IN THE HIGH COURT OF JUDICATURE AT PATNA

Nikesh Rai @ Piyush Raj and others

vs.

The State of Bihar

Criminal Appeal (DB) No. 117 of 2018

With

(Criminal Appeal (DB) No. 199 of 2018)

19 May 2023

[Hon'ble Mr. Justice A. M. Badar & Hon'ble Mr. Justice Chandra Shekhar Jha]

Issue for Consideration

Whether the prosecution successfully proved the guilt of the appellants beyond reasonable doubt based on the testimony of a single eyewitness.

Headnotes

From the autopsy report of all three deceased persons, death was caused out of gunshot injuries. Investigating Officers found several marks of firing on the walls of the room and also collected about 40 empty cartridges along with one misfired cartridge from place of occurrence, which support the version of indiscriminate firing, as it was made by appellant/convict. Nothing surfaced from the cross- examination of PW-1, which may create a doubt on his version as deposed before the trial court regarding occurrence, being eye-witness. (Para 29)

Ocular evidence of PW-1 is corroborated by medical evidence and also with the seizure list. The testimony of PW-1, who is the eye-witness cannot be disbelieved merely because certain insignificant, normal or natural contradictions have appeared into his testimony. Deceased were attacked by appellants/convicts in broad daylight where the motive behind attack is clear as there was previous enmity between accused/appellant/convict *qua* informant. (Para 30)

There is no reason to interfere in the findings of conviction and order of sentence. (Para 31)

Case Law Cited

Kalyan Kumar Gogoi v. Ashutosh Agnihotri, **(2011) 2 SCC 532**; Saju v. State of Kerala, **AIR 2001 SC 175**; State of M.P. v. Ramesh, **(2011) 4 SCC 786**; Mekala Sivaiah v. State of Andhra Pradesh, **AIR 2022 SC 3378**

List of Acts

Indian Penal Code, 1860: Sections 302, 34, 120B; Arms Act, 1959: Section 27(1)

List of Keywords

Eyewitness testimony; Criminal conspiracy; Firearm evidence; Triple murder; Prior enmity; AK-47 rifle; Section 302 IPC; Section 120B IPC; Section 27 Arms Act; Conviction based on sole witness

Case Arising From

Chapra Town P.S. Case No. 154 of 2011, Sessions Trial No. 107 of 2012/4868 of 2014

Appearances for Parties

(In CRIMINAL APPEAL (DB) No. 117 of 2018)

For the Appellant/s: Mr. Rajendra Narayan, Sr. Advocate; Mr. Satyendra Prasad, Advocate; Mr. Vikramdeo Singh, Advocate; Mr. Mukesh Kumar Singh, Advocate;

For the Respondent/s: Mr. Binod Bihari Singh, APP;

(In CRIMINAL APPEAL (DB) No. 199 of 2018)

For the Appellant/s: Mr. Rajendra Narayan, Sr. Advocate; Mr. Satyendra Prasad, Advocate; Mr. Vikramdeo Singh, Advocate; Mr. Mukesh Kumar Singh, Advocate;

For the Respondent/s:Mr. Binod Bihari Singh, APP

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.117 of 2018

Arising Out of PS. Case No.-154 Year-2011 Thana- CHAPRA TOWN District- Saran

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1. Nikesh Rai @ Piyush Raj, S/o Laxman Rai, R/o Vill.- Ramgarha, P.S.- Awtarnagar, District- Saran.
2. Shambhu Rai, S/o Late Ram Narain Rai, R/o Village- Narayanpur, P.S.- Garkha, District- Saran.

... ... Appellant/s

Versus

The State of Bihar.

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 199 of 2018

Arising Out of PS. Case No.-154 Year-2011 Thana- CHAPRA TOWN District- Saran

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Avinash Rai, Son of Jamdar Rai, Resident of Village- Banwari Basant, Police Station- Garkha, District- Saran.

... ... Appellant/s

Versus

The State of Bihar.

... ... Respondent/s

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Appearance :
(In CRIMINAL APPEAL (DB) No. 117 of 2018)

For the Appellant/s	:	Mr. Rajendra Narayan, Sr. Advocate
		Mr. Satyendra Prasad, Advocate
		Mr. Vikramdeo Singh, Advocate
		Mr. Mukesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Binod Bihari Singh, APP

(In CRIMINAL APPEAL (DB) No. 199 of 2018)

For the Appellant/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Satyendra Prasad, Advocate
Mr. Vikramdeo Singh, Advocate
Mr. Mukesh Kumar Singh, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date : 19.05.2023

Heard Mr. Rajendra Narayan, learned Senior counsel appearing on behalf of the appellants and Mr. Binod Bihari Singh, learned Additional Public Prosecutor appearing on behalf of the State in both Criminal Appeal (DB) No. 117 of 2018 and Criminal Appeal (DB) No. 199 of 2018.

2. Both above mentioned appeals are preferred challenging judgment of conviction dated 18.12.2017 and order of sentence dated 22.12.2017, as passed in Sessions Trial No. 107 of 2012/4868 of 2014 (arising out of Chapra Town P.S. Case No. 154 of 2011) passed by the learned Additional Sessions Judge, 9th Saran at Chapra, where appellant no. 1, Nikesh Rai @ Piyush Raj was convicted through Cr. Appeal (DB) No. 117 of 2018 for the offences alleged under Section 302/34 read with Section 120B of the Indian Penal Code and Section 27(1) of the Arms Act and sentenced to imprisonment

for life under Section 302/34 and 120B of the Indian Penal Code with a fine of Rs. 50,000/- and also appellant no. 2 namely Shambhu Rai for the offences alleged under Section 120B read with Section 302 of the Indian Penal Code and sentenced to imprisonment for life with a fine of Rs. 50,000/-. Further, to convict appellant Avinash Rai in Cr. Appeal (DB) No. 199 of 2018 for the offence alleged under Sections 302/34 & 120B of the Indian Penal Code and sentenced to undergo imprisonment for life and fine of Rs. 50,000/-, and in case of default to pay fine, further to undergo rigorous imprisonment of six months. He was also convicted under Section 27(1) of the Arms Act and sentenced to undergo rigorous imprisonment for three years with fine of Rs. 5000/- and in failure of payment of fine, further undergo for rigorous imprisonment of six months.

3. Both above criminal appeals heard together and decided through this common judgment.

4. Factual matrix of this case as it springs from written information of the informant, namely, Shashi Bhushan Singh (PW-2) dated 20.07.2011 that his younger brother, namely, Mani Bhushan Singh, proceed from his village *"Jhaua Basant"* at about 1.00 PM to the house of his friend, namely, Pappu Singh in connection to discuss business matter and

thereafter to visit Lucknow by train in evening, in meantime, he received a call at about 3:30 PM from one Chandrashekhar Singh, resident of Ghosh Colony, P.S. Muffasil, Chapra as to come immediately to the house of Pappu Ji, where indiscriminate firing was made, which is still continue, where 3-4 persons received gun shot injuries. On said information, informant (PW-2) went to the place of occurrence and found that his brother Mani Bhushan Singh, his driver Dinesh Yadav, Son of Bhikhari Rai, Resident of Banwari Basant, P.S. Garkha and one Devendra Singh, Son of Late Sudama Singh, Resident of Pipra Thana, Panapur, were found killed due to gun shot injuries. He inquired about the occurrence from Pappu Singh, where he came to know that 4-5 unknown accused persons arrived there equipped with AK-47 rifles, carbine and revolver and opened indiscriminate firing immediately after coming to the room of first floor, where Mani Bhushan Singh, Dinesh Yadav and Devendra Singh were killed. He raised suspicion that the murder of his brother and others were done by Avinash Rai, S/o Jamadar Rai (Appellant/convict), Resident of Banwari Basant, Thana Garakha, Nikesh Rai @ Piyush Raj (Appellant/convict), Son of Laxman Rai, Mahesh Rai, Son of Laxman Rai, Both residents of Ramgarha, P.S. Autar Nagar,

Devendra Singh @ Puttu, resident of Banwar, P.S. Daudpur and their associates. Reason for suspicion as explained that all these accused persons were in inimical terms with informant and also with his deceased brother Mani Bhushan Singh as one Sanjay Singh their friend was killed some years back by one Rakesh Rai, who is the brother of co-accused Mahesh Rai. It is further stated that he was named in the murder case of one Mohan Rai, who was Fufa (husband of his father's sister) of co-accused Mahesh Rai. It is also stated that Rakesh Rai, Manoj Rai and Manish Kumar were killed in police encounter where he was suspected as police spy by accused persons. All these occurrence collectively increased the threshold of inimical terms, where he received threat of life. It is also stated that he received information prior to this occurrence that Avinash Rai, Mukesh Rai, Mahesh Rai and others were looted Rs. 20 lacs somewhere in Pratap Garh in Uttar Pradesh, and in said case STF Team also visited their village and furthermore, with same looted money, one AK-47 was purchased. Prior to purchase of AK 47, Carbine and revolver were already available with them. Informant further stated that prior to 2-3 days of this occurrence, he and his deceased brother, namely, Mani Bhushan Singh received threat to life but they took it in very casual manner as

they were in habit to receive such threat but now he is claiming to be sure that his brother Mani Bhushan, Devendra Singh and Dinesh Yadav were killed in very planned manner by Avinash Rai (appellant), son of Jamadar Rai, resident of Banwari Basant, Thana Garkha, Nikesh Rai @ Piyush Raj (appellant) and Mahesh Rai, Both Son of Laxman Rai, Resident of Ram Garha, P.S. Autar Nagar, Devendra Singh @ Puttu Singh, Son of unknown, resident of Banwar, P.S. Daudpur and their associates.

5. On the basis of aforesaid written information Chapra Town P.S. Case No. 154 dated 20.07.2011 was lodged under Section 302/120B/34 read with 27(3) of Arms Act against four named accused persons, namely, Avinash Rai, son of Jamadar Rai, Nikesh Rai @ Piyush Raj and Mahesh Rai, Both Sons of Laxman Rai, Devendra Singh @ Puttu Singh, Son of unknown and unknown co-accused persons (number not specified), whereafter investigation, police submitted charge sheet against Nikesh Rai @ Piyush Raj, Avinash Rai and Shambhu Rai (All appellants/convicts). Whereafter, taking note of materials available on record, Learned Jurisdictional Judicial Magistrate took cognizance against appellants convicts under Sections 302/34, 120B of the Indian Penal Code and 27 (3) of the Arms Act, 1959. Accordingly, charges were framed against

appellants/convicts, where appellants/convicts pleaded "Not Guilty" and claimed their trial.

6. After the trial, appellants/convicts were convicted under Sections 302, 120B of the Indian Penal Code and also against 27 (3) of the Arms act and accordingly sentenced for life imprisonment alongwith fine.

7. Hence, the present appeals.

8. To established its case before the learned Trial Court, prosecutions altogether examined total of 12 witnesses, namely, Manjit Kumar Singh, **(PW-1),** Shashi Bhushan Singh, **(PW-2),** Sharvan Singh @ Sharvan Rai, **(PW-3),** Suresh Rai, **(PW- 4),** Dr. Rameshwar Prasad, **(PW- 5),** Dr. Shailendra Kumar Singh, **(PW-6),** Dr. Krishan Mohan Dubey, **(PW- 7),** Nandu Sharma, **(PW-8),** Arun Kumar Tiwari, **(PW- 9),** Anuj Kumar Singh, **(PW- 10),** Jaleshwar Kumar Rai, **(PW-11)** and Ghanshyam Choudhary, **(PW-12).**

9. The prosecution also exhibited following documents during the trial to substantiate its case which are as:-

Exhibit-1- Signature of informant on fardbeyan.

Exhibit-2- Signature of Shravan Kumar on Inquest Report.

Exhibit-2/1- Signature of Suresh Rai on inquest

report.

Exhibit-3-Signature of Dr. Rameshwar Prasad on P.M. report of Mani Bhushan Singh.

Exhibit-3/1-Signature of Dr. Rameshwar Prasad on P.M. report of Dinesh Rai.

Exhibit-3/2- Signature of Dr. Rameshwar Prasad on P.M. report of Devendra Singh.

Exhibit-3/3- Signature of Dr. Shailendra Singh on P.M. report of Dinesh Rai.

Exhibit-3/4- Signature of Dr. Shailendra Singh of P.M. report of Mani Bhushan Singh.

Exhibit-3/5- Signature of Dr. Shailendra Singh on P.M. report of Devendra Singh.

Exhibit-3/6- Post Mortem Report of Dinesh Rai.

Exhibit-3/7- Post Mortem Report of Mani Bhushan Singh.

Exhibit-3/8- Post Mortem Report of Devendra Singh.

Exhibit-4- Writing and signature of A.K. Tiwary on fardbeyan.

Exhibit-4/1- Endorsement on fardbeyan.

Exhibit-4/2- Formal FIR.

Exhibit-5- Carbon copy of inquest report of Mani Bhushan Singh.

Exhibit-5/2- Carbon copy of inquest report of Dinesh Rai.

Exhibit-5/3- Signature of Anuj Singh upon inquest report of Mani Bhushan Singh.

Exhibit-5/4- Signature of Anuj Singh on inquest report of Devendra Singh.

Exhibit-6- Site Map.

Exhibit-7- Seizure list of empty cartridges.

Exhibit-8- Signature of Jaleshwar Kumar Rai upon the seizure of Mobile of appellant no. 1.

Exhibit-8/1- Signature of Jaleshwar Rai upon the seizure of mobile and Sim of convict Avinash Rai.

The prosecution also exhibited following materials during the trial to substantiate its case which are as:-

Exhibit- I to XLI- Empty cartridges proved as material exhibit.

Exhibit- XLII to LII- Mobiles, Sim, I card of Election Commission of India, Cash and other papers.

10. After closure of the prosecution evidence, the

statement of appellants/convicts were recorded under Section 313 of the Code of Criminal Procedure, where they claimed complete innocence by denying all incriminating circumstances explained to them by showing their complete innocence and false implication.

ARGUMENTS ON BEHALF OF LEARNED COUNSEL APPEARING ON BEHALF OF APPELLANTS/CONVICT.

11. It is submitted by Mr. Rajendra Narayan, learned Senior counsel while appearing on behalf of appellants that with the available evidence it cannot be said that prosecution established its case against appellants/convicts beyond all reasonable doubts during the trial as to convict them. It is submitted that apparently, informant is not the eye witness of the occurrence and the basis of entire narrations as set out in FIR is the hearsay version as received from Pappu Singh. It is submitted that as per narration of FIR Chandrashekhar Singh, resident of Ghose Colony, P.S. Muffasil, Chapra would be the informant of this case, who narrated the occurrence to informant over telephone. It is also submitted that only eye witness of this occurrence, who is PW-1, namely, Manjit Kumar Singh examined separately in both trial i.e. Session Trial No. 107/12 which amalgamated later on with Session Trial No. 107A/12. It is submitted that there is a material contradictions in his

deposition as regard to manner of occurrence. It is also submitted that the name of appellant/convict Shambhu Singh first time surfaced during examination of PW- 2, who is none but the informant and who failed to named him in FIR. It is submitted that there is no evidence either direct or circumstantial which may established the version of PW-2 that appellant/convict Shambhu Singh was the Spy of main co-accused persons. It is also submitted that place of occurrence is also appearing disputed in terms of deposition of PW-9, namely, Arun Kumar Tiwari, who is the investigating officer of this case. It is submitted that save and except PW-1, namely, Manjit Kumar Singh, no one is the eye witness of the occurrence. While concluding arguments, it is submitted that the deposition of said eye witness, namely, Manjit Kumar Singh (PW-1) having several contradictions and on this score his version as eye witness appearing doubtful and just appears to secure conviction. It is further submitted that PW-9, who immediately visit place of occurrence failed to find PW-1 thereof and this fact get its strength as his statement was recorded at his village and as such it can be safely gathered that PW-1 was roped in this case as an eye witness in planned manner only to secure conviction.

12. It is further submitted by learned counsel appearing on behalf of appellants that PW-2, namely, Shashi Bhushan Singh, who is the informant of this case is a hearsay witness and as such, foundation of this case is based upon the hearsay input as provided by PW-1, claiming to be an eye-witness of the occurrence. It is submitted that hearsay evidence does not put any responsibility, as witness, giving any such statement as held in the matter of ***Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri, (2011) 2 SCC 532***. It is also submitted that there is no *prima facie* evidence affording a reasonable ground to believe that appellant/convict Shambhu Rai was member of a conspiracy. From deposition either of PW-1 or any witnesses deposed before the learned trial court or circumstances thereto nothing appears that anything said, done or written by him after the intention was formed by any of the co-accused persons including appellant/convict. The only evidence available against the appellant/convict Shambhu Rai is that he worked as a liner aiding main co-accused persons. In support of submission, learned counsel relied upon the report of ***Saju Vs. State of Kerala*** as reported in ***AIR 2001 SC 175.***

ARGUMENTS ON BEHALF OF LEARNED APP

13. Learned APP while arguing matter on behalf of the State submitted that it is the settled principle of law that number of witness is not required to established criminal case beyond any reasonable doubt, rather if a single witness is imposing such confidence that none else accused committed crime, the conviction can be secured. It is pointed out that it is settled principle of law that minor contradictions cannot be taken into consideration. It is submitted that PW-1 is the eye witness of the occurrence and nothing surfaced in his cross-examination, which may create a doubt on his version. It submitted that occurrence is a brutal day light murder of three persons, in which prohibited Arms were used. It is also pointed out that the deposition of PW-1, namely, Manjit Kumar Singh is in full corroboration with depositions of Dr. Rameshwar Prasad (PW-5), Dr. Shailendra Kumar Singh (PW-6) and Dr. Krishan Mohar Dubey (PW-7), who were conducted postmortem and found that the death was caused due to gun-shot injuries. It is also submitted that more than 40 empty cartridges were recovered from place of occurrence, suggesting thereof indiscriminate firing as deposed by PW-1 during the course of

occurrence. This fact also appears corroborated from seizure list **(Exhibit-4)** which suggest recovery of 40 empty cartridges and one live cartridge as also supported by PW-4. Learned APP further pointed out that from the deposition of PW-9, who is the I.O. of this case, it appears that total of 20 bullets marks were noticed upon wall of the room in which firing was made, which also support the version of prosecution as regard to indiscriminate firing, at place of occurrence causing death of three persons.

14. Learned APP relied upon the reports of Hon'ble Supreme Court in the matter of ***State of M.P. V. Ramesh (2011) 4 SCC 786*** *and also* in the matter of ***Mekala Sivaiah Vs. State of Andhra Pradesh*** reported as ***AIR 2022 SC 3378.*** It is relevant to reproduce the para-22 of the judgment:-

> *"22. The contentions raised by the appellant are on the weaker side in relation to testimonies of prosecution witnesses as it has been contended that PW-1 to PW-4 are the supporters of Telugu Desam Party and their evidence were contradictory with respect to the nature of injuries inflicted upon the deceased, place of occurrence etc. The testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omission as observed by this Court in Narayan Chetanram Chaudhary and Anr. V. State of*

Maharashtra, wherein while considering the issue of contradictions in the testimony, while appreciating the evidence in a criminal trial, it was held that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. In paragraph 42 of the judgment, it has been held as under:-

> *"42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the Court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW2. Even if there is contradiction of statement of witness on any material point, that is no ground to reject the whole of the testimony of such witness."*

CONCLUSION:-

15. We perused evidence and materials available on record carefully and also heard learned Counsel appearing on behalf of appellants/convicts and learned APP appearing on behalf of the State.

16. It would be appropriate to discuss the deposition of PW-1, namely, Manjit Kumar Singh, who is the only eye witnesses of this occurrence, examined during trial. This witness examined twice. Firstly in trial no. 107/12 and secondly, after amalgamation with the trial of other co-accused persons in Session Trial No. 107A/12. This witness examined in Session Trial 107/12 on 07.11.2014 where he deposed that occurrence is of 20.07.2011 at about 3:15 PM, by that time he was in the house of one Uma Shankar Singh, MP (Member of Parliament) situated at Rajendra Sarovar where Pappu Singh, Chandra Shekhar Singh, Devendra Singh and 1-2 unknown persons were also present. It is stated that while he was sitting there, Pappu Singh went to collect his cloth, whereas driver Dinesh Rai went down with an excuse to return shortly but came back just after 2-3 minutes by shouting that Avinash Rai, Nikesh Rai @ Piyush Raj (Both Appellants/convicts), Mahesh Rai and Ajay @ Raja are coming with **"Chhapan"** and as he

came up to room, said co-accused persons also arrived there immediately by following him and opened indiscriminate firing targeting Mani Bhushan Singh, Devendra Singh. It is deposed by him that Nikesh Rai (appellant/convict) was equipped with AK-47. Avinash Rai (appellant/convict) equipped with Carbine, Mahesh Rai equipped with Pistol, Raja equipped with Pistol and all of them opened indiscriminate firing where bullet hit to Mani Bhushan Singh and Devendra Singh, causing their death. It is also deposed that driver Dinesh Rai was also standing behind the door and as he move to hold the appellants/convicts, they also killed him. It is deposed that at the time of occurrence he was in the same room but keep him hide under wooden cot *(Chawki)* from appellants/convicts. He deposed that the cause of occurrence was previous enmity as informant, namely, Shashi Bhushan Rai (PW-2) suspected to authored the murder of brother of appellant/convict Nikesh Rai.

On his cross-examination, he deposed that he is not the relative of informant i.e. (PW-2) and their home are far apart having distance of about 4-5 KM. It is also stated by him that on the date of occurrence, he was accompanied with deceased Mani Bhushan Singh as to drop him at Chapra while he was going to Banaras. It is submitted that sister of informant (PW-2) and

deceased namely, Mani Bhushan Singh is the residents of Prabhu Nath Nagar. He first dropped her at her residence and thereafter came to place of occurrence. It is stated that at the place of occurrence, a board of coaching class was there at the ground floor. He failed to give details about the nearby temple and house of Uma Shankar Singh, MP (Member of Parliament) but stated that one temple is located to West of his house hardly away 25 steps. It is also stated by him that one stair was outside and one stair was inside, going up to the roof of the house. He denied to have any bodyguard and arms on the date of occurrence with him. In para 11 of his cross-examination, he deposed that when accused came at place of occurrence, he hide himself under wooden cot i.e. *"Chowki"*. He gave his statement to the police stating thereof that Dinesh Rai (deceased) tried to close the door but in meantime appellants/convicts alongwith other co-accused persons came there and he could not close the door. He also deposed that he was not assaulted during the course of occurrence and not even tried to hold appellants/convicts. He also stated that he is not reported this occurrence to police but after 5 minutes of the occurrence police arrived there and he narrated the entire occurrence to the police which was recorded by the police, where his signature was also

obtained. It was also stated by him that police brought him to Town P.S. where he was detained for about two and half hours and by that time Senior police officers were also came to police station. He denied the suggestion that as police was suspicious about his involvement in the occurrence therefore he was detained in police station. It was stated by him that police dropped him to his house under security cover. He stated that he was in jail in connection with Arms case, where he found sitting with informant of this case but he stated that police seized his licensed rifle as he was in habit to have his rifle. He failed to depose about the exact number of accused persons and denied the suggestions as deceased were criminals and due to previous enmities appellants/convicts were named with present occurrence. Shifting to deposition of PW-1 which was recorded in Session Trial No. 107A/12, where he also supported the occurrence of 20.07.2011, which took place at about 3:15 PM almost with same narration as he deposed in his examination-in-chief, as PW-1 in Session Trial No. 107/12, as discussed above.

On cross-examination, he deposed that he arrived on place of occurrence at about 3:00 PM. It was stated by him that police taken him away from place of occurrence by providing security. He also stated that police seized empty

cartridges and Pappu Singh (one of the co-accused) remained there till presence of police on spot. He also stated that seizure list was prepared which was duly signed by Pappu Singh. He also stated that his first statement was recorded as Town P.S. Case Number alongwith Shashi Bhushan Singh (PW-2). He also stated that his statement was recorded as Town Police Station after 5-6 days of occurrence. He denied to have any previous enmities prior to this occurrence with appellants/convicts. He also stated that in connection of murder of his brother Sanjeet Singh, Mahesh Rai and Mangal Rai were arrested and same Mahesh Rai is the accused in the present case. It is stated that Nikesh Rai (appellant/convict) is the brother of said Mahesh Rai. It was categorically stated by him in Para-11 that Dinesh Rai went down to stairs alone and came up by shouting that appellants/convicts alongwith other co-accused persons are coming but by same time appellants/convicts and other co-accused persons came there and opened indiscriminate firing. It was stated that out of fear he hide himself under wooden cot i.e. "*Chowki*", which was in the corner of the room. It was stated that out of fear this fact was not stated to police by him. In Para-12 he further categorically stated that he was witnessing entire occurrence by hiding himself in the corner of room and also

stated that the appellants/convicts along with other co-accused entered into room from eastern side. It is also stated by him in Para-15 that after occurrence, accused persons/appellants convicts run away and when police arrived at place of occurrence, no person was available thereof. It is stated by him that police took his statement on spot first time, but he is not sure to sign that statement. It was also stated by him that a television set was also in said room and he cannot say whether any bullet hit that television set. He failed to state that how much firing can be made from AK-56 and AK-47. He denied to suggestion as advanced by learned counsel appearing on behalf of appellants/convicts before the trial court that he was not present at the place of occurrence. He denied to state that he is a man having criminal image and as accused Mahesh Singh is involved in the murder of his brother, he is deposing falsely in present case.

17. PW- 2 is the informant of this case, namely, Shashi Bhushan Singh, who also deposed in his examination-in-chief that occurrence is of about 3:15 PM, which took place on 20.07.2011 and by that time he was in Civil Court, Chapra, where he was informed by one Chandrashekhar Singh over telephone to come immediately, as firing was opened at the

residence of Pappu Singh where Mani Bhushan Singh, Dinesh Rai (Driver), and Devendra Singh were killed. It is deposed that on this information, he went to the residence of Pappu Singh. After arriving at the place of occurrence, he found that police was already there, where he was informed by Manjit Singh (PW-1) that Dinesh Singh came up by shouting that Nikesh Rai, Avinash Rai (Both Appellants/convicts), Mahesh Rai, Devendra Singh @ Puttu are coming up with AK- 47rifle. Dinesh Rai came up (first floor of the house), where accused persons including appellants/convicts after following him also came up and opened indiscriminate firing. It was also informed to him by said Manjit (PW-1) that they were equipped with AK-47, Carbine and pistol. He also deposed that he asked to PW-1 that why they were came here (about deceased), where it was said that Pappu Singh called him in connection with business matter, where a train ticket was already booked for Lucknow. Pappu Singh also called PW-1 Manjit at place of occurrence. It was deposed that Pappu Singh told Mani Bhushan (deceased brother of informant) that not to come here with weapons. He deposed that Shambhu Singh, appellant/convict of Criminal Appeal (DB) No. 199 of 2018, act as a liner, providing secret information to co-accused persons including appellants/convicts. He also

deposed that he was in inimical term with Mahesh Rai and Nikesh Rai (Both appellants/convicts) and for said old enmities occurrence took place. It was also deposed by him that his statement was recorded at place of occurrence itself, which he signed. This witness identified his signature on written information which on his identification exhibited as **Exhibit-1** before the Court. It was also deposed by him that police came to his house after taking his statement. He identified all accused persons present in the dock.

On cross-examination, he stated that Pappu Singh was doing business of property dealing with his deceased brother (Mani Bhushan Singh) and he arrived at place of occurrence at about 4:15 PM. He also stated that before his arrival no statement of any person was recorded by police regarding occurrence. It was deposed by him that he met with Manjit (PW-1) at place of occurrence and his statement was not recorded by police before his arrival. It was stated that he asked from Manjit that whether he stated anything about the occurrence to any one, where he denied. His re-statement was recorded by police at his village. It is stated by him that when he arrived at place of occurrence Pappu Singh was not there. He deposed that by the time he was leaving the place of occurrence

Pappu Singh came there. He further deposed in his cross-examination that he did not mention in his written information that whatever he stated before the police, that basis of his information was input provided by Pappu Singh. He also denied to state about the presence of Manjit Singh (PW-1) at the place of occurrence in his statement, whereas he denied the suggestion that he stated before the police in his re-statement that he was told by Manjit (PW-1) that Pappu Singh told him over phone to go together for Lucknow. He deposed specifically that Manjit (PW-1) was also called by Pappu. He also stated that he mentioned in his written information and re-statement that he was informed by Manjit (PW-1) that Pappu Singh told him not to come with weapons. He also stated that he named Devendra Singh @ Puttu as one of the accused in this case. He denied the suggestion that Manjit (PW-1) was not available on the place of occurrence and denied that nothing was said to him by PW-1 regarding occurrence. He denied the suggestion that as no one was to support the occurrence, he planted Manjit (PW-1) as eye-witness of the occurrence. He also denied to depose falsely.

On further cross-examination on behalf of rest of co-accused persons including appellants/convicts, he denied while replying the suggestion of learned counsel of accused

appellants that he was told by Pappu Singh that firing was made by 4-5 unknown persons by using AK-47, Carbine and revolver, causing death of three persons. He further deposed that police recorded his statement at 3:55 PM. It is stated by him that he is an accused of Masrakh P.S. Case No. 129/12, which was lodged for Arms Act. He also stated that he was implicated falsely thereof. He also stated that he was falsely implicated in Awtar P.S. Case No. 60/13, also. He stated that he know one Mohan Rai but denied to know Raj Kumar Rai. He also stated that he was falsely implicated in Awtar Nagar P.S. Case No. 69/2005, which was lodged in connection with kidnapping of said Mohan Rai and Raj Kumar Rai. He denied to depose falsely out of previous enmities.

18. PW-3 Sharvan Singh @ Sharvan Rai, who is not the eye-witness of the occurrence and he came to know about the occurrence through television news. He is the nephew of deceased Dinesh Rai. He received the dead body of deceased Dinesh Rai and also signed on inquest report, what he identified during the trial and was exhibited as **Exhibit No -2**. It is stated by him that his statement was not recorded by police.

On cross-examination, it was stated by him that police got his signature after giving him dead body.

19. PW-4 is Suresh Rai, who is the witness of inquest report of deceased Dinesh Rai, and he identified said inquest report before the Court during the trial and on so his signature was exhibited as **Exhibit No.- 3.**

On cross-examination, it was stated by him that signature was taken by doctor.

20. PW-5 is Dr. Rameshwar Prasad who deposed that on 20.07.2011, he was posted as Medical Officer at Sadar Hospital, Chapra. Postmortem of deceased Mani Bhushan Singh was conducted by Dr. K.M. Dubey (PW-7) in his presence. He was one of the member of medical board and he identified his signature, which is marked as **Exhibit. 2.**

Similarly he also identified his signature on the postmortem report of deceased Dinesh Rai, conducted by Dr. K.M. Dubey (PW-7) which on his identification marked as **Exhibit-2/A.**

Finally, he also identified his signature on the postmortem report of third deceased, namely, Devendra Singh, which was conducted by Dr. K.M. Dubey (PW-7) which on his identification marked as **Exhibit-2/B.**

He deposed in cross-examination that postmortem was conducted by Dr. K.M. Dubey (PW-7) and he was simply a

member of medical board.

21. PW-6 is Dr. Shailendra Kumar Singh. On 20.07.2011, he was posted as medical officer at Sadar Hospital, Chapra, and was also one of the member of medical team, which conducted postmortem upon three deceased namely, Dinesh Rai, Mani Bhushan Singh and Devendra Singh. It is deposed that postmortem was conducted by Dr. Krishna Mohan Dubey (PW-7). He identified his signature on all three postmortem reports, which on his identification was marked as Exhibit- 2/C, 2/D and 2/E respectively.

On cross-examination it was deposed that Medical board was constituted at the instance of Deputy Superintendent, Chapra but that letter is not with him.

22. P.W-7 is Dr. Krishna Mohan Dubey, on 20.07.2011 he was posted at Sadar Hospital Chapra as Medical Officer. On that day he held the P.M. examination of the dead body of Dinesh Rai aged 30 Yrs. S/o Bhikhari Rai, Vill. Bishambarpur, P.O. Chinatamanganj, P.S. Garakha Distt.- Saran at 9.30 P.M. and found following Antemortem and postmortem findings:-

1. External injuries

A. Lacerated punctured wound of 2” diameter with

charge margin Over lateral wall of left side of neck. Cavity deep in neck (that was entry wound).

B. Lacerated punctured wound of about 4” diameter around the right eye ball and temporal area of skull (Exit wound).

Both the above injuries were communicating to each other. Right eye ball was absent.

C. Lacerated punctured wound 1/4” diameter with charged margin and other lacerated punctured wound 1/2” diameter in the same plane and in the same right arm 1st was entry wound and 2nd was exit would communicating to each other.

D. Lacerated wound within burn muscle and charged skin 4” x skin deep and 3” over the right thigh.

On dissection

Brain was lacerated and brain material was coming out, through left Temporal bone. Temporal bone was fractured.

All the Visceras were pale and intact. X ray skull bone showing fracture of right temporal bones.

As per X ray report cause of death was haemorrhage and shock, caused most probably by fire arm.

Time elapse since death from six to eight hours.

He deposed that postmortem report is in his writing and bears his signature which on identification **marked as 2/F.**

2. On the same day he held postmortem examination over the dead body of Mani Bhushan Singh S/o Gunjeshwar Singh aged about 40 Yrs. vill. - Ghuwa Basant P.S. Autar Nagar, Distt. - Saran at 9.45 P.M. and found the following injuries.

External injuries:

A. Lacerated punctured wound over the back of skull with charged margin with burn muscle. It was cavity deep of brain (entry wound).

B. Lacerated punctured wound over right frontal area, coming outside through it (exit wound), both the above injuries were communicating to each other.

C. Two lacerated punctured wound over right lateral chest ball 2" apart and 1/2" diameter each cavity deep to chest.

<u>On dissection</u>

Brain was lacerated with brain material coming out through the exit wound. Right lung was lacerated, chest cavity was filled with blood. Right lobe of liver was lacerated, right 3rd & 4th ribs were fractured with pieces of bones inside the lungs, small piece of metalic body was found in liver 1/2" long 1/6"

diameter, are other pointed metalic body found in right scapular head, which was preserved, other viscers were pale and intact.

As per postmortem examination and X-ray chest and other X-ray, cause of death was opined as haemmorrhage and shock caused by fire arms.

Time, elapse since death 6 to 8 hours.

He deposed that postmortem report is written by him and bears his signature, which on identification was marked as **Exhibit. 2/G.**

3. On the same day he held the P.M. examination over the dead body of Devendra Singh S/o Late Sudama Singh aged 45 Yrs. of Vill. - Pipara, P.S. -Panapur, Distt.-Saran at 10 P.M. and found following ante-mortem & postmortem findings over his dead body.

External Examination

A). Lacerated punctured wound over the left flank 3" above the left illiac crest with charged margin and blackening around the wound cavity deep to abdomen (Entry wound).

B. Lacerated punctured wound over the right flank 1" diameter and 4" above the right illiac crest with momentun protruding through wound. Both the above wound bears communicating to each other.

(Ext. wound)

C. Lacerated punctured on the left calf. 1/4" diameter with charges margin and blackening around the wound.

<u>On dissection</u>

Small intestine was lacerated and punctured at multiple feacl side. Material and blood was filled in abdominal cavity. Liver was lacerated other visceras were pale and intact. Left Tibia and tibula were fractured. Three small metal pieces were found at fracture site which were preserved.

He opined cause of death as haemorrhage and shock probability due to fire arm injuries.

Time elapse since death till postmortem was 6 to 8 Hrs. He deposed that postmortem report is in his pen and bears his signature which on his identification was marked as **Exhibit. 2/H.**

23. PW-8 is Nandu Sharma, who is one of the Investigating Officer of this case, who deposed in his examination-in-chief that he took charge of investigation of this case on 30.07.2011 and after taking charge of investigation recorded re-statement of informant (PW-2). He also deposed that accused persons were arrested by him and he also recorded

their confessional statement. He also deposed to obtain postmortem report and recorded the statement of witnesses Arun Srivastava, Munna Sharma, Raj Kishore Pandey, Chhotan Prasad during the course of investigation and submitted charge sheet accordingly after completion of investigation.

On cross-examination it was deposed by him that he never accompanied the Investigating Officer of this case prior to 03.07.2011 but he stated in Para-34 of the case diary that he went to Dahiyawana Tola alongwith Ex. I.O. of this case to arrest Ghanshyam Singh @ Pappu Singh and arrested him. He also stated that he never issued notice to Shashi Bhushan Singh (PW-2) for appearance at police station. It is stated that PW-2 appears at police station on the next day he assumed charge. It is stated by him that PW-2 told before him that Manjit (PW-1) was not present at place of occurrence, when he arrived there. It is also stated by him that during investigation it was stated by PW-2 that he came to know about the occurrence on the next day from his cousin brother Mritunjay Singh. He also stated that PW-2 disclosed that Puttu Singh was not involved in said occurrence. It is also stated that he (PW-2) came to know about the occurrence from Manjit Singh (PW-1) after occurrence. He denied suggestion that his investigation is faulty.

On cross-examination, he stated that Manjit (PW-1) never made such statement that Pappu Singh called him to accompanied for Lucknow. He also not stated that PW-1 stated during investigation that he was asked by Pappu Singh not to come with arms/weapons.

24. PW-9 is Arun Kumar Tiwari, who is also Investigating Officer of this case. He deposed in his examination-in-chief that on the date of occurrence i.e. on 20.07.2011 he was posted as SHO of Town Police Station. He recorded statement of Shashi Bhushan Singh (PW-2) and on the basis of which Town P.S. Case No. 154/2011 was registered. He identified his hand writing and signature on fardbeyan, which on his identification exhibited as **Exhibit-4.** He also identified his endorsement thereof, which was in his hand writing with signature, which on his identification exhibited before the trial court as **Exhibit- 4/1** and his signature over the formal FIR, was also exhibited as **Exhibit No. 4/2.** It is deposed by him that he himself assumed charge for investigation of this case. He identified signature of Shri Sanjay Kumar, Sub Inspector over inquest report of all three deceased, which on his identification exhibited as **Exhibit No. 5, 5/1 and 5/3** respectively.

On cross-examination, it was deposed by him that

he recorded the statement of witnesses during investigation. He described place of occurrence which is the first floor of the building, where northern part was occupied by one Uma Shankar Singh, MP (Member of Parliament) and southern part was of Pappu Singh. He stated that in flat of Pappu Singh, there was two rooms, facing eastern side, which open in Verandah. Out of these two rooms, the room of southern side was exact place of occurrence. It is stated that he found the dead body of Devendra Singh near to door of western wall of said room. The second dead body was also lying nearby and it was of deceased Mani Bhushan Singh and third dead body was in corner of north east wall which was of Dinesh Rai. All these dead body were found in pool of blood. He also found a wooden cot i.e. *Chowki* inside room in southern side. He also found one revolving chair in turn down position near to dead body of Mani Bhushan Singh. He also stated to found 10 (ten) bullet marks on western wall and door of said room, 05 (five) bullet marks on southern wall of said room, (05) five bullet marks on northern wall of said room and also found 40 empty cartridges on the Verandah of said room with one misfired bullet. He also prepared the map of place of occurrence during the course of investigation. It is also stated that inquest report of all three persons were prepared

in presence of Sub Inspector Sanjay Kumar and Shri Charan Ram, which on his identification exhibited before trial court, where inquest report of deceased Mani Bhushan Singh was exhibited as **Exhibit No. 5**. Inquest report of deceased Devendra Singh was exhibited as **Exhibit No. 5/1** and inquest report of Dinesh Rai was exhibited as **Exhibit No. 5/2** respectively. He also stated to seize empty cartridges and misfired bullet and on his direction, SI Sanjay Kumar prepared its seizure list. After preparing inquest report, the dead bodies were sent for postmortem. It is stated that he recorded statement of Rajesh Singh at place of occurrence, who supported fardbeyan in totality. He also stated to record statement of Manjit Singh (PW-1) on 21.07.2011 in his village Baikunthpur. He also stated to record statement of witnesses Chandrashekhar Singh and Mritunjay Singh, who supported the occurrence, as eye witness. It is stated that after obtaining necessary permission on 30.07.2011, he arrested accused Raju Singh. It is stated further that on 30.07.2011 he hand over the charge of investigation to station In-Charge, Nandu Sharma (PW-8). He also identified the signature of Sanjay Kumar, SI on seizure list which was exhibited before trial court as **Exhibit No. 7.**

On cross-examination, it was stated by him that

S.P., Saran was informed over his mobile at about 3.30 PM on 20.07.2011 regarding occurrence. Time was recorded as 3.33 PM. It was stated that he arrived place of occurrence at about 3.55 PM and recorded fardbeyan at about 5.00 PM. It is stated that all papers were prepared after 5.00 PM. He stated that he did not mention anything in diary that what investigation was done by him between 3.55 PM to 5.00 PM. It is stated that he proceeded for police station from place of occurrence to lodge FIR, where time was mentioned as 5.00 PM. It is also stated by him that inquest report of Devendra Singh was prepared at about 5.00. It is also stated that it came to his knowledge while noting fardbeyan that beside deceased Mritunjay Singh, Manjit Kumar Singh (PW-1) and Chandrashekhar Singh were present at the place of occurrence. It is also stated that these three persons were not found there and on the same night at about 10.45 PM a direction was received from S.P., Saran to record statement of these three persons, accordingly he visited the village of Mritunjay Singh but he was not found available at home and recorded statement of Manjit Kumar Singh (PW-1) after going to his residence. His statement was recorded on 21.07.2011 at about 1.45 AM. He also recorded the statement of Chandrashekhar Singh. He denied suggestion to implicate

accused persons including appellants/convicts in collusion with informant (PW-2).

On his cross examination on behalf of co-accused Pappu Singh he stated that informant/PW-2 nothing stated against Pappu Singh while recording his fardbeyan. Pappu Singh was also not named during recording his re-statement. It is also stated by him that Ghanshyam Singh @ Pappu Singh is a seizure list witness and his statement was also recorded during course of investigation. It is also stated by him that Manjit Singh (PW-1) also not stated anything against Pappu Singh. He also stated that Mritunjay Singh and Chandrashekhar Singh also not stated anything against Pappu Singh. He also stated during his cross examination that Shashi Bhushan Singh (PW-2) in his re-statement never made statement that Manjit (PW-1) told him that Pappu Singh called him to go together for Lucknow. It is also stated by him that he came to know from Pappu Singh about the occurrence and gave his statement as he was informed by Pappu Singh. He also stated that informant (PW-2) never made any such statement that Manjit Singh (PW-1) was available at place of occurrence. It is stated by him that informant (PW-2) stated before him in his re-statement that he was informed over telephone by Chandrashekhar Singh at about

3.40 PM on the date of occurrence that some miscreants opened fire in the house of Pappu Singh where Mani Bhushan Singh, Devendra Singh and Dinesh Singh were killed. He also stated that it was not disclosed by him that he came to know from Pappu Singh that firing was made from AK-47 and Carbine.

25. PW-10 is Anuj Kumar Singh, who is the witness of inquest report, and identified his signature on the inquest report of deceased Mani Bhushan Singh which exhibited on his identification as **Exhibit No. 5/3**. He also identified signature on inquest report of deceased Devendra Singh which exhibited as **Exhibit No. 5/4** before the trial court.

On cross examination, he failed to depose about the contents of both exhibits. It is also deposed by him that inquest report was not prepared before him and he signed said report as asked by Daroga Ji (police).

26. PW-11 is also not the eye witness of the occurrence. He is a seizure list witness of seized mobiles, which was seized from Nikesh Rai (appellant/convict). He identified his signature over seizure, which on his identification exhibited as **Exhibit No. 8**. He also identified seizure list of mobile phone of Avinash Rai (appellant/convict) where he identified his signature, which on his identification exhibited as **Exhibit No.**

8/1.

On cross-examination, he stated that at the time of preparing seizure list he was posted in Town P.S. Chapra in 2011. It is also stated by him that seizure list was prepared in premises of police station. It is also stated that when he signed the seizure list, the signature of Brij Mohan Rai was also available as a witness, over seizure list.

27. PW-12, is also a seizure list witness, who produced the seized empty cartridges before the learned trial court after opening the sealed box. There were 33 empty cartridges of 7.62 bore, 7 cartridges of 9 mm bore, one live cartridges of 7.62 bore, Total 41, which were exhibited before the Court as material exhibit starting from I to XLI. He also produced before the Court one micromax mobile, one spice mobile, one zen mobile, one Max mobile, 13 SIM of different companies, driving licence of one Mukesh Kumar, ATM card of SBI in name of Jamadar Rai. Identity card issued by Election Commission of India in favour of Mukesh Kumar, one small phone diary having name of different persons including phone numbers, four piece of papers having different phone numbers which were exhibited before the Court as material exhibits starting from XLII to LII.

On cross-examination, it is stated by him that none of the papers was containing signature of police personnel. It is also stated by him that the sealed bag containing materials exhibit is not bearing signature of police officer. It is also stated that the writing on sealed bag, which is in sketch pen, was not signed by any police officer. He also stated that on said bag name of M/s Sudarshan Jewellers was also written. He stated that none of cartridges were containing specific paper, having specific mark. He also stated that he cannot read out the name of person as mentioned in election I-card in want of spectacles. He also stated that mobile number is not written on any of the seized mobile and also that none of the mobile was sealed. He denied the suggestion that seizure list is forged and was prepared only for prosecution purpose.

28. The main contention of argument as advanced by the learned counsel appearing on behalf of the appellants is that the version of PW-1, namely, Manjit Kumar Singh, who is only eye-witness of the occurrence cannot believed for several contradictions. It appears as per the deposition of PW-8, who is Nandu Sharma as deposed in para-6 of his cross-examination that informant PW-2, namely, Shashi Bhushan Singh stated before him that when he visited the place of occurrence, PW-1

was not available there and he came to know about the occurrence from Manjit (PW-1) on the next date of occurrence. It also appears from deposition of PW-9, namely, Arun Kumar Tiwari, who is second investigating officer of this case as deposed in para-9 that deposition of Manjit Singh was recorded on 21.07.2011 at his village, namely, Baikunthpur. It appears from para-8 of his deposition that he recorded the deposition of one Rajesh Singh at the place of occurrence, who supported the narration of written information. From para 14 of his deposition, it appears that PW-1 told him that he came to his house immediately after the occurrence by motorcycle and his statement was recorded on 21.07.2011 at 1.45 AM at his residence. PW-9 specifically deposed that beside Manjit Singh (PW-1), Chandrashekhar Singh and Mritunjay were eye-witness of this occurrence. PW-9 found wooden cot i.e. *Chowki* on place of occurrence, where PW-1 keep him hide from appellants/convicts during course of occurrence and same appears corroborated with deposition of PW-1, also. Having these backgrounds of contradictions, on critical analysis of the depositions of PW-1 (only eye witness), PW-2 (informant) *qua* PW 8 and PW-9 who are the Investigating Officers of this case in totality as discussed above, it appears that nature of

contradictions of their statements are minor in nature and is not of such a nature which can convinced us to disbelieve the substantial deposition of PW-1, as an eye-witness of the occurrence by negating his presence.

29. From the deposition of PW-1, it appears that the person who appeared in room (exact place of occurrence) where deceased were present are appellants/convicts Nikesh Rai @ Piyush Raj and appellant/convict Avinash Rai, who fired indiscriminately causing death of brother of informant, namely, Mani Bhushan Singh, Devendra Singh and Dinesh Yadav. Nothing appears from his deposition that the appellant/convict Shambhu Rai was present there or there is anything like which may connect him with this occurrence as one of the conspirator or a person having common intention. He not even named appellant/convict during his entire deposition. It appears that name of appellant/convict, namely, Shambhu Rai appears first time in deposition of informant (PW-2), who is not the eye-witness of the occurrence and he named this appellant/convict on the basis of suspicion as arises out of previous litigations/enmities, where it was deposed that the appellant/convict worked as a liner but nothing surfaced either from his deposition or from the evidences available on record,

which may support his version as regard to involvement of appellant/convict Shambhu Rai in present occurrence. From the autopsy report of all three deceased persons as appearing from depositions of PW-5, PW-6 and PW-7 who are doctors that death was caused out of gun shot injuries. Investigating Officers PW- 8 and PW-9 found several marks of firing on the walls of the room and also collected about 40 empty cartridges alongwith one misfired cartridge from place of occurrence, which support the version of indiscriminate firing, as it was made by appellant/convict. Nothing surfaced from the cross-examination of PW-1, namely, Manjit Kumar Singh which may create a doubt on his version as deposed before the trial court regarding occurrence, being eye-witness.

30. In the fact stated above, it can be safely said that ocular evidence of PW-1 is corroborated by medical evidence and also with the seizure list. The testimony of PW-1, who is the eye-witness cannot be disbelieved merely because certain insignificant, normal or natural contradictions have appeared into his testimony. Deceased were attacked by appellants/convicts Nikesh Rai @ Piyush Raj and Avinash Rai in broad daylight where the motive behind attack is clear as there was previous enmity between accused/appellant/convict

qua informant (PW-2).

31. In view of the above mentioned facts and circumstances, we are convinced that there is no reason to interfere in the findings of conviction and order of sentence *qua* appellant Nikesh Rai @ Piyush Raj of Criminal Appeal (DB) No. 117 of 2018 and Avinash Rai of Criminal Appeal (DB) No. 199 of 2018.

32. Hence, appeals of appellant Nikesh Rai @ Piyush Raj of Criminal Appeal (DB) No. 117 of 2018 and Avinash Rai of Criminal Appeal (DB) No. 199 of 2018 are dismissed herewith by confirming their conviction and order of sentence as held by learned Trial Court through order and judgment dated 18.12.2017 and sentence dated 22.12.2017 passed by the learned Additional Sessions Judge IX, Saran at Chapra in Session Trial No. 107 of 2012/4868 of 2014 (arising out of Chhapra Town P.S. Case No. 154 of 2011.

33. In view of the facts as discussed above, it appears that prosecution failed to established any common intention or conspiracy on the part of appellant/convict, namely Shambhu Rai from evidences available on record to established his guilt beyond reasonable doubts.

34. Accordingly, the appeal of appellant, namely,

Shambhu Rai stands allowed.

35. The impugned order and judgment dated 18.12.2017 and sentence dated 22.12.2017 passed by the learned Additional Sessions Judge IX, Saran at Chapra in Session Trial No. 107 of 2012/4868 of 2014 (arising out of Chhapra Town P.S. Case No. 154 of 2011 are set aside, q*ua* appellant/convict Shambhu Rai, who accordingly acquitted of the charges levelled against him. He is directed to be set at liberty forthwith unless his detention is required in any other case.

36. Fine if any paid by appellant/convict Shambhu Rai be returned to him immediately.

(A. M. Badar, J.)

(Chandra Shekhar Jha, J.)

veena/-

AFR/NAFR	AFR
CAV DATE	17.04.2023
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