

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.512 of 2023

Arising Out of PS. Case No.-54 Year-2007 Thana- KOPA District- Saran

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RENU DEVI @ RENU KUNWAR wife of Late Tarkeshwar Singh Village-
Patila PS- Kopa Dist- Saran

... .. Appellant

Versus

1. The State of Bihar
2. Satyendra Yadav son of Kanhaiya Lal Yadav Village- Bankata PS- Kopa Dist- Saran
3. Dinesh Pandit son of Late Yadunath Pandit Village- Patila PS- Kopa Dist- Saran
4. Sudama Sah son of Late Ram Pravesh Sah Village- Patila PS- Kopa Dist- Saran
5. Raghuvir Sah son of Late Ram Pravesh Sah Village- Patila PS- Kopa Dist- Saran
6. Sunil Sah son of Shiv Prasad Sah Village- Patila PS- Kopa Dist- Saran

... .. Respondents

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Appearance :

For the Appellant/s	:	Mr. Sanjay Singh, Sr. Advocate Mr. Rudrank Shivam Singh, Advocate Mr. Ranvir Pratap Singh, Advocate
For the State	:	Mr. Satya Narayan Prasad, APP
For the Pvt. Respondent :		Mr. P.N. Shahi, Sr. Advocate Mr. Anjani Parashar, Advocate Mr. Madhukar Anand, Advocate Mr. Shubham Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 02-04-2026

The present appeal has been preferred by the wife of the deceased and daughter-in-law of the informant under proviso to Section 372 of the Code of Criminal Procedure (in short 'CrPC'), 1973 (since repealed).



2. Challenge in this appeal is to the judgment of acquittal dated 28th March, 2023 (hereinafter referred to as the 'impugned judgment') passed by learned 3rd Additional Sessions Judge-cum-Special MP/MLA/MLC Court, Saran at Chhapra (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 552A of 2007 arising out of Kopa P.S. Case No. 54 of 2007 registered under Sections 302, 120B, 201/34 of the Indian Penal Code (in short 'IPC') by which the accused-respondent nos.2 to 6 who were facing trial under Sections 302/34, 201/34 and 120B/34 IPC have been acquitted.

3. By the impugned judgment the learned trial court has held that the prosecution has not been able to establish its case under theory of last seen together. It is not based on direct evidence as there is no eyewitness on behalf of the prosecution. There is a long gap of five days between the last seen together with the deceased till the date on which his decomposed body in human skeleton skeleton was found and from the medical evidence on the record, no cause of death could be ascertained in the postmortem report. The learned trial court held that in this case Section 106 of the Evidence Act would not be attracted. The court found that the prosecution also failed to establish the motive against the accused persons and that the complete chain of events



or complete chain of evidence could not be established by the prosecution to prove its case against all the five accused persons for committing the offence of murder. The learned trial court acquitted all the five accused who faced trial in this case on account of lack of sufficient evidence, of all the charges.

Prosecution Case

4. The prosecution case is based on the *fardbeyan* of Ganesh Singh (not examined) recorded by Sub-Inspector of Police Laxman Prasad (PW-5) on 02.07.2007 at 11:30 Hrs. on the part of land of Bali Thakur in Village Patila in the District of Saran.

In his *fardbeyan*, the informant has alleged that in the morning at 08:30 AM when he was sitting at his *darwaja*, he heard *hulla* in the village that the dogs are pulling away a dead body which was buried under the land in between the plot of Bali Thakur and Gajnath Prasad. On receipt of this information, he took his grandson Rajan and Kundan Singh (PW-1) with him and reached at the plot of Bali Thakur where he found that towards southern ridge of the plot of Bali Thakur in the direction of West-East, a human skeleton of a dead body was lying on the land and the dogs were pouncing and eating the same. The informant further stated that the face and the upper part above the waist of the body had decomposed (सर गल गया था). On the bone of the neck, one chain



and in the left hand one torn old red-blue and white color bushirt part and in the body one mairoon and old full pant which were torn were there and he identified that it was his son Tarkeshwar Singh. The informant claimed that 200-250 villagers from neighboring places assembled there.

He alleged that on 27.06.2007 during the night hours at 09:00 PM his co-villager Rajesh Ram, son of Hira Lal Ram had come to his house/darwaja and took away his son Tarkeshwar Singh with him on the pretext of attending the marriage ceremony of the daughter of a co-villager namely Bharat Shah. He claimed that he had also gone there with Rajan Singh and Munindra Singh but before he reached they had already left the place. Thereafter, the informant took his dinner and he left then he saw that at the door of Sudama Sah and Raghuvir Sah, three motorcycles were parked and about 8 to 10 people were having discussions. Thereafter the motorcycles started and the first motorcycle was being driven by Satyendra Yadav, the informant's son was sitting on this motorcycle between Satyendra Yadav and an unknown person. On second motorcycle, Dinesh Pandit, Sunil Sah and one unknown person were sitting and on the third motorcycle Rajesh Ram and two unknown persons were sitting. All the three motorcycles went away towards the western side of the village. It is alleged that



when the informant's son did not return till 30.06.2007, informant sent his grandson to enquire about the victim upon which he was informed that the victim will return in 2-3 days. When the victim did not return till 30.06.2007, then informant himself went to the house of Rajesh Ram where he was informed that his son will return on second or third.

On 02.07.2007, while the informant was sitting at his door he heard *hulla* that one dead body has been found buried in southern ridge in the village and dogs are pouncing and eating the dead body. When the informant went to that place there were 200-250 people there and on seeing the bushirt, pant and the chain in the neck, he identified that the dead body was of his son Tarkeshwar Singh. The informant believes that all the six persons have murdered his son Tarkeshwar Singh.

5. On the basis of the *fardbeyan* of Ganesh Singh (PW-3), police registered Kopa P.S. Case No. 54 of 2007 dated 02.07.2007 against six named accused persons and four unknown accused persons but after investigation, police submitted Charge-sheet No. 74 of 2007 dated 26.10.2007 only against accused Rajesh Ram under Sections 302, 201, 120B/34 IPC. At this stage, the investigation against the other accused persons remained open.



6. Vide order dated 29.10.2007, the learned Chief Judicial Magistrate, Saran took cognizance of the offences under the above mentioned Sections and summoned the sole charge sheet accused Rajesh Ram to face the trial. The investigation against these five accused-respondents were kept open. Upon finding that the offences alleged against the accused are liable to be tried by a Court of Sessions, the records were committed to the court of Sessions where the charges were explained to the accused person in Hindi, they denied the charges and claimed to be tried. Accordingly, vide order dated 17.02.2020 charges were framed under Sections 302/34, 120B/34 and 201/34 IPC against the accused-respondent nos. 2 to 6.

7. In course of trial, the prosecution has examined altogether five witnesses and exhibited several documentary evidences. The description of the prosecution witnesses and the exhibits are given hereunder in tabular form:-

List of prosecution witnesses

PW-1	Kundan Singh @ Kundan Kumar Singh
PW-2	Renu Devi @ Renu Kunwar
PW-3	Dr. Umesh Sharma
PW-4	Dr. Shambhoo Nath Singh
PW-5	Laxman Prasad



List of Exhibits on behalf of prosecution

Exhibit 1	Postmortem Report of Tarkeshwar Singh
Exhibit 2	Signature of Dr. Shambhunath Singh on the Postmortem Report
Exhibit 3	Signature of Dr. S.K. Chakhyer on the Postmortem Report
Exhibit 4	Fardbeyan of Ganesh Singh in writing and signature of Laxman Prasad
Exhibit 5	Signature of Rajan Singh on the Fardbeya
Exhibit 6	Signature of then SHO on the formal FIR
Exhibit 7	Carbon Copy of Inquest Report
Exhibit 8	Charge Sheet NO. 74 OF 2007
Exhibit 9	Certified copy of deposition of Ganesh Singh the informant of this case in Sessions Trial no. 552 of 2007
Exhibit 10	Certified copy of deposition of Rajan Singh in the original Sessions Trial no. 552 of 2007
Exhibit 11	FSL Report
Exhibit 12	Certified copy of affidavt of accused Satyendra Yadav filed as candidate of Bihar Vidhan Sabha Election in 2020.
Exhibit 13	Certified copy of bail order in copa PS case no. 48 of 2019

The defence examined the following witnesses:-

PW-1	Bharat Sah
PW-2	Arun Kumar Tiwari
PW-3	Shiv Charan Sah
PW-4	Shubh Narayan Ram
PW-5	Mandev Ram
PW-6	Raju Sah Alias Raju Kumar Sah
PW-7	Sri Bhagwan Yadav
PW-8	Umesh Ram
PW-9	Chuman Kumar Sah
PW-10	Chhatu Kumar Singh
PW-11	Kedar Nath Sharma
PW-12	Ravindra Kumar Yadav alias Ravindra Kumar
PW-13	Prahalad Prasad
PW-14	Rajshwar Rai
PW-15	Mithilesh Yadav
PW-16	Yogendra Yadav alias Yogendra Rai
PW-17	Dharmnath Yadav
PW-18	Kanhaiya Manjhi
PW-19	Kam Lal Ram



PW-20	Shailendra Kumar Rai @ Shailendra Rajbhar
PW-21	Sunil Ram
PW-22	Bipin Kumar Pandit @ Bipin Pandit
PW-23	Md. Salim Ansari
PW-24	Mantosh Giri.
PW-25	Brajendra Ram @ Brajendra Kumar Ram
PW-26	Adbud Sah
PW-27	Mukhtar Yadav
PW-28	Ram Bijay Pandit.
PW-29	Mukhtar Pandit.
PW-30	Madan Yadav @ Madan Pd. Yadav
PW-31	Shankar Yadav.
PW-32	Ramayan Prasad
PW-33	Ashok Rai
PW-34	Babloo Rai @ Sanjay Kumar Yadav.
PW-35	Ramjeet Kumar Rai
PW-36	Baleshwar Kumar Yadav
PW-37	Binod Singh
PW-38	Saroj Ram
PW-39	Durga Ram
PW-40	Estiyaq Akhtar @ Saheb Mian
PW-41	Bateswar Prasad mahto @ Bateshwar Mahto
PW-42	Kamshwar Ray
PW-43	Sukhdeo Yadav
PW-44	Harendra Baitha
PW-45	Saiyad Saifu Rahman
PW-46	Bindeshwari Ram
PW-47	Ramuna Yadav
PW-48	Amresh Yadav @ Amresh Kumar Yadav.

List of Exhibit on behalf of Defence

Exhibit A	Certified copy of FIR of Kopa P.S. Case No. 48 of 2019
Exhibit B	Certified copy of GR Register in Kopa P.S. Case No. 54 of 2007



9. Thereafter, the statement of the accused persons was recorded under Section 313 CrPC in which they claimed innocence.

Findings of the learned Trial Court

10. The learned trial court has examined the oral and documentary evidences and recorded a finding leading to acquittal of the accused. The findings recorded by the learned trial court have been briefly stated by this Court at the top of this judgment, hence those are not reiterated at this stage.

Analysis of the evidence of prosecution witnesses

11. Kundan Kumar (PW-1) stated in his evidence that on 27.06.2007 around 9:00 PM, while he was having dinner on the roof, Rajesh Ram arrived at his door and asked his father Tarkeshwar Singh to accompany him to the wedding of daughter of Bharat Ram. Rajan, Munindra Singh and grandfather Ganesh Singh also left with them and returned at 10 PM. According to the witness, his grandfather said that three motorcycles heading west carrying Satyendra Yadav, Dinesh Pandit, Sunil Sah, Rajesh Ram and two unknown men. Deceased and an unknown person were with Satyendra Yadav on one motorcycle. When his grandfather went to the house of Rajesh Ram and Satyendra Yadav for inquiry about his son, he was informed that his son will return in 2-4 days



but his father did not return. On 02.07.2007, dead body of father of PW-2 was found in the field of Bali Thakur and identified his body. His grandfather and brother Rajan Singh have died.

12. In his cross-examination, PW-1 has stated that his village Patila is 3-4 kilometers away from the village of Satyendra Yadav. He could not say about enmity of his father with the villagers or about any case. His father had gone to the marriage of daughter of Bharat Sah at 9:00 PM and after 2-4 minutes his grandfather had gone but he had not gone in the marriage. There are 10-12 houses in between the house of PW-1 and Bharat Sah. PW-1 has further deposed that he had identified the dead body of his father with the help of torn clothes and chain which was in the neck of his father, he is not aware about seizure of the said clothes. He has denied that his father had enmity with someone and he himself was a criminal. He is also not aware about any case against his father for murder and kidnapping.

13. Renu Devi who has been examined as PW-2 has deposed that her husband Tarkeshwar Singh was taken by Rajesh Ram at 9:00 PM on 27.06.2007 to the marriage of daughter of Bharat Sah. Her father-in-law Ganesh Singh, son Rajan Singh and nephew Munindra Singh also went to the marriage and returned at 10:00 PM. She has further deposed that her husband Tarkeshwar



Singh was sitting at the door of Raghuvir Sah with Dinesh Pandit, Satyendra Yadav and Sunil Sah. Three motorcycles left towards the western side and Satyendra Yadav was with deceased Tarkeshwar Singh and an unknown person. On the next morning she knew that her husband had not returned and upon inquiry it was informed that Tarkeshwar would return in 2-3 days but he did not return and later the dead body of his husband was found in the field of Bali Thakur. She identified accused Sudama Sah in court and said she could recognise other accused too.

14. In her cross-examination, PW-2 has stated that police recorded her statement five days after her husband disappeared. She saw the dead body in the field with several people, police arrived but she does not know if they enquired others. She has stated that her statement was not recorded there and police was present there from 8:00 AM to 4:00 PM. She identified the body by cheek, mouth, nose and with trouser and shirt on the body. According to her, police had not made seizure list of anything from the human skeleton. She has also stated that her husband never went to jail and no case was registered against him. She denied the suggestion that the skeleton was not of her husband.



15. In her cross-examination, PW-2 has stated that her father-in-law has told about the occurrence in presence of the family members. This witness denied to have knowledge of Kopa P.S. Case No. 48 of 2005 regarding abduction of Sunil Sah in which her husband was an accused. According to her knowledge, there was not any criminal case registered against her husband.

16. Dr. Umesh Sharma (PW-3) who deposed on 02.07.2007 said that he was posted at Sadar Hospital, Chhapra and had conducted postmortem examination on the dead body of Tarkeshwar Singh and found the following antemortem injuries:-

“Body is in advanced stage of decomposition, Skull is present without any skin or muscles. Only bones were present. The body could not be recognised by face. It was recognised by Chaukidar 3/9 Kapil Manjhi, Rajan Singh S/o Tarkeshwar Singh and other relative present there as on inquest. Right fore arms absent. Right arms without any skin or muscles. In neck only cervical bones present no muscle or skin. Left arms only muscles attached, left fore arm only bone present. Both hands are absent. Upper half of the body almost turned into skeleton, ribs present, lungs and heart absent, lower half of the body has skin and muscle in abdomen. Only kidney and stomach was present. That too in putrefied state. Stomach empty.”

17. In his cross-examination, PW-3 stated that the dead body was identified by Chaukidar 3/9 Kapil Manjhi and Rajan



Singh son of the deceased. This witness further deposed that the dead body was completely decomposed.

18. Dr. Shambhu Nath (PW-4) deposed that he was Medical Officer at Sadar Hospital and he was a member of the Medical Board as Observer which conducted postmortem examination on the dead body of Tarkeshwar Singh.

19. Laxman Prasad (PW-5), the Investigating Officer and the then S.H.O. of Kopa P.S. deposed that on 02.07.2007 he recorded fardbeyan of Ganesh Singh at the field of Bali Thakur and obtained his signature (Exhibit '4'). He identified signature of Rajan Singh as Exhibit '5' and registered Kopa P.S. Case No. 54 of 2007 against Rajesh Ram and others. He signed his signature on the formal FIR as Exhibit '6'. He took over the investigation of the case and prepared the inquest report (Exhibit '7'). He further deposed that in course of investigation he inspected the place of occurrence and found that the body of Tarkeshwar Singh was found as a decomposed skeleton between the fields of Bali Thakur and Jai Nath Prasad which was identified by father and family members through torn clothes and a neck chain. The body was sent to Sadar Hospital, Chapra for postmortem.

20. This witness has further stated that in course of investigation, he recorded restatement of informant Ganesh Singh



who fully supported the occurrence. He also recorded statement of other witnesses and all of them supported the occurrence. He further deposed that he submitted charge-sheet No. 74 of 2007 against Rajesh Ram.

21. It appears from the trial court's records that after completing the formalities under Section 207 CrPC, the records of the case of Rajesh Ram was transferred to the court of Session where charges were framed against him and Sessions Trial No. 552 of 2007 was registered. In the said trial Rajan Kumar, Munindra Singh, and Ganesh Singh were examined as PW-1, PW-2, and PW-3 respectively. Kundan Singh @ Kundan Kumar, Dr. Umesh Sharma, Dr. Shambhu Nath Singh and Laxman Prasad were examined as PW-4, PW-5, PW-6 and PW-7 respectively.

22. As the trial of Rajesh Ram progressed, after recording of the evidence of PW-1, PW-2 and PW-3, the prosecution filed an application under Section 319 of the Code of Criminal Procedure for summoning the remaining accused persons against whom the investigation was kept pending. The learned trial court allowed the said application vide order dated 18.08.2008 and summoned the remaining accused namely Satyendra Yadav, Sudama Shah, Raghuvir Shah, Dinesh Pandit and Sunil Shah to face the trial.



23. It further appears that on appearance of those five accused persons, a separate trial was registered on 05.12.2008 giving rise to Sessions Trial No. 552A of 2007.

24. It so happened that the Sessions Trial No. 552 of 2007 and Sessions Trial No. 552A of 2007 proceeded separately. On 03.02.2009 Kundan Singh deposed as PW-4 in Sessions Trial No. 552 of 2007 and thereafter the remaining witnesses PW-5, PW-6 and PW-7 of Sessions Trial No. 552 of 2007 deposed.

25. As per records of the present trial, Kundan Singh @ Kundan Kumar Singh deposed as PW-1 in this trial on 8th September 2021, Renu Devi @ Renu Kunwar deposed as PW-2 on 1st day of November 2021, Dr. Umesh Sharma, Dr. Shambhu Nath, and Laxman Prasad deposed on 11th day of February 2022, 11th day of February 2022 and 4th April 2022 respectively. Renu Devi @ Renu Kunwar had not deposed in Sessions Trial No. 552 of 2007. So far as Kundan Kumar Singh is concerned, he had deposed in Sessions Trial No. 552 of 2007 on 3rd February, 2009 whereas Dr. Umesh Sharma and Dr. Shambhu Nath Singh who are PW-5 and PW-6 in the present trial had deposed on same day i.e. on 11th February, 2022 while Laxman Prasad who is PW-7 in the present trial deposed on 4th April, 2022 in Sessions Trial No. 552 of 2007. In fact, a bare perusal of the testimony of these three witnesses



would show that the same and one testimony has been prepared in both the sessions trial with only difference that the sessions trial number has been changed at the top of the deposition.

26. So far as the deposition of Kundan Singh @ Kundan Kumar Singh (PW-1) of the present trial is concerned, it is found that he has deposed in both the trials on two different points of time and his testimony has to be appreciated in the present case keeping in view his deposition available on the record in this case.

27. It appears that in course of trial, the prosecution brought on record the deposition of Rajan Kumar (PW-1) and Ganesh Singh (PW-3) of Sessions Trial No. 552 of 2007 and got them exhibited. The certified copy of the deposition of Ganesh Singh was marked Exhibit '9' whereas certified copy of deposition of Rajan Singh was marked as Exhibit '10' in Sessions Trial No. 552A of 2007.

28. The prosecution took a plea that the certified copies of the deposition of Rajan Singh and Ganesh Singh are admissible and relevant piece of evidence which are required to be considered in the present trial (552A of 2007) for the reason that they were dead and could not be produced in course of trial of this case. The prosecution relied upon Section 33 of the Evidence Act 1872 and contended that the evidence given by a witness in judicial



proceeding is relevant for the purpose of proving, in a subsequent judicial proceeding when the witness is either dead or cannot be produced to give evidence.

29. It would appear from the impugned order that the learned trial court has discussed in detail the admissibility of Exhibit '9' and Exhibit '10' with reference to Section 33 of the Evidence Act and Section 299 of the Code of Criminal Procedure. The trial court held that Exhibit '9' and Exhibit '10' will be relevant in this case because these two witnesses had last seen the deceased Tarkeshwar with the five accused persons at the door of one of the accused persons Raghuvir Shah on 27.06.2007 at about 9:30 PM but both the exhibits would not be admissible to the extent of "proof" in this case as it would only be relevant under Section 33 of the Evidence Act to the extent of relevancy of evidence of the informant who is dead. The trial court relied upon the judgment of Hon'ble Full Bench in the case of **A. T. Mydeen and Anr. vs. Assistant Commissioner, Customs Department** reported in **(2022) 14 SCC 392 (paragraph '39')**.

30. Mr. Sanjay Singh, learned Senior Counsel appearing for the informant-appellant, has given much emphasis on his submission that Sessions Trial Nos. 552 of 2007 and Sessions Trial No. 552A of 2007 are same and one trial. It is his contention that



the learned trial court has committed serious error in relying upon the evidence of Rajendra Kumar and Ganesh Singh, who had earlier deposed in Sessions Trial No. 552 of 2007. Learned Senior Counsel has taken this Court through Section 33 of the Evidence Act and Section 299 of the CrPC in his efforts to persuade that both the trials are to be appreciated together and the evidence of Gaensh Singh and Rajan Kumar are required to be considered in the same manner as if they have deposed in Sessions Trial No. 552 of 2007.

31. We, however, regret our inability to concur with the submission advanced by the learned Senior Counsel for the appellant. In this regard, we would reproduce Section 33 of the Evidence Act and Section 299 of the CrPC for a ready reference:-

Section 33 of the Evidence Act

"33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.- Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of



delay or expense which under the circumstances of the case, the Court considers unreasonable :

Provided -

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation. - A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section."

Section 299 of the CrPC

"299. Record in absence of accused (1)

If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of, may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India."



32. In the case of **A.T. Mydeen** (supra), the Hon'ble Supreme Court had occasion to consider the aforementioned provisions keeping in view the case laws on the subject. We reproduce paragraph '40' of the said judgment hereunder for a ready reference:-

“**40.** Now, merely because the seven witnesses produced by the prosecution were the same in both the cases would not mean that the evidence was identical and similar because in the oral testimony, not only the examination-in-chief but also the cross-examination is equally important and relevant, if not more. Even if the examination-in-chief of all the seven witnesses in both the cases, although examined in different sequence, was the same, there could have been an element of some benefit accruing to the accused in each case depending upon the cross-examination which could have been conducted maybe by the same counsel or a different counsel. The role of each accused cannot be said to be the same. The same witnesses could have deposed differently in different trials against different accused differently depending upon the complicity or/and culpability of such accused. All these aspects were to be examined and scrutinised by the appellate court while dealing with both the appeals separately and the evidence recorded in the respective trials giving rise to the appeals.”

33. We, therefore, do not agree with the contention of learned Senior Counsel for the appellant in this regard. Coming to the merit of the case, we find that there is no eyewitness of the occurrence. PW-1 and PW-2 are hearsay witnesses whereas PW-3, PW-4 and PW-5 are only formal witnesses of the case.



34. In result, we find no merit to interfere with the judgment of the learned trial. This appeal has not merit it is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

I agree

(Shailendra Singh, J)

rishik/-

AFR/NAFR	
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