

(2013) 10 PAT CK 0054

In the Patna High Court

Case No : Criminal Appeal (DB) No. 531 of 2003

Nirmal Singh and Sheo Janam Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2013) 10 PAT CK 0054

Hon'ble Judges : V.N. Sinha, J;Rajendra Kumar Mishra, J

Bench : Division Bench

Advocate : Kanhaiya Prasad Singh, Arun Kumar Pandey, No. I, Dhananjay Kumar Singh and Rajesh Kumar Singh, In CR. app DB Nos. 531 and 90 of 2003, for the Appellant; Ashwani Kumar Sinha, A.P.P For the State in Criminal Appeal (DB) No. 531 of 2003, Ram Chandra Singh, Jitendra Kumar Singh, Shankar Kumar and Nand Lal Singh, Advocates For the Informant in Criminal Appeal (DB) Nos. 531 and 90 of 2003 and Mr. Shivesh Chandra Mishra, A.P.P for the State Criminal Appeal (DB) No. 90 of 2004, for the Respondent

Judgement

V.N. Sinha, J.—These two appeals are directed against the Judgment/Order dated 4.12.2003/8.12.2003 passed by Ist Additional Sessions Judge, Ara, Bhojpur, in Sessions Trial No. 32 of 2001, whereunder the four appellants in the two Criminal Appeals have been convicted for the offence under Sections 302/34, 302 of the Penal Code and sentenced to suffer imprisonment for life with further direction to pay fine of Rs. 1000/- each. In default of payment of fine, they have further been directed to undergo simple imprisonment for one month. Appellants, Lallu Singh and Dhanu Singh, have also been convicted u/s 27 of the Arms Act and sentenced to suffer rigorous imprisonment for one year. The sentences have been directed to run concurrently. Accused nos. 1, 3, 4 and 7, namely, Bhuteli Singh, Ramjanam Singh, Ramjee Singh and Guddu Singh put on trial but have been acquitted under the impugned judgment. Prosecution case as set out in the fardbeyan (Ext. 3) of the informant, Bhuneshwar Yadav (P.W. 8), recorded by S.I. Waquar Hussain, Incharge Karnamepur Outpost (P.W. 11), on 12.7.2000 at Jai

Badhar at 17.10 hours is that on 12.7.2000, the informant after getting his land ploughed was broadcasting paddy seeds alongwith Sudarshan Yadav (not examined), who was driving the tractor. Both the deceased, Ram Chandra Yadav, son of Fatingan Yadav (P.W. 2) and Surendra Yadav, son of Baleshwar Yadav (P.W. 9), were sitting in the same field near babool tree. In the adjoining field Fatingan Yadav (P.W. 2) alongwith his son, Jai Nath Yadav (P.W. 3), co-villagers of the informant were broadcasting paddy seeds in their field. It is further stated in the fardbeyan that while the informant, others named in the fardbeyan were engrossed in conducting the agricultural operation, around 12 noon, appellants, Lallu Singh, Nirmal Singh, Dhanu Singh, Sheo Janam Singh, all resident of village- Isharpura, came to the field of the informant. Sheo Janam Singh was armed with lathi, Lallu Singh, Nirmal Singh and Dhanu Singh, were armed with gun (rifle). No sooner, the accused persons arrived in the field they indulged in scuffle with tractor driver, Sudarshan Yadav, appellant, Nirmal Singh, shot at him causing injury. Having sustained injury Sudarshan Yadav ran away. Informant and others tried to restrain the accused persons then Lallu Singh shot at Surendra Yadav, Dhanu Singh shot at Ram Chandra Yadav and both died at the place of occurrence itself. Informant and others in order to save themselves ran away. The four accused persons, named above in the fardbeyan chased the informant and others alongwith Ramjee Singh (acquitted), Ram Yash Singh (died during trial), Guddu Singh and Bhuteli Singh (both acquitted) armed with lathi and spear. They were also exhorting the above named four accused persons to kill the informant and his son. The motive behind the occurrence, as stated in the fardbeyan, is that deceased Ram Chandra Yadav had purchased land from Raj Nath Singh through sale deed in which he was broadcasting paddy seeds after getting the land ploughed, which was protested by the accused persons as they are having land in the vicinity and objected to the purchase of land by Ram Chandra Yadav. Having read the fardbeyan, informant Bhuneshwar Yadav (P.W. 8) as also Baleshwar Yadav (P.W. 9) father of deceased Surendra Yadav put their signatures over the same.

2. In the light of the fardbeyan (Ext. 3) of the informant, Bhuneshwar Yadav (P.W. 8), Shahpur P.S. Case No. 110 of 2000 dated 12.7.2000 was registered for the offence under Sections 147, 148, 149, 307, 302, 447 of the Penal Code and Section 27 of the Arms Act with endorsement that S.I. Waquar Hussain (P.W. 11) has already taken up its investigation. P.W. 11 conducted investigation recorded further statement of informant and statement of witnesses, prepared inquest report, inspected place of occurrence collected post mortem report but before submission of charge sheet he was transferred whereafter P.W. 10, Bodhnath Mandal, took up the investigation and after completing other formalities submitted chargesheet in the case.

3. During trial, prosecution examined 13 witnesses. P.W. 1, Narendra Kumar the nephew of the informant and brother of one of the deceased, Surendra Yadav, P.W. 2, Fatingan Yadav, the father of deceased, Ram Chandra Yadav, P.W. 3, Jai Nath Yadav, son of P.W. 2 and brother of deceased, Ram Chandra Yadav, P.W. 4,

Dhanjee Yadav, P.W. 5, Madhu Yadav, P.W. 6, Mani Yadav, are the villagers, who came to the place of occurrence after hearing the sound of gun shot fired on Sudarshan Yadav and claimed to be eye witnesses of the occurrence. P.W. 7, Dr. Harendra Prasad Srivastava, the Medical Officer, Sadar Hospital, Ara, who conducted post-mortem on the dead body of both the deceased, Surendra Yadav and Ram Chandra Yadav, submitted post-mortem reports and proved the same as Exts. 2 and 2/A. P.W. 8, Bhuneshwar Yadav, the informant is the uncle of one of the deceased, Surendra Yadav. P.W. 9, Baleshwar Yadav, is the brother of the informant and father of the deceased, Surendra Yadav, P.W. 10, Bodhnath Mandal, is the second Investigating Officer, who took charge of the investigation from P.W. 11, Waquar Hussain and submitted chargesheet. P.W. 11, Waquar Hussain, is the scribe of the fardbeyan and conducted investigation of the case until he was transferred. P.W. 12, Tarkeshwar Prasad, is the Advocate's Clerk, who proved the sale deed dated 12.05.2000 (Ext. 7). P.W. 13, Munmun Lal, is also Advocate's Clerk, who proved Protest Petition dated 30.8.2000 (Ext. 8).

4. Now, we proceed to consider the evidence of the prosecution witnesses.

5. P.W. 8, Bhuneshwar Yadav, is the informant of the case. He has stated in his evidence that occurrence has taken place about one year earlier at around 12 noon. He has further stated that at the time of occurrence, he alongwith his uncle, Fatingan Yadav (P.W. 2) and brother, Jai Nath Yadav (P.W. 3) was broadcasting paddy seeds in the field of Fatingan. Sudarshan driver was ploughing the field with tractor. Meanwhile, appellants, Lallu, Dhanu, Ram Janam (acquitted), Nirmal, all armed with gun alongwith Sheo Janam, Ramjee (acquitted), Ram Yash (died during trial) armed with lathi, Guddu and Bhuteli (acquitted) armed with spear came to the field, asked the driver to stop the tractor and entered into scuffle with him. Appellant, Nirmal, shot at the driver whereafter Sudarshan ran away leaving the tractor. It is further stated that the informant forbade Nirmal whereafter appellant, Sheo Janam, Ramjee (acquitted), Ram Yash (died during trial), Guddu and Bhuteli (both acquitted) exhorted others including the appellants to kill them (prosecution party) whereupon appellant Lallu shot at the deceased, Surendra, in his right waist. Deceased Ram Chandra was shot at by appellant Dhanu on his neck. Both fell down and died at the spot. At the same time, appellant, Sheo Janam, stated that prosecution party has got the award for purchasing the land. It is further deposed that when the assailants approached the informant and others they ran towards north. In paragraph-5 of his examination-in-chief, he has further stated that the occurrence has been witnessed by Narendra Kumar (P.W. 1), Dhanjee Yadav (P.W. 4), Mani (P.W. 6), and Madhu Yadav (P.W. 5). In paragraph-6, the informant further stated that the land in question was purchased by Fatingan Yadav (P.W. 2) from Mishri Yadav. In the same paragraph, informant further claimed that accused persons fled away from the place of occurrence. In paragraph-7, informant also stated that the villagers and father of the deceased, Surendra Yadav, namely, Baleshwar Yadav (P.W. 9) came to the place of occurrence afterwards and information regarding the occurrence was given to them. In paragraph-8, informant further stated that

Incharge of Karnamepur Outpost, Waquar Hussain (P.W. 11) came to the place of occurrence and recorded his fardbeyan on which he and Baleshwar Yadav (P.W. 9), father of the deceased, Surendra Yadav, put their signatures. The witness also identified his signature over the fardbeyan as Ext. 1/B. He also stated that the inquest report of deceased Ram Chandra Yadav was prepared in his presence over which he also put his signature and proved his signature as Ext. 1/C. In paragraph-11, informant further stated that he learnt later that the Officer Incharge came in collusion with the accused persons and did not include the name of accused, Ram Janam, in the fardbeyan and further detailed in the fardbeyan that he was broadcasting paddy seeds in his field for which he made complaint to S.P. and D.M. whereafter the Officer Incharge was transferred to Police Line. In paragraph-12, informant further stated that he also filed Protest Petition in court, which was drafted by Advocate, Anant Babu, over which he put his signature and proved his signature on protest petition as Ext. 1/D. In paragraph-13, informant further claimed that the place of occurrence land is in possession of Fatingan (P.W. 2). In paragraph-29, informant admitted that the accused persons indulged in scuffle with the driver for about a minute. Appellant, Nirmal Singh, shot at the tractor driver from a distance of 3-4 cubits. During scuffle, Sudarshan was sitting on the tractor. After being shot, Sudarshan, came down from the tractor and ran away towards north. In the same paragraph, informant further stated that he is not sure whether Sudarshan actually suffered the gun shot because he disappeared after the occurrence.

6. P.W. 1, Narendra Kumar, is the nephew of the informant and brother of the deceased, Surendra Yadav. He has stated in his evidence that the occurrence took place on 12.7.2000 at about 12 noon when he was weeding grass in his field, located in Jai Badhar within Isharpura village. His attention was drawn towards the place of occurrence after he heard gun shot in the south-west direction at a distance of 100 steps and saw the tractor driver, Sudarshan Yadav, running away raising alarm. Earlier, the tractor was ploughing the field of his cousin grand father, Fatingan Yadav (P.W. 2). Having seen the driver running away P.W. 1 went running towards the field of Fatingan (P.W. 2) where Lallu Singh, Dhanu Singh, Nirmal Singh, all appellants, Ram Janam Singh, armed with gun, Sheo Janam Singh, appellant, Ramjee Singh, Ram Yash Singh, armed with lathi, Guddu, Bhuteli armed with spear were present. Ramjee, Ram Yash, Guddu, Bhuteli and Sheo Janam exhorted others present to kill, whereafter Lallu shot at Surendra Yadav on his right waist. Before his fall Ram Chandra Yadav tried to hold him but, in the meantime, appellant, Dhanu shot at Ram Chandra Yadav on his neck from the front. Both the victims were killed at the spot. The accused persons thereafter tried to apprehend the witness and others. P.W. 1 managed to escape towards east, his uncle, Bhuneshwar Yadav (P.W. 8), Fatingan Yadav (P.W. 2), Jai Nath Yadav (P.W. 3), Mani Yadav (P.W. 6), Dhanjee Yadav (P.W. 4) and Madhu Yadav (P.W. 5) ran towards north. In paragraph-7, witness stated that Sheo Janam stated at the place of occurrence that the prosecution party has got the award for purchasing the land. In paragraph-8, P.W. 1 further stated that the

plot in question was purchased by his grand father, Fatingan from Mishri Yadav of village-Isharpura on 12.5.2000. In the same paragraph, he has given the details and the area of the land in question and has also stated that prior to the purchase, appellant, Sheo Janam Singh, was asking Fatingan not to purchase the land. In the same paragraph, witness also stated that after purchasing the land, Fatingan is in possession. He also reiterated in the same paragraph that on the date of occurrence paddy seeds were being broadcasted in the plot. In paragraph-29 of his cross examination, P.W. 1 has stated that after one minute of the accused persons leaving the place of occurrence, he and other witnesses returned to the place of occurrence and there was consultation amongst the witness to lodge the case, this witness and others did not go for lodging the case at the outpost. In paragraph-30, P.W. 1 has stated that Karnamepur Outpost is three kilometers south from the place of occurrence. In the same paragraph, he has also stated that village-Isharpura is two kilometers south-west from the place of occurrence.

7. P.W. 2, Fatingan Yadav, is the father of one of the deceased, Ram Chandra Yadav. He has stated in his evidence that the occurrence has taken place about one year earlier around 12 noon when he was broadcasting paddy seeds in his field, which is located in Jai Badhar. At the time of the occurrence, tractor was moving towards south. Appellant, Nirmal Singh, shot at the tractor driver, Sudarshan, who escaped towards east-north. Alongwith Nirmal, Ram Janam Singh (acquitted), appellant, Lallu, Dhanu, all armed with gun, Ramjee (acquitted), Ram Yash (died during trial) and appellant, Sheo Janam Singh armed with lathi, Guddu and Bhuteli (both acquitted) armed with spear were also present. Appellant, Lallu, shot at Budhram (Surendra Yadav) on his right waist, Dhanu shot at Ram Chela (Ram Chandra Yadav) on his neck from the front. Both having suffered shot fell down. The accused persons, thereafter, also exhorted the appellants to kill the witness and others, whereafter, the witness and others ran towards north. Assailants, however, went towards Isharpura. In paragraph-6, P.W. 2, stated that after he returned to the place of occurrence, both injured had died. In paragraph-7, P.W. 2 stated that place of occurrence land was purchased by him. In paragraph-20 of his cross examination, P.W. 2, has asserted that the accused persons also shot at the witness and others but injury was not caused, Surendra and Ram Chandra only suffered injury and they died where they suffered shot. In paragraph-25 of his cross examination, P.W. 2 has confirmed that he has made statement before the police that appellants, Lallu, Nirmal, Dhanu and Sheo Janam, had come to the plot of Bhuneshwar Yadav, informant (P.W. 8) and they collectively indulged in scuffle with the driver, Sudarshan Yadav. He also admitted in the same paragraph that he has stated before the police that he and others raised alarm from his plot asking the accused persons not to indulge in scuffle.

8. P.W. 3, Jai Nath Yadav, is the son of P.W. 2 and brother of the deceased, Ram Chandra Yadav. He has stated in his evidence that the occurrence took place on 12.7.2000 at about 12 noon when he was broadcasting paddy seeds in his field

located in Jai Badhar alongwith his father and informant, Bhuneshwar Yadav (P.W. 8). At the time of occurrence, tractor was being driven by Sudarshan Yadav. In paragraph-2, P.W. 3 has stated that at the time of occurrence, Ram Janam (acquitted), appellants, Nirmal, Lallu, Dhanu, armed with gun alongwith Ramjee (acquitted), Ram Yash (died during trial), appellant, Sheo Janam, armed with lathi came to the place of occurrence together with Guddu and Bhuteli (both acquitted) armed with spear. After arrival of the accused persons in the field, they indulged in scuffle with tractor driver, meanwhile, Nirmal shot at the tractor driver, the driver raising alarm ran towards east-north. In paragraph-4, P.W. 3 has further stated that the accused persons came ahead and then Ramjee, Ram Yash, Guddu, Bhuteli and appellant, Sheo Janam, exhorted the appellants to kill those present whereupon appellant, Lallu, Shot at the deceased, Surendra Yadav and Dhanu shot at the deceased, Ram Chandra Yadav and Sheo Janam claimed that award for purchasing the land has been given. In paragraph-5 of his cross examination, the witness stated that when the accused persons came towards them then he and others moved north and assailants went towards there home. In paragraph- 14, he has further stated that when the accused persons exhorted to kill P.W. 3, 4 others became afraid and ran towards northeast. He has further stated in the same paragraph that after departure of the accused persons from the place of occurrence, witness and others did neither discuss about giving information to the police nor did attempt to give information to the police.

9. P.W. 4, Dhanjee Yadav, is the co-villager of the informant and at the time of occurrence alongwith Madhu Yadav (P.W. 5) was returning from Karnamepur market and when the two reached near the field of Fatingan (P.W. 2) heard the sound of firing and saw Ram Janam Singh (acquitted), appellants, Lallu Singh, Dhanu Singh, Nirmal Singh, armed with gun, Ram Yash (died during trial), appellant, Sheo Janam Singh and Ramjee Singh (acquitted) armed with lathi, Bhuteli and Guddu armed with spear (also acquitted). He also saw the tractor driver, Sudarshan Yadav, running towards north. In paragraph-3, P.W. 4 stated that Sheo Janam, Ramjee, Ram Yash, Bhuteli and Guddu exhorted others to kill the members of the prosecution party whereafter Lallu shot at Surendra on his right waist and Dhanu shot at Ram Chandra on his neck and both the injured died at the spot.

10. P.W. 5, Madhu Yadav, has given similar evidence as that of P.W. 4, Dhanjee Yadav.

11. P.W. 6, Mani Yadav, is also co-villager of the informant. He has stated that the occurrence took place about one year earlier at 12 noon when he had come to Jai Badhar for grazing his cow, she-buffalo, heard sound of firing from the east and then saw Sudarshan raising alarm running towards north. At the same time, he also saw Surendra Yadav and Ram Chela sitting beneath babool tree. In paragraph-2, he has stated that he also saw at the same time, appellants, Lallu, Dhanu, Nirmal, Ram Janam (acquitted) armed with gun, Guddu and Bhuteli (acquitted) armed with spear and Ramjee (acquitted), Ram Yash (died during

trial) appellant, Sheo Janam armed with lathi exhorting those armed with gun to kill the members of the prosecution party. In the light of the exhortation, Lallu shot at Surendra Yadav on his right waist and Dhanu shot at Ram Chandra, both injured fell down. The accused persons escaped towards south. The witness came to the place of occurrence and saw both the injured dead. In paragraph-3, P.W. 6 further stated that Fatingan (P.W. 2) had purchased the land which the accused persons were asking him to leave due to which occurrence has taken place.

12. P.W. 9, Baleshwar Yadav, is the father of deceased, Surendra Yadav. He has stated in his evidence that occurrence took place 13-14 months earlier at about 12 noon when he was at his house and heard the sound of firing in south Jai Badhar and went near the plot of Fatingan (P.W. 2) and met Fatingan, Bhuneshwar and others also saw dead body of his son, Surendra Yadav, who died of gun shot injury. Ram Chandra was also lying there being shot dead. He learnt from Bhuneshwar and Fatingan that appellant, Lallu, shot Surendra and Dhanu shot Ram Chandra. He also learnt from the witnesses that assailants came alongwith Nirmal Singh, Ram Janam Singh, Sheo Janam Singh, Ram Yash Singh, Ramjee, Bhuteli and Guddu who were also armed. At the place of occurrence, Officer Incharge came and recorded the fardbeyan of Bhuneshwar on which he also put his signature as a witness.

13. P.W. 7, Dr. Harendra Prasad Srivastava, Medical Officer, Sadar Hospital, Ara, has stated that on 13.7.2000, he was posted at Sadar Hospital, Ara as Medical Officer and conducted postmortem examination on the dead body of Surendra Yadav on that day and found the following ante-mortem injury on his person:

(i). On external examination found a lacerated wound 3" X 3" X cavity deep on right side of chest. Muscles, tissues, vessels, all lacerated. This was wound of entry.

(ii). Lacerated wound 1/2" X 1/4" X skin deep on the back of scalp.

In paragraph-2 of his evidence, P.W. 7, Dr. Harendra Prasad Srivastava, has given finding after the dissection of dead body of Surendra Yadav and has also stated that small multiple pellets were recovered from abdominal and thoracic cavity, which were preserved and sealed in a glass viol and handed over to the police concerned. In paragraphs-3 and 4, P.W. 7 has stated that all the injuries were ante-mortem and the cause of death was due to shock and hemorrhage as a result of injury to the vital organ caused by firearm. In paragraph-7, P.W. 7 further stated that on 13.7.2000 itself at 8 A.M., he conducted post-mortem examination on the dead body of the deceased, Ram Chandra Yadav, and found one lacerated wound 3" X 2" X cavity deep at middle of neck. Multiple abrasion brown in colour found around the neck and adjoining chest, which was wound of entry only; vessels and tissues were lacerated and blood clots were present in the wound. In paragraph-8, P.W. 7 gave his finding after dissection of the dead body and then stated that two pieces of wades plastic like material and multiple

pellets were recovered from the wound, which were preserved and sealed in glass viol and handed over to the police concerned. In paragraph-9, he has stated that the injuries were ante mortem in nature. In paragraph-10, P.W. 7, gave his opinion about cause of death, which was due to shock and haemorrhage as a result of injury to major viscera and vessels caused by firearm. The post-mortem report of the two deceased, Surendra Yadav, Ram Chandra Yadav has been proved by P.W. 7 as Ext. 2, Ext. 2/A.

14. P.W. 11, Waquar Hussain, recorded the fardbeyan of the informant and is the first Investigating Officer of the case. He conducted investigation of the case until his transfer. In paragraph-1 of his evidence, he has stated that on 12.7.2000, he was posted at Karnamepur Outpost within Shahpur P.S. On 12.7.2000 he heard a rumour at about 3.30 P.M. that in the riverine area of Isharpura village two persons have been shot dead. For verification of the rumour, he alongwith A.S.I., Kapileshwar Singh, proceeded and reached Jai Badhar within Isharpura village at 5.10 P.M. and recorded the fardbeyan of Bhuneshwar (P.W. 8), resident of village-Nandlal Ka Dera, which is in his hand writing and proved the same as Ext. 3 and also proved the formal F.I.R. drawn by Officer Incharge, Sahpur Police Station, Sitaram Singh (Ext. 4). In paragraph-4, P.W. 11 further states that he took up the investigation of the case soon after recording the fardbeyan and collected the blood stained soil and sent the same to the police station through Chowkidar. P.W. 11 then proceeded to record the further statement of the informant and then inspected the place of occurrence, which is at a distance of two kilometers north-east from village-Isharpura and one kilometer north from village-Madhopur in Jai Badhar at a distance of 200 yards east from the village road which connect the place of occurrence with village Lalu Ka Dera. In the east and west of place of occurrence, there are two babool trees. The place of occurrence was found to have been sown, copious blood was also found there. Investigating Officer then further says in the same paragraph that he was informed that the two deceased were sitting on the upland. Place of occurrence is bounded on the East, West, South and North by the plot(s) of Gauri Ram, Bachcha Yadav, Dhanlal Yadav and the barron plot of the informant, adjacent to upland. In Paragraph-6, P.W. 11, states that he separately prepared the inquest report of both the deceased, Surendra Yadav and Ram Chandra Yadav in presence of Suresh Yadav (not examined), Jai Nath Yadav (P.W. 3), Bhuneshwar Yadav (P.W. 8). Both the deceased had suffered gun shot injury. P.W. 11 has further proved the inquest report of the two deceased as Exts. 5 and 5/A and then sent the dead bodies for post-mortem examination. In paragraph-8, P.W. 11 states that senior police officers also came to the place of occurrence. In paragraph-9, Investigating Officer further states that he took the statement of Baleshwar Yadav (P.W. 9), Jai Nath Yadav (P.W. 3), Fatingan Yadav (P.W. 2). Sudarshan driver was not found, as such, his statement was not recorded. P.W. 11 also stated that he collected the post-mortem report of both the deceased together with the pellets recovered at the time of post-mortem examination. In paragraph-11, P.W. 11 admitted that he handed over the charge of the investigation of the case on 20.7.2000 to B.N.

Mandal (P.W. 10) after he was transferred. In paragraph-19, Investigating Officer has stated that on 12.7.2000 at 15.30 hours he made entries in the diary. In the same paragraph, he further states that from Karnamepur one can come to the place of occurrence on a jeep, which is at a distance of one kilometer. In the same paragraph, he further stated that he came to the place of occurrence on a jeep reaching there at 17.10 hours. In paragraph-20, first Investigating Officer, P.W. 11, further described the place of occurrence as upland, just adjacent north of the barron plot of the informant (P.W. 8). Adjacent east of the upland is the plot of Gauridas and that of the informant. In the same paragraph, he further stated that in the plot, which was sown, there was no sign of tractor having ploughed the same, the tractor was not found in the plot. There was no sign of tractor having ploughed any other adjacent plot.

15. P.W. 10, Bodh Nath Mandal, is the second Investigating Officer who was posted in Shahpur police station on 20.7.2000 and was instructed by the senior officer to take charge of the investigation of the present case from S.I., Waquar Hussain (P.W. 11). In paragraph-2, P.W. 10 stated that during investigation, the case was supervised by the superior police officer, who submitted supervision note. In paragraph-3, he has stated that he recorded the statement of Narendra Kumar (P.W. 1), Mani Yadav (P.W. 6), Dhanjee Yadav (P.W. 4), Madhu Yadav (P.W. 5). He also wanted to record the statement of the driver, Sudarshan Yadav, but he could not be found. Having completed the investigation, he submitted chargesheet. In paragraph-5, second Investigating Officer stated that Isharpura village is in between village-Nand Lal Ka Dera and Karnamepur and from village Nand Lal Ka Dera if one has to come to Karnamepur he has to pass through Isharpura village.

16. P.W. 12, Tarkeshwar Prasad and P.W. 13, Munmun Yadav, are the Advocate's Clerks. P.W. 12, Tarkeshwar Prasad, proved the sale deed dated 12.5.2000 (Ext. 7), whereby the place of occurrence land was purchased by Fatingan Yadav (P.W. 2). P.W. 13, Munmun Lal, proved the protest petition dated 30.8.2000 (Ext. 8).

17. Counsel for the appellants has assailed the conviction of the four appellants on the following grounds:

(i). As per the story set out in the fardbeyan (Ext. 3), P.W. 8, the informant, after getting his land ploughed by tractor driven by Sudarshan Yadav was broadcasting paddy seeds in his field. At the same time, Fatingan Yadav (P.W. 2), his son, Jai Nath Yadav (P.W. 3) were also broadcasting paddy seeds in their plot, the two deceased were sitting in the plot of the informant near babool tree. The accused persons including the appellants came to the plot of the informant entered into scuffle with driver, Sudarshan Yadav. Meanwhile, appellant, Nirmal Singh, shot at him then the driver came down from the tractor and ran away with the key of the tractor. Informant restrained the accused persons whereupon appellants, Lallu Singh and Dhanu Singh, shot at Surendra Yadav and Ram Chandra Yadav respectively, who fell down and died. The appellants, thereafter, moved towards the informant and others, the informant and others in order to save themselves

ran towards their village, Lalu Ka Dera. Appellants and others chased them for some distance but as the prosecution party was approaching their village, the appellants and others went away. After the appellants and others went away, informant, P.Ws. 2, 3 and other villagers including the witnesses came back to the place of occurrence. It is submitted that in court the prosecution story has been changed by the informant as according to the evidence recorded in court, informant, P.W. 8, P.Ws. 2, 3 were broadcasting paddy seeds in the field of P.W. 2, which he has purchased under sale deed dated 12.5.2000 (Ext. 7) where the occurrence is said to have taken place. From the First Information Report, it is quite evident that at the time of occurrence, informant (P.W. 8) was in his field and the two deceased were sitting near the babool tree in the field of the informant but in court, the evidence of the informant is different as in court he has asserted that the occurrence took place when he, P.Ws. 2, 3 were broadcasting paddy seeds in the purchased field of P.W. 2. In this connection, it is also pointed out from the evidence of the eye witnesses as also from the evidence of first Investigating Officer, Waquar Hussain (P.W. 11) that dead body was not found neither in the field of the informant nor in the field of P.W. 2 but on the upland (Tila) and if the dead body was found on the upland, which neither belongs to the informant (P.W. 8) nor to P.W. 2, then the story as set out in the fardbeyan that the two deceased were sitting near the babool tree in the field of P.W. 8 appears to be doubtful.

(ii) Counsel for the appellant further submitted that the present occurrence has taken place at about 12 noon when the tractor was ploughing the place of occurrence land the prosecution party was broadcasting paddy seeds, the appellants and others to begin with entered into scuffle with tractor driver, Sudarshan Yadav, who after being shot at by appellant, Nirmal Singh, came down from the tractor and ran away from the place of occurrence taking the keys of the tractor leaving the tractor in the field but when the Investigating Officer came to the place of occurrence at 5.10 P.M. he did not find any tractor at the place of occurrence. In this connection, learned counsel for the appellants also pointed out that soon after the occurrence when the appellants and others went back, informant (P.W. 8), P.Ws. 2, 3, 1 and others, i.e., P.Ws. 4, 5 and 6 came back to the place of occurrence made consultation amongst themselves about lodging of the case but kept sitting at the place of occurrence until arrival of first Investigating Officer of the case, P.W. 11, at 5.10 P.M. It is submitted that in case the prosecution party had seen the assailants of the two deceased committing the crime, it was natural on their part to have either themselves gone to the Karnamepur Outpost, which is at a distance of one kilometer from the place of occurrence or to have sent any other villager to the outpost for giving information about the occurrence. It is submitted that as the informant and other eye witnesses had not seen the occurrence, they were consulting each other whether to institute a case.

(iii). Learned counsel for the appellants further submitted that occurrence has not taken place at the place of occurrence said to have been disclosed by P.W. 8

and found by P.W. 11. In this connection, he submits that had the Investigating Officer found the evidence of violence including blood stained soil at the place of occurrence, he must have made seizure of the blood stained soil from the place of occurrence. In this connection, he refers to the evidence of P.W. 11, paragraph-5, that he seized blood stained soil from the place of occurrence but did not prepare any seizure list, which is indicative of the fact that no blood stained soil was available for being seized as had he seized the blood stained soil, it was expected of him to have prepared the seizure list. From the evidence of Investigating Officer itself, it is quite evident that he did not prepare any seizure list of the blood stained soil and thus the claim of the prosecution that the two deceased were killed by causing gun shot injury at the place of occurrence described by the Investigating Officer in his evidence becomes doubtful.

18. Counsel for the State and the informant has supported the conviction of the appellants and submitted that minor discrepancy in the evidence of the eye witnesses as narrated in the fardbeyan and deposed in court may be there but that cannot be a ground to disbelieve the entire prosecution case as prosecution witnesses are consistent on the date, time and manner of the occurrence. In this connection, he pointed out that plot of the informant, P.W. 8 and the plot of P.Ws. 2, 3 are adjoining each other and at the time of occurrence, informant (P.W. 8), P.Ws. 2, 3 were broadcasting paddy seeds may be in their own field or in the field of P.W. 2 because as per the fardbeyan, P.W. 8 was broadcasting seeds in his own field and P.Ws. 2, 3 were broadcasting seeds in the field of P.W. 2 but in court P.W. 8 has stated that he alongwith P.Ws. 2 and 3 was broadcasting paddy seeds in the plot of P.W. 2 but such variance in the prosecution story as stated in the fardbeyan and the evidence deposed in court may not persuade this Court to disbelieve the prosecution story about the assault on the two deceased. As regards other submission that the Investigating Officer did not prepare the seizure list after he seized the blood stained soil from the place of occurrence. Counsel submitted that failure to prepare the seizure list is failure on the part of the Investigating Officer, which cannot be a ground to disbelieve the prosecution case. Counsel further submitted that occurrence having been committed at 12 noon in the day in presence of the prosecution witnesses, who were also chased by the appellants and their accomplice and as the members of the prosecution party feared further assault from the appellants and others, they did not proceed to Karnamepur Outpost for giving information to the Outpost about the occurrence. In this connection, he also pointed out that Karnamepur Outpost is at a distance of three kilometers from village Nand Lal Ka Dera and if one has to go to Karnamepur Outpost from village Nand Lal Dera he has to pass through village Isharpura of the accused and, thus, on account of fear of further assault, the prosecution party could not decide to take steps for informing the Outpost about the occurrence.

19. In support of submission that the prosecution story need not be thrown out on the ground of minor discrepancy about the prosecution case as set out in the fardbeyan and as deposed in court. Learned counsel for the State and the

informant relied the Judgment of the Supreme Court in the case of Sucha Singh and Another Vs. State of Punjab, paragraphs-13, 18, 19, 20, 21, 25}. From paragraph-13 of the said Judgment, it would appear that the court held that relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be made if plea of false implication is made. In such case, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. In paragraph-18, Court observed that even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. In paragraph-20, Supreme Court observed that exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. As regards non examination of the driver, Sudarshan Yadav, learned counsel for the informant submitted that after scuffle and being shot at he disappeared from the village. In this connection, referred to the evidence of the Investigating Officer that in spite of hectic search to trace Sudarshan Yadav he could not be traced and made available for recording his statement and, as such, for failure to examine him to unfold the prosecution story, the prosecution story can not be thrown out. He further pointed out that in any case tractor driver Sudarshan Yadav is only a witness of scuffle and being shot at by Nirmal Singh his disappearance from the place of occurrence leading to non examination as witness cannot be a ground to disbelieve the subsequent prosecution story of shot being fired on the person of Surendra Yada and Ram Chandra Yadav by Lallu and Dhanu Singh respectively. Learned counsel then referred to the Division Bench Judgment of this Court in the case of Harminder Mandal and Others Vs. The State of Bihar, paragraphs-28, 29, 30 and 34}, perusal whereof indicates that in paragraph-28 of the said Judgment, with reference to the Judgment of the Supreme Court in the case of Vadivelu Thevar Vs. The State of Madras, , this Court categorized the witnesses in three categories, namely, wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable and with reference to such categorization indicated in paragraph-29 as to how the material contradictions in the evidence of the witnesses is required to be considered. In paragraph-30, 34 again the Court indicated as to how the material contradictions in the evidence is required to be considered with reference to the Judgment of the Supreme Court in the case of Dr. Sunil Kumar Sambhudayal Gupta and Others Vs. State of Maharashtra, and Sucha Singh (supra), and then held that embellishments, contradictions and variance in the prosecution evidence even if found the evidence has to be considered in its entirety for better appreciation of the merit of the prosecution case in the light of evidence led.

20. In view of the rival submissions, we are required to consider the merit of the prosecution case and the evidence of the eye witnesses and other witnesses led in support thereof. From perusal of fardbeyan (Ext. 3) of the informant (P.W. 8),

it is evident that the prosecution party, i.e., P.Ws. 8, 2, 3 on the date, time of occurrence were attending to agricultural operation in their respective field situate in Jai Badhar of village-Isharpura within Karnamepur Outpost of Shahpur Police Station. While they were conducting agricultural operation and the tractor was ploughing the field of the informant (P.W. 8) he was broadcasting paddy seeds in his own field, the two deceased, Surendra Yadav and Ram Chandra Yadav, were sitting in the field of the informant near two babool trees. The appellants along with other accused persons, some of whom have been acquitted by the trial court, came to the plot approached the tractor driver, Sudarshan Yadav, and indulged in scuffle with him. While the scuffle was on, Nirmal Singh is said to have shot at him, which forced the tractor driver to switch off the tractor and to come down from the same and to run away towards north leaving the tractor in the plot. Meanwhile, the informant intervened asked the appellants, other accused persons not to resort to violence but appellants, Lallu Singh, Dhanu Singh shot at Surendra Yadav and Ram Chandra Yadav respectively, who fell down in the plot and died. The prosecution party apprehending further assault on them ran towards their village, Nand Lal Ka Dera, but was chased by the appellants and others for some distance, the appellants and others retreated back and then went away. Once the appellants and others retreated back and went away the members of the prosecution party, the eye witnesses again came back to the place of occurrence and made consultation amongst themselves whether to inform Karnamepur Outpost about the occurrence. In the meantime, to confirm the rumour afloat that murder has taken place in the riverine area S.I. Waquar Hussain, P.W. 11 attached to Karnamepur Outpost arrived at the place of occurrence. Such rumour was heard by P.W. 11 at about 3.30 P.M. and then having noted down in the diary, he proceeded to confirm the rumour but reached the place of occurrence on jeep at 5.10 P.M., though the distance between Karnamepur Outpost and the place of occurrence is one kilometer. It appears that the delay caused by P.W. 11 in reaching the place of occurrence is on account of the fact that he heard rumour that murder has taken place in the riverine area then perhaps he first visited the riverine area and then came to the place of occurrence, which is either the plot of the informant or P.W. 2 situate in Jai Badhar, which is outer area of either village-Nand Lal Ka Dera or Isharpura and not the part of the riverine area. The description of the place where the dead bodies of the two deceased have been found, as per the evidence of the Investigating Officer, P.W. 11, is quite categorical that the same was found on the upper land, which may be adjacent to the plot of either P.W. 8 or P.W. 2 but as per the prosecution case set out in the fardbeyan, the informant is quite categorical that the two deceased were sitting in his plot near the two babool tree(s) the dead body having been found on the upland (Tila), which is not the field of either P.W. 8 or P.W. 2. the place of occurrence as set out in the fardbeyan or in court that the two deceased were sitting in the field of the informant near the babool tree(s) and shot in the field does not appear to be supported by the evidence of the Investigating Officer or the objective findings made by him about the place of occurrence.

21. Now, we consider the other circumstance that after few minutes of the departure of the accused persons, the members of the prosecution party, i.e., P.Ws. 8, 1, 2, 3, 4, 5, 6 and other eye witnesses came back to the place of occurrence where they were also joined by P.W. 9 and made consultation about lodging of the case and remained at the place of occurrence until the arrival of the first Investigating Officer, Waquar Hussain (P.W. 11) at 5.10 P.M. and recorded the fardbeyan of P.W. 8, his further statement, prepared the inquest report of the two deceased sent the dead bodies for post-mortem examination, inspected the place of occurrence and recorded the statement of the prosecution witnesses. It would, thus, appear that the prosecution party, witnesses returned to the place of occurrence soon after the occurrence remained there consulting amongst themselves about lodging of the case but did not inform Karnamepur Outpost about the occurrence, which is at a distance of one kilometer and connected by the village road. In this connection, evidence of P.W. 1 is relevant as he has stated in paragraph 29 that they did discuss the issue of lodging the case but no attempt was made to inform the Outpost about the occurrence. P.W. 3 has also deposed in paragraph 14 that no attempt was made to inform the Outpost about the occurrence until arrival of P.W. 11. In this connection, submission of the learned counsel for the informant and the State that on account of fear and the fact that the approach road for reaching Karnamepur Outpost from the place of occurrence is through the village of the accused persons, Isharpura, is hardly of any substance as during day time between 1 P.M. onwards until arrival of the Investigating Officer at 5.10 P.M., they could have easily gone to Karnamepur O.P. through village road or by passing the same as according to P.W. 1 himself Karnamepur Outpost is at a distance of three kilometers towards south from the place of occurrence and Isharpura is at a distance of two kilometers south-west from the place of occurrence and there was nothing like crossing the village-Isharpura for reaching the Outpost. Failure to inform the police at the Outpost about the occurrence, which according to the Investigating Officer is at a distance of one kilometer connected by a village road on which the jeep also plies is indicative of the fact that the prosecution party was marking out time and deciding to give a particular shape to the case, perhaps, for the reason that they had not seen the occurrence. In this connection, we rely on the observations of the Hon''ble Supreme Court in the case of Ganesh Bhavan Patel and Another Vs. State of Maharashtra, }. It appears that in the said case, three prosecution eye witnesses of the occurrence recorded their statement before the Investigating Officer on the day following the evening of the occurrence and the Hon''ble Supreme Court taking into account the delay observed in paragraph-15 that the delay of few hours simplicitor in recording the fardbeyan and the statement of the eye witnesses may not by itself amount to a serious infirmity. Delay, however, may assume such a character if there is concomitant circumstance to suggest that the witnesses were deliberately marking time to fix the identity of the accused, shape to be given to the case and the eye witnesses to be introduced. In the instant case, occurrence having taken place at 12 noon, P.W. 8, the informant, P.W. 2 father of deceased Ram Chandra

Yadav, other witnesses including P.W. 9, father of another deceased, Surendra Yadav, came to the place of occurrence soon after the departure of the accused persons and deliberated about lodging of the case and continued to wait at the place of occurrence Jai Badhar (outer area of the village) without taking any effort even to inform Karnamepur Outpost about the occurrence though distance between the place of occurrence and Karnamepur Outpost is hardly one kilometer as per the evidence of first Investigating Officer (P.W. 11), who reached the place of occurrence on hearing the rumour about the murder in the riverine area and then recorded the fardbeyan at 5.10 P.M. is indicative of fact that the members of the prosecution party, perhaps were not sure about the identity of the assailants. The prosecution case that the place of occurrence plot was being ploughed by a tractor and initially scuffle in between the accused persons and the driver took place, who was shot at by appellant, Nirmal Singh, whereafter tractor driver, Sudarshan Yadav, came down from the tractor and ran away towards north leaving the tractor in the field also appears to be doubtful as when the Investigating Officer (P.W. 11) reached the place of occurrence at 5.10 P.M. he did not find any tractor in the field, is indicative of the fact that neither tractor was at the place of occurrence nor the story that P.Ws. 8, 2 and 3 were broadcasting paddy seeds either in their own plots or in the recently purchased plot of P.Ws. 2, 3 vide sale deed dated 12.05.2000 Ext. 7 appears to be trustworthy. In the aforesaid background non examination of Driver Sudarshan Yadav becomes relevant as P.W. 11 having inspected the place of occurrence has categorically stated in evidence that he found only one plot at the place of occurrence to have been ploughed. Besides, the discrepancies about the place of occurrence as indicated by the informant (P.W. 8) in his fardbeyan as also in his evidence in court and the place where the two dead bodies was found by the Investigating Officer, i.e., on the up land and not in the field of either P.W. 8 or P.W. 2 is also indicative of the fact that the place of occurrence as alleged in the fardbeyan and deposed in the court by P.Ws. 8, 2 and 3 is different from the one found by P.W. 11 vide his evidence in paragraphs-5 and 20.

22. In view of the discrepancies as indicated by us with reference to the evidence led by the prosecution in paragraphs discussed above including the circumstance that prosecution party including witnesses did not take steps to inform Karnamepur Outpost about the occurrence for about 5 hours between 12 noon and 5.10 P.M., though distance between the two is one K.M., we do not feel confident to maintain the conviction of the four appellants and grant them the benefit of doubt. The impugned Judgment of conviction/Order of sentence is set aside. The two appeals are allowed. We direct the appellants, Nirmal Singh and Sheo Janam Singh, who during pendency of appeal were directed to be released on bail, be discharged from the liabilities of their bail bond. So far appellants, Lallu Singh and Dhanu Singh, are concerned, they are in jail custody be released forthwith if not wanted in any other case.