

(2017) 02 PAT CK 0003

In the Patna High Court

Case No : 110 of 2012

Girdhari Yadav, S/O Sakhichand Yadav

APPELLANT

Vs

The State Of Bihar

RESPONDENT

Date of Decision : 04-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 120B](#)
[Section 302](#), [Section 34](#)

Citation : (2017) 02 PAT CK 0003

Hon'ble Judges : Samarendra Pratap, Aditya Kumar Trivedi

Bench : DIVISION BENCH

Advocate : Ambika Bhagat, Ram Bilash Mahto, Manoj Kumar Singh, Chandan Kumar Verma, A. K. Sinha

Judgement

1. In Criminal Appeal (DB) No.03 of 2012, Bihari Yadav is the appellant, in Criminal Appeal (DB) No.79 of 2012, Anirudh Yadav is the appellant and in Criminal Appeal (DB) No.110 of 2012, Girdhari Yadav and Adalat Yadav are the appellants, which arise out against the common judgment of conviction, dated 22.11.2011 and sentence, dated 30.11.2011 passed by the Additional Sessions Judge, Fast Track Court-IV, Begusarai in Sessions Trial No.251 of 2009, on account thereof, have been heard analogously and are being disposed of by a common judgment.

2. As per judgment of conviction, appellant Girdhari Yadav has been found guilty for an offence punishable under Section

302 / 120B of the I.P.C., whereunder directed to undergo rigorous imprisonment for life as well as also fine of Rs.10,000/- in default thereof, to undergo simple imprisonment for six months, additionally, under Section 307 / 120B of the I.P.C. and sentenced to undergo rigorous imprisonment for 10 years as well as also to pay fine of Rs.5,000/- in default thereof, to undergo simple imprisonment for three months additionally, Adalat Yadav, Anirudh Yadav and Bihari Yadav for an offence punishable under Section 302 / 149 of the I.P.C. read with Section 120B of I.P.C. and sentenced to undergo rigorous imprisonment for life as well as to pay fine Rs.10,000/- and in default thereof, to undergo simple imprisonment for six months independently, Section 307 / 149 read with Section 120B of the I.P.C. and further, directed to undergo rigorous imprisonment for 10 years as well as also slapped with fine appertaining to Rs.5,000/- in default thereof, to undergo simple imprisonment of three months additionally, to undergo rigorous imprisonment for seven years for an offence punishable under Section 27 Arms Act with a further direction to run the sentences concurrently.

3. PW-5 had filed written report before Officer-in-charge, Balia P.S. disclosing therein that in usual way while he was returning from Begusarai Court to Bhagatpur his native place with his brother Ram Sharan Yadav, Baijnath and his son Ganesh Yadav accompanied them from Balia Bazar. At about 5.00 p.m., they reached near grocery shop of Suresh Mahto of Bhagatpur, where Adalat, Anirudh, Bihari, Vijay, Shivji along with 3-4 unknown persons armed variously encircled Ram Sharan Yadav and further, ordered to kill. Adalat Yadav shot at forehead of Ram Sharan Yadav as a result of which, he died instantaneously. Anirudh Yadav also fired at Ram Sharan Yadav. Shivji, Bihari and Vijay fired at him as well as Baijnath and Ganesh Yadav, during course thereof, the firing having

made by Shivji Yadav struck over his right leg. It has further been disclosed that whole conspiracy relating to a murder as well as murderous attack upon them have been hatched by Girdhari Yadav, who happens to be under custody in relation to murder case. In one murder case relating to Mahesh Paswan, he along with his brother deceased Ram Sharan Yadav were a witness as well as doing necessary pairvi. Ram Sharan Yadav was to depose and for that, there was persistent demand at the end of Girdhari not to depose. Having been refused at their end, he had threatened to do away with life.

4. On the basis of the aforesaid written report, Balia P.S.

Case No.222 of 2008 was registered under Sections 302, 307, 324, 34, 120B of the I.P.C. and Section 27 of the Arms Act followed with an investigation. After completing the investigation, chargesheet was submitted and on the basis thereof, trial commenced and concluded in a manner as indicated above, the subject matter of these appeals.

5. Defence case as is evident from mode of cross- examination as well as statement having been recorded under Section

313 of the Cr.P.C. is that of complete denial as well as false implication. Furthermore, it has also been pleaded that prosecution party themselves happen to be notorious criminals, who have sustained the death as well as injury at different place in different manner by different persons, but in the background of prevailing animosity, got them involved with false and frivolous allegations. Though no oral evidences were adduced, however, certain documentary evidences have been adduced at their end.

6. While challenging the judgment of conviction and sentence, the learned defence counsel has raised manifold argument. The first and foremost is that from the own deposition of the witnesses, it is crystal clear that none of the prosecution witnesses happen to be an eye witness. Apart from this, the informant PW-5 also

speaks with regard to an incidence having been committed in different manner at different place than the earliest prosecution version as flashed by way of written report. That being so, the prosecution version as is exposed by way of written report has not been substantiated by the witnesses themselves apart from contradictory objective finding of the I.O. with regard thereto. Therefore, the apparent inconsistency prevailing on the record completely demolishes the prosecution version whereupon the conviction and sentence having been recorded by the learned trial Court would be found vanished.

7. Furthermore, it has also been submitted that prosecution had not brought up on record the relevant papers relating to murder of Mahesh in order to suggest that these appellants, for the reason assigned by the prosecution virtually happens to be an aggrieved to that extent provoking them to cause murder of Ram Sharan Yadav as well as to cause injury to Sunil, the informant. Consequent thereupon, there was no occasion for these appellants to cause murder of Ram Sharan Yadav as well as to cause murderous attack upon Sunil, PW-5.

8. Apart from this, from own conduct of the prosecution, it is evident that the narration with regard to commission of the occurrence was not at all convincing as well as probable. To substantiate the same, it has been submitted that from the written report itself, it was not Ram Sharan Yadav alone, but Ram Sharan Yadav as well as Sunil both, who were doing necessary pairvi in a murder case relating to Mahesh. It is evident that on the way to their house, they met Baijnath and his son Ganesh. It has further been alleged that all the four were intercepted and were encircled by the accused persons. While Ram Sharan Yadav was shot at by Adalat, there was no firearm injury on Baijnath as well as Ganesh Yadav

while Sunil, PW-5, who sustained single injury at his leg, was not at all attempted by the appellants in order to murder him that too, when there was no intervening circumstance, which could have prevented the appellants. It has also been submitted that improbability of the prosecution version is visible from the further conduct of the prosecution as none of the witnesses have stated that they came or they were carrying paper, then how the written report was prepared by Baijnath on dictation of PW-5, informant in presence of police officials is another circumstance which belies the prosecution case. Had there been a genuine conduct, the fard-bayan would have been given to the police official by the PW-5, Sunil at the place of occurrence itself. The aforesaid activity casts doubt on presence of PW-5 at the place of occurrence, more particularly in the background of the evidence of the I.O.

9. Another circumstance which also casts doubt over the genuineness of the prosecution version is further apparent from the record. From the evidence of PW-5, it is evident that when the police came at the place of occurrence, he was present there and in presence of police officials, he dictated written report, which was scribed by Baijnath and then thereafter, he was sent for treatment on account of firearm injury having been sustained by him. From the evidence of doctor, it is apparent that no police requisition was ever received by him at the time of admission of PW-5. Contrary to it, it has been deposed by Dr. Ashok Kumar Sharma, PW-8 that he had sent requisition to the police with regard to arrival of PW-5 in an injured condition on account of having sustained firearm injury. In cumulative effect, it has been submitted that the assertion of the prosecution that Sunil, Baijnath, Ganesh were along with Ram Sharan Yadav, deceased happens to be palpably false and as, it has been flashed in a pre-planned manner to implicate these appellants, on

account thereof, such kind of inconsistency, variance in their evidence is found. Apart from this, it has also been submitted that objective finding of the I.O. completely demolished the prosecution version. As per prosecution version, it is apparent that while they were on way to Bhagatpur and reached near grocery shop of Suresh Mahto, they were intercepted by the accused persons followed with commission of the crime and that happens to be consistent prosecution version, but contrary to it, from inquest report having been prepared by PW-9, it is apparent that dead body was found in front of house of Jago Choudhary. Furthermore, as per objective finding relating to place of occurrence by the I.O., PW-9 as detailed under Para-5, he completely ruled out presence of dead body in front of grocery shop of Suresh Mahto. Therefore, the place of occurrence found by the I.O. happens to be inconsistent with the place of occurrence shown by the prosecution witnesses. In the aforesaid background, it has been submitted that on account of inconsistency creeping amongst eye witness amongst themselves as well as with the I.O. coupled with improbability of the prosecution version, makes the whole prosecution case unreliable, unacceptable. Consequent thereupon, prosecution case is fit to be thrown outrightly as a result of which, these appeals are fit to be allowed.

10. Furthermore, it has been submitted that for the purpose of attracting conviction under guise of criminal conspiracy, there should be positive as well as conclusive evidence over meeting with an agreement, which from perusal of the evidence of respective evidence is found completely lacking, save and except showing suspicion, which could not justify the finding recorded by the learned Trial Court on this score. Therefore, the judgment impugned loses its vitality.

11. The learned Additional Public Prosecutor along with

learned counsel for the informant has extraneously rebutted the argument having been raised on behalf of appellants. It has been submitted that appreciation of evidence in piecemeal manner is not at all warranted. Evidence in totality is to be considered, and accepted, adopting such exercise during course of appreciation of the evidences of the witnesses, will clearly indicate that all the witnesses inspire confidence as well as substantiate prosecution case in its entirety. In likewise manner, it has also been submitted that post mortem report happens to be another limb which supports the manner of prosecution case.

12. Now, coming over theme of conspiracy, it has been submitted that appellants have not denied nor controverted during course of cross-examination of the PWs with regard to status of Sunil as well as Ram Sharan Yadav to be witness against Girdhari Yadav, who was under custody relating to murder of Mukesh and further, deceased was to depose. It is further evident that Girdhari was making persistent demand by himself as well as through the appellants forbidding the prosecution party to depose against him otherwise to face dire consequence. The activity of the appellants since before the occurrence giving repeated threatening not to depose against Girdhari Yadav is indicative of the fact that they were very much concerned with the welfare of Girdhari and in case, deceased would have deposed against Girdhari would have suffered irreparable loss and in the aforesaid background as well as considering the ultimate beneficiary to be Girdhari Yadav at whose instance the appellants were working since before, manifest action of the appellants to be at the instance of Girdhari and for that, they have had rightly been found guilty for an offence of committing murder under the theme of criminal conspiracy. So, submitted that these appeals are fit to be dismissed.

13. In order to substantiate its case, prosecution had examined altogether 10 PWs, out of whom, PW-1 is Dhara Yadav, PW-2 Ganesh Yadav, PW-3 Anil Yadav @ Anil Kumar Yadav, PW-4 Bajinath Yadav, PW-5 Sunil Yadav @ Sunil Kumar Yadav, PW-6 Chandeshwar Prasad, PW-7 Dr. Ashok Kumar Jha, PW-8 Ashok Kumar, PW-9 Ganesh Singh and PW-10 Dinesh Chandra Mandal. Side by side also exhibited the documents as Exhibit-1 writing of written report, Exhibit-2 signature of PW-5 over written report, Exhibit-3 post mortem report, Exhibit-4 injury report, Exhibit-5 endorsement over written report, Exhibit-6 formal F.I.R., Exhibit-7 police requisition, Exhibit-8 inquest report, Exhibit-9 series chargesheet of different cases, Exhibit-10 series certified copy of the judgment.

14. At the other end, though the defence had not examined any DW, but had exhibited certain documents viz. Exhibit-A certified copy of agreement, dated 14.09.1990, Exhibit-B certified copy of F.I.R. of Balia P. S. Case No.104 of 2009, Exhibit-C certified copy of deposition of Ram Sharan Yadav in Sessions Trial No.17 of 1997, Exhibit-D certified copy of chargesheet of Balia P.S. Case No.87 of 1993.

15. Before coming to ocular evidence, it looks desirable for better appreciation to notice medical evidence first. PW-7 had conducted post mortem over the dead body of Ram Sharan Yadav on 05.12.2008 and found following ante-mortem injuries:-

(1) One circular whole -" diameter, inverted margin and charring of skin around 4" area-one on the back of skull 1 -" away (Rt side) from midline- On dissection the wound passed upward and forward & finally comeant anterarly just at upper base of nose. In between it damaged occipital & Rt side of brain.

The injury is caused by firearm which passed through & through.

(2) Abrasion Rt temple 1 -" size aur face-
caused by hard & blunt substance time since death-12 to 18 hrs.

Death is due to shock & haemorrhage
produced by brain injury.

16. So, from the evidence of PW-7, there happens to be no dispute with regard to presence of ante-mortem fatal gun-shot injury. Furthermore, the injury is found to be caused from close range in the background of being categorized as charred wound.

17. PW-8 is Dr. Ashok Kumar Sharma, who had examined PW-5, Sunil on 04.12.2008 at about 7.20 p.m. and found following injuries over his person No.1 lacerated wound 4" x 2" x bone deep with charred margin right leg below knee lateral side with fracture of right tibia. In the opinion of doctor, the age of the injury happens to be within six hours caused by firearm and the nature of injury shown by the doctor happens to be grievous one. It is further stated by the doctor that the required police requisition is of 05.12.2008, though, he had informed the police immediately after arrival of the patient.

18. During cross-examination, it is evident that he was not at all cross-examined on the score of nature of the injury. However, it is apparent from Para-2 that informant had come to his clinic without any police requisition and on account thereof, he immediately informed the police and started treating the injured without awaiting arrival of the police. From Para-5, it is evident that when police came to his clinic, injured was present there. Police requisition was received by him on 05.12.2008. As such, presence of firearm injury over the person of Sunil, PW-5 is also found duly

substantiated by the evidence of PW-8, who also opined the injury to have been caused from close proximity on account of presence of charring wound.

19. PW-1 had stated that on the alleged date and time of occurrence, he was going to Bhagatpur chowk to purchase household articles. During course thereof, he saw Baijnath Yadav, Ram Sharan Yadav, Sunil Yadav and Ganesh Yadav coming from opposite side. They reached near grocery shop of Suresh Mahto where Adalat Yadav, Anirudh Yadav, Shivji Yadav, Bihari Yadav, Vijay Yadav, Ram Balak Yadav, Subodh Yadav, Neti Yadav armed with pistol, encircled them. Adalat Yadav ordered to kill. Then thereafter, Adalat Yadav shot at on head of Ram Sharan Yadav, Anirudh Yadav also fired at Ram Sharan Yadav. Ram Sharan fell down and died instantaneously. Shivji Yadav, Bihari Yadav, Vijay Yadav shot at Sunil Yadav, Baijnath Yadav and Ganesh Yadav. The firing having been made by Shivji Yadav struck over right leg of Sunil Yadav. The aforesaid offence was committed in conspiracy with Girdhari Yadav, who was under custody. About an hour, thereafter police came, prepared inquest report over which he put his L.T.I.

20. The motive for occurrence is traced to the murder of Mahesh Paswan and Ram Chandar Sah in the Year 2003, for which case was instituted. Ram Sharan Yadav, Sunil Yadav were doing pairvi in the aforesaid case for which they were regularly forbidden by Girdhari Yadav. It has also been disclosed that 10-11 months after murder of Mahesh Paswan and Ram Chandar Sah, Adalat Yadav and others had attempted upon the life of Baijnath Yadav, but anyhow, he managed to escape. It has also been disclosed that four days after the aforesaid occurrence, Girdhari Yadav, Adalat Yadav and others made indiscriminate firing at the house of Ram Sharan Yadav, wherein daughter of Ram Sharan Yadav was killed. It has also been disclosed

that Adalat Yadav has been sentenced to undergo rigorous imprisonment for life for the murder of Shivji Yadav. Janardan Yadav, Sunil Yadav, Anil Yadav, Baijnath Yadav, Ganesh Yadav, Karelal Yadav and others have been cited as a witness. Furthermore, he identified the accused in dock. During cross-examination, he had stated that Baijnath Yadav, Ram Sharan Yadav was uncle and nephew. He had further stated that he had got no knowledge with regard to land dispute in between Baijnath and Adalat Yadav. He had further admitted that Adalat Yadav had launched a case against Baijnath Yadav, Ram Sharan Yadav including himself for amputation of hand of Girdhari Yadav as well as damaging his eye. He had further stated that he had got no information with regard to cause of dispute amongst Adalat Yadav and Baijnath Yadav. He had further stated that Balia P.S. Case No.104 of 2009 has been launched by Dinesh Yadav, wherein his brothers are accused. In Para-10, he had stated that Adalat Yadav is presently living for the last 9-10 years at village Pratappur which lies 7-8 kilometers away from the P.O. In Para-11, he had stated that his family members have instituted series of litigation against Adalat Yadav. In Para-12, he had stated that no other shop is present near the grocery shop of Suresh Mahto. Other houses are lying at a distance, but he is unable to tell the names of occupant thereof. His house lies 5-6 lagga away from the grocery shop of Suresh Mahto. Police Station lies two kilometers away from the grocery shop of Suresh Mahto. When he reached at the shop of Suresh Mahto, it was closed. He had not seen anybody. He had not stayed at the shop, again he corrected, he stayed there for about one and half hour. During course thereof, he had not talked about the incident with anybody. However, during midst thereof, so many villagers came including Janardan, Anil, Baijnath, Sunil, Ganesh, who are his family members. In Para-13, he stated that P.O. is road as well

as some portion of land adjacent to it, but again corrected that P.O. is road covering 10 feet. P.O. is Eastern side of the road. It happens to be pakka road. Blood had fallen at only one place covering 2-3 hands of area. He had not seen more than that. In Para-14, he had stated that he heard sound of 15-20 rounds of firing. Firing was made one by one. After seeing firing, he became afraid and hid in a Banana cluster, which he had shown to Darogaji. All the accused persons have not fired from all side over the prosecution party rather they have fired from Western side. At that very time, Ram Sharan Yadav was standing on Southern front. Sunil Yadav, Ganesh Yadav, Baijnath Yadav were also standing in the same posture. He is unable to say whether Ganesh Yadav had sustained injury or not. He had not seen injury over Baijnath Yadav. In Para-15, he had stated that Sunil Yadav had sustained only one injury by means of firearm. In Para-16, he had stated that Ram Sharan Yadav had sustained only one firearm injury over his head from back side. Ram Sharan Yadav fell down East to the shop of Suresh Mahto by the side of pakki road. 20-25 persons have assembled there including Janardan, Anil, Sunil, Baijnath. In Para-17, he had stated that there was no sign of firing at the P.O. In Para-19, he had stated that his statement was recorded by the police three days after the occurrence. Para-20 is the contradiction however not relating to the main occurrence. Although, the same has not been corroborated from the evidence of PW-9, the I.O.

21. PW-2 had stated that on the alleged date and time of occurrence, he along with his father Baijnath Yadav, cousin brother Ram Sharan and Sunil Yadav were returning from Balia. When they reached near the grocery shop of Suresh Mahto, he saw Adalat Yadav, Bihari Yadav, Anirudh Yadav, Shivji Yadav, Vijay Yadav, Ram Balak, Subodh along with one unknown person, who intercepted them. They were armed with pistol. Adalat Yadav abused and then,

stated that in spite of repeated instruction given by Girdhari Yadav to leave doing pairvi relating to murder case of Mahesh Paswan and Ram Chandar Sah, still they have not left the pairvi and so, his whole family will be eliminated. Thereafter, Adalat Yadav ordered to kill. Adalat Yadav fired from his pistol over head of Ram Sharan Yadav from back side. Anirudh Yadav had also fired, Ram Sharan Yadav died instantaneously. Shivji Yadav, Bihari Yadav and Vijay Yadav began to fire at them and during course thereof, the firing having been made by Shivji Yadav struck over right leg of Sunil Yadav. Thereafter, the accused persons left the place after making firing in the air, after an hour, police came and prepared inquest (exhibited). The motive for occurrence has been shown as Sunil Yadav and Ram Sharan Yadav were doing pairvi against Girdhari Yadav to the disliking of accused. At an earlier occasion, Ram Sharan Yadav was shot at by the accused persons. On 28.11.2003, accused persons raided house of Ram Sharan Yadav, made indiscriminate firing, exploded bomb, wherein daughter of Ram Sharan Yadav namely Prem Kumari was killed. He identified the accused in dock. During cross-examination at Para-7, he had admitted that since 1977, Adalat Yadav and Baijnath Yadav are having strained relationship. He had shown ignorance over pendency of different cases amongst the parties since before. In Para-10, he had stated that his cousin brother Ram Sharan Yadav was Munshi in the Court. He had further stated that his uncle Shivji Yadav was murdered in the Year 1977. Now, remains his father Baijnath Yadav and uncle, Vasudev Yadav. In Para-11, he had stated that he along with his father had gone to Balia at about 3.00 p.m. He had not met with any family members during midst of way. He had not met with any family members at Balia Bazar. He had gone to Balia only for wondering. He stayed there one and half hour. He simply loitered at Balia Bazar. He had not stayed at any shop. In Para-

12, he had stated that they were coming from Balia bare-foot. While he was returning from Balia, met with Ram Sharan Yadav, Baijnath Yadav and Sunil Yadav and none other. In course of returning, he had not met with anybody at place of occurrence. There happens to be no house in between Balia to P.O. In likewise manner, there happens to be no house in between P.O. to his house. The road is isolated one. One shop belonging to Suresh Mahto lies in between. He remained at the place of occurrence from 5.00 p.m. to 7.00 p.m. During midst thereof, about 10 persons came at the place of occurrence. Police came after an hour at the place of occurrence. After arrival of the police, so many persons came at the place of occurrence, but he is unable to disclose their names. In Para-7, he had stated that grocery shop of Suresh Mahto lies near about place of occurrence. He is unable to say whether people remained present throughout at his shop or not. In Para-8, he had stated that he was about one lagga East to grocery shop. Other persons were 2-3 steps South to him. As soon as they reached near shop of Suresh Mahto, all the accused persons encircled them. Firing did not follow soon after encircling, rather 2-3 minutes thereafter. All the accused persons were armed with some kind of weapon. In Para-9, he had detailed, who fired whom and during course thereof, he had stated that Vijay Yadav and Shivji Yadav fired from Western side over Sunil Yadav. Thereafter, they escaped there from, others have also fired in the air. He is unable to disclose the exact rounds of firing. He had further stated that firing was made from Eastern-Western side. At that very moment, Ram Sharan Yadav and Sunil Yadav were standing having Southern front. Firing was made from a distance of one hand. In Para-11, he had stated that there was no commotion on account of firing. Villagers have not come at that very moment. After fleeing of accused, they remained there. Subsequently thereof, so many villagers assembled,

but he is unable to disclose their names. In Para-12, he had stated that there was sign of firing marks on full pant of Sunil Yadav. In Para-13, he had stated that police had seized blood stained earth from the road. In Para-14, he had stated that Ram Sharan Yadav died at the spot. Sunil Yadav did not become unconscious. The occurrence took place on the Eastern flank of pakka road. Blood had spread below the road. In Para-17, he had stated that he had accompanied the dead body. Sunil Yadav remained at hospital whole night. In Para-18, he had stated that he sustained single firearm injury below his knee. In Para-19, he had stated that Ram Sharan Yadav had received one injury on his head, which was struck from behind and the cartridge came out through his forehead. In Para-20, he had stated that after sustaining gun-shot injury, Sunil Yadav fell on the pitch road. Ram Sharan Yadav fell down two hands West from Sunil Yadav. Blood was present at both the places.

22. PW-3 had stated that on the alleged date and time of occurrence, he was at his house. After hearing sound of uproar as well as abuse, he rushed towards grocery shop of Suresh Mahto where he saw Adalat Yadav, Anirudh Yadav, Bihari Yadav, Shivji Yadav, Vijay Yadav, Ram Balak Yadav, Neti Yadav, Subodh Yadav and one unknown person armed with pistol having surrounded Ram Sharan Yadav, Baijnath Yadav, Ganesh Yadav and Sunil Yadav. Adalat Yadav had repeatedly forbidden Girdhari Yadav from doing pairvi in the case and further, if he would not accede, then he will be eliminated, fired from his pistol on his head from behind as a result of which Ram Sharan Yadav fell down. Anirudh Yadav also fired. Ram Sharan Yadav died instantaneously. Shivji Yadav, Bihari Yadav, Vijay Yadav fired at Sunil Yadav, Baijnath Yadav and Ganesh Yadav and during course thereof, Sunil Yadav sustained firearm injury over his right leg from the firing made by Shivji Yadav. He had further

stated that the occurrence has been committed at the instance of Girdhari Yadav. Thereafter, accused persons ran from there. Police came, prepared inquest report, recorded statement of Sunil Yadav. Then he disclosed the motive by stating that in the Year 2003, Girdhari Yadav and others committed murder of Mahesh Paswan and during course thereof, Ram Sharan Yadav had also sustained injury over his hand. Ram Sharan Yadav was a witness of that case and was also doing pairvi. Subsequently thereof, the accused persons also raided house of Ram Sharan Yadav and made indiscriminate firing as well as exploded bomb and during course thereof, his daughter was killed. He also identified the accused in dock. During cross-examination, he had admitted his status to be full brother of Sunil Yadav. He had also admitted that he also happens to be witness relating to murder of Gango Yadav. In Para-9, he had admitted that since 5-7 years, there happens to be series of litigation amongst his family as well as family of Adalat Yadav. He had denied the suggestion that there happens to be land dispute amongst the parties. In Para-10, he stated that at the time he left his house on hearing alarm, he could not say as to who were present at his house. He had simply heard sound of uproar and not the sound of marpit. His attention has been drawn towards his previous statement that has not been substantiated from the evidence of PW-9, the I.O. In Para-12, he had stated that Adalat Yadav abused as well as also threatened. In Para-13, he had stated that his house lies 5-6 lagga away from the place of occurrence. He had further stated that the shop of Suresh Mahto lies 5-6 lagga away from his house. He had further stated that he is not remembering how many persons have their residential house near about his house. In Para-14, he had stated that when he proceeded from his house towards place of occurrence, he did not meet with anybody. In Para-15, he had stated that it was 5 O" clock.

When he reached at the place of occurrence, he saw 15-20 persons, who were members of both the parties. He is not remembering the names of others. In likewise manner, he is not remembering the exact number relating to them. Accused persons have surrounded from all side. Subodh Yadav and Neti Yadav covered from Eastern side. Anirudh Yadav, Bihari Yadav, Shivji Yadav and Vijay Yadav were from Western side. He is not remembering the persons, who had surrounded from Northern side. They had not fired in one sequence. He is not remembering how many rounds of firing was resorted to by each of the accused. His family members did not try to move helter and skelter. He along with Dhodho Yadav, Janardan Yadav, Ganesh Yadav, Baijnath Yadav had seen the occurrence hiding themselves. He is not remembering whether others were also witnessing the occurrence in same manner. Dhodho Yadav had concealed himself in Banana cluster. Janardan Yadav was two lagga away North to the place of occurrence. He had taken shelter of a wall of Suresh Mahto. The exact location of others, he is not remembering. Firing was also made at Ganesh Yadav and Baijnath Yadav. He is not remembering whether at the time of occurrence, people had assembled or not. In Para-19, he had stated that P.O. is at the Eastern flank of pitch road lying two lagga West to the grocery shop of Suresh Mahto having boundary:- East-Jago Choudhary, West-Grocery shop of Suresh Mahto, North and South-pitch road. No house save and except grocery shop of Suresh Mahto is lying at the Western side of the place of occurrence. In Para-20, he had stated that he had seen firing having effected from northern as well as western side. Four rounds of firing were made from western side while one round of firing from northern side. Much more rounds of firing was also made, but he is unable to count, again said it went on for 5-7 minutes. In Para-21, he had stated that there were two injuries on head of Ram Sharan Yadav. He had

seen one injury over body of Sunil Yadav, which was over right leg. He had not seen injuries of others. In Para-22, he had stated that Ram Sharan Yadav fell down at eastern flank of the pitch road. Sunil Yadav sat north-west from Ram Sharan Yadav at a distance of one hand. Darogaji came at the place of occurrence about an hour. So many persons assembled there, but he is unable to disclose their names. Police seized blood stained earth, but he is unable to say whether pant of Sunil Yadav was seized or not. In Para-28, 29, attention has been drawn up towards his previous statement, but again same has not been confronted to PW-9, the I.O. and so, happens to be worthless.

23. PW-4 had stated that Ram Sharan Yadav, deceased was his nephew, who was Munshi at Begusarai. He used to visit from his house. On 04.12.2008, Ram Sharan Yadav and Sunil Yadav were returning from Begusarai. At Balia bazaar, he met with them and then thereafter, he along with Ram Sharan Yadav, Sunil Yadav, Ganesh Yadav proceeded towards their house. When they reached near the grocery shop of Suresh Mahto, Adalat Yadav, Anirudh Yadav, Bihari Yadav, Shivji Yadav, Vijay Yadav, Ram Balak Yadav, Neti Yadav and Subodh Yadav were present since before. Just after seeing them, they surrounded. At that very time, all the accused persons were armed with pistol. Adalat Yadav had directed Ram Sharan Yadav that he has been forbidden to do pairvi relating to murder case of Mahesh Paswan as well as Gango Yadav, which he failed to accede. Subsequently thereof, Adalat Yadav shot at Ram Sharan Yadav over his head on account of which he died instantaneously. Anirudh Yadav had also fired at Ram Sharan Yadav. Shivji Yadav, Bihari Yadav, Vijay Yadav fired at Sunil Yadav with an intention to kill and during course thereof, Sunil Yadav sustained injury over his right leg and from the firing having made by Shivji Yadav, Neti Yadav, Ram Balak

Yadav, Subodh Yadav and others also fired in air and escaped thereafter. About an hour, the police came. Police recorded statement of Sunil Yadav which happens to be in pen (exhibited). Inquest was prepared. Dead body was sent for post mortem. He also accompanied Sunil Yadav for treatment. It has further been stated that Girdhari Yadav, who happens to be notorious criminal and has been in jail, was regularly threatening Ram Sharan Yadav stating that either you leave to do pairvi otherwise he will be murdered and so, the occurrence has been committed as a result of conspiracy hatched by Girdhari Yadav. It has further been disclosed that at an earlier occasion, they have also raided the house of Ram Sharan whereunder daughter of Ram Sharan Yadav was killed at their hands. He identified the accused in dock. During cross-examination, he had stated at Para-10 that he reached at Balia bazaar at 3.00 p.m. He had gone to Balia bazaar to stroll. In Para-13, he had admitted that all the witnesses are from his family. Accused persons are not their gotia. In Para-14, he had denied presence of dispute on account of land and in likewise manner, litigation having cropped up thereupon. He had also shown ignorance with regard to creation of a deed of an agreement. In Para-17, he had admitted that there was compromise petition filed on their behalf in Sessions Trial No.17 of 1997. In Para-18, he had stated that first of all, his brother Shivji Yadav was murdered by the accused persons for which they have registered a case against the accused persons. He had denied the suggestion that aforesaid occurrence took place on account of land dispute. In Paras-21, 22 and 23, he had denied there being cases in the background of land dispute amongst them. In Para-24, he had stated that the deceased Ram Sharan Yadav was Munshi at Begusarai Civil Court for the last 10-12 years. He used to daily make to and fro to the Court from his house. They have not informed the police nor registered Sanha with regard to threatening having been

given at the end of the accused persons. He is unaware with regard to time relating to the last threatening having been given to the deceased. Deceased used to come by train, bus or jeep. On the alleged date and time of occurrence, deceased had travel led through jeep to Begusarai. Deceased returned back through train. He got down at Lakhminia station and then, came to Balia bazaar. Sunil Yadav was along with him. He met with deceased at Lakhminia station. He had gone to Lakhminia station to stroll. He had not met with any of co-villager at Lakhminia station. After staying for ten minutes, they returned to Balia bazaar where they stayed for one and half hour and then, proceeded from Balia Bazar. He had not met with co-villager at Balia Bazar. Ganesh Yadav was along with him since before. In Para-25, he again stated that he met with deceased Ram Sharan Yadav at Balia Bazar at about 4.45 p.m. and then, proceeded towards their house. All the four proceeded from Balia Bazar. In midst of way, they have not met with any co-villager. They proceeded through pitch road which happens to be lonely. At that very time, they were not apprehensive. In Para-28, he had stated that P.O. is not Balia Bazar rather one kilometer south to Balia Bazar, where only pitch road is available. Fields of his co-villagers are lying near about place of occurrence, north-south of the P.O. happens to be pitch road. In East portion, land of Jangal Choudhary, west grocery shop of Suresh Mahto and then, his land. At that very time, there was potato in the field of Suresh Mahto. No crop was standing in the land of others. In Para-29, he had stated that they have not met with anybody in between Balia to P.O. While they were one lagga away from the shop of Suresh Mahto, they had seen the accused persons. When they had seen the accused persons, at that very moment, all of them have surrounded them. Accused persons were present there since before. Just after surrounding, they kept confined 2-3 minutes. They have surrounded

them from a distance of 1-2 hands. He detailed the location of the accused persons also. In Para-30, he stated that he tried to escape, but could not succeed. Just two minutes thereafter, there was firing which struck at his head as well as leg. There was commotion. They remained static in same manner. Thereafter, accused persons escaped. He had also stated that there was 15-20 rounds of firing having aimed at them, but he had not sustained any injury. Only two persons sustained injury. They were shot at from a distance of 1-2 hands. In Para-31, he had stated that at that very time, on account of fear, none of the villagers came. About half an hour, so many villagers have assembled there. For the present, he is not remembering their names. In Para-34, he had stated that he had seen from his naked eye, the event whereunder Ram Sharan Yadav sustained firearm injury over his head from behind. In Para-35, he had stated that written report was scribed by him at the dictation of Sunil Yadav. Same was prepared after an hour before the police. In Para-37, he had stated that fard-bayan was not recorded by the police. In Para-38, he had stated that his statement was recorded on 30.01.2009. In Paras-39, 40, 41, 42, 43 have been drawn up in order to expose contradiction, but the same has not been found substantiated from the evidence of PW-9, the I.O.

24. PW-5 is the informant. He had stated that the occurrence took place on 04.12.2008 at about 5.00 p.m. On that day, he was returning along with his brother Ram Sharan Yadav from Begusarai Court to their house. When they reached at Balia, they met with Baijnath Yadav and Ganesh Yadav, then all of them proceeded towards their house. When they reached near the grocery shop of Suresh Mahto, Adalat Yadav, Anirudh Yadav, Bihari Yadav, Vijay Yadav, Shivji Yadav and 3-4 unknown persons regarding whose identity, he later on came to know as Ram Balak Yadav, Neti Yadav, Subodh Yadav and one unknown person, all of them surrounded

them. They were armed with pistol. Adalat Yadav abused Ram Sharan Yadav and further, said that in spite of repeated direction given by Girdhari Yadav to leave pairvi relating to Mahesh Paswan's murder case and further, not to depose, he declined to accede and then, Adalat Yadav provoked the others and during course thereof, he fired from his pistol over head of Ram Sharan Yadav on account of which he sustained injury, fell down and died instantaneously. During course thereof, Anirudh Yadav had also fired on Ram Sharan Yadav. Then thereafter, Bihari Yadav, Vijay Yadav, Shivji Yadav fired at him including Ganesh Yadav, Baijnath and during course thereof, he sustained injury over his right leg by the firing having been made by Shivji Yadav. Then thereafter, all the accused persons left the scene making firing in the air. Motive for occurrence has been shown as the accused persons caused murder of Mahesh Paswan and Ram Chandra Sah in the Year 2003, wherein his brother Ram Sharan Singh also sustained injury. He was one of the witness in that case and was also doing pairvi. Again, they have indulged in criminal activity by raiding house of Baijnath Yadav on 24.11.2003. On 28.11.2003, they had also raided their house wherein daughter of Ram Sharan Yadav was killed. He had further disclosed that Adalat Yadav happens to be life convict in Sessions Trial No.47 of 1983. He had further stated that Girdhari Yadav conspired, hatched plan which the accused persons executed. It has further been disclosed that after an hour, police had come at the place of occurrence, where he had tendered his written report (exhibited) recorded in pen of Baijnath Yadav, his uncle. Police prepared inquest report. Also seized blood stained earth. Dead body was sent for post mortem while he was sent to the clinic of Dr. Ashok Sharma. He had identified the accused. During cross-examination in Para-8, he had stated that all the witnesses happen to be his family members. In Para-9, he had stated that no paper, pen was available

since before for preparation of written report. He is unable to say how the paper-pen was made available. He had further stated that he is unable to say whether written report was prepared on chair, table, khatia or chauki or on ground, but the same was prepared in his presence. In Para-10, he had stated that at the time of preparation of written report, Officer-in-charge and 20-25 persons including his co-villagers were present, but he is unable to say the names of his co-villagers. In Para-11, he had stated that just after tendering of written report, police had not recorded his further statement. He had further stated that he had not mentioned the names of witness in the written report. He had further stated that at that very time, the Officer-in-charge had not enquired from his co-villagers. He had further stated that it was day light. He had further stated in Para-12 that Officer-in-charge had seized the blood stained earth, took the dead body. He is not remembering whether empty cartridges were seized from there or not. In Para-15, he had stated that he along with Ram Sharan Yadav, Baijnath Yadav and Ganesh Yadav reached place of occurrence conjointly. About 1-2 minutes thereafter, Anil Yadav came running. Dhodho Yadav was 1-2 lagga ahead of him. Janardan Yadav was 1-2 lagga behind them. Firing took place 2-3 minutes after their arrival at the place of occurrence. Firing was made one after another. It was continuous. At that very time, only four persons were present, who were surrounded by the accused. They were cordoned for 2-3 minutes. They tried to escape there from, but could not succeed. During midst thereof, whole occurrence took place. There was no commotion at the place of occurrence. None of his villagers came after occurrence. He is not remembering whether 15-20 co-villagers have arrived. None of them tried to apprehend the accused. They have not seen the occurrence in static mode. In Para-18, he had admitted that both the family happens to be on inimical term, but there was no land dispute.

He had further admitted that accused persons were being prosecuted at their end. In Para-19, he had admitted that accused Adalat Yadav had launched Sessions Trial No.17 of 1997 against him, Ram Sharan Yadav, Janardan Yadav, Baijnath Yadav, Dhodho Yadav and others. In Para-20, he had stated that the assailant was 2-3 hands away (western side) from him. At that very time, he was standing having southern front. The assailant was standing having eastern front. First of all, Ram Sharan Yadav was assaulted and then, he was.

25. PW-6 is Chandeshwar Prasad the part I.O., who had simply submitted chargesheet against the accused persons Adalat Yadav, Girdhari Yadav keeping the investigation pending against others and subsequently, submitted supplementary chargesheet against Ram Balak Yadav keeping the investigation pending against Anirudh Yadav, Bihari Yadav, Vijay Yadav, Shivji Yadav, Neti Yadav and Subodh Yadav. He had further stated that Anirudh Yadav and Bihari Yadav were arrested from West Bengal and then, supplementary chargesheet was submitted against them while against remaining, investigation was kept pending. During cross-examination, it is evident that he had not done any substantial investigation after taking charge.

26. PW-9 is Ganesh Singh, the real Investigating Officer. He had stated that on 04.12.2008, he was posted as A.S.I. at Balia Police Station. He proceeded at 3.15 p.m. from police station in evening with patrolling team and came at Bari Balia Bazar. At about 5.45 p.m., he received information from police station that one person has been murdered by way of shooting near about Bhagatpur "more", on which he proceeded there from and reached at Bhagatpur "more" at about 6.00 p.m., where he saw one person dead. On query, he came to learn that deceased was Ram Sharan Singh, son of Basudev Yadav. In the meantime, Officer-in-charge Santosh Kumar Singh, A.S.I. Rama

Shankar Singh along with armed police personnel had also reached at the place of occurrence. The S.D.P.O. also arrived. Injured Sunil Yadav handed over written report to Officer-in-charge. Inquest was prepared at the spot and then, dead body was sent for post mortem (exhibited). Thereafter, Officer-in-charge along with A.S.I. returned to police station having written report as well as after having seizure of blood stained earth. On the basis of the written report, Balia P. S. Case No.222 of 2008 was registered and investigation was entrusted to him. He exhibited formal F.I.R., endorsement over written report. On the same day at about 11.00 p.m., he proceeded from P.S. to P.O. along with Officer-in-charge as well as police personnel and then, inspected the place of occurrence as pointed out by the informant. He detailed the place of occurrence which happens to be Bhagatpur pitch road. Blood stained was found east to the pitch road. He had given boundary as follows:-South-road, North-Balia Bazar, East-land of Jago Choudhary, West-land of Suresh Mahto wherein potato has been planted. One banana tree has also been seen. He recorded statement of informant and those of Janardan Yadav, Anil Yadav and Dhodho Yadav. He received post mortem on 06.01.2009. On 30.01.2009, he recorded statement of Ganesh Yadav and Baijnath Yadav. He took statement of Kare Lal Yadav. He received injury report of Sunil Yadav (exhibited). He submitted chargesheet against Adalat Yadav and Girdhari Yadav keeping investigation pending against others. During cross-examination at Para-14, he had stated that he received information from P.S. at 5.45 p.m. (17.45) that one person has been shot at near about Bhagatpur "more". The occurrence is dated 04.12.2008. He proceeded from Balia Bazar at 5.48 p.m., when he reached at the place of occurrence, he saw one person having been shot at. On query, he came to know that name of the deceased, happens to be Ram Sharan Yadav. At that very time, he was not

conscious. He had not written the name of the family members of the deceased. At the place of occurrence itself written report was filed. Blood stained earth was seized at that very time. Injured Sunil Yadav was sent to hospital. He is unaware whether at that very time, Ganesh Yadav, Baijnath Yadav, Dhodho Yadav, Anil Yadav, Sunil Yadav were present or not because of the fact that he was unknown to them since before. In Para-19, he had stated that then thereafter, he again went on patrolling from the P.O. itself. After return to P.S., he again came at P.O. at about 11.10 p.m. At that very time, informant was not there. In Para-20, he had stated that he had not recorded statement of Jago Choudhary as well as Suresh Mahto. He had further stated that he had not found grocery shop in vicinity of the P.O. At Para-21, he had stated that none came forward to give statement at the place of occurrence. Injured was not in position to make statement on account thereof, his further statement was not taken. In Para-22, he had stated that none of the villagers save and except, own family members of the deceased as well as injured became ready to make statement. In Para-25, he had stated that he took statement of family members of informant on 07.12.2008. He took further statement of informant on 06.12.2008. He took statement of Ganesh Yadav on 30.01.2009.

27. PW-10 is a formal witness in nature, who had proved the inquest report having been prepared in carbon process.

28. Before analyzing the evidence available on the record as detailed herein above, first of all the status of accused is to be considered. Save and except Girdhari Yadav, others have been identified having played active role during course of occurrence. So far Girdhari Yadav is concerned, he has been shown as a conspirator. Admittedly, there happens to be no evidence on the record to suggest that there was an agreement amongst each other to facilitate murder of deceased Ram Sharan Yadav as well as to commit murderous attack

upon Sunil Yadav. However, the witnesses more or less stated that as the deceased and Sunil Yadav were doing pairvi against Girdhari Yadav and others, who were facing trial for commission of murder of Mahesh Paswan and during course thereof, Ram Sharan Yadav had also sustained injury and on account thereof, had also witnessed and for that, he was regularly threatened by Girdhari Yadav, but neither any specific date has been shown by any of the witnesses including Sunil Yadav, informant nor any of them had stated that Girdhari Yadav had threatened in their presence. Apart from this, the witnesses are also silent over having the remaining accused/ appellants in company of Girdhari Yadav since before the occurrence nor they deposed that all of them ever made threatening in their presence. The learned lower Court in Para-34 of the judgment had considered the aforesaid aspect and further, relying upon 2003 Criminal Law Journal 4801 as well as 5021 inferred that theme of conspiracy is found duly substantiated without noticing whether any sort of evidence have been adduced satisfying the legal mandate attracting application of Section 120B I.P.C.

29. Section 120A of the I.P.C. defines criminal conspiracy which is as follows:-

"[120A. Definition of criminal conspiracy.--When two or more persons agree to do, or cause to be done,--

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in

pursuance thereof. Explanation.--It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.]"

30. In *Gulam Sarbar v. State of Bihar* (Now Jharkand) as reported in 2014 Cr.L.J. 34, it has been held as follows:-

"5. The essential ingredients of Criminal Conspiracy are (i) an agreement between two or more persons; (ii) agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. Mere knowledge or discussion or generation of a crime in the mind of the accused, is not sufficient to constitute an offence.

The offence takes place with the meeting of minds even if nothing further is done. It is an offence independent of other offences and punishable separately. Thus, the prosecution is required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of proving criminal misconduct on the part of an accused. Criminal conspiracy is generally hatched in secrecy thus direct evidence is difficult to obtain or access. The offence can be proved by adducing circumstantial evidence or by necessary implication. Meeting of minds to form a criminal conspiracy has to be proved by

adducing substantive evidence in cases where circumstantial evidence is incomplete or vague. The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting³⁸ to do them between the parties. Agreement is essential. (Vide: *Kehar Singh & Ors. v. State (Delhi Admn .)*, AIR 1988 SC 1883; *State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820; *Mir Nagvi Askari v. CBI*, AIR 2010 SC 528; *Baldev Singh v. State of Punjab*, (2009) 6 SCC 564; *State of M.P. v. Sheetla Sahai & Ors .*, (2009) 8 SCC 617; *R. Venkatkrishnan v. CBI*, AIR 2010 SC 1812; and *S.Arul Raja v. State of T.N .*, (2010) 8 SCC 233).

6. In *Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh & Anr. v. CBI*, (2008) 15 SCC 49, it was held that in order to come under this provision it is not necessary for the accused to know the detailed stages of conspiracy; mere knowledge of main object/ purpose of the conspiracy would suffice for this Section. Similarly, in *Vikram Singh & Ors. v. State of Punjab*, AIR 2010 SC 1007, this Court dealt with a case where the accused had purchased fortwin injection and chloroform. Thus, it was held that since the purchase of these materials was an initial step towards commission of offence, the presence of co-accused Sonia, though not referred to by the witnesses at the time of actual

kidnapping would not imply that she was not privy to conspiracy and conviction of the accused under Section 120-B IPC was upheld."

31. In State (Government of NCT of Delhi) v. Nitin Gunwant Singh with State(Government of NCT of Delhi) v. Om Prakash Srivastava @ Babloo as reported in 2015 Cr.L.J 4759, it has been held as follows:-

"16. The prosecution relies upon the existence of criminal conspiracy, which resulted into the death of Lalit Suneja. This Court has time and again laid down the ingredients to be made out by the prosecution to prove criminal conspiracy. It is now, however, well settled that a conspiracy ordinarily is hatched in secrecy. The Court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. However, while doing so, it must be borne in mind that meeting of mind is essential; mere knowledge or discussion would not be sufficient. Yet, the prosecution has failed to prove the evidence which establishes any prior meeting of mind of the accused. The prosecution merely proved that all the accused were present in Delhi on the date of occurrence, and that the alleged motor-bike and the car used in incident belonged to respondent No.2, Om Prakash Srivastava @ Babloo. The High Court rightly dismissed this argument, as the involvement of the said vehicles in commission of the crime were never proved.

Neither any prior meeting of mind of the accused was proved, nor any action, individually or in concert, was proved against any of the accused. Needless to say that the entire foundation of the prosecution story was never established."

32. In *Subhash v. State of Haryana* as reported in (2015) 12 SCC 444, it has been held as follows:-

"6. To make out the offence under Section 120-B of IPC, the prosecution must lead evidence to prove the existence of some agreement between the accused persons. There is no specific evidence as to where and when the conspiracy was hatched and what was the specific purpose of such conspiracy. No such evidence has been adduced in the present case. Therefore, in our opinion, the conviction and sentence of the appellants have to be set aside."

33. In *Devender Pal Singh v. State N.C.T of Delhi* as reported in 2002 Cr.L.J 2035, it has been held as follows:-

"12. The element of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, (d) in the jurisdiction where the statute required an overt act. The essence of a criminal

conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See American Jurisprudence Vol. II Section 23, p. 559). For an offence punishable under Section 120B, prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of

two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

13. No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."

34. In *Chandra Prakash v. State of Rajasthan* as reported in 2014 Cr.L.J. 2884, it has been held as such:-

"70. While dealing with the facet of criminal conspiracy, it has to be kept in mind that in case of a conspiracy, there cannot be any direct evidence. Express agreement between the parties

cannot be proved. Circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. Such a conspiracy is never hatched in open and, therefore, evaluation of proved circumstances play a vital role in establishing the criminal conspiracy. In this context, we may refer with profit to a passage from Yogesh alias Sachin Jagdish Joshi v. State of Maharashtra [(2008)10 SCC 394]: -

"20. The basic ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. Yet, as observed by this Court in Shivnarayan Laxminarayan Joshi v. State of Maharashtra [(1980)2 SCC 465] a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. Therefore, the meeting of minds of the conspirators can be inferred from the circumstances proved by the prosecution, if such inference is possible."

71. The same principles have been stated in Pratapbhai Hamirbhai Solanki v. State of

Gujarat and another [(2013)1 SCC 613].

72. In Yakub Abdul Razak Menon v. The State of Maharashtra, through CBI, Bombay[(2013) (3) SCALE 565], analyzing various pronouncements, this Court opined thus: -

"68. For an offence Under Section 120B Indian Penal Code, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication. It is not necessary that each member of the conspiracy must know all the details of the conspiracy. The offence can be proved largely from the inferences drawn from the acts or illegal omission committed by the conspirators in pursuance of a common design. Being a continuing offence, if any acts or omissions which constitute an offence are done in India or outside its territory, the conspirators continuing to be the parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain the sanction of the Central Government. All of them need not be present in India nor continue to remain in India. The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve. (Vide: R.K. Dalmia v. Delhi Administration [AIR 1962 SC 1821], Lennart Schussler and Anr. v. Director of Enforcement

and Anr .[(1970) 1 SCC 152], Shivanarayan
Laxminarayan Joshi v. State of Maharashtra and
Mohammad Usman Mohammad Hussain
Maniyar and Anr. v. State of Maharashtra [AIR
1981 SC 1062])."

35. After going through the aforesaid judicial pronouncements as well as principle so laid down therein, it is apparent that some sort of material should be brought up on record at the end of the prosecution, which could sustain its case. As stated above, save and except, stating that Girdhari Yadav was insisting upon the deceased as well as Sunil Yadav to withdraw from main stream would not satisfy as the prosecution is lacking in evidence in exposing any past activities of the appellants to the extent of entering into an agreement during course of such nefarious design to commit an illegal act to wit committing murder of Ram Sharan as well as murderous attack upon Sunil. True it is, that in majority of cases direct evidence would not visualize and could be substantiated with circumstantial evidence, but again some sort of evidence must surface which could indicate that ultimate result smacks fragrance of conspiracy. May be, other accused belonging to group of Girdhar Yadav might be interested in his acquittal and for that they gone to that extent, but that does not mean that act was executed after having an agreement, so, prosecution suffers from inherent deformity on this score and is fit to disapprobation. Consequent thereupon, the conviction and sentence so recorded by the learned Trial Court relating to appellant Girdhari Yadav is set aside. He is under custody whereupon, is directed to be released forthwith if not wanted in any other case.

36. Now, coming to the status of remaining appellants, in the background of finding so recorded hereinabove nullifying

applicability of Section 120B of the I.P.C., their conviction with the aid of Section 120B of the I.P.C. would not survive. That being so, the overall consideration of the prosecution case is to be taken note of while adjudging the issue relating to them.

37. From the evidence having been adduced on behalf of prosecution as well as appellants, it is crystal clear that prosecution as well as appellants identified themselves in two separate groups, hostile to each other and on account thereof, series of litigation is going on amongst the parties. When two notorious groups are at loggerheads, the villagers would not like to indulge themselves, more particularly in the present social framework, whereunder no positive, concrete, foresee approach is found available to properly safeguard the interest of the witnesses. Therefore, all the witnesses commanded by one group would not frustrate their status, if otherwise is found acceptable, reliable, credible as well as worth consideration.

38. From the written report, it is evident that presence of PW-1 has not been shown although as per evidence of all the PWs, it is abundantly clear that after arrival of the police personnel, PW-5 had dictated written report to his uncle Baijnath Yadav, PW-4. Had there been presence of PW-1, certainly his presence would have found mentioned. If Paras-12 and 14 of the evidence of PW-1 is gone through, it is evident that his status as an eye witness became doubtful. In Para-12, he had stated that when he reached, he found shop of Suresh Mahto closed. He had not seen anybody. He had not stayed at the shop, but again corrected that he remained there and stayed for one and half hour. During midst thereof, Janardan Yadav, Anil Yadav, Baijnath Yadav, Sunil Yadav, Ganesh Yadav came, who happen to be his family members. He had not named Ram Sharan Yadav, the deceased. In Para-14, he had stated that he heard 15-20 rounds of firing sound as well as also seen firing made one by one. He

became scared and hid behind banana trees, which was shown to the police.

39. PW-2 is the son of PW-4 Baijnath Yadav. Baijnath

Yadav had stated that he along with Ganesh Yadav had gone to Balia Bazar, stayed there and then, returned along with Sunil Yadav and Ram Sharan Yadav. This witness PW-2 had simply stated that on the alleged date and time of occurrence, he was returning along with his cousin brother Ram Sharan Yadav, Sunil Yadav and father Baijnath Yadav. In Para-11, he had stated that he had gone to Balia along with his father. He had not met with anybody at Balia or during midst of way. He had gone to Balia only to stroll. He remained there for one and half hour to 1.45 minutes. In Para-12, he had stated that when he proceeded from Balia, he met Ram Sharan Yadav, Baijnath Yadav and Sunil Yadav. Therefore, from his evidence, it is apparent that Baijnath Yadav was not along with him. His evidence is further to be tested with the evidence of his father PW-4. In Para-2, he had stated that he met with Sunil Yadav and Ram Sharan Yadav in Balia Bazar and then, he along with Ram Sharan Yadav, Sunil Yadav, Ganesh Yadav proceeded towards their house. In Para-10, he had stated that he reached at Balia Bazar at 3.00 p.m. First of all, he reached at Patel chowk and then, had gone to Balia Bazar where he had not met with anybody. In Para-24, he had stated that Ram Sharan Yadav and Sunil Yadav got down from train at Lakhminia station at about 4.45p.m. He had further stated that he met with them at Lakhminia station where he had gone. After staying at the station, he returned to Balia Bazar where he remained one to one an half hour and then, at 4.45p.m., he proceeded there from. Ganesh Yadav was along with him since before. In Para-25, he had stated that he met Ram Sharan Yadav at Balia Bazar at 4.45 p.m. and then, all of them proceeded there from.

40. PW-3 is Anil Yadav @ Anil Kumar Yadav, who is

also not named in the written report. He had stated that after hearing sound of uproar, he rushed from his house to the place of occurrence. During cross-examination at Para-10, he had stated that he is unable to say who were present at his house at the time of his departure. In Para-15, he had stated that when he reached at the place of occurrence, he found 15-20 persons and it was 5 O" clock in the evening. The aforesaid 15-20 persons belonged to both the groups.

41. It is true that the evidence of the witnesses is to be considered in its totality. Furthermore, the classification of the witnesses have been found duly identified as wholly reliable, wholly unreliable, partly reliable as well as partly unreliable. Generally, the maxim falsus in uno and falsus in omnibus is not found applicable in Indian continent. However, when the evidence of the witnesses suggests at first hand that they could not be an eye witness to occurrence, then in that event, their status being inimical as well as interested, will play an additional role in order to discredit their evidences. Moreover, when their evidences are uncorroborated by an independent witness, then in that event, the same would require scrutiny. That being so, status of PW-1, PW-2, PW-3 and PW-4 could not be considered as an eye witness to occurrence, more particularly PW-2 and PW-4, who claimed to have joined company of deceased as well as injured at Balia Bazar, where they had gone together from their house before 3.00 p.m., on account of inconsistencies as well as contradictions at the first instance itself. In likewise manner, the status of PW-1 also becomes doubtful in the background of the fact that he was to purchase household articles and for that, he had gone to the shop of Suresh Mahto, which was closed and then, staying for one and half hour without any activity could not inspire confidence regarding his conduct. So far PW-3 is concerned, admittedly, he happens to be full brother of PW-5, informant and was also one of the participants of

the fray being fought amongst the parties as well as depicting presence of 15-20 persons at the P.O. representing both groups is a circumstance, which could not be washed away during course of consideration of individual status of the witnesses vis-a-vis their credibility as an eye witness to the occurrence. Their presence might have after the occurrence, as, the P.O. lies in vicinity of the village.

42. Now, coming to the evidence of PW-5, informant.

From the evidence, more particularly PW-8, Dr. Ashok Kumar Sharma and PW-9, the Investigating Officer, it is apparent that he had sustained firearm injuries. It is also apparent from the evidence of PW-9 that when he reached at the place of occurrence at about 6.00 p.m., he found Ram Sharan Yadav dead while Sunil Yadav in injured condition.

43. In *Jodhan v. State of Madhya Pradesh* reported in 2015 Criminal Law Journal 3291, it has been held:-

"21.Additionally, we may note with profit that these witnesses had sustained injuries and their evidence as we find is cogent and reliable. A testimony of an injured witness stands on a higher pedestal than other witnesses. In *Abdul Sayeed v. State of M.P.* (2010) 10 SCC 259, it has been observed that the question of weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the

crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. It has been also reiterated that convincing evidence is required to discredit an injured witness. Be it stated, the opinion was expressed by placing reliance upon *Ramlagan Singh v. State of Bihar* (1973) 3 SCC 881, *Malkhan Singh v. State of U.P.* (1975) 3 SCC 311, *Vishnu v. State of Rajasthan* (2009) 10 SCC 477 and *Balraje v. State of Maharashtra* (2010) 6 SCC 673 and *Jarnail Singh v. State of Punjab* (2009) 9 SCC 719.

22. From the aforesaid summarization of the legal principles, it is beyond doubt that the testimony of the injured witness has its own significance and it has to be placed reliance upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and inconsistencies. As has been stated, the injured witness has been conferred special status in law and the injury sustained by him is an inbuilt- guarantee of his presence at the place of occurrence. Thus perceived, we really do not find any substance in the submission of the learned counsel for the appellant that the evidence of the injured witnesses have been appositely discarded being treated as untrustworthy by the learned trial Judge."

44. Keeping the settle principle as referred above over reliability, acceptability of evidence, relating to an injured witness, the evidence of PW-5 is to be scrutinized. From close scrutiny thereof, it is evident that not only he had consistently deposed over motive

having been carried by the appellants, rather he also properly identified parts played by each of the accused. Even during course of lengthy cross-examination, he stood fairly, and no part thereof, is found adverse to his status being not only an eye witness rather once of the victim of present episode. Furthermore, during close scrutiny of his evidence in consonance with the evidence of PW-8, the doctor who had examined PW-5 for the gun-shot injury having sustained by him along with evidence of PW-9, the I.O., no room of doubt is found existing at the other end, it is found crystal clear the presence of PW-5, in an injured condition at the P.O. where dead body of deceased Ram Sharan Yadav was also lying. Furthermore, having positive evidence regarding presence of copious blood at the P.O., preparation of seizure list additionally supports the prosecution version.

45. The only abnormal conduct which is visualized from the evidence of PW-5 is that instead of fard-bayan, he furnished written report which, in the facts and circumstances of the case, could not be considered a vital lacuna, moreover, in the background of evidence of the I.O. who had deposed on that very score. Furthermore, neither PW-5 the informant was cross-examined on that score why, instead of fard-bayan, written report was filed. In likewise manner, PW-4 Baidya Nath Yadav, the scribe was also not cross-examined at Court by way of suggestion that he had not scribed written report on the dictation of PW-5.

46. Section 134 of the Evidence Act prescribes justification of conviction and sentence if evidence of single witness is found worth accepting.

47. In Sudip Kr. Sen alias Biltu v. State of West Bengal and others with Goutam Ghosh v. State of West Bengal with Apu Chatterjee alias Soumitra v. State of West Bengal with Sankar Das alias Bhai v. State of West Bengal with Tapas Das alias Bhambal v.

State of West Bengal reported in 2016 CRI. L.J. 1121, it has been held:-

"12. Observing that there is no impediment for recording conviction based on the testimony of a single witness provided it is reliable in Prithipal Singh & Ors. vs. State of Punjab & Anr ., (2012) 1 SCC 10, it was observed as under:-

"49. This Court has consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the

quality of evidence." [See Vadivelu Thevar v. State of Madras, AIR 1957 SC 614, Sunil Kumar v. State (Govt. of NCT of Delhi, (2003) 11 SCC 367, Namdeo v. State of Maharashtra, (2007) 14 SCC 150 and Bipin Kumar Mondal v. State of W.B ., (2010) 12 SCC 91]: (AIR 2010 SC 3638)."

48. That being so, the appeals having been preferred on behalf of appellants, Adalat Yadav, Bihari Yadav and Anirudh Yadav are found meritless, whereupon are dismissed, subject to modification as held herein before to the extent of erasing of Section 120B of the I.P.C. Appellants are under custody on account thereof, they will remain till saturation of the respective sentences having inflicted against them by the learned lower Court.