

(2019) 07 PAT CK 0287

In the Patna High Court

Case No : Criminal Appeal (DB) No. 217, 275 Of 2014

Prem Chand Verma And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 324, 341, 498(A)

Arms Act, 1959 — Section 27

Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 07 PAT CK 0287

Hon'ble Judges : Rakesh Kumar, J;Anjani Kumar Sharan, J

Bench : Division Bench

Advocate : Ajay Thakur, Pravin Kumar, Udbhav, Ajay Mishra, Bachan Jee Ojha, Ajay Mishra

Final Decision : Allowed

Judgement

1. Appellants in both the appeals were tried together and by common judgment, they were convicted and sentenced by the Trial Judge and as such, both the appeals were taken up together under the heading "For Hearing" and are being disposed of by this common judgment.

2. Both the appellants by judgment dated 12-02-2014 were convicted for offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'), however; Prem Chand Verma {sole appellant in Cr.Appeal (DB) No. 275 of 2014} was further convicted for offence under Section 27 of the Arms Act, 1959 (hereinafter referred to as 'Arms Act'). Both the appellants under Section 302 of the I.P.C. by order dated 19-02-2014 were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- (five thousand) each. In case of default in payment of fine, they were directed to further undergo simple imprisonment for three months. Under Section 27 of the Arms Act, appellant Prem Chand Verma {in Cr.Appeal (DB) No. 275/14} was further sentenced to undergo rigorous imprisonment for two years. Sentences in respect of appellant

Prem Chand Verma {in Cr.Appeal (DB) No. 275/14} was directed to run concurrently. However, despite the fact that against both the appellants, charges were framed under Sections 307, 324 and 341 of the I.P.C., they were acquitted from such charges. The judgment of conviction and sentence was passed by Sri Ravi Shankar Tiwary, learned Addl. District and Sessions Judge - II, Buxar (hereinafter referred to as the 'Trial Judge') in Sessions Trial No. 289 of 2010, arising out of Buxar Town P.S. Case No. 347 of 2009 (incorrectly in the judgment impugned, Nawanagar P.S. Case No. 347 of 2009 has been mentioned).

3. The fact of the case, as per fardbeyan of Banshi Dhar Seth (deceased) is that on 22-12-2009 at 10.30 hrs. in Sadar Hospital, Buxar, fardbeyan of Banshidhar Seth was recorded by A.S.I. Ram Awtar Yadav of Buxar (Town) Police Station, Buxar. In the fardbeyan, the informant (deceased) described that he was son of late Bhagwati Seth, resident of village and police station - Jamania, District - Gazipur (U.P.). On the same date i.e. 22-12-2009 in injured condition, he gave his fardbeyan in Sadar Hospital before Jamadar Sahab disclosing therein that his son Binod Kumar Verma (P.W.4) was married on 30-01-2005 with daughter of Prem Chand Verma {appellant in Cr.Appeal (DB) No. 275/14}, resident of Bari Tola, Buxar. In the year 2009, there was some misunderstanding and thereafter, against the informant and others, a case was instituted under the provision of Dowry Prohibition Act, vide Buxar Town P.S. Case No. 212 of 2009. In the said case, the deceased was on bail and next date was fixed on the date of occurrence itself. The informant on the fixed date by D.M.U. train had come to Buxar and his two sons namely Binod (P.W.4) and Raj Kumar (P.W.5) through motorcycle left for Buxar. At about 9.00 in the morning, the informant (deceased) reached Buxar Station. Since there was some time for opening of the court, he, with a view to meet his relatives, who were residing near Alka Cinema, moved on foot and thereafter, near Jyoti Prakash Chowk he got rickshaw. On rickshaw, he proceeded towards Alka Cinema and while his rickshaw reached opposite Maharaja Petrol Pump at about 9:15 AM on the road, suddenly from the backside on one motorcycle, (1) Munna Seth S/o Laxmi Narayan, resident of Civil Lines and (2) Prem Chand Verma {appellant in Cr.Appeal (DB) No. 275/14}, resident of Bari Tola Buxar came ahead and stopped the informant and both the accused persons flashed out pistol and with intent to kill the informant opened fire, which hit the stomach of the informant and another bullet hit rickshaw puller on his butuck. The informant further disclosed that he and rickshaw puller both in injured condition started squirming. In the meanwhile, on two separate motorcycles, on one of which, (3) Krishna (not sent up for trial), son of Prem Chand Verma {appellant in Cr.Appeal (DB) No. 275/14}, (4) Bipin Verma {appellant in Cr.Appeal (DB) No. 217/14}, (5) Kanhaiya, resident of Civil Line and on another motorcycle, two unknown accused persons arrived there. After the gun shot hit the injured, all the accused persons on three motorcycles fled towards northern side. The informant and rickshaw puller were carried by some unknown persons to Sadar Hospital, Buxar, where on getting information regarding the occurrence, his two sons also reached hospital where the informant

was being treated. The reason for the occurrence was explained by the informant that accused persons were not willing that the informant may do any pairvi in the case. The informant claimed that aforesaid accused persons with intent to kill him had fired on him, in which occurrence, rickshaw puller also received injury. He identified his fardbeyan and in presence of his son Binod Kumar (P.W.4), the same was read over to him and after finding it correct, he put his thumb impression on the bottom of the fardbeyan. As a witness to the fardbeyan, Binod Kumar Verma (P.W.4) put his signature.

4. On the basis of said fardbeyan, on the same date i.e. on 22-12-2009 at 11:45 AM, a formal F.I.R., vide Buxar (Town) P.S. Case No. 347 of 2009 (incorrectly in the judgment impugned, Nawanagar P.S. Case No. 347 of 2009 has been mentioned), was registered for offence under Sections 307, 324, 341, 34 of the I.P.C. and Section 27 of the Arms Act against:

- (i) Munna Seth (absconder),
- (ii) Prem Chand Verma {app. in Cr.App.(DB) No. 275/14},
- (iii) Krishna Verma (not sent up for trial),
- (iv) Bipin Verma {appellant in Cr.Appeal(DB) No. 217/14},
- (v) Kanhaiya Singh (investigation in respect of whom was kept pending)

and other two unknown accused persons. Subsequently in the case on 18-03-2010, Section 302 of the I.P.C. was added.

5. The police after registering F.I.R., investigated the case and on 31-07-2010 chargesheet was submitted against both the appellants and one Munna Set @ Munna Verma showing him absconder. The police report indicated that case was not found true against Krishna Verma one of the F.I.R. named accused, however; investigation against Kanhaiya Singh was kept pending. After submission of chargesheet, on 23-08-2010 learned Chief Judicial Magistrate, Buxar took cognizance of the offence. Thereafter, on 29-09-2010 the case of both the appellants was committed to the court of sessions and on 03-01-2011 charge against both the appellants under Sections 302/34, 307/34, 324/34 and 341/34 of the I.P.C. was framed. On the same date, a separate charge was framed against appellant Prem Chand Verma {in Cr.Appeal (DB) No. 275/14} for offence under Sections 302, 307 of the I.P.C. and Section 27 of the Arms Act.

6. It is evident that in the chargesheet, 10 persons were shown as prosecution witnesses, however; to the reasons best known to the prosecution, three persons, who were cited as prosecution witness namely 1. Parmesh Ram (one of the injured and rickshaw puller), 2. Prayag Rai and 3. Dr. Anil Kumar Singh were not produced for examination as a prosecution witness. However during trial, to establish its case on behalf of the prosecution, altogether 8 witnesses were examined. Out of 8 witnesses, 7 were already cited as witness in the chargesheet and one P.W.8 Nisar Ahmad, who had submitted chargesheet and was not cited

as witness, was examined as prosecution witness. Out of

8 witnesses, P.W.4 Binod Kumar Verma and P.W.5 Raj Kumar Verma (both sons of the deceased) were examined to the extent, as if, deceased in injured condition had given oral dying declaration to them over mobile phone disclosing name of all the accused persons. P.W.1 Sanjay Kumar Singh is an independent witness, who has stated that he was informed by someone that two accused persons on a motorcycle had come and gave gun shot injury and fled away. P.W.2 Madan Prasad Gupta is hearsay witness. P.W.6 Dr. Ram Kumar Verma has conducted post-mortem examination on the dead body of the deceased. P.W.8 Nisar Ahmad is the second investigating officer and only submitted chargesheet and P.W.7 Ram Krishna Gupta was the officer incharge of Buxar Town Police Station and investigating officer of the case, however; P.W.3 Ashok Pandey was declared hostile.

7. After completion of the prosecution evidence, on 18-07-2013 evidences and circumstances brought during the trial against the appellants was explained to the appellants and their statement under Section 313 of the Cr.P.C. was recorded, in which, they denied the prosecution case and stated that they were falsely implicated.

8. Thereafter, from the defence side also, one witness i.e. Ranjeet Kumar Singh was examined as D.W.1, who was handwriting, finger and thumb impression expert. He was approached by one of the accused for the purposes of verifying the correctness of so called thumb impression on the fardbeyan, which prosecution had pleaded as thumb impression of the deceased. This witness had examined thumb impression on the fardbeyan of the so called deceased as well as thumb impression on bail-bond and on comparison, in his report, he had noticed that the thumb impression of the deceased on the fardbeyan was not tallying with the thumb impression on the bail-bond. He has proved his original report, which was marked as Ext.A, which runs into 11 pages.

9. Sri Ajay Thakur, learned counsel assisted by Sri Pravin Kumar, learned counsel for the appellant {in Cr.Appeal (DB) No. 275/14 (Prem Chand Verma)}, after placing entire evidence on record, has argued that despite the fact that prosecution had not been able to establish as to whether the fardbeyan was actually 'dying declaration' of the deceased or not and without any other cogent material has incorrectly passed the judgment of conviction and sentence. He submits that it is admitted case of the prosecution that none of the witnesses, who were examined as prosecution witnesses, had claimed to be eye- witness to the occurrence. He submits that the case is based only on so called dying declaration of the deceased, which has been got marked as Ext. 3 i.e. fardbeyan. Besides fardbeyan, which was claimed as dying declaration, the prosecution had tried to develop a case that it was case of oral dying declaration given on telephone to P.W.4 and 5 (both sons of the deceased). By way of referring to evidence of P.W.4 and 5, it has been argued that no reliance can be placed on their evidence due to the reason that they were not trustworthy. It has come in

evidence that deceased had proceeded from Jamania to Buxar catching D.M.U. Train and it has come that by second train P.W.5 Raj Kumar Verma had proceeded for Buxar. So far as P.W.4 is concerned, it has come that he proceeded on motorcycle. However, during evidence, P.W.4 and P.W.5 had come out with a case, as if, both were moving on same motorcycle and while they reached near the bridge of river Karamnasa, they stopped motorcycle for a while for urinating, in the meanwhile, P.W.4 gave a call on the mobile of his father, which was not picked-up. Again, after two or three calls one another person picked up mobile of his father and thereafter, his father told over mobile phone that he was lying in injured condition in Sadar Hospital, Buxar and the injured gave description of participation by all the accused persons, as was stated in the fardbeyan. Sri Thakur, learned counsel submits that since in the prosecution case itself, it has come that P.W.4 Binod Kumar Verma and P.W.5 Raj Kumar Verma had proceeded for Buxar through two different mode, their evidence may not be relied upon for the purposes of treating the story built up by them as oral dying declaration of the deceased.

10. Sri Thakur, learned counsel for the appellant has further argued that the evidence of one of the independent witness i.e. P.W.1 Sanjay Kumar Singh makes it clear that in the occurrence, two accused persons were involved, who had come on motorcycle. Sanjay Kumar Singh in his evidence has stated that after hearing sound of firing he reached to the place of occurrence and saw two persons in injured condition lying on the road and he with the other persons sent the injured to Buxar Sadar Hospital. P.W.1 has clarified that the injured had not disclosed name of any of the accused persons, rather this witness stated that he came to know that two unknown accused persons on motorcycle had committed the crime.

11. Learned counsel for the appellant has also referred to the evidence of P.W.6 Dr. Ram Kumar Verma, who had conducted post-mortem examination on the dead body of the deceased and submitted that in cross-examination, this witness has stated that the injuries, which were found on the person of the deceased, indicate that the injured after such injury was not in a position to make any statement or injury was sufficient for instantaneous death. Taking the clue from the mouth of P.W.6, it has been argued that the injured after getting such injury before he was carried to hospital had already died and only after arrival of P.W.4 and P.W.5, a story was cooked out, as if, he was done to death by about 7 accused persons in the occurrence. He has also drawn our attention to the evidence to the extent that P.W.4 Binod Kumar Verma was son-in-law of appellant Prem Chand Verma {in Cr.Appeal (DB) No. 275/14}. Earlier from the appellants' side, Prem Chand Verma had lodged a case under the Dowry Prohibition Act against the deceased and his sons (P.W.4 & 5) and due to the old animosity, the present case was planted by P.W.4, in connivance with P.W.5 and police.

12. It has also been argued by Sri Thakur, learned counsel for the appellant

(Prem Chand Verma) that evidence of investigating officer also depicts that the story, which was built up by the prosecution, was unreliable. The investigating officer P.W.7, who was officer incharge of Buxar Town Police Station on the date of occurrence in his evidence, had stated that in police station just

10 minutes after the occurrence, he got telephonic information. After getting information, to verify the same, he visited the place of occurrence, where he was informed that two injured were already carried to Sadar Hospital, then instead of visiting Sadar Hospital, the investigating officer has stated that he sent one A.S.I. Ram Awtar Yadav to Sadar Hospital and a case has been made out that in the Sadar Hospital A.S.I. Ram Awtar Yadav recorded fardbeyan of the deceased. It was argued that the investigating officer had further stated that he went to the hospital and thereafter, collected fardbeyan for registering F.I.R. and subsequently, a formal F.I.R. was shown to be lodged on the same day at 11:45 AM. He submits that since the fardbeyan was falsely shown to be of injured/deceased, the prosecution has purposely withheld Ram Awtar Yadav, who was scribe of the fardbeyan. It has also been argued that in a case, which is based on only dying declaration, onus lies on the prosecution to establish the case that the dying declaration was without any influence or was truthful. However, on examination of the fardbeyan, it is evident that an injured regarding whose injury, P.W.6 doctor, who conducted post-mortem, has stated that in such injury, instantaneous death was possible and it was not at all possible that such injured would had given such a detailed story regarding the occurrence with name of accused persons, parentage and their villages and also the story behind the said occurrence.

13. Sri Ajay Thakur, learned counsel for the appellant has also argued that since P.W.4 and P.W.5 have come out with a case that near the bridge of Karamnasa river they had a telephonic conversation with the deceased, it was required on the part of the prosecution to bring on record call details as well as location of mobile phone during evidence. It has come that the investigating officer had collected call details, but purposely it was not brought on record, otherwise the case of prosecution would have been falsified on the basis of C.D.R. (Call Detail Record) itself. It has also been argued that during investigation, the investigating officer had recorded statement of some of the eye- witnesses, but to the reasons best known to the prosecution, they were not produced during the trial. He submits that had those witnesses come forward, there was every possibility to establish regarding non-implication of the appellants. He further submits that even if during investigation, it was noticed by the police that the occurrence was witnessed by some of the witnesses, in that event, it was mandatory on the part of the prosecution to put the accused persons on Test Identification Parade (T.I.P.), however the investigating officer in his evidence has stated that during investigation, no T.I.P. was held. On aforesaid ground, it has been argued that prosecution has miserably failed to establish the case, rather it was clear-cut case of false implication of the appellants.

14. Sri Bachan Jee Ojha, learned counsel appearing on behalf of appellant {in Cr.Appeal (DB) No. 217 of 2014 (Bipin Verma)} adopting the submission of Sri Ajay Thakur, learned counsel, has further argued that the prosecution has miserably failed to establish that the so called fardbeyan/dying declaration was recorded in the Sadar Hospital. He submits that prosecution has not brought on record either bed-head ticket to show that the injured/deceased was treated in hospital and during treatment his fardbeyan was got recorded, but neither any doctor nor employee of hospital has come forward to depose that deceased was admitted in hospital or treated in hospital or even his fardbeyan was recorded in hospital. He has also argued that it appears that only paper work was done by the investigating officer and a case was made out, as if, after being treated for short while in Sadar Hospital, Buxar, the injured was referred either to P.M.C.H., Patna or Varanasi and while he was being carried to P.M.C.H., Patna, on way near Ara, he succumbed to his injuries and thereafter, his dead body was brought back. It has been argued by Sri Ojha that if on way, the injured died, then there was no reason for bringing back the deceased to the Sadar Hospital. He has also argued that the prosecution has purposely not brought on record the inquest report prepared in respect of the dead body of the deceased.

15. Sri Ajay Mishra, learned Addl. Public Prosecutor, though has opposed the appeal, he was not in a position to explain as to under what circumstances, the scribe of the fardbeyan was not examined by the prosecution. However, he submits that it is case of the prosecution that besides fardbeyan as dying declaration, it was oral dying declaration given by the deceased to P.W.4 on mobile phone. He has emphasized that since the case is based on the last version of the deceased, this Court may not interfere with the judgment of conviction and sentence.

16. Besides hearing learned counsel for the parties, we have examined entire evidence on record and after going through the same, prima facie, we are of the opinion that prosecution has miserably failed to establish its case beyond all reasonable doubt. However, before proceeding, it is necessary to discuss the evidences, which have been brought on record.

17. P.W.4 Binod Kumar Verma is the son of the deceased and he is also attesting witness to the fardbeyan. In his evidence, he has identified his signature on the fardbeyan, which was marked as Ext.1. In his evidence, he stated that in Buxar court where the case under Section 498(A) of the I.P.C. was going on against him, his father (deceased) proceeded through D.M.U. Train. He alongwith his younger brother Raj Kumar Verma (P.W.5) were going on a motorcycle. Near Karamnasa river bridge, he stopped for urinating and then he phoned his father. After 2 or 3 ring, it was not picked up. Thereafter, one another person picked up the phone and he provided talk with his ikik (father). His father was squirming and told on phone that father-in-law of this witness (P.W.4) i.e. Prem Chand Verma {appellant in Cr.App.(DB) No. 275/14} and one Munna Seth had shot him. Simultaneously, he stated that Bipin Verma {appellant in Cr.App.(DB) No.

217/14} and Krishna Verma after firing fled away and he called this witness immediately to come to Sadar Hospital, Buxar. He further stated that Bipin Verma {appellant in Cr.App.(DB) No. 217/14}, Krishna Verma and Kanhaiya Seth were on one motorcycle. Then he rushed to Buxar Sadar Hospital where he saw that his father was being treated. Thereafter, police officer arrived there and in his presence recorded statement of his father. On the statement of his father, he stood as a witness and put his signature and he identified his signature, which was marked as Ext.1. In paragraph- 5 of his examination-in-chief, he further stated that the doctor told him to immediately carry the injured either to Patna or Banaras (Varanasi). He on an ambulance carried his father to Patna from Sadar Hospital Buxar. He stated in paragraph - 6 of his evidence that while he was having a discussion and moving, near Ara, his father succumbed to his injuries. In the occurrence, his father had received injury on his stomach and rickshaw puller was also injured. Thereafter, again they returned to Buxar Hospital, where inquest report was prepared, on which, he put his signature. Despite the fact that in his evidence, P.W.4 stated that on inquest report he put his signature, neither his signature was shown to him or got it identified nor inquest report was brought on record. In paragraph - 12 of his evidence, he stated that the reason for the occurrence was that this witness was married with the daughter of Prem Chand Verma {appellant in Cr.App.(DB) No. 275/14} and they had lodged a case, in which, his father was going for doing pairvi. He reiterated in paragraph 13 that Prem Chand Verma {appellant in Cr.App.(DB) No. 275/14} was his father-in-law. In paragraph - 15 of his cross-examination, attention to his previous statement recorded during investigation was drawn and at the time of evidence of P.W.7, contradiction was taken and P.W.7 in paragraph - 3 categorically stated that the fact, which this witness had stated during the trial, was not disclosed by him during investigation. Meaning thereby that this witness has come out with a new case during the trial. P.W.7 in paragraph 30 (at page 62 of paper-book) has stated that this witness during investigation had stated that on the date of occurrence his father had gone for Buxar by D.M.U. Train and thereafter, his younger brother Raj Kumar Verma (P.W.5) had gone to Buxar by another train and this witness on motorcycle had gone to Buxar. This fact itself depicts regarding the truthfulness of P.W.4 and as such, there is no reason to place reliance on so called oral dying declaration of the deceased.

18. Similar is the evidence of P.W.5 Raj Kumar Verma (another son of deceased). He too has reiterated, as was stated by P.W.4. Attention of this witness was also drawn to his previous statement, which was denied in paragraph 11 to 17 of his cross- examination. At the time of evidence of investigating officer/P.W.7 contradiction was taken, again same fact has come to fore that during investigation, no such fact was disclosed by P.W.5 and as such, there is no reason to place reliance on the evidence of P.W.5 too.

19. P.W.1 Sanjay Kumar Singh is a witness, who immediately after hearing the sound of firing, reached to the place of occurrence and saw two injured person. He thereafter managed to forward the injured to hospital and then he reached

hospital also. In his evidence, he stated that he heard that two accused persons on one motorcycle had committed the crime. His evidence belies the story of fardbeyan i.e. so called dying declaration as well as so called oral dying declaration, as presented by P.W.4 and P.W.5. This witness further stated that the injured had not stated any fact regarding the occurrence.

20. P.W.2 Madan Prasad Gupta is simply a hearsay witness without any corroboration, and as such, there is no meaning for examining his evidence.

21. Similarly, P.W.3 Ashok Pandey was declared hostile and his attention was drawn to his previous statement. Ofcourse, it was not required to examine the said fact, but on perusal of the same, it is evident that even if he had stated the fact disclosed during investigation, there was nothing in his previous statement showing involvement of either of the appellants.

22. P.W.6 Dr. Ram Kumar Gupta on 22-12-2009 was posted as Medical Officer, Sadar Hospital, Buxar and on the same date at 3:40 PM, he conducted post-mortem examination on the dead body of the deceased and he noticed following facts:-

"External Observation:

Mouth and both eyes semi-closed.

(i) Lacerated wound ¼" oval in shape with burning and charring with blackening at its margin (2 mm all around) with margin inverted - At the right flank of abdomen at the level of umbilicus in the anterior auxiliary line (would of entry).

(ii) L.W. (Lacerated wound) 1" dia-spherical in shape on the left flank of abdomen at the level of umbilicus in the mid auxiliary line with margins everted (would of exit).

On dissection

(i) Skull - Brain intact & pale.

(ii) Chest - Both lungs intact & Pale. Heart - Right empty, Left Chamber contains scanty blood.

(iii) Abdomen - Abdominal cavity full of blood and blood clots, which gushed out of the exit wound. Omentum & Omental vessels severed. A part of small intestine and descending colon severed.

Liver, spleen, Both kidneys intact & pale. Stomach contains digested food, urinary bladder empty.

Cause of death - Haemorrhage & shock due to abdominal injury.

Caused by - Fire-arm

Time since death - Within 24 hours."

23. He further identified the post-mortem report, which was marked as Ext.2. In cross-examination in paragraph - 9, he stated that it was not necessary that in an injury, which he had defined Injury No.3, death may cause instantly, but the same might be caused and in paragraph - 10, he stated that it was not predictable to say that in the above severe injury, the injured was in a condition to speak after sustaining such injuries.

24. On examination of the evidence of this witness, it appears that injury caused on the deceased was possible for instantaneous death and also there was possibility of not speaking anything in such injured condition by the injured. If we examine the evidence of P.W.6/Dr. Ram Kumar Gupta and fact depicted in the fardbeyan, it is difficult to believe that in such injured condition, the injured was in a position to give detailed descriptive fardbeyan, which was relied by the prosecution, as dying declaration.

25. P.W.7 Ram Krishna Gupta on 22-12-2009 was officer incharge in Buxar Town Police Station. In his evidence, he proved the fardbeyan, which was marked as Ext.3. He also proved endorsement on the fardbeyan, which was marked as Ext.3/1 and formal F.I.R. as Ext.4. On examination of his evidence, there are many reasons for considering the prosecution case with doubt. P.W.7 in his evidence has stated that within 10 minutes from the occurrence i.e. 9:25 AM, he got telephonic information regarding the occurrence. He reached the place of occurrence where he was informed that two injured were carried to Sadar Hospital. Instead of moving to Sadar Hospital himself, to the reasons best known to the officer incharge, he sent one A.S.I. namely Ram Awtar Yadav to Sadar Hospital and it has come out, as if, Ram Awtar Yadav immediately at 10:30 AM recorded fardbeyan of the injured. He in his evidence has stated that thereafter he tried for search of the accused persons and then he reached Sadar Hospital. He obtained fardbeyan and thereafter, formal F.I.R. was lodged, whereas, endorsement on the fardbeyan was in the pen of other police official. In normal course, it appears to be not possible that the officer incharge will himself go to obtain fardbeyan and thereafter, he will come with the fardbeyan and record a formal F.I.R., but in this case, within an hour & fifty minutes from the so called recorded fardbeyan, on the same date i.e. on 22-12-2009 at 11:45 AM, the formal F.I.R. was lodged. It is case of the prosecution that immediately thereafter the injured was carried to Patna for his better treatment and on way near Ara he died, but the prosecution, to the reasons best known to them, had not brought on record the inquest report, which was necessary for establishing as to at what place the dead body was seized by the police and in what condition it was found.

26. The prosecution case further appears to be doubtful due to the reasons that if the prosecution is placing reliance on oral dying declaration, which has come from the mouth of P.W.4 and 5 and investigating officer during investigation had obtained telephonic call details of P.W.4, there was no reason for withholding the C.D.R. (Call Detail Record). It was case of P.W.4 that immediately after the occurrence he had a talk with his injured father on mobile and he got information

regarding involvement of all the accused persons. In such situation, it was duty on the part of the prosecution to bring on record the C.D.R. to establish that at the time when injured was in hospital, as stated by P.W.4, there was a telephonic conversation with the deceased and P.W.4. This is apparently lacking. Besides this, evidence of P.W.4 may not be relied upon, considering the fact that he appears to be not truthful witness, since in his evidence, he has introduced a fact, as if, he alongwith P.W.5 was moving on motorcycle towards Buxar, which fact has been demolished by the prosecution witnesses itself.

27. Another reason for considering the prosecution case, as doubtful, is that none of the witnesses has come forward that at the place of occurrence they saw accused persons on two motorcycle and as such, there was no reason for implicating about 7 accused persons (5 named & 2 unknown), as accused, in the F.I.R.

28. On examination of the evidence, it is further evident that one of the person, who was arrayed as accused from the mouth of deceased namely Krishna Verma, during investigation, was found to be present in Delhi where he had used A.T.M. card, he was also shown present at the place of occurrence. This depicts regarding false implication from the very inception of the present case. The falsity of the prosecution case is further evident that even though seven persons were arrayed as accused in the F.I.R., which has come from the mouth of deceased in his so-called dying declaration, even during investigation, accusation against one of the F.I.R. named accused was not found true and he was not sent up for trial and only two accused persons have faced trial.

29. It is also relevant to note that no explanation has been given for non-examination of the injured/rickshaw puller. It appears that purposely the prosecution has withheld rickshaw puller, who was only eye-witness to the occurrence. Even the doctor, who initially examined the deceased as well as injury report of rickshaw puller, had not been produced by the prosecution.

30. In view of our discussion, it is evident that the appellants had lodged a case against the deceased as well as P.W.4 under the provision of Dowry Prohibition Act and as such, there is possibility that in a case of no evidence, the appellants were fabricated as accused in the present case.

31. On Examination of entire evidence, we are of the view that the prosecution has not been able to establish its case beyond all reasonable doubt and as such, there is no reason to approve the judgment of conviction and sentence. Accordingly, the judgment of conviction and sentence dated 12-02-2014 and 19-02-2014 respectively passed by the learned Addl. District and Sessions Judge - II, Buxar in Sessions Trial No. 289 of 2010 is, hereby, set aside and both the appeals are allowed.

32. In view of the fact that the judgment of conviction and sentence has been set aside, the appellant namely Prem Chand Verma {in Cr.Appeal (DB) No. 275 of 2014}, who is in custody, is directed to be released forthwith, if not wanted in

any other case. So far as appellant Bipin Verma {in Cr.Appeal (DB) No. 217 of 2014} is concerned, he is on bail and as such, he is discharged from the liability of his bail bond.