with Section 56 of the Evidence Act, which deals with the authority of a court to accept certain facts, which are either of common knowledge or from sources which guarantee the accuracy or are a matter of authoritative official record or court record, without the need to establish such fact. The judicial notice of any fact is taken when the facts cannot reasonably be doubted.

**73.** This Court, in its various pronouncements, has taken support of Section 56 of the Evidence Act to do substantial justice in respective matters. Some of them are being reproduced hereinafter to get a better picture of how judicial notice is taken.

**78.** The law, in respect of taking judicial notice of any fact, may be summarised in the following manner:

**78.1.** The doctrine of judicial notice, as provided under Section 56, is an exception to general rules of evidence applicable for proving any fact by adducing evidence in the court of law.

**78.2.** According to Section 56 of the Evidence Act, judicial notice of any such fact can be taken



by the court, which is well known to everyone, which is in the common knowledge of everyone, which is authoritatively attested, which is so apparent on the face of the record, etc.

**78.3.** Except in the rarest of rare cases, judicial notice of any fact is generally not taken in criminal matters in the normal course of proceeding, and the case is decided on the basis of oral, material and documentary evidence adduced by the parties to find out the guilt or innocence.”

**105.** Taking recourse to Section 56 of the Indian Evidence Act, we take judicial notice of the fact that while absconding in the case, respondent no. 2 was charged for murder of one of the witnesses of this case but all the prosecution witnesses resiled, they were declared hostile and the benefit thereof accrued to the respondent no. 2.

**106.** The I.O. has stated that he had conducted raid in the house of respondent no. 2. Respondent no. 2 had not surrendered by that time. He has stated that in raid several firearms were seized from the place of respondent no. 2. To get the details of the firearm recovered from the place of respondent no. 2, we have noticed the recording of the I.O. in the case diary and found that the following firearms and ammunition are said to have been recovered from the place of respondent no. 2.



“ 2 कार्बाइन, 2 मैगजीन 9 एम एम का, 15 गोली, एक देशी पिस्तौल, .315 बोर का 3 जिन्दा गोली, 12 बोर का पाँच कारतूस आदि बरामद किया ।”

**107.** At this stage, we would take note of Section 8 of the Indian Evidence Act. The Hon’ble Supreme Court had occasion to discuss the said provision and the case laws in the case of **Harendra Rai** (supra). Paragraphs ‘83’ to ‘88’ from the judgment in the case of **Harendra Rai** (supra) are being reproduced hereunder for a ready reference:-

**“Issue (B) : Conduct of the accused-Section 8**

**83.** In the case in hand, the conduct of the accused is not only relevant under Section 8 of the Evidence Act but is also one of the major circumstances to arrive at a conclusion about his guilt. Section 8 of the Evidence Act is being reproduced hereinafter:

**“8. Motive, preparation and previous or subsequent conduct.**—Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.”

**84.** Illustration (e) of Section 8 throws some light on the case in hand and is significant in the present matter, which is being reproduced hereinafter:

**“Illustration (e)** A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who



might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.”

**85.** In a very interesting case of *Anant Chintaman Lagu v. State of Bombay*<sup>10</sup>, this Court, while holding the accused of that case guilty of murder, has touched on the aspects of relevancy of conduct of the accused subsequent to the incident in question, and its inference by the court to decide the guilt and innocence of the accused. Relevant extracts from the aforesaid judgment<sup>10</sup> are quoted hereinbelow : (AIR pp. 505, 510 & 526, paras 15, 31 & 76)

15. ... A criminal trial, of course, is not an enquiry into the conduct of an accused for any purpose other than to determine whether he is guilty of the offence charged. In this connection, that piece of conduct can be held to be incriminatory which has no reasonable explanation except on the hypothesis that he is guilty. Conduct which destroys the presumption of innocence can alone be considered as material. ...

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31. ... What inference can be drawn from his conduct after the death of Laxmibai is a matter to be considered by us. And in this connection, we can only say at this stage that if some prior conduct is connected intrinsically, with conduct after death, then motive of the appellant would be very clear indeed.

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76. These arguments, however, are of no avail, in view of the appellant's entire conduct now laid bare, which conduct has been proved to our satisfaction to have begun not after the death of Laxmibai but much earlier. This conduct is so knit together as to make a network of circumstances pointing only to his guilt.”

**86.** In the case with which we are dealing, there is no iota of doubt that Respondent 2-accused was instrumental in making all possible efforts to wipe out the evidence against him and the prosecution machinery as also the Presiding Officer of the trial court, if we may say so, was used as a tool of his high-handedness.

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10. 1959 SCC OnLine SC 21 : AIR 1960 SC 500



**87.** The obvious question pops up in the mind of any prudent person, as to why he was instrumental, when he was not guilty of the offence to which he was being tried. The obvious answer to this would reasonably come to mind of any prudent person that his guilty mind was fearful about the result. All these aspects leave no room for doubt that the subsequent conduct of Respondent 2 is one of the major circumstances pointing towards his guilt for the incident that occurred at 9 a.m. on 25-3-1995.

**88.** We may quote a Latin maxim which aptly means that a person who receives advantage must also bear the burden, “*qui sentit commodum, sentire debet et onus*”.”

**108.** We are of the opinion that in the present case also, the conduct of respondent no. 2 must be noticed. The firearms and ammunition recovered from the place of respondent no. 2 are such that it may be easily appreciated as to what kind of reputation the respondent no. 2 could have and would have and how that would be a relevant fact. Under illustration (e) of clause 2 of Section 3 of the Indian Evidence Act, it is provided as under:- “(e) that a man has a certain reputation is a fact.”

**108.** The word “relevant” has been defined as:- “One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of the Act relating to the relevancy of facts.”

**109.** In ultimate analysis, we find that the learned trial court has committed a gross error by ignoring several material



evidences and aspects of the matter. We are conscious of the principles governing an appeal against acquittal.

**110.** In the case of **Ganesha** (supra), the Hon'ble Supreme Court has observed *inter alia* as under:-

“**11.**... where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the trial court shall be obliged to reappraise the evidence in light of the observation of the Revisional Court and take an independent view uninfluenced by any of the observations of the Revisional Court on the merit of the case. ...”

**111.** In the present case, since we have noticed that the trial court has not only failed to ensure that the exhibits are to be properly marked but has also mistaken Sanjay Kumar (PW-4) as an injured witness and has drawn adverse inference from his deposition, for the various reasons which we have discussed hereinabove, we are of the considered opinion that the judgment of the trial court in this case is only a cut and paste judgment of Sessions Trial No. 246 of 2006. Paragraph '20' of this judgment is verbatimly the same and one as that of paragraph '22' of the judgment in Sessions Trial No. 246 of 2006. The impugned judgment is, therefore, apparently in the nature of a routine and mechanical judgment without properly appreciating the evidences on the record. We have discussed the evidences and have given some observations hereinabove only for pointing out how



the learned trial court has missed out in appreciation of the evidences on the record.

**112.** This Court sets aside the impugned judgment and remits the matter to the trial court once again for fresh consideration after taking on the records the documents which have already been marked exhibit but not placed on the record of the trial court or the records which are there on the record, signatures thereon have been marked exhibits but the whole document has not been marked.

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

**114.** The trial court shall reappraise the evidences and take an independent view uninfluenced by any of the observations of this Court on merit.

**115.** While parting with this judgment, this Court would express its anguish on the manner in which the records of the case have been maintained. We have noticed that a number of important documents are lying on the record in torn condition and are getting



destroyed. This Court would, therefore, direct the learned Registrar General of this Court to issue appropriate direction to the concerned Section/Office of this Court to get the records properly arranged and safely preserved. The documents which are getting damaged and destroyed be preserved in digital form.

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

**117.** The accused-private respondent shall surrender in the trial court within two weeks from today, if he is on bail, then the trial court shall obtain fresh bail bond from the accused-private respondent.

**118.** It is made clear that the observations of this Court hereinabove shall not cause prejudice to the case of the either parties.

**119.** The appeals are allowed to the extent indicated hereinabove.

**(Rajeev Ranjan Prasad, J)**

**(Ashok Kumar Pandey, J)**

Rishi/-

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