

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.100 of 2019

Arising Out of PS. Case No.-91 Year-2016 Thana- JAMALPUR District- Munger

1. Bimal Yadav, Son of Bikan Yadav, Resident of Village - Bakunia, P.S.- Nawhatta (Darhar O.P.), District-Saharsa.
2. Amar Yadav, Son of Bikan Yadav Resident of Village - Bakunia, P.S.- Nawhatta (Darhar O.P.), District-Saharsa.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 84 of 2019

Arising Out of PS. Case No.-91 Year-2016 Thana- JAMALPUR District- Darbhanga

Kamal Yadav, son of Bikan Yadav R/o village- Bakonia, P.S- Nawhatta (Darhar O.P), District- Saharsa.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 100 of 2019)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Shivam, Advocate
Mrs. Sushmita Mishra, Advocate
Dr. Rajesh Kumar Singh

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

(In CRIMINAL APPEAL (DB) No. 84 of 2019)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Shivam, Advocate
Mrs. Sushmita Mishra, Advocate
Dr. Rajesh Kumar Singh

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

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date : 10.04.2026

At the outset, it is important to mention that

both above named appeals are disposed herewith

through this common judgment, as same arises out of



Sessions Trial Case No. 177 of 2017, arising out of Jamalpur P.S. Case No. 91 of 2016 corresponding to G.R. No. 987 of 2016.

2. The present appeal preferred by appellants /convicts for final hearing against judgment of conviction dated 19.12.2018 and order of sentence dated 21.12.2018 passed by the learned Additional Sessions Judge-II, Benipur, Darbhanga in Sessions Trial Case No. 177 of 2017, arising out of Jamalpur P.S. Case No. 91 of 2016 corresponding to G.R. No. 987 of 2016, whereby and whereunder appellants/convicts have been convicted for the offences punishable under Section 302/34 of the Indian Penal Code (in short 'IPC') and sentenced them to undergo rigorous imprisonment for life with a fine of Rs. 25,000/-, in case of default of payment of fine, they shall further undergo simple imprisonment for one year.

3. The brief case of prosecution raised on fardbeyan as recorded by A.S.I. Navendra Kumar Singh



of Beta O.P., Darbhanga near to emergency ward of doctor Anil Kumar of Darbhanga Medical College and Hospital (in short 'DMCH') that his father namely, Dashrath Yadav (deceased) was going on 27.12.2026 to Darbhanga by taking tempo from Kirathpur Chowk. It was stated that his father proceeded to another State and as he reached 200 yards near to the Kirathpur chowk, Vikash Yadav son of Babuan Yadav, Bimal Yadav (appellant), Kamal Yadav (appellant) and Amar Yadav (appellant) all sons of Bikan Yadav, Brajesh Yadav, Gulshan Kumar Yadav, both sons of Bimal Yadav, Mukesh Yadav, Rakesh Yadav, both son of Kamal Yadav, residents of village Bakunia, P.S. Nawhatta, District- Saharsa, who were hiding there prior to reaching of tempo, came in front and stopped tempo and pulled his father forcibly. All aforesaid persons who were equipped with *iron rod, lathi* and rod started assaulting his father and injured him badly, as a result of which he became seriously injured. Upon public alarm, the nearby people



and villagers when started coming towards place of occurrence, seeing them, the aforesaid persons snatched Rs. 5,000/- and mobile and fled away, whereafter by the help of villagers and family members, he brought his father first to Primary Health Centre, Kirathpur from whereafter giving primary treatment, he was referred to DMCH, where he was admitted to emergency ward of Dr. Anil Kumar but during treatment, he died. It was stated that his both legs and hands also got fractured.

4. The aforesaid fardbeyan was read over to him, which he understood and found correct and, thereafter, before his uncle and family members he put his signature. The aforesaid fardbeyan was witnessed by Sushil Kumar Yadav, Ram Naresh Yadav Nunulal Yadav and Shrawan Yadav, who were examined during the trial.

5. On the basis of aforesaid fardbeyan, police registered Jamalpur P.S. Case No. 91 of 2016 on 28.12.2016 for the offences punishable under Sections 341, 323, 325, 302, 379/34 of the Indian Penal Code.



6. After completion of investigation, police submitted charge-sheet No. 16 of 2017 on 31.03.2017 against three accused persons/appellants for the offences under Sections 302/379/34 of the Indian Penal Code (In short 'IPC').

7. Learned Jurisdictional Magistrate after taking cognizance of the case and making compliance of Section 207 of the Cr.P.C., committed the present case to the Court of Session under Section 209 of the Cr.P.C. for its trial and disposal.

8. To establish its case before the learned trial court, the prosecution altogether examined in total of eight witnesses, namely, **PW-1** Bindu Sada, **PW-2** Bahadur Sada, **PW-3** Sushil Kumar Yadav, **PW-4** Bishundev Yadav, **PW-5** Raushan Yadav (Informant), **PW-6** Nunulal Yadav, **PW-7** Dr. Ravi, **PW-8** Digamber Kumar (I.O. of this case).

9. The prosecution has also exhibited following documents during the trial to substantiate its



case which are as:-

Exhibit-1 - Fardbeyan

Exhibit-1/1 Signature of the informant over the fardbeyan.

Exhibit-1/2 Signature of 04 witnesses over the fardbeyan, namely Sushil Kumar Yadav (P.W-3), Ram Naresh Yadav (not examined).

Exhibit-2: Inquest Report

Exhibit-2/1-:Signature of the witnesses, namely, Raushan Kumar (PW-5) and Nunulal (PW-6) over the Inquest Report.

Exhibit-3 Post Mortem Report

Exhibit-4 Formal FIR

10. After examination of the prosecution witnesses and by taking note of evidences and incriminating circumstances as surfaced during the trial, the statement of appellants/accused persons were recorded under Section 313 of the Cr.P.C., which was denied in totality by showing complete innocence.

11. In support of defence, accused persons examined in total of four witnesses, who has been examined before the learned trial court as **DW-1** Harikishan Yadav, **DW-2** Brijlal Yadav, **DW-3** Phulo



Yadav, **DW-4** Amiri Lal Yadav.

12. On the basis of aforesaid evidences as surfaced during the trial, the learned trial court convicted the appellants/convicts and passed order of sentences accordingly, being aggrieved with, the present appellants /convicts have preferred the present appeal.

13. Hence the present appeal.

14. Opening his argument, it is submitted by Mr. Ajay Kumar Thakur, that the father of the informant died due to injuries received out of accident of motor vehicle (tempo) and due to inimical terms, the appellants were implicated in the present case as two criminal cases and one civil case is pending between them. It is submitted by Mr. Thakur that the informant projected himself as an *eye-witness* of the occurrence, however, at the time of occurrence he was in Darbhanga in connection with his studies. It is also pointed out that FIR lodged with delay without any just explanation. It is also pointed out that the other prosecution witnesses who are the immediate



family members of deceased claimed themselves as an *eye-witness* of the occurrence and their presence at place of occurrence collectively is mere a chance in itself which creates a doubt *qua* their testimony as *eye-witness* of the occurrence. Particularly in view of fact that when four members of the family including informant was at place of occurrence, none of them came forward to rescue the deceased.

15. It is further submitted by Mr. Thakur that during trial only two independent witnesses were examined i.e. PW-1 and PW-2. P.W. 1, categorically stated in his examination-in-chief that he came to know that father of the informant died due to road accident whereafter he was declared hostile. PW-2 who is another eye-witness of the occurrence, who also deposed through his examination-in-chief that the father of the informant died due to accident but was not declared hostile by the prosecution and, therefore, a serious doubt *qua* entire occurrence surfaced during the trial, which was



completely overlooked by learned trial court while recording the judgment of conviction.

16. While concluding the argument, it is submitted by learned counsel that the deceased father of the informant was a labour contractor, who usually works outside the State and when he was going alongwith other labours in tempo unfortunately the accident took place, due to which he received serious injuries and died during treatment in DMCH. It is submitted that the doctor who has been examined as PW-7, ascertained during his cross-examination that this type of injuries are also possible in road accident.

17. In view of aforesaid, it is submitted that the prosecution failed to established its case beyond all reasonable doubt, the benefit of which must be extended to appellants by setting aside the impugned judgment. Mr. Thakur relied upon the legal report of Hon'ble Supreme Court as available through ***Rajendra Singh and others Vs. State of Uttaranchal Etc.*** reported as



2025 SCC OnLine SC 2148, Punimati and Another Vs. State of Chhattisgarh and Others reported as **2025 SCC OnLine SC 2866** and **Goverdhan and Another Vs State of Chhattisgarh reported as (2025) 3 SCC 378.**

18. Learned APP while opposing the appeal submitted that though witnesses were present as a matter of chance near to the place of occurrence but it is not an impossible event, which could not be believed. It is pointed out that admittedly parties were in inimical terms and, therefore, out of said enmities, the present occurrence took place. However, he could not dispute the fact that PW-2 ascertained the occurrence as accident and was not declared as hostile by the prosecution during the trial.

19. Learned APP relied upon the legal report of Hon'ble Supreme Court as available through **Balraje v. State of Maharashtra** reported as **(2010) 6 SCC 673, Dalip Singh v. State of Punjab,** reported as



(1953) 2 SCC 36, *Masalti v. State of U.P.*, reported as 1964 SCC OnLine SC 30 and *Namdeo v. State of Maharashtra*, reported as (2007) 14 SCC 150.

20. It would be apposite to refer **para No. 26** of the legal report of Hon'ble Supreme Court in the matter of ***Rajendra Singh and others (supra)***, which reads as under:-

"26. This Court, in several decisions, while considering the evidentiary value of a chance witness, has held that the deposition of a chance witness whose presence at the place of incident is doubtful should be discarded, or at least be treated with great caution and close scrutiny. Such a chance witness must adequately explain his presence at the place of incident, which has not been satisfactorily done in the instant case."

21. It would be further apposite to refer **para No. 13** of the legal report of Hon'ble Supreme Court in the matter of ***Punimati and Another (supra)***, which reads as under:-

"13. It is a well-settled law that merely because the witness is an interested or related witness, his/her deposition cannot be discarded. Further, deposition of such witnesses is required to be scrutinized closely. As such, we have closely scrutinized the deposition given by



PW-4, who is the mother of the deceased. As observed hereinabove, there are material contradictions in her deposition regarding the manner in which the incident took place and with regard to which the information about the incident was given by her granddaughter."

22. It would be further apposite to refer **para Nos. 52 to 54** of the legal report of Hon'ble Supreme Court in the matter of ***Goverdhan and Another (supra)***, which reads as under:-

"52. It goes without saying that to be an eyewitness, the witness must have been at the place of occurrence or in the vicinity within the range of visibility when the incident occurred.

53. If we critically examine the other evidence on record, it cannot be said that Lata Bai (PW 10) did not see the incident.

54. For this, we will first refer to the evidence of Santosh (PW 6). Even though Santosh (PW 6) had claimed during his court testimony that he did not see who the assailants were, yet, in the cross-examination he specifically stated that it is true that the information of the incident was given immediately by him to the mother (PW 10) and father (PW 5) of Suraj. Therefore, the presence of Lata Bai near the place of occurrence cannot be doubted. It is to be noted that in the site map of the place of occurrence (Ext. P-16) it is mentioned that the body of the victim was found very near about 21 ft on the lane opposite the house of the deceased. Thus, it cannot be said that it was impossible on her part to have witnessed the incident. PW 10 is not a chance witness but a natural witness. She



did not suddenly appear at the place of occurrence where she was not expected to be present."

23. It would be apposite to refer **para Nos. 29 and 30** of the legal report of Hon'ble Supreme Court in the matter of ***Balraje v. State of Maharashtra, (supra)*** which reads as under:-

"29. Law is fairly well settled that even if acquittal is recorded in respect of the co-accused on the ground that there were exaggerations and embellishments, yet conviction can be recorded if the evidence is found cogent, credible and truthful in respect of another accused. The mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence.

30. In law, testimony of an injured witness is given importance. When the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence."

24. It would be apposite to refer **para No. 24**



of the legal report of Hon'ble Supreme Court in the matter of ***Dalip Singh (supra)*** which reads as under:-

24. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

25. It would be apposite to refer **para No. 14** of the legal report of Hon'ble Supreme Court in the matter of ***Masalti (supra)*** which reads as under:-

"14. Mr Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prove to involve falsely members of the rival faction out of enmity



and partisan feeling. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

26. It would be apposite to refer **para No. 38** of the legal report of Hon'ble Supreme Court in the matter of **Namdeo (supra)** which reads as under:-

"38. *From the above case law, it is clear that a close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony*



of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."

27. We have perused the trial court records carefully and gone through all the evidences available on record and has also considered the rival submissions as canvassed by the learned counsel appearing on behalf of the parties.

28. As to re-appreciate the evidence, while disposing the present appeal, it appears apposite to us to discuss the evidences available on record with aforementioned legal notes which are as under:-

29. PW-1 is Bindu Sada, who deposed during trial that occurrence took place about 4:00 PM somewhere before five months, he was busy with irrigation of wheat field of the informant namely, Raushan Yadav and heard the public alarm that some accident took place, whereafter Dashrath Yadav



(deceased) was taken to the hospital. He could not see that who assaulted him. He was declared hostile by the prosecution. He denied the suggestion that he made a statement before the police that three persons equipped with *lathi, rod* assaulted the father of the informant and he died during his treatment. It was ascertained that he is not the eye-witness of the occurrence but came to know that the father of informant namely Dashrath Yadav died due to road accident.

30. PW-2 is Bahadur Sada, who testified during the trial through his examination-in-chief that at the time of occurrence he was irrigating his wheat field and was also planning to go outside but in meantime, he came to know that contractor (deceased father of the informant) met with an accident, he saw that three persons were engaged to bring him on cot, namely, Ram Yadav, Phul Yadav and Jyotish Yadav. Subsequently, he said that four persons were engaged carrying the injured, out of which one was unfamiliar to him. He also



accompanied the injured till Kirathpur Hospital, from where doctor referred the injured to DMCH for better treatment and he came to know on the very next day that contractor had died. It was stated that he made the same statement before police. He was not declared hostile by the prosecution. He had also identified the accused persons.

30.1 Upon cross-examination, he stated that the accident took place near to Partaha village and father of the informant died due to injuries received in road accident.

31. PW-3 is Sushil Kumar Yadav, who claimed to be an *eye-witness* of the occurrence. It was deposed by him that at the time of occurrence he was at Kirathpur Chowk and after hearing public alarm, he came to near north south embankment of Koshi and saw that Bimal Yadav, Kamal Yadav, Amar Yadav, Vikash Yadav, Mukesh Yadav, Rakesh Yadav, Gulshan Kumar, Brajesh Kumar, in total of nine persons were assaulting Dashrath



Yadav (deceased) by using *lathi*, *danda* and *rod*. It was ascertained that Kamal Yadav penetrated rod in the neck of Dashrath Yadav. It was also ascertained in his examination-in-chief that after occurrence injured was taken to Kirathpur Hospital, from where he was further referred to DMCH for better treatment, where he died after 20 minutes. It was also ascertained that informant has given his fardbeyan before ASI/daroga in DMCH before him and has also put his signature over there.

31.1 Upon cross-examination, he stated that land dispute was pending between the parties and Dashrath Yadav (deceased) was his cousin brother. It was said that in total of 3-4 litigations are pending between them i.e. with appellants/accused. All litigations are said to be pending in the Civil Court, Saharsa. It was said that Amar Yadav (appellant) lodged Nawhatta P.S. Case No. 79/13 and 125/13 against them. It was also stated that one Title Suit bearing No. 158/14 is also pending in the Civil Court, Saharsa. It was also stated



that his house is at the distance of about one and half kilometers from Kirathpur Chowk and there is no direct route to come to Kirathpur Chowk from his house as one river is there, which is always filled with water in all seasons and boat is the only source of convenience. It was stated that Kirathpur market is at a distance of about 100 meters from the place of occurrence. He could not disclose that when he proceeded from his house. He stated that he proceeded alone. He met with Bishundeo Yadav while on the way and with Dashrath Yadav at about 4:00 PM at place of occurrence. It was also ascertained by him that Dashrath Yadav is a Contractor and works in Gujarat by hiring labours from village. It is categorically stated by him that at the time of occurrence Dashrath Yadav was going outside alongwith his labours, however, he could not disclose the name of labours. He could not said the number of vehicle through which he was going. He could not describe the injuries. It was stated by him that Dashrath Yadav was given primary



treatment at Kirathpur Hospital i.e. for about 5-10 minutes, whereafter was referred to DMCH where the treatment was continued for 20-25 minutes and, thereafter, he was referred to PMCH (Patna Medical College and Hospital), where the treatment was continued for 20-25 minutes. It was stated that except Dashrath no one received treatment, this is the only witness who stated that deceased was treated upto Patna Medical College and Hospital, he denied the suggestion that Dashrath Yadav died due to road accident and false implication was raised due to previous enmities.

32. PW-4 is Bishundeo Kumar Yadav, who also claims to be an eye-witness of the occurrence. At the time of occurrence he was at Chhilkora Chowk, which is 200 yards away from the place of occurrence. After hearing public cry he came to the place of occurrence and saw that Vikash Yadav, Bimal Yadav, Kamal Yadav, Amar Yadav, Brajesh Yadav, Mukesh Yadav, Gulshan



Kumar and Rajesh Kumar were assaulting Dashrath Yadav by using *lathi*, *rod* etc. The blood were oozing out from the mouth and nose of Dashrath. When people gathered over there, the accused persons fled away. It was also ascertained by him that the injured Dashrath Yadav was hospitalized in Kirathpur Hospital from where he was referred to Darbhanga, where he died during treatment.

32.1 Upon cross-examination, it was stated by him that informant is his nephew. It also stated that in total of 2-3 litigations are pending between them and also ascertained that Amar Yadav (appellant) lodged Nawhatta P.S. Case No. 125/13 and 79/13 against him. It is also stated that a Title Suit is also pending between them and parties are the agnates of each other. His village was located between the two banks of Koshi and Chhilkora Chowk which is about 2-3 kilometers away from his village where one can only reach after crossing two rivers through boat. It was also stated that the



distance between Chhilkora and Kirathpur is one kilometer. It was also ascertained by him that he alone proceeded for Chhilkora from his house at 2:00 PM. It was stated that the place of occurrence is about 200 yards in north from Kirathpur Chowk whereas the Kirathpur hospital is about 300-400 yards away from place of occurrence. It was said that the Kirathpur Chowk is a busy public place. He saw total of 10-12 persons at the place of occurrence and found Bigan Yadav, Bimal Yadav, Kamal Yadav, Amar Yadav, Brajesh Yadav, Gulshan Yadav, Mukesh Yadav and Rakesh Yadav. Upon further cross-examination, he stated that Dashrath Yadav was doing service in Gujarat in one M/s Alkem company. He came to village from Gujarat 10-15 days before. He could not disclose the name of labour engaged by Dashrath Yadav. It was stated that the deceased has three sons, namely, Raushan Kumar, Vikash Kumar and Nandan Kumar and Raushan Kumar (informant) study at Darbhanga and is a student of



Matric (Class-Xth). He stated that the doctor referred Dashrath Yadav immediately for DMCH and his treatment was continued at Darbhanga throughout day and night. He was present during treatment of Dashrath Yadav. It was stated that the funeral rite took place on 28th or 29th day of December. It was also stated that parties were fighting for 11 bighas of land, for which the matter was pending in Civil Court, Saharsa. He denied the suggestion that no such occurrence took place and the father of the informant died in a road accident.

33. PW-5 is the informant, namely, Raushan Kumar, it was deposed by him through his examination-in-chief that the occurrence took place about one year before and the time was about 4:00 PM. He was accompanied with his father for Darbhanga and was also on tempo and when he turned towards north from Kirathpur Chowk, immediately thereafter the accused persons Bimal Yadav, Amar Yadav, Kamal Yadav, Brajesh Yadav, Mukesh Yadav, Rakesh Kumar,



Gulshan Kumar and Vikash Yadav came there suddenly equipped with lathi, rod etc. It was testified by him that Kamal Yadav, penetrated rod in the neck of his father and also caused injuries in his head. When people gathered over there the accused persons fled away, whereafter his father was brought to PHC, Kirathpur from where the doctor referred him for DMCH, where his treatment was continued for 10-20 minutes whereafter he died. It was stated that his fardbeyan was recorded in DMCH itself, which he identified and found correct during the trial and upon his identification it was exhibited as **Exhibit-1/1**. He also identified his signature on inquest report, which upon his identification was exhibited as **Exhibit No. 2**.

33.1 Upon cross-examination, it was stated by him that witnesses Sushil Yadav (PW-3), Bishundev Yadav (PW-4), and Nunulal Yadav (PW-6), all are his uncle. He could not state that how many cases are pending between the parties. It was stated that he



passed his class 10th examination in year 2014 and he is the student of ML Academy of Darbhanga. It was deposed that he is residing in Darbhanga since last three years. It was also deposed that Mukesh Yadav, Brajesh Yadav, Gulshan Yadav are also residing at Darbhanga. Upon further cross-examination, it was stated by him that between his village and Kirathpur, there is a stream of Koshi river, which remains full of water in all seasons and can be crossed only by using boat. It took at least half an hour usually from his village to reach Kirathpur. It was stated by him that his father works in Gujarat as a Contractor for a company. He also stated that he was a labour contractor and he usually engage labour of nearby 4-5 villages for his work in Gujarat. He could not state the registration number of tempo but stated that it was of blue colour. He was sitting in front of the tempo next to the driver. There was plenty of blood at place of occurrence. The clothes of his father was also stained with blood. After 10-15 minutes of occurrence his father



was taken to Kirathpur Hospital for treatment. It was stated that whether he was treated in OPD or not can be said by only his uncle. The treatment at Kirathpur was continued only for 2-4 minutes whereafter his father was referred to DMCH where treatment was continued for 20 minutes and, thereafter, he died. He informed police on next day of the occurrence i.e. on 28th at DMCH itself. He was aware about Jamalpur police station which is in Kirathpur, where occurrence took place. He could not state that which accused were equipped with which type of weapons. Police recorded his statement at place of occurrence after 3-4 days of the occurrence. He denied that his father died in road accident and due to previous enmities, implicated accused persons.

34. PW-6 is the Nunulal Yadav, who also claimed as an *eye-witness* of the occurrences and deposed through his examination-in-chief that on 27.12.16 at about 4:00 PM, he was at Kirathpur Chowk. He was informed by unknown person that his brother is



assaulted by Kamal Yadav, Bimal Yadav, Amar Yadav, Brajesh Yadav, Gulshan Yadav, Rakesh Yadav, Mukesh Yadav, Dukhan Yadav, whereafter he went there and found accused persons assaulting his brother by using *danda* and *rod* and due to said assault both legs and hands become fractured. Kamal Yadav penetrated rod in neck, resulting profused bleeding from nose and mouth of Dashrath Yadav. It was specifically deposed that Kamal Yadav snatched Rs. 5000/- and one mobile of his brother. He also deposed that after receiving treatment for some time, his brother was referred to DMCH, where he died after 20-25 minutes during course of his treatment. He testified that the informant has given his fardbeyan before police in his presence and has also put his signature thereof, which upon his identification was exhibited as **Exhibit No. 1/2**. He also testified the inquest report of his deceased brother Dashrath Yadav which was prepared in his presence. He identified his signature before the court and over inquest, which upon



his identification was exhibited as **Exhibit No. 2/1**.

34.1 Upon cross-examination, it was stated that Sushil Yadav and Bishundeo Yadav are his brothers. He also stated that accused were in inimical terms since last 2-3 years. He also ascertained land dispute between the parties. He could not ascertained that Amar Yadav lodged Nawhatta P.S. Case No. 79/13 and 125/13 against him. The Title Suit was filed by him. It was stated that parties are agnates of each other. He proceeded for Kirathpur market from his home at 2:00 P.M. He purchased clothes from the shop but could not disclose the name of shop keeper. He met with several persons in between but could not disclose the name of anyone. He could not disclose the name of any of the shop keeper of the Kirathpur market. It was stated that his deceased brother was a labour contractor in Gujarat. It was stated that when he reached at place of occurrence, 10-15 persons were already present there. He identified only 9-10 persons, who are Raushan



Kumar, Sushil Kumar, Bimal Yadav etc. It was stated that Kamal Yadav was equipped with rod and rest of the accused persons were equipped with lathi. He tried to save his brother but by that time, nearby persons arrived there, as a result the accused persons fled away. He does not received any injuries during the occurrence, as he was at the distance of 3-4 laggas. The accused persons were assaulting Dashrath Yadav indiscriminately by lathi, therefore, he could not stated that who assaulted how many times by lathi to deceased. He found blood at place of occurrence. He could not explain that in which ward of Kirathpur hospital the treatment was given to the deceased and stated that Sushil Kumar and Shrawan Yadav were present over there. He could not state that who informed police first. He denied the suggestion that Dashrath Yadav died in road accident and taking benefit of that the applicants were falsely implicated with this case.

35. PW-7 is Dr. Ravi, who was posted as



Tutor in department of FMT, D.M.C.H, Darbhanga. On 28.12.2016, he examined deceased Dashrath Yadav, Son of Sital Yadav, Village- Bakunia, P.S. Nawhatta, Distt. Saharsa and found following injuries on his person:-

1. Body and body clot were soaked with blood and blood clots bandages soaked with blood and blood clots were found over different part of the body. Blood and Blood clots found over both nostrils and both ears. Abrasion measuring 3'x1/2' is found over right side of forehead. 3 1/2"x1/2" was found over right side of neck on lateral aspects.

3- Lacerated wound measuring 3"x1/2"x1/8' was found over it paritatiouperoual region of the head.

I- 5x 1/4"x Muscle deep was found middle of the left leg on lateral aspects.

II-2 1/2"x1/4" x muscle deep was found over medial aspects of right thigh in the middle

III-3 1/2"x1/2"x1/8"was found over left arm



lateral aspects.

These wounds were infiltrated with blood and blood clots. There was closed fracture of shaft of right humerus in the middle. There was closed fractured shaft of femur in the middle and left tibia and fibia in the middle.

4. On dissection of scalp underlines of tissues and muscles were grossly lacerated and infiltrated with blood and blood clots in left parietal temporal region of head. On removal of soft tissues and muscle and cleansing the area there was linear fracture 3' in length in left parietal bone. On removal of scalp cap there was extra dural and sub dural haematoma were present in both hemisphere of brain. Right side of heart was filled with blood and left was found empty. Both lungs, liver, spleen and both kidneys were pale. Stomach and urinary bladder was found empty.

5- Opinion- Above noted injuries were ante-mortem and dangerous to life in ordinary course of



nature. These were caused by Hard and blunt object/s consisted with Police inquest. Death was due to intracranial hemorrhage, compression and shock. Time since death was within 12-18 hours from the time of P.M examination in the deptt. This report was with my pen and bears my signature and seal of the deptt. Mark as ext.-3.

35.1 Upon cross-examination, it was deposed by him that during autopsy he found bandage over the wound. He found total of four wounds from which the blood was oozing. Injury no. 2 was on neck, which was superficial. Injury no. 1 was on head, which was also superficial. It was categorically stated that this type of injury is possible in accident. It is stated that only cause of death is required to be mentioned in postmortem not the time of injury. It was also stated that all injuries were found to be caused by using blunt weapons. One fractured in right leg and one fractured in left leg were found upon.



36. PW-8 is Digambar Kumar, who is Investigating Officer of this case, who was posted as SHO in Jamalpur police station on 20.12.2016 and registered the present case as Jamalpur P.S. Case No. 91/16. He identified his signature and also the handwriting of formal FIR, which upon his identification was exhibited as **Exhibit No. 4.** He visited place of occurrence and prepared a map and after obtaining criminal antecedent report, Call Details Record of accused persons, Consumer Application Forms (In short 'CAF') obtained during investigation and as per the direction of his superior authority, submitted charge-sheet against accused/appellants for the offences punishable under Sections 302, 379/34.

36.1 Upon cross-examination, it was stated by him that Bindeshwar Sada and Bahadur Sada (PW-2) are independent witnesses, whereas the witness Sushil Kumar Yadav (PW-3), Bishnudeo Yadav (PW-4) and Nunulal Yadav (PW-6) are the family members of the



deceased. He could not collect any mark regarding occurrence from the place of occurrence. He could not find blood. No one received injuries except deceased. He only received postmortem report and stated that no injury report was received by him. The postmortem report is not mentioning with police case number as by that time no FIR was lodged. It was stated that in FIR, no specific allegation is available against any of the accused persons. It is stated that the fardbeyan suggest that both hand and leg of deceased were fractured. He stated that witnesses supported the pending criminal litigation and title suit. It was also stated that mobile number 7292930937 which was said to be snatched by the informant from his father during the occurrence was found registered in the name of Prakash Mukhiya son of Ramu Mukhiya of village Punhad, District- Darbhanga. At the time of occurrence this mobile was in village Pardaha, police station -Nawhatta, District- Saharsa, which was two kilometer away from place of occurrence.



He denied the suggestion that Dashrath Yadav died in accident and also in want of proper treatment.

37. Record also suggest that in total of four witnesses were examined in defence. All of them supported the fact that they came to know that deceased Dashrath Yadav was going to Garole Chowk from Partaha and due to turning of his tempo he received injuries, due to which he died during his treatment. None of them appears to be an *eye-witness* of the occurrence. DW-3 stated through his examination-in-chief that after accident Dashrath Yadav was brought to his home and he went there to see him, whereafter he was taken to hospital and he has also accompanied them up to village border.

Our Findings

38. The first and foremost issues, which seems to us is to whether the PW-3 Sushil Kumar Yadav, PW-4 Bishundev Yadav and PW-6 Nunulal Yadav are wholly reliable witnesses or not as they are family members of



deceased and ascertained their presence at place of occurrence as a matter of 'chance', in the background of previous enmities arising out of land dispute.

39. It appears from the testimony of PW-3 that the appellant Kamal Yadav penetrated rod in the neck of Dashrath Yadav, the deceased. He ascertained that at the time of occurrence he was at Kirathpur Chowk. He also testified that he met with Dashrath Yadav at about 4:00 PM at place of occurrence and when the occurrence took place he was going with labours further stepping ahead it was said by him in his cross-examination that deceased Dashrath Yadav was referred to PMCH, where his treatment was continued for 20-25 minutes. No any witness including the informant testified that for any point of time the deceased was referred to PMCH in connection with his statement. The aforesaid testimony of PW-3 is in contrary to the statement of PW-4, PW-5 (informant) and PW-6 that the deceased died in the emergency ward of DMCH, creates a serious doubt *qua*



his presence at place of occurrence.

40. PW-4, who also claimed to be an *eye-witness* of the occurrence and ascertained that at the time of occurrence he was at Chhilkora Chowk, which is about 200 yards away in north of place of occurrence. He ascertained that the deceased was assaulted by accused appellants and other accused persons but nowhere ascertained that Kamal Yadav caused penetrative wound to the neck of deceased, rather he stated that the blood was oozing out from the mouth of the deceased. He also ascertained that the deceased was going with labours to Gujarat, where he was working as a labour contractor. He stated contrary to the deposition of PW-3, PW-5 (informant) and PW-6 that the treatment of the deceased was undergoing the whole night, contrary to the statement that it was continued for about 20-25 minutes. Similarly, PW-6 who is Nunulal Yadav, who is brother of the deceased also said to be present at Kirathpur Chowk at the time of occurrence as he went



there to purchase some goods. He stated that during the occurrence both legs and hands of his brother got fractured contrary to medical finding, all these three witnesses, who claimed themselves to be an *eye-witness* of the occurrence appears to be present near the place of occurrence as a matter of chance. It was also stated by all witnesses that only through boat they can arrive the place of occurrence from their home. They are immediate family members and their contradictions qua treatment and manner of assault as discussed aforesaid cannot be accepted as minor contradictions. All these three chance witnesses who are the family members categorically stated that the two criminal cases were lodged by appellant's side against them by appellant Amar Yadav, which is as Nawhatta P.S. Case No. 125/13 and 79/13 whereas the informant's side lodged a Title Suit for dispute of 11 bighas of land, which is pending in Civil Court, Saharsa as Title Suit No. 158/14. It transpires from the deposition of PW-3, PW-4 and PW-6



that place of occurrence is a "Chowk" and a busy public place but no independent witness were examined except PW-2, who testified *qua* occurrence as a road accident.

41. In view of aforesaid, we are of the considered opinion that these three witnesses are interested witness in the outcome of the trial seeking to secure the conviction. Their testimony, *qua* crime in question also appears inconsistent on material aspects, as discussed above. The presence of all three immediate family members at or near to the place of occurrence also creates a doubt, for the reason that despite the presence of four immediate family members including informant at the place of occurrence, no efforts was made by any of them individually or collectively to save the deceased. Hence, we are convinced enough that their testimony are not "wholly reliable" being those of interested witness. Furthermore, their presence at place of occurrence does not appear to have been adequately explained to us.



42. Now coming to the testimony of PW-5, who is the informant of this case. It transpires that he is the person whose 'fardbeyan' forms the basis of the FIR. He is the son of the deceased, aged about 18 years. He recorded his statement in emergency ward of DMCH. He also projected himself as an *eye-witness* to the occurrence and as per FIR made an impression that he was with his father in the tempo. He nowhere stated in his fardbeyan that Kamal Yadav inflicted an injury on the neck of his father, rather he did not even name the person who took Rs. 5000/- and the mobile from his father's pocket. He not even stated while recording FIR that he was with his father in tempo but while deposing before the court as PW-5, he stated that he was with his father in tempo and sitting on front seat next to the driver but during the trial as PW-5 he stated that Kamal Yadav struck his father on the neck with a rod. He failed to testify that any cash or mobile was looted from his pocket during the occurrence. He also stated that his



father was working as a labour contractor in Gujarat though he identified the colour of tempo as blue but failed to say anything about its registration number. He said that after 10-15 minutes of the occurrence his father was taken to Kirathpur Government Hospital but he could not state whether he was treated in OPD or not, which makes his presence at Kirathpur Hospital doubtful. He also stated that he informed the police from DMCH on next very day i.e. on 28th of December 2016. Though it transpires from his testimony that Jamalpur police station was just one and half kilometer ahead to the place of occurrence. He could not even have stated that which person were equipped with *lathi* and which were equipped with rod, this testimony creates a doubt *qua* his testimony that Kamal yadav has inflicted an injury on the neck of his father, and such his testimony being of interested witness also not appears "wholly reliable".

43. PW-7, conducted autopsy upon the dead body of the deceased, namely Dashrath Yadav, found



only six injuries, where the first one was measuring 3'x1/2'on the right side of forehead and 3'1/2x1/2' was found over right side of the neck. Lacerated wound measuring 3'x1/2x1/8' was found on parietal temporal region of the head and thereafter, one muscle deep injury was found on middle of the left leg and another was on medial aspects of the right thigh and last one was found over left arm lateral aspects. None of the wound was found of penetrating in nature. The injury on neck and forehead were superficial in nature and it was also ascertained by him that this type of injuries are possible in accident. The cause of death was ascertained as intra-cranial hemorrhage, compression and shock. The contradictions of medical evidence also creates a doubt *qua* presence of PW-5 (informant) with his father during the occurrence. His improvement over the occurrence also creates a doubt. PW-2 categorically stated that he saw the deceased carried by four persons in injured condition on cot and came to know that he



received injuries due to road accident. This witness was also not declared hostile by the prosecution, creating a big question mark to the entire occurrence. His testimony was accepted by the prosecution who is also an independent witness examined during trial.

44. In view of aforesaid, we are of the considered opinion that the prosecution failed to established its case beyond all reasonable doubt during the trial, the benefit of which must be extended to all above named appellants/accused.

45. Accordingly, all above-mentioned appellants are acquitted from the charges levelled against them, by giving benefit of doubt.

46. Hence, appeal stands allowed.

47. Accordingly, the impugned judgment dated 19.12.2018 and 21.12.2018 respectively passed by learned Additional Sessions Judge-II, Benipur, Darbhanga in Sessions Trial Case No. 177 of 2017, arising out of Jamalpur P.S. Case No. 91 of 2016



corresponding to G.R. No. 987 of 2016 is hereby set aside.

48. Appellants namely, Bimal Yadav, Amar Yadav and Kamal Yadav are in custody in connection with this case, they are directed to be released forthwith, if not required in any other case. Fine if any paid, be returned to appellants forthwith.

49. Office is directed to send back the trial court records along with a copy of this judgment to the trial court, without delay.

(Chandra Shekhar Jha, J.)

Bibek Chaudhuri, J:- I agree.

(Bibek Chaudhuri, J.)

veena/-

AFR/NAFR	AFR
CAV DATE	30.03.2026
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