

(2019) 05 PAT CK 0012

In the Patna High Court

Case No : Criminal Appeal (DB) No. 634, 688, 780, 848 Of 2011

Suryanath Yadav And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 09-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307, 323, 324, 379

Arms Act, 1959 — Section 27

Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 05 PAT CK 0012

Hon'ble Judges : Rakesh Kumar, J; Anil Kumar Sinha, J

Bench : Division Bench

Advocate : Kanhaiya Pd. Singh, Pankaj Kumar Das, Mukund Mohan Jha, Pratik Mishra, Ajay Mishra

Final Decision : Dismissed

Judgement

1. Appellants in all the aforesaid four appeals were tried together and convicted and sentenced by the common judgment of the trial court and as such, all the four appeals were taken up together under the heading "For Hearing" and are being disposed of by this common judgment.

2. All the appellants in aforesaid four appeals alongwith one Harihar Yadav (appellant no. 1 in Cr.Appel DB No. 634 of 2011 died during pendency of the appeal and as such, his appeal stood abated, vide order dated 07-03-2019) were convicted by judgment dated 10-06-2011 and were sentenced by order dated 14-06-2011 by the learned Trial Judge, which is dealt with in detail in the table hereinbelow:-

Name

Appellant in Cr. Appeal (DB) No.

Conviction U/s

Sentence [note: L.I.(life imprisonment) RI (Rigorous imprisonment)]

Fine

Default in Payment

Remarks for separate sentence U/s

Ram Charitra Yadav

848/11

148,302 IPC & 27 Arms Act

RI for life for 302 and RI for 2 yrs. for 148

5000/-

2 yrs RI

No sentence for 27 Arms Act

Mahendra Yadav

780/11

148,302, 307 IPC & 27 Arms Act

RI for life for 302 and RI for 2 yrs. for 148

5000/-

2 yrs RI

No sentence for 307 IPC and 27 Arms Act

Ganesh Pd. Yadav

688/11

148,302 r/w 149, 323 IPC & 27 Arms Act

RI for life for 302 r/w 149 IPC and RI for 2 yrs. for 148

5000/-

2 yrs RI

No sentence for 323 IPC and 27 Arms Act

Harihar Yadav

634/11 (stood abated)

148, 302 r/w 149 and 324 IPC

RI for life for 302 r/w 149 IPC and RI for 2 yrs. each for 148 & 324 IPC

5000/-

2 yrs RI

Surya Nath Yadav

A1 in 634/11

148, 302 r/w 149 and 324 IPC

RI for life for 302 r/w 149 IPC and RI for 2 yrs. each for 148 & 324 IPC

5000/-

2 yrs RI

Dhanbir Yadav

A3 in 634/11

148, 302 r/w 149, 324, 323 IPC

RI for life for 302 r/w 149 IPC and RI for 2 yrs. each for 148 & 324 IPC

5000/-

2 yrs RI

No sentence for 323 IPC

Narayan Yadav

A2 in 634/11

148, 302 r/w 149, 323

RI for life for 302 r/w 149 IPC and RI for 2 yrs. for 148

5000/-

2 yrs

No sentence for 323 IPC

Dinesh Yadav

A4 in 634/11

147, 302 r/w 149, 325 IPC

RI for life for 302 r/w 149 IPC, RI for 2 yrs. for 325 IPC and RI for 1 yr. for 147 IPC

5000/-

2 yrs

All the aforesaid sentences were directed to run concurrently. The judgment of conviction dated 10-06-2011 and order of sentence dated 14-06-2011 has been passed by Mr. Shahid Khan, learned Additional Sessions Judge, Fast Track Court

No. 2, Madhubani (hereinafter referred to as the 'Trial Judge') in Sessions Trial No. 173 of 1995 {arising out of Laukaha (Lalmania) P.S. Case No. 177 of 1993}.

3. Short fact of the case is that on 14-11-1993 at 7:30 P.M., Sub-Inspector of Police namely J.K.Thakur (not examined) of Khutauna Police Station recorded fardbeyan of Ram Ashish Yadav (P.W.7). The fardbeyan was recorded at P.H.C. (Primary Health Centre), Khutanua. In the fardbeyan, the informant, near the dead body of his brother Ram Chandra Yadav, disclosed that on the same date i.e. 14-11-1993, about 400 yards away from his house in his field, which was near northern Hatiya Gachhi, he was indulged in crushing sugarcane. Alongwith him, his brothers Ram Chandra Yadav (deceased) and Nasib Lal Yadav (P.W.5) were also there. About 200 yards away of eastern side on the eve of Sukurati festival (Gowardhan puja), number of villagers had assembled in Dhan Gachhi and they were playing gqjk&gqjh (wrestling). In the meanwhile (following accused persons with their weapons arrived there):

Sl.

Name of the accused

Appellant in Cr. Appeal (DB) No.

Carrying weapon in hand

1.

Ram Charitar Yadav, s/o Dhanbir Yadav

848 of 2011

Country-made pistol

2.

Mahendra Yadav, S/o Dhanbir Yadav

780 of 2011

Country-made pistol

3.

Ganesh Pd. Yadav, S/o Ram Lakhan Yadav

688 of 2011

gun

4.

Narayan Yadav, S/o Harihar Yadav

A-2 in 634 of 2011

Farsa

5.

Harihar Yadav, S/o Sant Yadav

634 of 2011 (abated)

Bhala

6.

Surya Nath Yadav, S/o Sonai Yadav

A-1 in 634 of 2011

Bhala

7.

Nathuni Yadav, S/o Rabhash Lal Yadav

Not appellant

Bhala

8.

Dhanbir Yadav, S/o Late Rabhash Lal Yadav

A-3 in 634 of 2011

Farsa

9.

Yogendra Yadav, S/o Dhanbir Yadav

Acquitted

Lathi

10.

Devendra Pd. Yadav, S/o Nathuni Yadav

Acquitted

Lathi

11.

Shiv Charan Yadav, S/o Jungli Yadav

Acquitted

Lathi

12.

Ram Narayan Yadav, S/o Madri Yadav

Acquitted

Lathi

13.

Dharm Nath Yadav, S/o Rameshwar Yadav

Not appellant

Lathi

14.

Ghooran Mahto, S/o Girjan Mahto

Acquitted

Lathi

15.

Dinesh Yadav, S/o Ram Lakhan Yadav

A-4 in 634 of 2011

Lathi

16.

Umesh Yadav, S/o Ram Lakhan Yadav

Acquitted

Lathi

17.

Ram Lakhan Yadav, S/o Teji Lal Yadav

Acquitted

Lathi

And about 25-30 unknown persons also arrived there and entered into informant's 'Kulhuwar' (crusher machine of sugarcane being run through ox). Firstly, Ram Charitra Yadav (sole app.in Cr.App.DB No. 848/11) by way of putting pistol on the chest of his brother Ram Chandra Yadav fired, whereby his brother fell down and became unconscious. Mahendra Yadav (sole app.in Cr.App.DB No. 780/11) injured Nasib Lal Yadav (P.W.5) by way of giving shot of firing from his pistol and he (P.W.5) too fell down. He received injury on his head. Ganesh Yadav (sole app.in Cr.App.DB No. 688/11) fired from his country-made gun, which hit the right hand of the informant (P.W.7). On alarm, being raised by the informant, Madhuri Ram (P.W.2) son of Dinesh Ram, Ram Nath Ram (P.W.3) son of Madhav Ram, Bhola Yadav (not examined) and Tilak Paswan (examined as defence

witness) arrived there runningly to save them, then aforesaid accused persons assaulted them also by means of bhala, farsa and lathi. All the accused persons were resident of village Birpur Bhelha, P.S. - Lalmania, District - Madhubani. The informant further disclosed that thereafter number of nearby villagers namely Deo Sakal Yadav (not examined), Ram Suphal Yadav (not examined), Ram Swaroop Yadav (not examined), Jhauli Yadav (P.W.6) and number of other villagers runningly arrived there and also saw the occurrence. The accused persons after noticing the mob forcibly took 25-30 chakki of Gur (Bricks of brown sugar) and also took away four blankets and fled away. He further disclosed that the witnesses and number of other persons carried informant, his brothers Ram Chandra (deceased), Nasib Lal (P.W.5) and other injured persons to Khutauna Hospital for treatment. The brother of the informant Ram Chandra died on way to hospital. Informant further disclosed that in between accused persons and informant & his family, dispute was going on since long and this was the reason that Ram Charitra Yadav (sole app.in Cr.App.DB No. 848/11) had killed his brother Ram Chandra Yadav and other accused persons had injured others by means of pistol, country-made gun, farsa, lathi, bhala and inflicted injury on informant and others with intent to kill them. The said fardbeyan was read over to him and after finding it correct, he put his signature in presence of two witnesses namely Baidhnath Yadav and Janak Yadav, who were not examined.

4. The said fardbeyan, which was recorded by Sub- Inspector of Police J.K.Thakur of Khutauna Police Station, was forwarded to Laukaha (Lalmania) police station and on the basis of said fardbeyan, on 15-11-1993 at 6:00 A.M., formal F.I.R., vide Laukaha (Lalmania) P.S. Case No. 177 of 1993, was registered for offence under Sections 147, 148, 149, 323, 324, 379, 307, 302 of the Indian Penal Code and Section 27 of the Arms Act against 17 F.I.R. named accused persons, which includes all the seven appellants and 25-30 unknown persons.

5. After conducting investigation and finding the case true, on 28-02-1994 chargesheet was submitted showing five accused persons namely (i) Ram Charitra Yadav (App.in Cr.App.DB No. 848/11), (ii) Mahendra Yadav (App.in Cr.App.DB No. 780/11), (iii) Yogendra Yadav (died), (iv) Devendra Yadav (Acquitted) and (v) Ganesh Prasad Yadav (App.in Cr.App.DB No. 688/11) as absconder, against all the F.I.R. named accused persons. Thereafter, on 25-03-1994 the learned Addl. Chief Judicial Magistrate, Jhanjharpur (Madhubani) took cognizance of the offence. On 14-07-1995, the case was committed to the court of sessions. Before commitment, all the accused, who were shown as absconder, were remanded. After commitment, the case was numbered as Sessions Trial No. 173 of 1995 and on 19-08-1996, charges were framed against all the accused persons, which are shown in the table as under:

Sl.

Name of the accused

Appellant in Cr. Appeal (DB)/Acquitted

Charge framed u/s

1.

Ghooran Mahto

Acquitted

379, 147, 302/149

2.

Ram Narayan Yadav

Acquitted

379, 147, 302/149

3.

Harihar Yadav

634/11 (abated)

379, 148, 302/149, 324

4.

Surya Nath Yadav

A-1 in 634/11

379, 148, 302/149, 324

5.

Nathuni Yadav

Died during trial

379, 147, 302, 324, 323

6.

Shiv Charan Yadav

Acquitted

379, 147, 302/149, 323

7.

Dinesh Yadav

A-4 in 634/11

379, 147, 302/149, 325

8.

Umesh Yadav

Acquitted

379, 147, 302/149, 323

9.

Ram Lakhan Yadav

Acquitted

379, 147, 302/149, 323

10.

Dharamnath Yadav

Died during trial

379, 147, 302/149

11.

Dhanbir Yadav

A-3 in 634/11

379, 148, 302/149, 324, 323

12.

Narayan Yadav

A-2 in 634/11

379, 148, 302/149, 323

13.

Ram Charitra Yadav

848/11

379, 148, 302

14.

Mahendra Yadav

780/11

379, 148, 302

15.

Yogendra Yadav

Acquitted

379, 147, 302/149

16.

Devendra Pd. Yadav

Acquitted

379, 147, 302/149, 323

17.

Ganesh Pd. Yadav

688/11

379, 148, 302/149, 323

6. It is apt to clarify that altogether 17 accused persons were put on trial. However, during pendency of the trial, two accused namely Dharmnath Yadav and Nathuni Yadav died and as such, their cases were abated and dropped. Seven accused persons after trial were acquitted, whereas, eight accused persons were convicted. One of the appellant in Cr.App.DB No. 634/11 namely Harihar Yadav died during pendency of the appeal and as such, his case stood abated and his name has been expunged.

7. During the trial, to establish its case on behalf of prosecution, altogether ten witnesses were examined. Out of 10 witnesses, P.W.2 Madhuri Ram, P.W.3 Ram Nath Ram, P.W.4 Rajendra Yadav, P.W.5 Nasib Lal Yadav and P.W.7 Ram Ashish Yadav (informant) were injured and they have been examined as eye-witnesses. P.W.6 Jhalli Yadav was only tendered. The doctor, who conducted post-mortem examination on the dead body of the deceased i.e. Dr. J.P.Narayan was examined as P.W.1. P.W.8 Dr. Surendra Lal Das had examined the injured persons namely P.W.2 Madhuri Ram, P.W.3 Ram Nath Ram and P.W.7 Ram Ashish Yadav and he had also examined one another injured namely Bhola Yadav, who has not been examined during the trial. P.W.10 Ram Parikshan Yadav, though was examined, his evidence was expunged by the trial court and investigating officer Surendra Paswan has been examined as P.W.9.

8. After examination of the prosecution witnesses, on 12-05-2000 the accused persons were questioned with incriminating circumstances and evidences and their statement under Section 313 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was recorded, in which, they claimed that they would lead defence evidence and denied all the circumstances, which were brought against them. On behalf of defence, altogether five witnesses were examined namely Tilak Paswan (D.W.1), who has claimed to be injured in the occurrence and eye-witness, Dashrath Paswan (D.W.2) as eye-witness, Dr. Prem Kant Jha (D.W.3), who had come forward to depose, as if, prior to the occurrence appellant Ram Charitar Yadav (in Cr.App.DB No. 848/11) was admitted in P.H.C., Rahika and he was under his treatment even on the date of occurrence, Md. Karimullah (D.W.4) and

Nandi Ram (D.W.5), both have accepted regarding the occurrence, but they have given an odd picture of the occurrence.

9. After placing entire evidence, Sri Kanhaiya Prasad Singh, learned senior counsel for the appellants has argued that the prosecution case appears to be not believable and the learned Trial Judge, without any cogent evidence, has passed the judgment of conviction and sentence. He submits that P.W.7/ informant in his fardbeyan though has stated that occurrence was seen by Deo Sakal Yadav, Ram Suphal Yadav, Ram Swaroop Yadav, to the reasons best known to the prosecution, they have not been examined as prosecution witness nor any explanation has been given. He further submits that one of such witness, whose name had come in the fardbeyan, was only tendered. This suggests that the prosecution had purposely withheld the evidence of those witnesses, otherwise the case of prosecution would have been demolished by their evidence itself. Sri Singh further submits that it appears to be not believable that informant/P.W.7 in injured condition had carried his injured brother Ram Chandra, who died after being carried for some distance, and even then the informant with other three persons carrying the cot, on which deceased was lying, moved for about 7 km. to the hospital. He submits that it is case of the prosecution that P.W.7 had received fire arm injury and in such injured condition, it is beyond imagination that one could have carried an injured on cot to such a long distance.

10. Sri Singh, learned senior counsel has further argued that in the fardbeyan, it was alleged by the informant that appellants, besides injuring prosecution side, had also assaulted Bhola Yadav and Tilak Paswan by means of bhala, farsa and lathi, but they have not been examined as prosecution witness, whereas during the trial, Tilak Paswan has come forward as defence witness i.e. D.W.1. According to learned senior counsel for the appellants, prosecution itself had destroyed its case, in view of evidence of P.W.2 Madhuri Ram and P.W.7 Ram Ashish Yadav (informant) and evidence of investigating officer/P.W.9. He has specifically referred to paragraph no. 7, 17 and 21 of their evidences respectively. Learned senior counsel has also tried to persuade the Court that the fardbeyan appears to be ante-dated and ante-timing and to elaborate his submission, he has referred to evidence of P.W.4 in paragraph-11. According to learned senior counsel for the appellants due to non-examination of the scribe of the fardbeyan, the case of the prosecution appears to be not probable. He submits that no reason has been assigned for non- examination of the police officer, who had recorded fardbeyan. Ofcourse in the case, five witnesses were examined as defence witness, but at the time of argument, Sri Singh has preferred not to refer to their evidences. On aforesaid ground, it has been argued that the prosecution case has not been established beyond all reasonable doubt and the judgment of conviction and sentence is liable to be set aside.

11. Sri Ajay Mishra, learned Addl. Public Prosecutor, at the very outset, has argued that in a criminal trial, number of witnesses are not required to be looked into, but quality of evidence is to be seen. He submits that in this case, informant

himself is the injured witness, who in the occurrence had received fire-arm injury. Besides him, P.W.2 Madhuri Ram, P.W.3 Ram Nath Ram, P.W.4 Rajendra Yadav and P.W.5 Nasib Lal Yadav are eye-witnesses to the occurrence and all of them were assaulted by the accused persons. The injuries of witnesses were examined by the medical officer and as such, he submits that considering the fact that in the case, most of the witnesses, who were injured, have supported the prosecution case, the prosecution case may not be considered as 'doubtful'. Besides this, it has been argued that in the evidence, it has come that accused persons had created nuisance and due to old animosity, they arrived at the Kulhuwar of the informant and started assaulting them. Even witnesses, who tried to save them, were not spared and they were also assaulted. He highlights that the evidence of Informant/P.W.7 is specific that his brother was given shot of firing by appellant Ram Charitra Yadav (in Cr.App.DB No.848/11) from a very close range. The said version has been corroborated at the time of post-mortem examination of the deceased. The entry wound was having charring mark with blackening and it was a case of firing from very close range, which has been stated by the informant itself. The injuries received by P.W.2, 3 and 4 are also sufficient to corroborate that prosecution has been able to establish its case beyond all reasonable doubt.

12. Sri Mishra, learned Addl. Public Prosecutor has further argued that it is true that in the case, in the fardbeyan itself, there was reference of number of witnesses, who had seen the occurrence, but fact remains that now-a-days, it is very difficult to get evidence of independent witness and this was the reason that some of the witnesses, who were examined by the investigating officer instead of supporting prosecution case, have come forward in support of defence and they were examined as defence witnesses. He further submits that even on perusal of the evidence of defence witnesses, it is established that occurrence had taken place at the place, which was occupied by the prosecution side. Ofcourse they have tried to develop a story, as if, the manner of occurrence has taken place in the different way, but in any event, except D.W.2, all other witnesses are consistent on the point of occurrence, which had taken place, as alleged by the prosecution. Ofcourse manner has been given in a different way. On aforesaid ground, learned Addl. Public Prosecutor submits that the judgment of conviction and sentence requires no interference.

13. 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 the learned Trial Judge has committed no error in passing the impugned judgment of conviction and sentence, however before proceeding, it would be necessary to discuss the evidences, which are on record.

14. The informant Ram Ashish Yadav has been examined as P.W.7. In his evidence, he has proved his signature on the fardbeyan and also signature of one Baidyanath and Janak, who were signatory to the fardbeyan and those signatures were marked as Ext.2, 2/1 and 2/2 respectively. In his evidence,

P.W.7 has stated that the deceased Ram Chandra Yadav was his own brother. The occurrence had taken place on 14-11-1993 at about 4:30 P.M. He with his brother Nasib Lal (P.W.5) and Ram Chandra Yadav (deceased) was engaged in crushing sugarcane in Dalal Gachhi. He stated that there was one mango orchard, which was about 200 yards away from Hatiya Gachhi and said area was also known as Dalal Gachhi, in which, the informant was having his Kulhuwar for crushing sugarcane. On the date and time of occurrence, Ram Charitra Yadav (app.in Cr.App.DB No. 848/11) carrying pistol, Mahendra Yadav carrying pistol, Gangesh Yadav carrying gun, Narendra Yadav, Dhanveer (both carrying farsa), Harihar Yadav, Nathuni Yadav, Suryanath Yadav (all carrying bhala), Dinesh Yadav, Umesh Yadav, Ram Lakhan Yadav, Dharmnath Yadav, Shiv Charitra Yadav, Ram Charan Yadav, Devendra Yadav, Yogendra Yadav (all carrying lathi in their hands) arrived there. Besides them, there were 25-30 other accused persons. Those accused persons surrounded the Kulhuwar. Ram Charitra Yadav (App. in 848/11), by putting pistol, on the chest of his brother Ram Chandra Yadav gave shot of firing and after getting such injury, his brother fell down after some distance. Thereafter, Mahendra Yadav (App. in 780/11) by his pistol gave shot of firing on the head of Nasib Lal Yadav (P.W.5) and he also became unconscious. The informant while tried to save his brother, Ganesh Yadav (App. in 688/11) shot fire from gun, which caused injury on his hand. Madhuri Ram (P.W.2), Ram Nath Ram (P.W.3), Rajendra Yadav (P.W.4), Bhola Yadav (not examined) all came with a view to save the informant side, however; they were also assaulted by accused persons by means of lathi and bhala. The accused persons forcibly took 25-30 xqM+ dh pDdh (bricks of brown sugar) and four blankets. This witness further stated that he with the help of others carried his injured brother Ram Chandra to Khutauna, however on way, he died. He clarified that before his arrival to hospital, he died. His fardbeyan was recorded in Khutauna hospital, on which, he put his signature and also two witnesses namely, Janak and Baidyanath signed it, though they were not examined. In cross-examination, in paragraph-7, this witness stated that injured was carried on cot to hospital, on way, in between orchard to hospital Khutauna, there was his house where he stayed for 2-4 minutes and then through cot, injured was carried. On way, his brother Nasib Lal was watching and he stated that his brother died within a short distance from his village, however at that very time, they were about half kilometer away from his house and then they went to hospital. In paragraph-8 of his cross-examination (recorded on 18-11-1997), this witness has stated that on the date of occurrence, Ram Chandra Yadav (deceased) alongwith two labourers were indulged in crushing sugarcane. Further in paragraph-9, he stated that in the night of the date of occurrence, cM+k ckw (Bada Babu) of Khutauna Police Station arrived, his name was Y.K. Thakur and at that very time, Ram Chandra Yadav had already died and fardbeyan of this witness was recorded. This witness was cross-examined at length, however on examination of entire evidence of P.W.7, we do not find anything to raise any suspicion on credibility of this witness.

15. Similarly, P.W.2 Madhuri Ram in his evidence has stated that on the date and

time of occurrence, he was in Hatiya Gachhi in his village and he heard the hulla in the Kolhuwar of Ram Ashish Yadav (P.W.7). The Kolhuwar was about 200 yards away on the eastern side of Hatiya gachhi, he went there and thereafter saw the entire occurrence. He has almost in similar manner has depicted about the occurrence and shown participation in the occurrence by the accused persons. He also shown regarding the presence of Rajendra Yadav (P.W.4) and Tilak Paswan (D.W.1), who were also given assault. This witness was assaulted in the occurrence due to lathi blow given by Dinesh Yadav (A-4 in Cr.App.DB No. 634/11). He further clarified that Narayan Yadav (A-2 in Cr.App.DB No. 634/11) had given lathi side of the farsa. Besides stating the fact as to how Ram Chandra was gunned down and injury received by informant, in paragraph-4 of his cross-examination, he stated that his statement was recorded in Khutauna hospital by the police officer. It was recorded on the next date of the occurrence. This witness has stated that on the date of occurrence, he had not seen the police officer. His attention was drawn to his previous statement in paragraph-4 and corroboration was taken from the evidence of P.W.9/investigating officer in his evidence in paragraph-9. We have examined both the statement i.e. evidence of P.W.2 in paragraph-4 as well as evidence of investigating officer (P.W.9) in his paragraph-15. Ofcourse there are some deviation, but on examination in entirety, we find that such deviation is not enough to raise any doubt on his evidence.

16. P.W.3 Ram Nath Ram, P.W.4 Rajendra Yadav and P.W.5 Nasib Lal Yadav are injured eye-witnesses and all of them have supported the case almost in similar manner like P.W.7/informant. It is evident that P.W.2 Madhuri Ram, P.W.3 Ram Nath Ram and P.W.4 Rajendra Yadav are independent witness, whereas P.W.5 Nasib Lal Yadav is own brother of the deceased as well as informant. In paragraph-8 of evidence of Nasib Lal Yadav, it has been clarified that the field, where Kolhuwar was situated, was also known as Dalal gachhi. All the aforesaid witnesses have supported the prosecution case and also shown the role played by the accused persons in the occurrence.

17. P.W.6 Jhali Yadav has only been tendered and as such, there is no need to discuss about his evidence.

18. P.W.8 Dr. Surendra Lal Das on 14-11-1993 was posted as Medical Officer in Primary Health Centre, Khutauna and on the same date, he examined injury of Ram Ashish Yadav (P.W.7), Bholu Yadav (not examined), Madhuri Ram (P.W.2) and Ram Nath Ram (P.W.3), which are as follows:-

Injury of P.W.7 Ram Ashish Yadav (injury report Ext.3)

"1. Almost circular wound 1" diameter with blackened margin over right lower arm about 3" below elbow/posteriorly.

2. Penetrating oozing wound about 1/6" diameter over right upper arm posteriorly about 1/2" above right elbow.

Time of injury- within three hours.

Cause of injury- fire arm weapon. The injuries were simple in nature."

Injury of P.W.2 Madhuri Ram (injury report Ext.3/2)

- "1. Incised wound 3" x ½" x ½" over left temporal/parietal region of skull.
2. Incised wound ¾" x 1/6" x 1/6" parallel to left eye- brow over fore-head laterally.
3. Incised wound 1" x ¼" x skin deep over left leg, middle third.
4. Incised wound 1½" x ¼" x 1" over left leg middle third.
5. Lacerated wound 1" x 1" over scapular region of left side with swelling.
6. Swelling with pain of left elbow posteriorly.
7. Swelling with pain of thumb left hand.
8. Swelling with pain of right lower arm, middle third.
9. Lacerated wound 1" x ½" over right hand index finger, middle joint posteriorly.
10. Swelling with pain of left lower arm middle third with fracture of left ulna.

Time of injuries - within three hours.

Cause of injuries - injury no 1- 4 (one to four) by sharp weapon such as farsa. Injury no. 5 to 10 by hard and blunt substance such as lathi. Injury no. 1 to 9 were simple in nature, while injury no. 1 was grievous in nature."

Injury of P.W.3 Ram Nath Ram (injury report Ext. 3/3)

- "1. Incised wound ½" x ¼" x skin deep over right lower leg, lower third posteriorly.
2. Lacerated wound ¼" x ¼" over left hand ring finger, middle phalanx anteriorly."

Injury of Bhola Yadav (not examined) injury report Ext.3/1

- "1. Pain and swelling 6" x 3" over left thigh laterally lower third.

Time of injury- Within three hours.

Cause of injury- Hard and blunt substance, such as lathi. The injury was simple in nature."

19. On examination of evidence of P.W.8 as well as injury reports, it is evident that:

(i) informant/P.W.7 had received fire-arm injury, which was simple in nature, whereas

(ii) injuries found on the person of Madhuri Ram (P.W.2) were mostly incised

wound. Injury no. 1 to 4 were caused by sharp edge weapon such as farsa and injury no. 5 to 10 were by means of hard and blunt substance such as lathi. Injury no. 1 in respect of Madhuri Ram was noticed grievous in nature. Ofcourse, in his evidence, it has come that injury no. 1 to 9 were noticed 'simple in nature'. Injury no.1, which has been mentioned in evidence of P.W.8, has been found as 'grievous' in nature. Even on examination of injury no.1, it is evident that this wound was 3" x ½" x ½" over left temporal region.

(iii) With regard to injuries of Ram Nath Ram (P.W.3), injury no. 1 was inflicted by sharp edge weapon such as bhala, whereas injury no. 2 was caused by hard and blunt substance like lathi.

(iv) With regard to injury received by Bhola Yadav, who has not been examined, was caused by hard and blunt substance and was simple in nature.

20. The injury report particularly injury report of Madhuri Ram (P.W.2), Ram Ashish Yadav (P.W.7) and Ram Nath Ram (P.W.3) itself depicts the fact as to how by making unlawful assembly, the accused had attacked the prosecution side.

21. Dr. J.P. Narayan, who was examined as P.W.1 on 14-11-1993 was posted as Civil Assistant Surgeon in Sadar Hospital, Madhubani and on the same date, he conducted post- mortem examination on the dead body of the deceased. While conducting post-mortem examination, he had found one bullet in the body of the deceased, which was extracted and same was produced and marked as Material Ext.I. He also identified post- mortem report, which was marked as Ext.1. On examination of the dead body of deceased Ram Chandra Yadav, P.W.1 had noticed following facts:-

"(i) Lacerated circular wound ½" diameter with inverted of ragged margin with sign of seinging and charring and tattooing just below xiphisternum in the epigastrium. It was the wound of entrance on dissection abdominal cavity containing approximate 2 pints of blood and blood clots.

(ii) Liver ruptured into pieces, stomach and intestine with semi-digested food, in abdominal cavity.

(iii) Spleen and kidney - pale,

(iv) Large intestine containing facial matters and gases, urinary was empty.

(v) One bullet found impacted on the left side of posterior wall of abdomen at the level of L-2 vertebral spine.

(vi) chest cavity containing approximate one pint of blood and blood clots

(vii) Right lung ruptured at its base and left lung was pale.

(viii) Heart - both chamber empty

(ix) Brain and meninges were pale.

The bullet found in the dead body was seized and kept in a phile and handed over to the constable.

Time since death - within 36 hours.

Opinion - Death was caused due to haemorrhage and shock as a result of aforesaid injuries which was caused fire arm."

22. He proved the post-mortem report, which has been marked as Ext.1. Examination of the post-mortem report as well as evidence of P.W.1 corroborate the oral version of the prosecution that deceased was shot at from very close range.

23. The investigating officer Surendra Paswas was examined as P.W.9. On 15-11-1993, he was officer incharge of Lalmaniya Police Station. In his evidence, he has proved fardbeyan, which was marked as Ext.4, endorsement on the fardbeyan marked as Ext.5, formal F.I.R. Ext.6, forwarding report of fardbeyan Ext.5/1 and seizure list, which was in respect of seizure of blood soaked soil and leaf of sugarcane found at the place of occurrence, was marked as Ext.7. Prosecution has also got exhibited case diary from page 50 to 159, which was marked as Ext.8. Normally, such step was not required to be taken, however it appears that investigating officer/P.W.9 in his evidence has stated that he had recorded case diary from page 1 to 49 only and the officer, who had further investigated the case, has not been examined. This witness has also proved requisition in respect of injury of (a) Rajendra Yadav (P.W.4), which was marked as Ext.9, (b) one Gayasuddin as Ext.9/1, (c) Nasib Lal Yadav (P.W.5) as Ext.9/2 and (d) Tilak Paswan (D.W.2) as Ext.9/3. In paragraph-4 of his evidence, he had described regarding place of occurrence. He stated that he during investigation had recorded statement of witnesses. The investigating officer at the time of inspection of place of occurrence had noticed blood mark and a seizure list was prepared. Ofcourse on examination of evidence of P.W.9, it appears that he has not conducted investigation in its right perspective, but merely on the ground of defective investigation, benefit may not be granted to the accused persons, if other evidence is credible.

24. On examination of entire evidence on record, there is no reason to raise any doubt on the prosecution case. Ofcourse an argument was advanced by Sri Kanhaiya Prasad Singh, learned senior counsel for the appellants that number of witnesses, whose names were mentioned in the fardbeyan, have not come forward to depose as prosecution witness, but the Court is of the opinion that merely on the ground of non- examination of those witnesses, the evidence of injured witnesses may not be ignored. It was also argued that the informant, in such an injured condition, had carried the injured to hospital, which was about 7 kilometre from the place of occurrence, is improbable and also appears to be not tenable. In this context, it is evident that though he (P.W.7) received fire-arm injury, but the doctor in his evidence has stated that it was simple in nature. In such situation, it cannot be said that it was improbable to carry the injured to the

hospital. It is also true that the name of Bhola Yadav was mentioned in the fardbeyan, who had received injury and injured Tilak Paswan was also referred, but they have not come forward. In present scenario as well as in view of said fact that the said injured Tilak Paswan, instead of coming forward as prosecution witness, has been examined as defence witness, it is itself indicative of the fact that in what manner the defence had proceeded with the trial in the present case.

25. So far as submission of learned senior counsel for the appellants that the prosecution had destroyed its own case in view of paragraph-7 of P.W.2, paragraph-17 of P.W.7 and paragraph-21 of P.W.9 is concerned, on examination of the same, we do not find any sufficient ground to outrightly reject the prosecution case. P.W.2 in paragraph-7 had stated that till his arrival at the place of occurrence, assault had not started and he further deposed that amongst the accused persons, only one accused was having gun. It appears that learned senior counsel wanted to persuade the Court that at least P.W.2 had stated that only one person was carrying gun. On examination of fardbeyan as well as evidence of P.W.7, it is evident that in the mob, only one person was carrying country made gun and others were carrying pistol, farsa, bhala and lathi and as such, this submission is required to be noticed only for its rejection.

26. By way of referring to evidence of P.W.7 in paragraph-17, it was argued that this witness had stated that clothes of deceased, which were soaked with the blood, were handed over to दरोगाजी, however P.W.9 Surendra Paswan/investigating officer of the case has stated that he had not seized clothes soaked with the blood and the prosecution had never produced such blood soaked clothes to him. It is true that in the case, no seizure list in respect of cloth of either injured or deceased was prepared, which was duty on the part of the investigating officer. We have examined the evidence of investigating officer and have seen several defects committed by him. The statement made by the investigating officer in paragraph-17 that those clothes were never produced to him is itself indicative of the fact that as to how he had proceeded with the investigation. It is the duty of the investigating officer to collect all those materials. It appears that since he had not seized those clothes, a plea was taken that he had not been shown those clothes. Moreover on such technicality or defect, the case of prosecution, which is otherwise credible, may not be ignored.

27. On examination of entire evidence on record, we are of the considered opinion that the learned Trial Judge has committed no error in passing the judgment of conviction and sentence and as such, the judgment of conviction dated 10-06-2011 and order of sentence dated 14-06-2011 passed in Sessions Trial No. 173 of 1995 (arising out of Khutauna P.S. Case No. 77 of 1993) by learned Additional Sessions Judge, F.T.C.-II, Madhubani in respect of all the appellants is approved and all the aforesaid four appeals are dismissed.

28. Except Ram Charitra Yadav (sole appellant in Cr. Appeal (DB) No. 848 of 2011), all other appellants are on bail and since their appeals have been dismissed and the judgment of conviction and sentence has been approved, their

bail-bonds are, hereby, cancelled and they are directed to surrender before court below forthwith, failing which the learned Trial Judge may take appropriate step for securing their attendance.