

(2021) 08 PAT CK 0081

In the Patna High Court

Case No : Criminal Appeal (DB) No. 714, 778 Of 2015

Anil Tiwary

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 25-08-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 134, 302

Arms Act, 1959 — Section 27

Code Of Criminal Procedure, 1973 — Section 154, 157, 161(3), 207, 313

Citation : (2021) 08 PAT CK 0081

Hon'ble Judges : Ashwani Kumar Singh, J; Anil Kumar Sinha, J

Bench : Division Bench

Advocate : A. K. Thakur, Raghunandan Kumar Singh, Dr. Mayanand Jha, Vikram Deo Singh, Sada Nand Roy, Mayanand Jha

Final Decision : Allowed

Judgement

“

1. The appellants in these two appeals have challenged the common judgment of conviction dated 8th July, 2015 and the order of sentence dated 13th,,

July, 2015 passed by the learned 7th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No.384 of 2011.",,

2. By the aforesaid judgment dated 08th July, 2015, the appellants have been convicted for the offences punishable under Section 302/ 34 of the Indian",,

Penal Code (for short â??IPCâ??) and section 27 of the Arms Act.,,

3. After hearing the convicts on the point of sentence, vide consequential order dated 13th July 2015, the Trial Court sentenced them to undergo",,

rigorous imprisonment for life and a fine of Rs.10,000/- each for the offence punishable under Sections 302/34 of the IPC and in default of payment of",,

fine, to undergo imprisonment for an additional period of six months and rigorous imprisonment for three years and to pay a fine of Rs.1,000/- for the",,

offence punishable under Section 27 of the Arms Act and in default of payment of fine, to undergo imprisonment for an additional period of one",,

month. The trial court directed that both the sentences shall run concurrently.,,

4. The Sessions Trial, in which the impugned judgment and order were passed, relates to the First Information Report (for short "FIR") that had",,

been registered at 7:45 a.m. on 1st April 2010 in Rajpur Police Station under Section 154 of the Code of Criminal Procedure (for short "CrPC"),,

in respect of an incident that had occurred at about 4:00 p.m. on 31st March 2010 at Chitbisao situated at a distance of 18 kilometres from the police,,

station.,,

5. The FIR, giving rise to the Sessions Trial, was registered on the basis of the fardbeyan of one Ramnath Singh Yadav, son of Ramayan Singh",,

Yadav, which was recorded by Chandra Narayan Jha, Station House Officer (for short "SHO") Rajpur Police Station on 31st March 2010 at",,

08:15 p.m.,,

6. In his fardbeyan, Ramnath Singh Yadav stated that on 31st March 2010 at about 4:00 p.m., he along with his brothers Umesh Singh Yadav",,

(deceased), Rajesh Singh, Udit Narayan, nephew Jitendra Singh and mother Gangotri Devi had gone to the Ahar (canal) to bring the pump set",,

machine. At that place, Anil Tiwari was sitting on a chowki from before and, at some distance, his co-villager Gupteshwar Sharma and Sudarshan",,

Sharma were also sitting. When he and his family members went to the aforesaid place, Anil Tiwari started talking to him. He along with others",,

brought the pump set near the Ahar and kept it at his residence. Thereafter, he again went to the field for some work. In the meantime, Anil Tiwari",,

came armed with a gun and fired twice at his brother Umesh Singh Yadav causing injury to him as a result of which, he fell and succumbed. He ran",,

away towards the place of occurrence, but in the meantime, Sudarshan Sharma fired from his country-made pistol, which fortunately did not hit",,

anyone. Thereafter, Anil Tiwari, Sudarshan Sharma and Gupteshwar Sharma ran away towards village-Suara. He further stated that 3-4 days ago, his",,

deceased brother Umesh Singh Yadav was coming from the south towards his house and when he reached near the house of Janardan Pandey",,

Pramod Pandey and Janardan Pandey who were standing there from before fired on him. His brother came running to his house. However, he did not",,

disclose the incident to him nor did he file any written report in this regard. He stated that Anil Tiwari, a resident of village-Suara, used to visit the",,

house of the accused persons quite frequently. He stated that a few months ago a child of the village was kidnapped. His co-villager Sudarshan",,

Sharma was named accused in that case and was arrested by the police. Sudarshan Sharma and his brother always suspected that it was the",,

deceased Umesh Singh Yadav, who was responsible for the arrest. He alleged that it was the motive for the killing of his brother Umesh Singh Yadav",,

by the accused persons.,,

7. On the basis of the aforesaid fardbeyan of Ramnath Singh Yadav, Rajpur P.S. Case No.38 of 2010 was registered under Sections 302/120B/34 of",,

the IPC and 27 of the Arms Act against five persons, namely, Anil Tiwari, Gupteshwar Sharma, Sudarshan Sharma, Janardan Pandey and Pramod",,

Pandey and the investigation of the case was taken up by the SHO Chandra Narayan Jha himself.,,

8. On completion of the investigation, the Investigating Officer (for short â?? I.O.â??) submitted charge-sheet No.49 of 2010 dated 30th July 2010 in",,

the court of Sub Divisional Judicial Magistrate, Bikramganj under Sections 302/34 of the IPC and 27 of the Arms Act against the accused Gupteshwar",,

Sharma and Sudarshan Sharma and kept the investigation open with regard to the other accused persons named in the FIR,,

9. On receipt of the charge-sheet, after taking cognizance of the offence, the learned Sub Divisional Judicial Magistrate, Bikramganj complied with the",,

requirements of Section 207 of the CrPC and committed the case of the charge-sheeted accused persons, namely, Gupteshwar Sharma and",,

Sudarshan Sharma to the Court of Sessions vide order dated 18th August 2011, which was numbered as Sessions Trial No.384 of 2011.",,

10. Subsequently, the I.O. submitted a supplementary charge-sheet in the court of Sub Divisional Judicial Magistrate finding the case to be true as",,

against the FIR named accused Anil Tiwari under Sections 302 read with 34 of the IPC and 27 of the Arms Act vide charge-sheet No.49 of 2011,,

dated 12th November 2011.,,

11. However, the two other FIR named accused persons, namely, Janardan

Pandey and Pramod Pandey were not sent up for a trial, as their",,

culpability in the offence was not found true during the investigation.,,

12. Consequently, after complying with the requirements of Section 207 of the CrPC, the case of the accused Anil Tiwari was also committed to the",,

Court of Sessions for trial, vide order dated 18th January 2012 passed by the learned Sub Divisional Judicial Magistrate, Bikramganj, which was",,

numbered as Session Trial No.49 of 2012.,,

13. After hearing the parties, on the point of charge, the Trial Court, vide order dated 18th January, 2012 passed in Sessions Trial No.384 of 2011,",,

framed charges under Sections 302/134 of the IPC and 27 of the Arms Act against the accused Sudarshan Sharma and Gupteshwar Sharma to which,,

they pleaded not guilty and claimed to be tried.,,

14. Similarly, after hearing the parties, on the point of charge, the Trial Court, vide order dated 2nd April 2012 passed in Sessions Trial No.49 of 2012,",,

framed charges under Sections 302/34 and 27 of the Arms Act against the accused Anil Tiwari to which he pleaded not guilty and claimed to be tried.,,

15. Since, both the Sessions Trials arose out of the same FIR, vide order dated 19th September 2012, the Trial Court directed to amalgamate Sessions",,

Trial No.49 of 2012 with Sessions Trial No.384 of 2011. Thus, both the Sessions Trials were clubbed together.",,

16. During the trial, the accused Sudarshan Sharma absconded. In spite of his bail bonds being cancelled and the processes being issued against him,",,

he could not be produced before the Court. Hence, he was declared a proclaimed offender and his trial was split up and the Trial Court proceeded",,

with the trial of the accused Anil Tiwari and Gupteshwar Sharma.,,

17. The witnesses examined on behalf of the prosecution during the trial in the present case can be classified into four categories. The first category,,

I.,Exhibit 1,"The identification of signature by Ramayan Singh (P.W.4) on the carbon copy of inquest report of the deceased Umesh Singh Yadav.

II.,Exhibit 1/1,"The identification of signature made by Babunandan Singh on the carbon copy of the inquest report of the deceased Umesh Singh Yadav.

III.,Exhibit 2,"The identification of his signature by the informant Ramnath Singh (P.W. 5) on the fardbeyan.

IV.,Exhibit 2/1,"The identification of his signature by the witness Ramayan Singh (P.W. 4) on the fardbeyan.

V.,Exhibit 2/2,"The identification of his signature by the witness Babunandan Singh on the fardbeyan.

VI.,Exhibit 2/3,Fardbeyan.

VII.,Exhibit 2/4,Identification of signature of SHO Rajpur.

VIII.,Exhibit 2/5,"Pagination made by the SHO Rajpur over the fardbeyan.

IX.,Exhibit 3,"The post-mortem report of the deceased Umesh Singh Yadav.

X.,Exhibit 4,"Inquest report of the deceased Umesh Singh Yadav.

the occurrence. He stated that he does not know as to whether Munmun Tiwari has been made accused in the case of murder of the aunt and the,,

nephew of the accused Anil Tiwari. He denied the defence suggestion that he is deliberately suppressing the real facts. He expressed his ignorance,,

about the fact that the deceased was a friend of the aforesaid Munmun Tiwari. He stated that blood had fallen on the ground at the place of,,

occurrence and some blood had also got mixed in water collected in the Ahar. He stated that part of the body of the deceased was outside the water,,

and part of the body was inside the water collected in the Ahar. He stated that the police reached the place of occurrence on the information given by,,

someone at about 5:00-5:30 p.m. He admitted that he did not put signature on any paper. According to him, the police took the body to the police,,

station and his father and brother had accompanied the police. After the postmortem examination was held, they had returned to the village. He denied,,

the defence suggestion that the deceased Umesh was killed by unknown criminals in a gang war and the accused persons have been implicated,,

falsely at the instance of the aforesaid Munmun Tiwari. He also denied the defence suggestion that the dead body was not found lying near the place,,

of occurrence.,,

22. Gangotri Devi (P.W. 3) also corroborated the prosecution case as narrated in the fardbeyan of the informant in her examination-in-chief. In cross-examination, she admitted that the deceased Umesh was sent to jail earlier. However, she could not tell in which case he was sent to jail. She also admitted that the deceased Umesh was earlier sent to jail in Delhi. She stated that the police recorded her statement a day after the incident. She stated that near the water collected in the Ahar, Umesh had sustained firearm injury and blood had spread in and around the place of occurrence. She stated that Umesh had gone to attend the call of nature towards Ahar and immediately thereafter, she heard the sound of firing. She stated that she had disclosed to the police that the accused Anil Tiwari had resorted to two rounds of firing, which caused injuries in the neck and waist of the deceased Umesh. According to her, at the time of firing, Umesh was at a distance of 1-2 meters from the assailant Anil Tiwari. She stated that she had fallen on the body of the deceased and started crying as a result of this, her saree was drenched with blood. According to her, there were no bloodstains on the clothes of any other person. She stated that at the time of occurrence, no other villager was present at the place of occurrence."

23. Jitendra Singh (P.W. 2) is the nephew of the deceased. He also corroborated the prosecution case as narrated in the fardbeyan of the informant in his examination-in-chief. In cross-examination, he stated that the place of occurrence was at a distance of 1 kilometer from his house. He and others went to the place of occurrence and saw the dead body in the Ahar. He admitted that the height of pind of Ahar is about 10 feet from the ground level. He stated that the place of occurrence is at a distance of 80 feet from his land. He further stated that in his presence the police had arrived at the place of occurrence. Till the arrival of the police, the dead body of the deceased Umesh Singh Yadav was not shifted from the place where it was lying. He stated that he was the first person from whom the I.O. made inquiry, but he did not take his signature on his fardbeyan. The informant Ramnath Singh gave his statement at the police station, but he had not gone to the police station. He admitted that in his presence, no document was prepared at the place of occurrence. He also admitted that there was no pre-existing enmity between his family and the family of Sudarshan Sharma and Gupteshwar Sharma. His attention was drawn towards his previous statement. However, he denied that he had stated before the police that he

had not witnessed the occurrence himself and had learnt about it from others. He stated that in his previous statement made before the police, he had",,, stated that he had gone to the place of occurrence along with his family members to bring the pump set machine from the Ahar. He stated that the,, police had arrived at the place of occurrence after sunset, but at that time it was not dark. The police continued at the place of occurrence for about",,, half an hour and on the next day, the police arrived at his residence at about 3:00-4:00 p.m. and recorded the statement of his family members. He",,, admitted that several cases were pending against his deceased uncle and he had also gone to jail several times. He denied the defence suggestion that,, the offence as alleged had not taken place and he had deposed falsely before the court. He also denied the defence suggestion that he did not witness,, the occurrence and had deposed before the court at the instance of Munmun Tiwari.,,,

24. Ramayan Singh (P.W. 4), father of the deceased as well as the informant, is an attesting witness to the FIR. He too corroborated the prosecution",,,

case as narrated in the FIR in his examination-in-chief. He proved his signature on the carbon copy of the inquest report, which was marked as",,,

Exhibit 1. He also proved his signature on the fardbeyan, which was marked as Exhibit 2/1. He has not stated that the fardbeyan was recorded either",,,

at Ahar or in the village. He has simply stated that the inquest report was prepared in his presence, on which, he put his signature and the police had",,,

recorded his statement.,,,

25. In cross-examination, he admitted that at the time of occurrence, he was at his house and his maternal grand-son Jitendra (P.W. 2) informed him",,,

about the occurrence. Thereafter, he went to the place of occurrence. He admitted that the police brought the dead body to the police station where",,,

the documents were prepared. He also admitted that the deceased Umesh Singh Yadav was sent to jail earlier. He further admitted that the deceased,,

was also sent to jail in Delhi. He denied the defence suggestion that the deceased Umesh was killed by some unknown criminals and at the instance of,,

Pramod, Janardan and Munmun Tiwari, a false case has been instituted. He further admitted that from his house, the Ahar is situated at a long",,,

distance.,,,

26. Rajesh Kumar (P.W. 7), the brother of the informant as well as the deceased,

has corroborated the contents of the fardbeyan of the informant in",,,
 his examination-in-chief. In cross-examination, he stated that his statement was recorded by the police on 31st March. He stated that he, Ramnath,",,
 Udit Narayan and Jitendra had shifted the dead body to a distance of 10 feet from the place where it was lying. He admitted that blood had fallen on,,
 their clothes also, but it was not shown to the police. He denied the defence suggestion that he had not stated before the police that he had witnessed",,,
 the occurrence. He admitted regarding the criminal antecedent of the deceased and the fact that he was sent to jail several times. However, he denied",,,
 that the deceased was a veteran criminal and was killed in a different manner by some unknown criminals in gang war. He further denied that the,,
 accused persons have been implicated at the instance of the enemies of the accused Anil Tiwari.,,,

27. Babu Nandan Singh (P.W. 6), maternal uncle of the informant, is a formal witness. He has proved his signature on the carbon copy of the inquest",,,
 report of the deceased Umesh Singh, which was marked as Exhibit 1/1. In cross-examination, he stated that his village-Chakanwa is situated at a",,,
 distance of 16-17 kilometres from the place of occurrence. He had gone to the place of occurrence after hearing about the incident. He admitted that,,
 he did not read the contents of the document on which he had put his signature. He further admitted that though he had gone to the police station along,,
 with the body of the deceased, he did not put his signature on any other paper. He also admitted that the incident did not take place in his presence.",,

28. Dr. Sidheshwar Prasad Singh (P.W. 8) is the doctor, who conducted the postmortem examination on the body of the deceased on 1st April 2010.",,
 He stated in his deposition that at the relevant time, he was posted as Medical Officer at Sadar Hospital, Saran. He found the following antemortem",,,
 injuries on the body of the deceased: -,,

â??(i) abrasion 2â??x1â?? over right forearm;,,

(ii) lacerated wound 1/2â? in diameter, inverted margin, blackening of skin around the wound, back of abdominal region left side at 4th lumbar vertebra",,,
 level; and,,

(iii) lacerated wound 1â?? in diameter, inverted margin, blackening of skin around the wound, cavity deep, left scapular region.â??",,,

29. He stated that the time elapsed since death was within 12-24 hours and the

cause of death was hemorrhage and shock due to the above-,,

mentioned injuries. According to him, the injury Nos. 2 and 3 were caused by a firearm.",,

30. In cross-examination, he admitted that abrasion can be caused only by hard and blunt substances. He further admitted that he did not find injury on",,,

the head or on the neck of the deceased. He admitted that blackening injury can be caused when firing would be made from a distance of one meter.,,,

He stated that both the injuries were found on the backside. He further admitted that he conducted a postmortem examination at 9:30 a.m. and the,,

inquest report was before him at that time. He admitted that no case number was mentioned on the inquest report. He admitted that the P.S. Case,,

number was not mentioned in his postmortem examination report.,,,

31. Chandra Narayan Jha (P.W. 10) stated in his examination-in-chief that on 31st March 2010 he was posted as SHO of Rajpur Police Station. He,,

took over the investigation of Rajpur P.S. Case No.38 of 2010 on the same day. He recorded the fardbeyan of the informant near the Ahar at village-,,

Chitbisao. He identified his writing and signature on the fardbeyan, which were marked as Exhibit 2/3 and 2/4. He also identified the pagination made",,,

by him over the fardbeyan, which was marked as Exhibit 2/5. He stated that after taking over the investigation of the case, he recorded the further",,,

statement of the informant Ramnath Singh Yadav, inspected the place of occurrence, which is situated adjacent to the village-Chitbisao near Ahar. He",,,

stated that he did not prepare the inquest report because of the darkness in the night. He prepared the inquest report at 6:00 a.m. on 1st April 2010.,,,

He identified his writing and signature on the carbon copy of the inquest report of the deceased, which was marked as Exhibit 4. He took the signature",,,

of the witnesses on the inquest report and sent the body of the deceased for postmortem examination and, subsequently, obtained the postmortem",,,

report. He stated that he recorded the statement of Udit Singh, Rajesh Singh, Jitendra Singh, Gangotri Devi, Ram Narain Singh, Haribansh Pandey",,,

Jagdish Rai, Baliram Mishra, Sapan Singh, Surendra Singh, Jokhan Sharma, Pintu Singh and Murari Singh during the investigation. He handed over the",,,

charge of the investigation as he had superannuated on attaining the age of retirement.,,,

32. In cross-examination, he admitted that he had received information about

the occurrence at the police station, but he did not register any sanha in",,,
this regard. He further admitted that he did not mention anywhere about the receipt of the information at the police station. He recorded the fardbeyan,,
at about 8:15 p.m. at village-Chitbisao. He did not record the time when the subsequent statement of the informant was recorded. He admitted that he,,
did not inspect the place of occurrence due to darkness in the night. He further admitted that he did not mention the time when he inspected the place,,
of occurrence in the case diary. He did not mention the boundary of the place of occurrence during the investigation of the case in his diary. He also,,
admitted that he has not mentioned in the case diary where the body of the deceased was found lying. He contradicted Rajesh Singh (P.W. 7) by,,
accepting that he did not disclose before him that he had seen the killing of the deceased. He admitted that the deceased was a man having criminal,,
antecedent. He was made accused in cases relating to murder, loot, assault etc. He contradicted Jitendra Singh (P.W. 2) by admitting that he did not",,,
disclose during the investigation that he had witnessed the occurrence. He had not disclosed before him that he had gone together with his family,,
members towards Ahar to bring a pump set machine. He further admitted that in his previous statement he had not narrated the incident as narrated in,,
the fardbeyan. He had not narrated that the accused Surendra Sharma was apprehended by the police in connection with the kidnapping of a boy of,,
the village and the accused persons suspected that it was deceased at whose instance the police had arrested him. He had also not stated that the,,
accused Anil Tiwari fired two shots causing injuries to Umesh in his neck and waist. He further stated that he stayed at the place of occurrence along,,
with the police party for the whole night. He stated that the body of the deceased was lying at a distance of 5 feet from where the water got,,
collected. He denied the defence suggestion that he did not inspect the place of occurrence and the deceased was killed in a different manner. He,,
also denied the defence suggestion that he falsely instituted the police case in collusion with the members of the prosecution party,,
33. Arun Kumar (P.W. 9) stated in his examination-in-chief that on 17.06.2010, he took over the charge of the investigation of Rajpur P.S. Case",,,
No.38 of 2010. He stated that since the statements of witnesses were already recorded by the P.W. 10 earlier, he submitted a charge sheet before",,,

the court finding sufficient material in the case diary against the accused persons. In cross-examination, he admitted that in the case diary, there is no",,,
mention of the place of occurrence.,,

34. After the closure of the prosecution case, in order to enable the accused persons to explain the circumstances appearing against them, the Trial",,,

Court recorded their statements under Section 313 of the CrPC in which they denied the charges and pleaded their innocence.,,

35. After the recording of the statements of the accused persons under Section 313 CrPC, on behalf of the defence, one Rama Choudhary was",,,

examined as D.W.1. In his examination-in-chief, he deposed that on 31st March 2010 he was present at the Ahar of Chitbisao village for fishing. The",,,

settlement for fishing in the Ahar was made in his favour. His occupation is fishing for the last 20-25 years. He has a Marai near the Ahar in which he,,

was living for the last 4-5 days and used to cook his meal there. He was present at that place since morning. He stated that no occurrence as alleged,,

had taken place and no person was killed on 31st March 2010 near the Ahar.,,

36. In cross-examination, he stated that his village is situated at a distance of one mile from the village-Chitbisao. He admitted that he cannot produce",,,

any certificate in proof of fishing done by him on 31st March 2010. He denied the suggestion that he has falsely deposed before the court in collusion,,

with the accused persons.,,

37. After analyzing the evidence on record and arguments advanced on behalf of the parties, the Trial Court found the prosecution case true beyond",,,

reasonable doubt against both the accused facing trial. Accordingly, they were convicted and sentenced in the manner indicated above.",,,

38. Assailing the impugned judgment of conviction and order of sentence, Mr. Ajay Kumar Thakur, learned advocate for the appellant in Criminal",,,

Appeal (DB) No.778 of 2015 submitted that the Trial Court failed to appreciate the evidence on record. He submitted that the prosecution had failed,,

to bring home the charges levelled against appellants. He submitted that from the evidence, it would be evident that a large number of persons were",,,

present at the place of occurrence, but not even a single independent person, except the family members, came forward to support the case of the",,,

prosecution even as a hearsay witness. He submitted that from the evidence of the I.O., it would be evident that he recorded statements of several",,,

independent witnesses, but none of them was made a charge sheet witness. Since the prosecution failed to examine the independent witnesses, the",,,

Trial Court ought to have drawn adverse inference against it. He argued that all the prosecution witnesses examined in the case are interested and,,

related witnesses. They all are partisan witnesses. Hence, their evidence should have been discarded. According to him, there was no occasion for",,,

the witnesses examined on behalf of the prosecution to be present at the place of occurrence, but only because they are family members they came",,,

forward to support the case of the prosecution. He argued next that the prosecution has failed to prove the place of occurrence, as there was no",,,

objective finding of the place of occurrence by the I.O. during the investigation. He urged that the manner of occurrence as alleged by the prosecution,,

appears to be palpably false. He submitted that the postmortem examination report is also not in alignment with the case of the prosecution. He,,

strenuously urged that the prosecution case becomes doubtful, as the I.O. has suppressed the earliest version. It is not known whether the inquest",,,

report was prepared at the place of occurrence or at the police station. Lastly, he contended that the witnesses examined on behalf of the prosecution",,,

are wholly untrustworthy.,,,

39. While adopting the aforesaid arguments made by Mr. Ajay Kumar Thakur, learned advocate for the appellant Anil Tiwari in Criminal Appeal",,,

(DB) No.778 of 2015, Mr. Vikram Deo Singh, learned advocate for the appellant Gupteshwar Sharma in Criminal Appeal (DB) No.714 of 2015 added",,,

that the Trial Court ought to have taken into consideration the fardbeyan of the informant in which he has stated that the accused Anil Tiwari was,,

sitting along with a gun and it was he who is said to have fired upon the brother of the informant Umesh Singh Yadav, who died on the spot. He",,,

contended that it is not the case of the prosecution that the accused Gupteshwar Sharma was sitting with the accused Anil Tiwari rather the case of,,

the prosecution is that he along with one Sudarshan Sharma was sitting at another place. Hence, it cannot be said that the accused Gupteshwar",,,

Sharma was sharing a common intention. He contended that, according to the FIR, after the accused Anil Tiwari opened fire, the accused Sudarshan",,,

Sharma is said to have fired, which did not hit anyone. He submitted that the witnesses examined during the trial have categorically stated that neither",,,

the empty cartridges nor any other material were seized from the place of occurrence, which clearly shows that the story of firing resorted to by the",,,
accused Sudarshan Sharma is nothing but an afterthought. He contended that the witnesses examined on behalf of the prosecution have been,,
contradicted in material particular by the I.O. of the case. He urged that though the witnesses examined on behalf of the prosecution stated that blood,,
had fallen on their clothes, neither the I.O. seized those clothes nor they were produced as material exhibits during the trial, which creates doubt on the",,,
veracity of the prosecution case.,,,

40. On the other hand, Dr. Mayanand Jha, learned Additional Public Prosecutor for the State submitted that the impugned judgment of conviction and",,,
order of sentence needs no interference by this Court. He contended that the Trial Court has passed the judgment under appeal after properly,,
appreciating the evidence on record. According to him, there is a consistency of evidence. Also, there is no perversity in the judgment under",,,
challenge. He highlighted that there are six eyewitnesses to the occurrence of the murder and participation of these two appellants in the offence. He,,
contended that P.W. 5 has fully corroborated the earliest version during his examination in the trial. He was cross-examined at length by the defence",,,
but nothing substantial could be extracted. According to him, he withstood the test of trial. He explained the manner and motive of occurrence and",,,
attributed specific roles played by each of the accused. He categorically stated that the appellant Anil Tiwari fired two shots from his gun, which",,,
caused fatal injuries on the body of the deceased. He also stated that the accused Sudarshan Sharma fired shots from his country-made pistol. He,,
contended that the evidence of P.W. 5 has been corroborated in material particular by P.Ws. 1, 2, 3, 4 and 7, who have deposed as eyewitnesses",,,
during the trial. He contended that P.W. 10, who was the SHO of Rajpur Police Station at the relevant time and the first I.O. of the case has proved",,,
the FIR. He has established the place of occurrence. He recovered the body of the deceased from the Ahar and stated that the accumulated water in,,
the Ahar was 5 feet away from where the body of the deceased was recovered. He argued that the ocular evidence of the witnesses is corroborated,,
by medical evidence. The doctor (P.W. 8), who conducted the postmortem examination on the body of the deceased Umesh Singh Yadav, found two",,,

firearm injuries in the back of the abdominal region and left scapular region. He also found blackening of the skin, which proves that the firing was",,,
made from a close range. He argued next that the defence produced only one witness in support of its case, but even that witness was not",,,
trustworthy. His presence at the place of occurrence was doubtful. He tried to make out a case that no killing had taken place on the alleged date at,,
the place of occurrence, but his evidence is outweighed by the evidence of the prosecution witnesses and the recovery of the dead body from the",,,
place of occurrence.,,,

41. I have given my anxious consideration to the rival submissions and have carefully perused the evidence on record.,,,

42. Learned advocates for the appellants have submitted that all the material prosecution witnesses are the close relatives of the deceased Umesh,,

Singh Yadav being his brothers, nephew, maternal uncle, mother and father and they are highly interested and partisan witnesses and, therefore, their",,,

evidence should be discarded. It is true that all the non-official witnesses examined on behalf of the prosecution are related to the deceased. However,",,

the law in this regard is well settled. The evidence of a related witness cannot be discarded merely on the ground that he is either partisan or related,,

or interested, if otherwise the same is found to be believable and trustworthy. All that is required is to analyze the evidence of such a witness with",,,

greater care and caution. Hence, the submission made on behalf of the appellants that their evidence should be discarded cannot be accepted as",,,

correct.,,,

43. The next submission of the learned advocates for the appellants is that it would be evident from the evidence of the witnesses that a large number,,

of persons were present in their field at the time of occurrence, but not even a single independent witness except the family members came forward",,,

to support the case. In this regard also, the law is well settled that non-examination of independent witnesses is not fatal to the case of the prosecution",,,

when other witnesses are found to be trustworthy and reliable.,,,

44. In Dharampal Singh vs. State of Punjab reported in (2010) 9 SCC 608 and Baldev Singh vs. State of Haryana reported in (2015) 17 SCC 554, the",,,

Supreme Court has held that merely because independent witnesses were not examined, it is no ground to reject the case of the prosecution.",,

45. Another argument advanced on behalf of the appellants is that certain independent witnesses whose statements were recorded under Section 161(3) of the CrPC by the I.O. were deliberately not examined during the trial in order to suppress the real facts of the case. It is true that the I.O. has stated in his evidence that he had recorded statements of several witnesses during the investigation, who has not been examined during the trial. However, their non-examination could not be held fatal to the case of the prosecution. It is the credibility of the testimony of the witness examined by the prosecution which has to be appreciated by the court. If their evidence appears to be truthful, creditworthy and acceptable, the mere fact that some other witnesses, whose statements were recorded under Section 161(3) of the CrPC have not been examined, will not adversely affect the case of the prosecution. Hence, it would be appropriate to appreciate the evidence of the witnesses examined during the trial and to ascertain as to whether they have been able to prove the guilt of the appellants beyond a reasonable doubt.

46. It has been argued on behalf of the appellants that the earliest version has been suppressed by the prosecution. In order to appreciate the aforesaid submission, when I scrutinize the evidence of the prosecution witness, I find that the I.O. has deposed that he received information at the police station, but the same was not noted down in the case diary. He further deposed that he did not make any entry into the station diary in this regard. He has not given any explanation for not recording the information received by him either in the station diary or in the case diary. There is no clarity as to who informed the police first regarding the incident.

47. Moreover, P.W. 2 deposed before the court that first of all, the I.O. made inquiry from him regarding the incident when he reached the place of occurrence, but he did not take his signature on his fardbeyan. He further deposed that the fardbeyan of the informant Ramnath Singh (P.W. 5) was recorded at the police station. He also deposed that in his presence, the police did not do any paperwork at the place of occurrence.

48. If the evidence of P.W. 2 is to be believed, even after the police reached the place of occurrence, it was he, who gave his fardbeyan first and the fardbeyan of P.W. 5 was recorded later on in the police station. However, there is no explanation as to why the signature of P.W. 2 was not taken by

the I.O. on his fardbeyan.,,

49. When I look at the fardbeyan of P.W. 5 on the basis of which the FIR has been registered, it would give an impression that the same was",,

recorded by the I.O. at 8:15 p.m. on 31st March 2010 at village-Chitbisao. P.W. 5 has stated his testimony that from the time of occurrence till the,,

arrival of the police, he and his family members remained present at the place of occurrence. According to him, the police recorded his statement at",,,

about 7:00 p.m. He clarified further that the police arrived at the place of occurrence nearly two and a half hours after the incident, which would mean",,

that the police had arrived at the place of occurrence at about 6:30 p.m., as the incident had taken place at about 4:00 p.m. on 31st March, 2010. None",,

of the witnesses examined during the trial has stated that the police went to village-chitbisao on the date of occurrence. The I.O. himself stated in his,,

deposition that after his arrival at the place of occurrence, he remained present at the place of occurrence for the whole night.",,

50. Thus, there is no clarity on the point as to whether the fardbeyan of the informant was recorded at the place of occurrence near the Ahar, which",,

is situated at some distance from the village-Chitbisao or at village-Chitbisao or at the Rajpur Police Station.,,

51. Be that as it may, at least this much is clear from the deposition of witnesses that the initial report made to the police regarding the incident on the",,

basis of which, the I.O. proceeded to the place of occurrence along with the police party has been suppressed. Similarly, the initial statement made by",,

P.W. 2 to the I.O. has also been suppressed by the prosecution.,,

52. Another important aspect of the matter is that the FIR was not registered promptly. There is evidence that the police had arrived at the place of,,

occurrence after receiving the report about the incident within 1 $\hat{A}$ $\frac{1}{2}$ -2 $\hat{A}$ $\frac{1}{2}$ hours. The place of occurrence is 18 kilometers from the police station.,,

Even if I presume that the fardbeyan was recorded at 8:15 p.m., there is no reason as to why the I.O. could not have come back to the police station",,

in the night and instituted the FIR promptly. The formal FIR makes it clear that it was registered at 7:45 a.m. on the next day, i.e., on 1st April 2010.",,

There is no explanation for the delayed institution of the FIR. It is settled law that a prompt FIR lends credence to the prosecution version and,,

prevents the possibility of a coloured version being put by the informant.,,

53. In *Thulia Kali vs. The State of Tamil Nadu* reported in (1972) 3 SCC 393, the Supreme Court observed that "FIR in a criminal case is an",

extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The Court further observed,

that "delay in lodging the FIR often results in embellishment as it might be creation of afterthought. On account of delay, the FIR not only gets",

bereft of the advantage of spontaneity but danger creeps in of the introduction of coloured version exaggerated account or concocted story. As a,

result of deliberation and consultation",

54. However, in *Ramdas and others vs. State of Maharashtra* reported in AIR 2007 SC 155, the Supreme Court observed that "the fact that report",

was not belated is a relevant fact of which the court must take note. This fact has to be considered in the light of other facts and circumstances of the,

case, and in a given case the court may be satisfied that the delay in lodging the report has been sufficiently explained. In the light of the defence of",

the delay, the court has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of",

appreciation of evidence",

55. Further, in *State of Punjab vs. Ramdev Singh* reported in (2004) 1 SCC 421, the Supreme Court held that "the delay in lodging the FIR cannot",

be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information,

report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is",

satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account,

of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the same cannot by itself",

be a ground for disbelieving and discarding the entire prosecution version",

56. Keeping the aforesaid ratio laid down by the Supreme Court in mind, when I carefully examine the record, I find that though the fardbeyan was",

recorded at 8:15 p.m. on 31st March 2010, the FIR was registered at 7:45 a.m. on 1st April 2010 and the inquest report (Exhibit-4) was prepared on",

1st April 2010 at 6:00 a.m. by the I.O.,

57. Admittedly, the FIR was registered after the preparation of the inquest

report. The preparation of the inquest report and sending the body of the",,,
deceased to the hospital for postmortem examination were certainly acts of the
police during the investigation of the cognizable case. Normally, the",,,
investigation starts after the institution of the FIR. However, in the present case,
before instituting the FIR, inquiries were made from other witnesses",,,
an inquest report was prepared and the body of the deceased was sent for
postmortem examination. If the I.O. prepared the inquest at 6:00 a.m. at,,
the place of occurrence and reached at the police station at 7:45 a.m. on 1st
April 2010 and instituted the FIR, the distance from the place of",,,
occurrence to the police station was covered by him within two hours. If that was
the case, the I.O. should have either come back to the police station",,,
after recording the fardbeyan and registered the FIR in the night itself or if he
thought that he was required to be present at the place of occurrence in,,
the night, he ought to have sent the fardbeyan to the police station through
some constable, who was accompanying him for institution of the FIR.",,,
Having not done so, the FIR becomes a suspicious document.",,,

58. The investigation of a cognizable offence begins when the Officer-in-charge
of the police station registers an FIR. A prompt despatch of a copy of,,
FIR under the mandatory provision of Section 157 of the CrPC to the Court
further ensures that there is no manipulation or interpolation in the FIR.,,
The requirement of sending the FIR to the Court of Magistrate is an external
check on the working of the police agency.,,

59. In the instant case, the formal FIR was sent to the court of Sub-divisional
Judicial Magistrate, Bikramganj two days after its registration, i.e., on",,,
3rd April 2010. There is no explanation for the delay of two days caused in
transmitting the FIR to the Court of Magistrate.,,

60. The second external check equally important is the sending of the copy of
FIR along with the dead body and its reference in the inquest report.,,

61. In the case in hand, when I look at the evidence of P.W. 8, Dr. Sidheshwar
Prasad Singh, who had conducted the postmortem examination on the",,,
body of the deceased Umesh Singh Yadav, I find that he has admitted in cross-
examination that when he had conducted the postmortem examination",,,
at 9:35 a.m. on 1st April, 2010 though, the inquest report was before him, no
case number was mentioned on that, which would mean that till the time",,,
the body of the deceased was sent for postmortem examination by the I.O., the

FIR was not registered. The postmortem report (Exhibit-3) would also",,, suggest that the details of the FIR are not reflected on it. The absence of the details of the FIR is indicative of the fact that the FIR came to be",,, recorded later on after due deliberations and consultations.,,,

62. I would now consider whether the place of occurrence where the deceased was allegedly shot has been established. As per the FIR, the",,,

informant along with the deceased, his mother P.W. 3, his brothers P.W. 1 and P.W. 7 and nephew P.W. 2 had gone to take back pump set at Ahar",,,

and they started plucking Tori and, on hulla, they proceeded towards the place of occurrence. In the meantime, the appellant Anil Tiwari fired twice",,,

causing injury to his brother as a result of which, he died. Thereafter, the accused Sudarshan Sharma also fired from his country-made pistol, but",,,

fortunately, it did not hit anyone. The prosecution witnesses examined during the trial have stated that blood had fallen on the ground at the place of",,,

occurrence, but neither the soil from the place of occurrence was seized by the I.O. nor the same was sent to the Forensic Science Laboratory. If the",,,

incident had taken place near the Ahar at village-Chitbisao, some traces of the incident would certainly have been found at the place of occurrence.",,,

The prosecution has offered no explanation as to why the blood-stained soil was not seized from the place of occurrence.,,,

63. Further, I find from the evidence of the I.O. that he has admitted in cross-examination that he did not inspect the place of occurrence in the night.",,,

He also admitted that there is no mention of inspection of the place of occurrence in the case diary. He further admitted that he did not record in the",,,

case diary regarding the place from where the body of the deceased was recovered. It has come in evidence of P.Ws. 3, 5 and 7 that the body of the",,,

deceased was brought from western side of the Ahar to the eastern side with the help of family members and the clothes of the informant and others",,,

were bloodstained. It has also come in his evidence that both the places were shown to the I.O. and it was disclosed to him that the body was shifted",,,

from one place to another, but not even a single drop of blood was found either at the place where the body was lying or at the place where the body",,,

was carried. There should have been a trail of blood in between both the places, i.e., where the occurrence took place and where the dead body was",,,

shifted.,,,

64. The blood-stained clothes of P.Ws. 3, 5 and 7 were neither seized by the I.O. nor sent to the Forensic Science Laboratory.",,

65. Similarly, it has also come in the evidence of P.W. 2 that mark of firing was found at two places on the clothes worn by the deceased.",,

Surprisingly, the clothes of the deceased were also not seized by the I.O. nor was it sent to the Forensic Science Laboratory. If the clothes of P.Ws.",,

3, 5 and 7 would have been seized and sent to the Forensic Science Laboratory and the blood group of the deceased would have been ascertained at",,,

least link between the blood found on the seized clothes and the blood of the deceased could have been established and the same would have been,,

given credence to their oral testimony that they were present at the place of occurrence as also that the occurrence took place in the manner,,

disclosed by them. At the same time, if the blood-stained soil would have been seized and produced before the court as a material exhibit together with",,,

other incriminating articles, the same would have given credence to the prosecution case regarding the place of occurrence and the manner of",,,

occurrence.,,,

66. The non-seizure of the blood-stained soil or any other incriminating material from the place of occurrence as also the deposition of the I.O. leads to,,

an irresistible conclusion that the prosecution has failed to establish the place of occurrence and the manner of occurrence in the present case.,,,

67. In regard to the medical evidence and the ocular testimony of the witnesses examined during the trial, it would be evident that in the FIR the",,,

informant has simply stated that the appellant Anil Tiwari armed with a gun came and fired twice at his brother Umesh Singh Yadav causing injury to,,

him as a result of which, he fell down and succumbed, but during the trial, the witnesses improved their version by stating that the appellant Anil",,,

Tiwari fired twice causing injury in the waist and neck of the deceased. However, P.W. 8, Dr. Sidheshwar Prasad Singh, who conducted the",,,

postmortem examination, has categorically stated that he did not find any firearm injury on the neck of the deceased. According to him, the injuries",,,

caused were on the backside of the abdominal region, left side at 4th lumbar vertebra level and on the left scapular region. However, the informant did",,,

not state in the FIR that the firing resorted to by the appellant Anil Tiwari was from the back of the deceased. Thus, I am of the opinion that the",,,

medical evidence is certainly not in alignment with the initial version of the prosecution.,,

68. While testing the truthfulness in the testimony of witnesses, I find that the I.O. (P.W. 10) stated in his deposition that after arriving at the place of",,,

occurrence on 31st March 2010, he remained present at the place of occurrence throughout the night and prepared the inquest report in the morning",,,

but Jitendra Singh (P.W. 2) stated in his deposition that the I.O. left the place of occurrence after staying there for about half an hour and on the next",,

day, he arrived at his residence at about 3-4 p.m. and recorded the statements of his family members.",,,

69. From the deposition of witnesses, it further appears that they have contradicted each other in a material particular on vital issues. The informant",,,

(P.W. 5) deposed before the court that even before the arrival of the police, he had shifted the body of the deceased Umesh Singh Yadav from the",,,

western side of the Ahar to the eastern side with the aid of family members. Similarly, Rajesh Kumar (P.W. 7) stated in his testimony that on 31st",,,

March 2010, he, Ramnath, Udit Narayan and Jitendra had shifted the dead body to a distance of 10 feet from the place it was lying, but his nephew",,,

Jitendra Singh (P.W. 2) stated in his testimony before the court that till the arrival of the police, the body of the deceased Umesh Singh Yadav was not",,,

shifted from the place where it was lying.,,,

70. Further, the informant has stated in his deposition that from the time of occurrence till the arrival of the police all the family members remained",,,

present at the place of occurrence and no one went to his house or to the police station, but his mother (P.W. 3) stated in her deposition that the police",,,

did not come to the place of occurrence in her presence. She further stated that she came back to her village from the place of occurrence at about",,,

6:00 p.m. and her statement was recorded by the police a day after the incident.,,,

71. It would be pertinent to note here that P.W. 5 stated in his deposition that statements of all the family members were recorded by the I.O. at about",,,

8:00 p.m. on the date of occurrence at the place of occurrence itself. He further stated that three days after the occurrence, the police came to his",,,

village. His brother P.W. 7 also stated that his statement was recorded by the I.O. on 31st March, 2010, but P.Ws. 2 and 3 stated in their deposition",,,

that the police recorded their statement a day after the occurrence. Even, the I.O. admitted in his deposition that he recorded the statement of",,,

witnesses after the institution of the FIR.,,,

72. Apart from the above contradictions in the statement of witnesses, I further find that P.W. 1 stated in his deposition that the police reached the",,,

place of occurrence at 5-5:30 p.m. on the date of occurrence on the information given by someone. Similarly, P.W. 2 stated that on the date of",,,

occurrence though, the police arrived at the place of occurrence after sunset, the sky did not get dark, but the I.O. stated in his deposition that after",,,

arriving at the place of occurrence on 31st March 2010, he did not prepare the inquest report because of the darkness in the night and the inquest",,,

report was prepared on the next day at 6:00 a.m.,,,

73. I further find that the I.O. (P.W. 10) has contradicted P.W. 2 in material particular by admitting that he had not stated in his previous statement,,

under Section 161(3) of the CrPC that along with the family members, he had gone to take pump set from Ahar and saw the appellant Anil Tiwari",,,

firing shots at the deceased with a gun causing injuries on his neck and waist as a result of which, he died. Similarly, Rajesh Kumar (P.W. 7) has",,,

claimed to be an eyewitness to the occurrence. He has also been contradicted by the I.O. (P.W. 10), who has admitted that he did not say in his",,,

previous statement made before him that he saw the deceased being killed or that the appellant Anil Tiwari fired two shots causing injuries on the,,

neck and waist of the deceased.,,,

74. Apparently, the prosecution witnesses have contradicted each other on vital points. They have also been contradicted by the I.O. Their evidence is",,,

not trustworthy.,,,

75. To conclude, I am of the opinion that the prosecution has suppressed the earliest version; the delay caused in instituting the FIR has not been",,,

explained; the investigation was tainted; the place of occurrence has not been established; the witnesses examined during the trial made material,,

improvements; they contradicted each other on vital points; they have also been contradicted by the I.O., and the medical evidence does not",,,

corroborate the ocular testimony of the witnesses.,,,

76. In view of all these discrepancies in the prosecution case, I am of the opinion that the finding recorded by the Trial Court holding the appellants",,,

guilty of the offences charged with, is erroneous and unsustainable. The Trial Court did not advert to the inherent improbabilities in the prosecution",,,

evidence discussed above and failed to appreciate the evidence on record in the right perspective.,,,

77. Having regard to the infirmities pointed out in the foregoing paragraphs, the finding of guilt recorded against the appellants by the Trial Court, which",,, is manifestly erroneous and unreasonable, cannot be sustained.",,,

78. Accordingly, the impugned judgment of conviction dated 8th July, 2015 and the order of sentence dated 13th July, 2015 passed by the learned 7th",,,

Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No.384 of 2011 arising out of Rajpur P.S. Case No.38 of 2010 are, hereby, set aside.",,,

79. The appellants are acquitted of the charges levelled against them. The appellant Gupteshwar Sharma, who is on bail, is discharged from the",,,

liabilities of the bail bonds. The appellant Anil Tiwari, who is in custody, is directed to be released forthwith, if not required in any other case.",,,

80. The appeals are allowed.,,,