

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL APPEAL (DB) No. 940 of 2017**

Arising Out of PS. Case No.-34 Year-2006 Thana- SARMERA District- Nalanda

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Ganesh Chauhan Son of Late Sakal Chauhan, R/o Village- Mohanpur, P.S.- Sarmera, District- Nalanda.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

**CRIMINAL APPEAL (DB) No. 1058 of 2017**

Arising Out of PS. Case No.-34 Year-2006 Thana- SARMERA District- Nalanda

1. Yadu Yadav Son of Baso Yadav,  
2. Dinesh @ Pulis Yadav, Son of Yadu Yadav, Both resident of Village- Mohanpur, P.S.- Sarmera, District- Nalanda.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

**CRIMINAL APPEAL (DB) No. 1065 of 2017**

Arising Out of PS. Case No.-34 Year-2006 Thana- SARMERA District- Nalanda

=====

Krishna Yadav Son of Baso Yadav, Resident of Village- Mohanpur, P.S.- Sarmera, District- Nalanda.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

**Appearance:**

(In CRIMINAL APPEAL (DB) No. 940 of 2017)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Adv.

Ms. Meena Singh Adv.

For the State : Ms. Shashi Bala Verma, APP



For the Informant : Mr. Rajesh Kumar Singh, Sr. Adv.  
Mr. Satyendra Prasad Singh, Adv.  
Mr. Anil Kumar Singh, Adv.

(In CRIMINAL APPEAL (DB) No. 1058 of 2017)

For the Appellant/s : Mr. Ramakant Sharma, Sr. Adv.  
Mr. Rajesh Kumar, Adv.  
Mr. Arun Kumar Pandey, Adv.

For the State : Ms. Shashi Bala Verma, APP

For the Informant : Mr. Rajesh Kumar Singh, Sr. Adv.  
Mr. Satyendra Prasad Singh, Adv.  
Mr. Binod Kumar Singh, Adv.

(In CRIMINAL APPEAL (DB) No. 1065 of 2017)

For the Appellant/s : Mr. Ramakant Sharma, Sr. Adv.  
Mr. Rajesh Kumar, Adv.  
Mr. Arun Kumar Pandey, Adv.

For the State : Ms. Shashi Bala Verma, APP

For the Informant : Mr. Satyendra Prasad Singh, Adv.  
Mr. Binod Kumar Singh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**and**

**HONOURABLE MR. JUSTICE SHAILENDRA SINGH**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)**

**Date: 10-07-2025**

The aforesaid appeals preferred under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”) arise out of the same judgment of conviction and order of sentence dated 24.6.2017 and 30.6.2017, passed by the learned Court of Fast Track-I, Nalanda (hereafter referred to as “the learned Trial Judge”), in Sessions Trial Case No. 516 of 2010 (arising out of Sarmera P.S. Case No. 34 of 2006), hence these appeals have been heard together and are being disposed off by the present common judgment and order. By the said judgment dated 24.6.2017, the



learned Trial Judge has convicted the appellants of the aforesaid appeals under Section 302/34 and Section 307/34 of the Indian Penal Code (hereinafter referred to as “the I.P.C.) and under Section 27 of the Arms Act, 1959 and they have been sentenced to undergo imprisonment for life under Section 302/34 of the I.P.C. with fine of Rs. 10,000/- and in default thereof, they have been further directed to undergo rigorous imprisonment for two years. The appellants have also been sentenced to undergo rigorous imprisonment for five years under Section 307/34 of the I.P.C. with fine of Rs. 5,000/- and in default thereof, they have been further directed to undergo rigorous imprisonment for one year, apart from the appellants having also been sentenced to undergo rigorous imprisonment for three years under Section 27 of the Arms Act, 1959 with fine of Rs. 1,000/- and in default of payment of fine, they have been directed to undergo rigorous imprisonment for two months. All the sentences have been directed to run concurrently.

2. The short facts of the case are that on 04.07.2006 at about 21:00 hours, the fardbeyan of the informant, Arvind Kumar Yadav (P.W.6), was recorded by the Sub-Inspector of Police, Sri A. N. Mandal, Officer-in-Charge, Sarmera Police Station. In his fardbeyan, Arbind Kumar Yadav (informant) has stated that the



petromax was burning at the door of his house and he was sitting at the *chabutra* along with his grandfather Kailash Yadav (P.W.2), and Bhushan Yadav (P.W.5) at the door of his house and was talking to the Panchayat Sevak of Mirnagar Panchayat, namely Suresh Yadav (deceased) and Bimal Yadav (P.W.10). On the said day i.e. 04.07.2006, annual puja had been organized at the Devi Sthan, situated towards the east of the house of the informant in which goat etc. was cut and Panchayat Sevak, Suresh Yadav, had come at about 4:00 in the day time to give information to the Mukhiya about the BPL Aam Sabha, whom the informant had requested to stay back for having *prasad* of the aforesaid puja. Bimal Yadav (P.W.10), who is Doctor by profession, had also come to give medicine to the grandfather of the informant, who was suffering from fever. The informant has further stated that all the said five people were sitting on the *Chabutra* and talking to each other when from the lane situated on the western side (Beldar Toli), co-villagers, namely Sudarshan Chauhan armed with country made rifle, Ganesh Chauhan armed with country made rifle, Lalit Chauhan armed with country made gun, Yadu Yadav armed with country made gun, Krishna Yadav armed with country made gun and Dinesh Kumar @ Police armed with country made gun, arrived at the



*Chabutra*, whereafter Krishna Yadav said that if they do not enter into a compromise in the pending case, they would reap the consequences, whereafter Krishna Yadav fired on the persons sitting on the *Chabutra* and as soon as Krishna had fired, the other aforesaid accused persons had also fired on them, whereupon the informant had ran and hid himself in the *Dalan*, but his grandfather Kailash Yadav (P.W.-2), Bimal Yadav (P.W.-10) and Bhushan Yadav (P.W.-5), who were sitting on the *Chabutra*, became badly injured and Panchayat Sevak, Suresh Yadav died instantly on account of being hit by gunshots. After engaging in indiscriminate firing, the aforesaid accused persons went towards the Devi Sthan Mandir, situated towards the eastern side and while firing they moved towards the northern side of the village for exiting the village.

3. The informant, in his fardbeyan has further stated that somehow he followed the accused persons by hiding himself and at the temple, in the light of petromax he saw that people were running helter-skelter including his agnate Shrawan Yadav, who was running towards the house of Sudhir Yadav, situated on the northern side, however Sudarshan Chauhan and Lalit Chauhan fired from the arms in their hand upon Shrawan Yadav and after committing his murder, they ran towards the northern



side of the village towards the orchard while firing. The informant has stated that the motive for the occurrence is that a murder case is going on against Krishna Yadav, Yadu Yadav and Dinesh Yadav *vis-a-vis* the informant and the aforesaid accused persons were insisting and pressurizing them to withdraw the said case but since they had not acceded to their pressure, the present occurrence has taken place. The informant had thereafter, put his signature on the fardbeyan after the same was read over to him, which he had understood and had found the same to be correct, in presence of his co-villager Subhash Yadav (P.W.-3), who had also made his signature on the fardbeyan. On the basis of the aforesaid fardbeyan of the informant, a formal FIR bearing Sarmera P.S. Case No. 34 of 2006 was registered against Sudarshan Chauhan, Ganesh Chauhan, Lalit Chauhan, Yadu Yadav, Krishna Yadav and Dinesh Kumar @ Police under Section 147/148/149/302/324/ 307/34 of the I.P.C. and Section 27 of the Arms Act. After investigation and finding the case to be true, the police had filed charge-sheet on 6.10.2006 against the aforesaid appellants and two others (showing them to be absconders) under Sections 147/ 148/149/302/324/307/34 of the I.P.C. & Section 27 of the Arms Act, whereafter the learned Trial Judge had taken cognizance of the offences under the same



sections, vide order dt. 7.10.2006. The case was then committed to the Court of Sessions and numbered as Sessions Trial Case No. 516 of 2010. After taking into consideration the charge-sheet and the materials collected during the course of investigation, the learned Trial Judge framed charges under Section 302/34 and Section 307/34 of the I.P.C. and Section 27 of the Arms Act, 1959, vide order dated 02.02.2011 against the appellants of the aforesaid appeals, to which they pleaded not guilty and claimed to be tried.

4. During the course of trial, 11 witnesses have been examined on behalf of the prosecution. P.W.3 Subhash Yadav, P.W.9 Bhikhari Yadav and P.W.10 Bimal Kumar have been declared hostile. P.W. 2 Kailash Yadav and P.W.5 Shashi Bhushan Kumar @ Bhushan Yadav are injured eye witnesses. P.W.1 Jay Kumar, P.W. 4 Yogendra Yadav and P.W.6 Arbind Yadav (informant) claim to be eye-witness. P.W. 7 Dr. Ajay Kumar Sinha is the Doctor, who had examined the three injured persons and P.W.11 Dr. Anil Kumar Jang Bahadur is the Doctor, who had conducted postmortem of the dead body of the two deceased persons, namely Shrawan Yadav and Suresh Yadav. P.W. 8 Abhinandan Mandal is the investigating officer of the present case.



5. The prosecution, by way of documentary evidence, had proved the following documents, which were marked as exhibits during the course of the trial:-

Exhibit No.	Description
Exhibit-1	Signature of P.W.-3, Subhash Yadav on fardbeyan.
Exhibit-2	Signature of P.W.-3, Subhash Yadav on seizure list.
Exhibit-3	Signature of P.W.-3, Subhash Yadav on the Inquest report of Suresh Yadav.
Exhibit-3/1	Signature of P.W.-3, Subhash Yadav on the inquest report of the 2 <sup>nd</sup> deceased, namely Shrawan Yadav.
Exhibit-3/2	Signature of Subhash Yadav (P.W.-3) on fardbeyan.
Exhibit-4	Signature of informant (P.W.-6) on the Inquest report of Suresh Yadav.
Exhibit-5	Signature of informant (P.W.-6) on the Inquest report of Shrawan Yadav.
Exhibit-6	Signature of informant (P.W.-6) on seizure list.
Exhibit-7	Protest petition filed by Arvind Yadav (P.W.-6) against the Investigating Officer.
Exhibit-8	Fardbeyan of Arbind Kumar.
Exhibit-9	Inquest report of Suresh Yadav.
Exhibit-10	Inquest report of Shrawan Yadav.
Exhibit-11	Seizure list prepared by P.W. 8 at the place of occurrence.
Exhibit-	Formal FIR.
Exhibit-12	Postmortem report of Shrawan Yadav.
Exhibit-12/A	Postmortem report of Suresh Yadav.
Exhibit-13	C.C. of judgment dated 17.11.2009 passed in S.T. No. 745 of 2004.
Exhibit-X	The injury report of Bimal Yadav (P.W.-10) prepared by P.W.7 Dr. Ajay Kumar Sinha.





Exhibit-X/1	The injury report of Shashi Bhushan Yadav (P.W.-5) prepared by P.W.7 Dr. Ajay Kr. Sinha.
Exhibit-X/2	The injury report of Kailash Yadav (P.W.-2) prepared by P.W.7 Dr. Ajay Kumar Sinha.

6. The learned Senior Counsels for the appellants of the aforesaid appeals, Sri Ramakant Sharma as also Sri Krishna Prasad Singh, assisted by Ms. Meena Singh, Advocate and other counsels have argued at length for the aforesaid Appellants.

7. The learned Senior Counsel for the appellants of the second and third case, Sri Ramakant Sharma has firstly submitted that in the FIR, though there is no allegation of indiscriminate firing as also Krishna Yadav (appellant of the third case) is said to have also fired gunshots, however it has not been alleged that the bullet fired by him had hit any one in particular. It is also submitted that subsequently during the course of trial, the prosecution has improvised on its version and has changed the story by stating that Krishna Yadav had hit Bhushan Yadav (P.W.5) by butt of rifle. It is stated that P.W. 6 (informant) is not an eye-witness, since he has deposed that he became afraid after the accused persons started firing indiscriminately and had hid himself in the *Dalan* and stood near the pillar of *Dalan*, thus obviously he had not seen the incident / occurrence in question. It is next submitted that out of the three injured witnesses, one of them namely, Bimal Kumar



(P.W.10) has turned hostile while the other two injured witnesses have not specifically named the accused who had shot them. It is submitted that a bare perusal of the evidence of the prosecution would show that the story of indiscriminate firing is false. In fact P.W. 8 Abhinandan Mandal (Investigating Officer), in his evidence has stated that Yogendra Yadav (P.W.4) had stated before him that from west 15-16 people came and from Beldar Tola 15-16 police personnel had come, thus in all probability Naxalites must have attacked the injured and deceased persons and fired indiscriminately leading to death of two persons. It is contended that as far as the three injured persons are concerned, their injury report is not on record, hence it cannot be said that the said three injured persons had received gunshot injuries. As far as deceased Suresh Yadav is concerned, it is stated that the postmortem report would show that he has sustained only one bullet injury, thus the story of indiscriminate firing is bellied.

8. The learned Senior Counsel for the appellants of the second and third case has next contended that if medical evidence completely rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. In this regard, reference has been made to a judgment, rendered by the



Hon'ble Apex Court in the case of ***Gangabhavani vs. Rayapati Venkat Reddy & Ors.***, reported in ***2013 (6) Supreme 238***, paragraphs no. 7 and 8 whereof are reproduced herein below:-

*"7. It is a settled legal proposition that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution case and unless it is reasonably explained may discredit the entire case of the prosecution. However, the opinion given by a medical witness need not be the last word on the subject. Such an opinion is required to be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all an opinion is what is formed in the mind of a person regarding a particular fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts, it is open to the Judge to adopt the view which is more objective or probable. Similarly, if the opinion given by one doctor is not consistent or probable, the court has no liability to go by that opinion merely because it is given by the doctor. "It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant' ".*

*Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative*



*possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. (Vide: Ram Narain Singh v. State of Punjab, AIR 1975 SC 1727; State of Haryana v. Bhagirath, AIR 1999 SC 2005; Abdul Sayeed v. State of M.P. (2010) 10 SCC 259 and Rakesh v. State of M.P. (2011) 9 SCC 698).*

*8. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence stands crystallized to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.”*

It is submitted that as far as the present case is concerned, firstly, there is no injury report on record, qua the said three injured persons and secondly, the mode and manner in which the prosecution has alleged the appellants to have fired indiscriminately and injured and killed the members of the prosecution party is apparently not true, as is apparent from a



bare perusal of the postmortem report of the deceased Suresh Yadav, hence the witnesses are not trustworthy and their testimony is unreliable. Reference in this connection has also been made to a judgment, rendered by the Hon'ble Apex Court in the case of *State of Uttarakhand vs. Darshan Singh*, reported in *(2020) 12 SCC 605*.

9. The learned Senior Counsel for the appellants of the second and third case has also argued that the Investigating Officer has stated in his testimony as P.W.8 that upon hearing rumor with regard to the alleged occurrence, he had gone to the place of occurrence, firstly to the house of the informant, Arbind Kumar Yadav (P.W.6) where he had seen the deceased Suresh Yadav lying, thereafter he had gone to the *Chabutra* and there he had seen the injured persons, whereafter he had started investigation, made seizure list and then he had sent the injured persons for medical examination and only then he had recorded the fardbeyan at 21:00 hours on 4.7.2006 though he had arrived at the place of occurrence at 20:10 hours. It is thus submitted that first of all, the Investigating Officer could not have started investigation prior to registration of the FIR and secondly, he having recorded the fardbeyan and registered the formal FIR could not have assumed the investigation himself, inasmuch as



he is an interested person, who may act with bias. In this connection, reference has been made to a judgment, rendered by the Hon'ble Apex Court, reported in ***AIR 2014 SC 187 (Lalita Kumari vs. Government of Uttar Pradesh & Others)*** to submit that registration of FIR is mandatory under Section 154 of the Cr.P.C. if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. The learned Senior Counsel for the appellants has also referred to a judgment, rendered by the Hon'ble Apex Court, reported in ***(2023) 13 SCC 563 (Harendra Rai vs. State of Bihar & Others)*** on the issue of defective investigation and its consequences. The learned Senior Counsel for the appellants has also contended that unless and until the guilt of the appellants is proved beyond all reasonable doubt, they cannot be convicted and in this regard reference has been made to a judgment, rendered by the Hon'ble Apex Court, reported in ***(2023) 18 SCC 403 (Sita Ram vs. State of Uttar Pradesh)***, paragraph No. 13 whereof is reproduced herein below:-

*“13. Therefore, we hold that the prosecution has failed to prove the guilt of the appellant beyond a reasonable doubt. Hence, the conviction of the appellant under the impugned judgment and orders [Ram Briksha v. State of U.P., 2019 SCC OnLine All 7182] is set aside, and the*



*appellant is acquitted of the charges framed against him. The order dated 8-2-2021 [Sita Ram v. State of U.P., 2021 SCC OnLine SC 3462] passed by this Court records that the appellant has surrendered. We, therefore, direct that the appellant shall be forthwith set at liberty unless he is required in connection with any other case. The appeal is, accordingly, allowed.”*

10. Lastly, the learned Senior Counsel for the appellants of the second and third case has referred to a judgment, rendered by the Hon’ble Apex Court in the case of ***Mallapa & Others vs. State of Karnataka***, reported in ***(2024) 3 SCC 544***, paragraph No. 45 whereof is reproduced herein below:-

*“45. The circumstances in this case are far from conclusive and a conclusion of guilt could not be drawn from them. To sustain a conviction, the court must form the view that the accused “must have” committed the offence, and not “may have”. As noted in Sharad Birdichand Sarda [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116], the distinction between “may have” and “must have” is a legal distinction and not merely a grammatical one.”*

Thus, it is submitted that not only there are grave contradictions in the testimony of the witnesses produced by the prosecution but they have also deposed inconsistently, hence they are untrustworthy and moreover, they are not eye-witnesses to the alleged occurrence as also the prosecution has failed to



produce any corroborative evidence to prove the guilt of the appellants in the alleged occurrence beyond all reasonable doubt. Therefore, it is submitted that the judgment of conviction and order of sentence, passed by the learned Trial Judge, is fit to be set aside.

11. The learned Senior Counsel Sri. Krishna Singh, appearing for the appellant of the first case, namely Ganesh Chauhan has though adopted the aforesaid arguments advanced on behalf of the Appellants of the second and third case but has additionally argued that though the appellant of the first case is stated to have been armed with country made rifle but all the three injuries found on the three injured persons are gunshot injuries and as far as the firearm injury found on the person of the deceased Suresh Yadav is concerned, the Doctor has not specified as to whether it is gunshot injury or rifle injury, hence the said appellant cannot be stated to have fired at the injured persons or the deceased person. It is also submitted that Exhibit-13, which is a judgment dated 17.11.2009, passed by the learned Court of 4<sup>th</sup> Additional Judge, Nalanda at Biharshariff, in Sessions Trial No. 745 of 2004 (arising out of Sarmera P.S. Case No. 23 of 2004, which was lodged by the informant of the present case namely, Arbind Kumar), would show that the





appellant of the first case i.e. Ganesh Chauhan has not been convicted, thus as far as he is concerned, no motive has been proved, necessitating his participation in the alleged occurrence.

12. The learned APP for the State, Ms. Shashi Bala Verma, has submitted that the present case is a case of double murder, hence the evidence led by the prosecution is required to be appreciated with circumspection. It is stated that indiscriminate firing was made by country made rifle / gun and not by any automatic weapon. It is also submitted that as far as the registration of formal FIR is concerned, there is no delay, inasmuch as the occurrence took place at about 8:00 pm on 04.07.2006, the fardbeyan was recorded at about 9:00 pm on 04.07.2006, whereafter the formal FIR was drawn at about 5:30 am in the morning of 05.07.2006. The learned APP for the State has also referred to the deposition of P.W.8 i.e. the Investigating Officer to submit that he had recorded *sanha* and thereafter, left for the place of occurrence along with the police force to investigate the matter. It is also submitted that the Investigating Officer, who registers the FIR, is not barred from taking up the investigation himself. The learned APP for the State has also referred to paragraph No. 18 of the cross-examination of P.W.8 to submit that he had seized *khokha* (*empty cartridge*) as well as



blood-stained mud. The learned APP for the State has referred to the evidence of P.W.7 to submit that P.W.7 i.e. Dr. Ajay Kumar Sinha has in detail explained the firearm injuries sustained by the three injured witnesses i.e. P.W.2, P.W.5 and P.W.10.

13. The learned APP for the State has also referred to the evidence of P.W.11 Dr. Anil Kumar Jung Bahadur, who had conducted the postmortem examination of the dead body of the two deceased persons, to submit that as far as the postmortem report of the deceased Suresh Yadav is concerned, the medical evidence is consistent with the ocular evidence, hence there is no reason to disbelieve the case of the prosecution. Finally, it is submitted that neither there is any inconsistency nor any contradiction in the evidence of the witnesses produced by the prosecution as also there are ample materials on record to prove the guilt of the appellants beyond all reasonable doubt, hence the judgment of conviction and order of sentence, passed by the learned Trial Judge, is fit to be upheld.

14. The learned Senior Counsel for the informant, Sri Rajesh Kumar, assisted by Sri Satyendra Pratap Singh, Advocate, has submitted that there is no contradiction in the evidence led by the prosecution and there is no dispute that indiscriminate firing was made by the accused persons / the appellants, inasmuch as



three persons have been injured and two persons have died during the said occurrence. It is stated that minor contradictions would not be fatal to the case of the prosecution. It is next submitted that P.W.1, P.W.2, P.W.4, P.W.5 and P.W.6 are eye-witnesses to the aforesaid occurrence and the defence has not been able to show that they are untrustworthy. In response to the argument of the learned Senior Counsel for the appellants to the effect that P.W.6 had hid behind the pillar and went into the *Dalan*, hence he cannot be stated to be an eye-witness, it is submitted that the evidence of P.W.6 would show that while he had hid behind the pillar of the *Dalan*, upon indiscriminate firing being resorted to, he was watching the incident from behind the pillar, thus there is no doubt that he is an eye-witness to the alleged occurrence. As regards the argument of the learned Senior Counsel for the appellants to the effect that there is no proof of injuries being sustained by the three injured witnesses, it has been submitted that the evidence of P.W.7 Dr. Ajay Kumar Sinha would show that not only the injury reports of the three injured witnesses have been marked as Exhibits-X, X/1 and X/2 for identification, but the said witness i.e. P.W.7 has also explained in detail the injuries sustained by the injured persons and the defence has failed to put any question to P.W.7



to challenge the veracity of the injury reports. It is stated that in fact, the defence has cross-examined P.W.7 with regard to the injuries sustained by the 3 injured witnesses, hence obviously the injury reports must have been present before the learned Trial Court, at the time of cross-examination of P.W.7. As far as P.W.-10 turning hostile is concerned, it has been submitted by the Ld. Senior Counsel for the informant that in his examination-in-chief, P.W.10 has though supported the case of the prosecution but in cross-examination, he could not identify the accused persons since he was from a different village and in fact was a Doctor at Delhi, who had come to his village at that moment of time.

15. The learned Senior Counsel for the informant has contended that there should be material contradictions to impair the credibility of the witnesses, however, in the present case, no such material contradictions have been pointed out by the learned Senior Counsel for the appellants. In this connection, reference has been made to a judgment, rendered by the Hon'ble Apex Court in the case of ***Edakkandi Dineshan @ P. Dineshan & Others vs. State of Kerala***, reported in ***(2025) 3 SCC 273***, paragraphs no. 14 to 16, 20 and 21 whereof are reproduced herein below:-



*“14. It was urged by the counsel for the appellants that there are material contradictions in the testimonies given by the prosecution witnesses, particularly the eyewitnesses. In this context, the question arises, whether these contradictions are material enough for the benefit of doubt to be given to the appellants so as to set aside their conviction.*

*15. The law relating to material contradiction in witness testimony has been discussed by this Court in the judgment of Rammi v. State of M.P. [ (1999) 8 SCC 649] It was held that:*

*“25. It is common practice in the trial court to make out contradictions from the previous statements. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness.  
...*

*26. ... Only such of the inconsistent statement which is liable to be “contradicted” would affect the credit of the witness.”*

*16. The abovementioned settled position of law in Rammi [Rammi v. State of M.P., (1999) 8 SCC 649] was again reiterated by this Court in the judgment of Birbal Nath v. State of Rajasthan [(2024) 15 SCC 190] wherein it was*



*held as under:*

*“21. No doubt statement given before police during investigation under Section 161 are “previous statements” under Section 145 of the Evidence Act and therefore can be used to cross-examine a witness. But this is only for a limited purpose, to “contradict” such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned Judges of the High Court have gone wrong.*

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*26. In the landmark case of Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012] this Court has held that to contradict a witness would mean to “discredit” a witness. Therefore, unless and until the former statement of this witness is capable of “discrediting” a witness, it would have little relevance. A mere variation in the two statements would not be enough to discredit a witness. This has been followed consistently by this Court in its later judgment, including Rammi [Rammi v. State of M.P., (1999) 8 SCC 649].”*

*20. Either a partial, untrue version of one of the witnesses or an exaggerated version of a witness may not be a sole reason to discard the entire prosecution case which is otherwise supported by clinching evidence such as truthful version of the witnesses, medical evidence, recovery of the weapons, etc. At this stage, it may not be*



*out of place to refer to the principle called as “falsus in uno, falsus in omnibus”.*

*21. It is a settled position that “falsus in uno, falsus in omnibus” (false in one thing, false in everything) that the above principle is foreign to our criminal law jurisprudence. This aspect has been considered by this Court in a plethora of judgments. In Ram Vijay Singh v. State of U.P. (2021) 15 SCC 241, a three-Judge Bench of this Hon'ble Court had held that :*

*20. We do not find any merit in the arguments raised by the learned counsel for the appellant. A part statement of a witness can be believed even though some part of the statement may not be relied upon by the court. The maxim falsus in uno, falsus in omnibus is not the rule applied by the courts in India. This Court recently in a judgment in Ilangovan v. State of T.N. [(2020) 10 SCC] held that Indian Courts have always been reluctant to apply the principle as it is only a rule of caution. It was held as under:*

*‘11. The counsel for the appellant lastly argued that once the witnesses had been disbelieved with respect to the co-accused, their testimonies with respect to the present accused must also be discarded. The Counsel is, in effect, relying on the legal maxim “falsus in uno, falsus in omnibus”, which Indian Courts have always been reluctant to apply. A three-Judge Bench of this Court, as far back as in 1957, in Nisar Ali v. State of U.P. [1957 SCC OnLine SC 42 : AIR 1957 SC 366]*



*held on this point as follows:*

*“9. ... This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded.*

*...*

*10. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called “a mandatory rule of evidence”. ” ’*

*21. Therefore, merely because a prosecution witness was not believed in respect of another accused, the testimony of the said witness cannot be disregarded qua the present appellant. Still, further, it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality of evidence which is relevant in criminal trial and not the quantity.”*

Thus, it is submitted that a partial untrue version of one of the witness or an exaggerated version of a witness cannot be the sole reason to discard the entire prosecution case, which is otherwise supported by clinching evidence such as truthful version of the witnesses etc. As far as the present case is concerned, not only the testimony of the prosecution witnesses do not suffer from any inconsistency but they are also





trustworthy and truthful, hence their testimony definitely proves the guilt of the appellants, beyond all reasonable doubt.

16. The learned Senior Counsel for the informant has next submitted that minor inconsistency pointed out by the learned Senior Counsel for the appellants to the effect that P.W.6 (informant), in his evidence has stated that the appellant of the third case, namely Krishna Yadav had assaulted Bhushan Yadav (P.W.5) by butt of the gun whereas in the FIR no such overt act has been referred to, would not have any adverse effect while appreciating the evidence, inasmuch as minor discrepancies cannot lead to rejection of the evidence led by the prosecution in its entirety. The learned Senior Counsel for the informant has next submitted that the testimony of an eye witness to the occurrence, who has himself been injured in the incident, is generally considered to be very reliable and as far as the present case is concerned, at least two of the injured witnesses i.e. P.W. 2 Kailash Yadav and P.W.5 Shashi Bhushan Kumar @ Bhushan Yadav have deposed consistently with regard to the role of the appellants in the alleged occurrence, which definitely proves their guilt beyond all reasonable doubt. In this regard, reference has been made to a judgment, rendered by the Hon'ble Apex Court in the case of *Brahm Swaroop & Anr. vs. State of Uttar*



**Pradesh**, reported in **(2011) 6 SCC 288**, paragraphs No. 28 and 32 whereof are reproduced herein below:-

*“28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.” (Vide State of U.P. v. Kishan Chand [(2004) 7 SCC 629], Krishan v. State of Haryana [(2006) 12 SCC 459], Dinesh Kumar v. State of Rajasthan [(2008) 8 SCC 270], Jarnail Singh v. State of Punjab [(2009) 9 SCC 719], Vishnu v. State of Rajasthan [(2009) 10 SCC 477], Annareddy Sambasiva Reddy v. State of A.P. [(2009) 12 SCC 546] and Balraje v. State of Maharashtra [(2010) 6 SCC]).*

*32. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the court to reject the evidence in its entirety. “Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions.” Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After*



*exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. (See State of U.P. v. M.K. Anthony [(1985) 1 SCC 505], State of Rajasthan v. Om Prakash [(2007) 12 SCC], State v. Saravanan [(2008) 17 SCC 587] & Prithu v. State of H.P. [(2009) 1 SCC 588])”*

17. The learned Senior Counsel for the informant has finally submitted that with the aid of Section 34 of the I.P.C., all the appellants stand jointly liable for the offence committed under Section 302 of the I.P.C. In this regard, reference has been made to a judgment, rendered by the Hon’ble Apex Court in the case of **Gulab vs. State of Uttar Pradesh**, reported in **(2022) 12 SCC 677**, paragraphs No. 23, 24, 25, 27 and 31 whereof are reproduced herein below:-

*“23. The present case is not one where despite the recovery of a firearm, or of the cartridge, the prosecution had failed to produce a report of the ballistic expert.*



*Therefore, the failure to produce a report by a ballistic expert who can testify to the fatal injuries being caused by a particular weapon is not sufficient to impeach the credible evidence of the direct eyewitnesses.*

**24. Section 34 IPC provides that:**

***“34. Acts done by several persons in furtherance of common intention—*** *When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”*

**25. The well-established principle underlying the above provisions emerges from the decision of Vivian Bose, J. in Pandurang v. State of Hyderabad [AIR 1955 SC 216] where it was held :**

*“32. Now in the case of Section 34 we think it is well established that a common intention presupposes prior concert. It requires a prearranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. [Mahbub Shah v. King Emperor [1945 SCC OnLine PC 5]. Accordingly, there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely, the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a prearranged plan. In a case like that, each would be individually liable for*



*whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be proved in his case. [Barendra Kumar Ghosh v. King Emperor [1924 SCC OnLine PC 49 and Mahbub Shah v. King Emperor [1945 SCC OnLine PC 5] As their Lordships say in the latter case, 'the partition which divides their bounds is often very thin: nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice.'* [Mahbub Shah v. King Emperor, 1945 SCC OnLine PC 5]

33. *The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a prearranged plan however hastily formed and rudely conceived. But prearrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other e.g. the intention to rescue another and, if necessary, to kill those who oppose."*

27. *Emphasising the fundamental principles underlying Section 34, this Court held that:*



*27.1. Section 34 does not create a distinct offence, but is a principle of constructive liability.*

*27.2. In order to incur a joint liability for an offence there must be a prearranged and premeditated concert between the accused persons for doing the act actually done.*

*27.3. There may not be a long interval between the act and the premeditation and the plan may be formed suddenly. In order for Section 34 to apply, it is not necessary that the prosecution must prove an act was done by a particular person.*

*27.4. The provision is intended to cover cases where a number of persons act together and on the facts of the case, it is not possible for the prosecution to prove who actually committed the crime.*

*31. The evidence on the record clearly establishes a common intention in pursuance of which the appellant exhorted Idrish to kill the deceased. The prosecution is not required to prove that there was an elaborate plan between the accused to kill the deceased or a plan was in existence for a long time. A common intention to commit the crime is proved if the accused by their words or action indicate their assent to join in the commission of the crime. The appellant reached the spot with a lathi, along with Idrish who had a pistol. The appellant's exhortation was crucial to the commission of the crime since it was only after he made the statement that the enemy has been found, that Idrish fired the fatal shot. The role of the appellant, his presence at the spot and the nature of the exhortation have all emerged from the*



*consistent account of the three eyewitnesses.”*

18. Reference has also been made by the learned Senior Counsel for the informant to a judgment bearing Neutral Citation-2025 INSC 221 [Judgment dated 11.02.2025, passed by the Hon’ble Apex Court in Criminal Appeal No. 593 of 2022 (***Vasant @ Girish Akbarasab Sanavale & Anr. vs. The State of Karnataka***)], paragraphs no. 38 to 41, 48 to 50 and 53 whereof are reproduced herein below:-

*“38. If there is one decision explaining Section 34 IPC which could be termed as locus classicus then the same is the Allahabad High Court decision in the case of Om Prakash v. State, 1956 Cri LJ 452. Justice M.H. Beg (as His Lordship then was) has beautifully explained the provision and its applicability.*

*39. In order that an intention should be common, it should be attributable to every member of the group. This is also clarified by the fact that the section itself characterises the common intention to be the ‘common, intention of all’. Section 34, IPC, therefore, does not ignore the intention of the individual offender.*

*40. It only adds some more persons in the commission of the offence and postulates that the same intention was jointly existing in the mind of every individual member of the group as well. It may be that the intention was alleged to be common, but that only means that every member shared it along with others and not some members shared*



*it and others did not.*

*41. The common intention required under Section 34 Penal Code, 1860 need not, however, be identical with the guilty intention or 'mens rea' which is the ingredient of the offence and is to be distinguished from it. The latter might be coincident with or collateral to the former.*

*48. Under Section 34 every individual offender is associated with the criminal act which constitutes the offence both physically as well as mentally. That is, he is a sharer not only in what has been described as a common act but also in what is termed as the common intention, and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different.*

*49. To put it in other words, whereas under Section 149, IPC the entire emphasis both in respect of the physical act as well as in respect of the mental state is placed on the assembly as a whole, under Section 34, IPC, the weight in respect of both is divided and is placed both on the individual member as well as on the entire group.*

*50. Section 34, IPC, as contrasted with Section 149, IPC, therefore, balances the individual and the general aspect, although while taking into account the individual aspect it conceives it as part and parcel of the general aspect. In this sense, Section 34, IPC, is far more restricted than Section 149, IPC. If, therefore, a person is charged with an offence with the application of Section 34, IPC, and*





*convicted for the substantive offence only, it is not so easy for him to advance the plea that he was not aware that the matter had any individual aspect.*

*53. On the other hand, under Section 34, IPC, a mere agreement, although it might be a sufficient proof of the common intention, would be wholly insufficient to sustain a conviction with the application of Section 34, IPC, unless some criminal act is done in furtherance of the said common intention and the accused himself has in some way or the other participated in the commission of the said act.”*

19. Thus, in nutshell, it is the submission of the learned Senior Counsel for the informant that the evidence led by the prosecution definitely proves the guilt of the appellants beyond all reasonable doubt, hence there is no error in the judgment of conviction and order of sentence, passed by the learned Trial Judge and the same is fit to be upheld.

20. Besides hearing the learned counsel for the parties, we have minutely perused both the evidence, i.e. oral and documentary. Before proceeding further, it is necessary to cursorily discuss the evidence.

21. P.W. 3 Subhash Yadav has though been declared hostile, but he has stated in his examination-in-chief that he had put his signature on the fardbeyan, which he has identified and the



same has been marked as Exhibit-1. P.W.3 has also identified his signature made on the seizure list, which has been marked as Exhibit-2. P.W.3 has next identified his signature made on the inquest report of Suresh Yadav, which has been marked as Exhibit-3 and further he has identified his signature on the inquest report of the second deceased, namely Shrawan Yadav, which has been marked as Exhibit-3/1. He has also stated in his examination-in-chief that the occurrence dates back to 7-8 years and on that day, puja had been organized in the village and when he was at his house, he heard that some people / outsiders had arrived in the village and were firing indiscriminately leading to death of Suresh Yadav and Shrawan Yadav as also injuries being inflicted upon Kailash Yadav, Bimal Yadav etc. Nonetheless, P.W.3 has stated that he did not see the accused persons firing, thus he was declared hostile.

22. P.W.9 Bhikhari Yadav has though been declared hostile, but he has stated in his examination-in-chief that the occurrence dates back to 5-6 years at about 7:00 pm in the evening, when he was sitting at Devi Sthan and at that time he heard sound of gunshot firing from the southern side, whereafter he saw the accused persons running towards the northern side where house of Suresh Yadav is situated and then he saw Shrawan Yadav



coming running from the southern side, whereupon the accused persons had caught hold of Shrawan Yadav and killed him, however he has stated that he cannot say as to who had caught hold of Shrawan Yadav. He has further stated that he had heard that the accused persons had fired gunshots on Suresh Yadav at the *Chabutra* of Arjun Yadav and Kailash Yadav had been inflicted with gunshot injury, however his statement was not recorded by the police. The said witness has been declared hostile. In his cross-examination, P.W.9 has stated that one Mahendra Singh of the said village was killed and in the said case, various persons have been made accused, namely Jay Kumar Yadav, Shrawan, Arbind, Rakesh, Subhash Yadav, Bhushan Yadav, Sadhu Yadav etc., in which Ganesh Chauhan is a witness.

23. P.W.10 Bimal Kumar has stated in his examination-in-chief that the occurrence dates back to the year 2006 (4.7.2006) at about 7:00 pm in the evening and at that time he was at Mahdipur village from where he used to go from house to house and impart treatment and on that day he had come to the house of Arjun Yadav to examine his grandfather as also give him injection and after giving injection to him, he was asked to stay and eat *prasad*, since there was puja in the village, whereafter



he had sat on the *Chabutra* nearby. P.W.10 has also stated that it was a moonlit night and he was sitting on the *Chabutra* with Bhushan (P.W.-5), grandfather of Arjun Yadav, namely Kailash Yadav (P.W.-2) and one Gram Sevak, namely Suresh Yadav (deceased). He has further stated that at that moment of time, about 10-12 accused persons armed with gun and rifle had arrived there and had started firing indiscriminately, whereafter he sustained one gunshot injury and fell down, whereupon Suresh also received gunshot injury and he died there. P.W.10 has next stated that he does not recognize any accused person nor his statement was recorded by the police, hence he had been declared hostile.

24. P.W.1 Jai Kumar has stated in his deposition that the occurrence dates back to five years and eight months at about 7-8 pm in the evening when he was sitting at Devi Sthan and then he heard sound of gunshot firing from the western side as also commotion had taken place at the temple, whereafter he along with his brother Shrawan started running, however at that time Sudarshan Chauhan and Lalit Chauhan had fired gunshot on his brother, who was shot on his temple leading to him falling there and having died instantly. P.W. 1 had then gone to the *Chabutra*, situated near the house of Arbind where he saw Suresh Yadav



lying dead and gunshot injury had been sustained by Kailash Yadav (P.W.-2), Bimal Yadav (P.W.-10) and Bhushan Yadav (P.W.-5). P.W.-1 has also stated that the gunshots were fired by Kishan Yadav, Yadu Yadav, Dinesh Yadav @ Police, Ganesh Chauhan, Sudarshan Chauhan and Lalit Chauhan. P.W.-1 has stated that he had recognized Sudarshan Chauhan and Lalit Chauhan in the light of petromax. P.W.-1 had also recognized Ganesh and Dinesh Chauhan standing in the dock. P.W.1 has next stated that in the past also, the accused persons had killed his nephew and in that case the accused persons wanted to enter into a compromise but the same could not happen leading to the present incident. In cross-examination, P.W.1 has stated that in the past, one case was registered with regard to murder of Mahendra Singh bearing Sarmera P.S. Case No. 41 of 2004 in which he is an accused.

25. P.W.2, Kailash Yadav has stated in his deposition that the occurrence dates back to about five and a half years at about 7-8 pm in the night when he was sitting at the *Chabutra* constructed in front of his house and along with him his grandson Arbind Kumar (P.W.-6), Gram Sevak Suresh Prasad (deceased), Dr. Bimal Kumar (P.W.-10) and Shashi Bhushan Prasad (P.W.-5) were also sitting. On that day Asadi puja was taking place in the



village and at that time about 15-16 accused persons had arrived from Nonia Tola out of which he could recognize Yadu Yadav, Krishna Yadav, Dinesh Yadav @ Police, Sudarshan Chauhan, Ganesh Chauhan and Lalit Chauhan, who were all armed with guns. As soon as the said accused persons arrived there, they asked the grandson of P.W.2 to enter into a compromise, failing which he would reap the consequence. Thereafter, the said accused had assaulted Shashi Bhushan (P.W.-5) by butt on his head, whereafter the rest of the accused persons started firing indiscriminately resulting in Gram Sevak Suresh sustaining gunshot injury leading to his death instantaneously P.W.2 has stated that he was also shot on the arm of left hand as also on the claw of the left leg resulting in him being badly injured and one bullet had passed by his head apart from one bullet hitting Dr. Bimal (P.W.-10). P.W. 2 has further stated that later on, he heard that towards the northern side of the temple, Shrawan Kumar was also hit by gunshots, who was returning after easing himself, leading to his death on account of gunshot injury.

26. P.W. 2 has next stated that he had recognized the accused persons in the light of petromax because puja programme was going on. P.W. 2 has also stated that he can recognize the accused persons who had fired gunshots, however at present he



has difficulty in seeing from his eyes, hence he can recognize them after seeing them from nearby. P.W.2 had then gone near the accused persons, namely Ganesh, Yadu and Krishna, standing in the dock and recognized them. In cross-examination, P.W.2 has stated that on account of firing having been resorted to indiscriminately, he cannot say as to whose gunshot had hit whom and injured whom. He has also stated that it was a moonlit night on the day of occurrence and petromax was burning at the *Chabutra* near the house. He has next stated that he did not run away because after being hit on account of indiscriminate firing he had become injured and had fallen down on the ground. In paragraph no. 7 of his cross-examination, P.W. 2 has stated that in the village, one person namely Mahendra Singh was killed leading to registration of Sarmera P.S. Case No. 41 of 2004 and the murder had taken place on 04.07.2004 in which his grandson namely, Arbind Yadav is an accused, who is the informant of the present case. In the aforesaid case one Jai Kumar Yadav is also an accused, who is a witness in the present case. Shrawan Yadav was also an accused in the aforesaid case, who is brother of Jai Kumar Yadav apart from Subhash Yadav, Shashi Bhushan Yadav @ Shashi Yadav and Jogi Yadav being also accused in the aforesaid



case, who all are witnesses in the present case. In paragraph No. 11 of his cross-examination, P.W.2 has stated that on the day of occurrence, he was sitting at the *Chabutra*, which is situated towards the northern side of his house and at that time, Bhushan Yadav (P.W.-5), Arbind Yadav (P.W.-6), Bimal Yadav (P.W.-10) and Panchayat Sevak were also along with him and sitting on the *Chabutra* without any sheet spread on the ground. He has also stated that the accused persons had come from the western side without raising any alarm and had resorted to indiscriminate firing near the *Chabutra*. He has also stated that he cannot say as to whom the accused persons had come to kill, nonetheless Suresh Yadav was shot at by mistake, since he had no enmity with the accused persons. He has also stated that his grandson had ran away towards the house, hence he could save himself, however Shashi Bhushan Yadav (P.W.-5) and Bimal Yadav (P.W.-10) were injured by rifle bullets and Shashi Bhushan was hit by butt of the gun.

27. In paragraph no. 12 of his cross-examination, P.W.2 has stated that he was wearing dhoti and *ganji* (vest) and after being shot by gunshot he had got injured, had fallen down as also blood was smeared all over his body, whereafter his treatment was done at Sarmera Hospital and then he was sent to





Biharsharif. He has also stated that the police had seen blood-soaked cloth. He has stated that he cannot say as to on which part of the body of Arbind Yadav (P.W.-6) and Bhushan Yadav (P.W.-5), gunshot injury was inflicted, however he has stated that he had seen the injury of Bimal Yadav at the hospital but he cannot say as to whether blood was dripping out from the injury of others or not. P.W. 2 has stated that he had given his statement before the police and had told the police that the occurrence had taken place in between 7-8 pm in the night when he was sitting at the *Chabutra* constructed in front of his house. He has said that he had stated before the police that 15-16 persons had come from Nonia Tola. He has also stated before the police about Shashi Bhushan (P.W.-5) being hit on his head. He has next stated that after he got up, he saw that on account of indiscriminate firing one person was lying dead. He has also stated that he had told the police that he had sustained gunshot injuries on the left arm and near the left leg as also one bullet had passed adjacent to his forehead and upon getting up, he had seen that one bullet had also hit Dr. Bimal. P.W.2 has next stated that after the occurrence, all the accused persons had fled away towards the eastern side and then he heard that Shrawan had gone to ease himself towards the eastern side of the temple



where he had sustained gunshot injury.

28. P.W. 4 Yogendra Yadav has stated in his evidence that the occurrence dates back to about five and a half years back at about 7-8 pm in the night when he was sitting at the *Bathan* in front of his house and at that time he saw that from the western side i.e. from Beldari Toli/ Chauhan Toli, 15-16 persons had arrived including Sudarshan Chauhan, Ganesh Chauhan, Lalit Chauhan, Yadu Yadav, Krishna Yadav, Dinesh Yadav @ Police, whom he had recognized in the light of petromax, which was burning at the *Chabutra* of Arbind Yadav (P.W.-6) and all the accused persons were armed with rifle / guns. P.W.4 has further stated that all the accused persons had reached at the *Chabutra* of Arbind Yadav (P.W.-6), whereafter Krishna Yadav was saying loudly that if the case is not compromised, the consequences will be bad, whereupon all the accused persons started firing indiscriminately resulting in Kailash Yadav (P.W.-2), Bimal Yadav (P.W.-10) and Suresh Yadav (deceased) sustaining gunshot injuries leading to death of Suresh Yadav at the place of occurrence itself. Shashi Bhushan (P.W.-5) was assaulted by butt of gun on his head leading to his head being smashed. Thereafter, all the accused persons had gone towards Devi Sthan where Asadi puja was taking place and petromax was burning



where also commotion had taken place and then he heard that Shrawan Yadav has also been inflicted with gunshot injury and has died at the place of occurrence. P.W. 4 has stated that he recognizes all the accused persons, out of whom Ganesh Chauhan is present in the dock. He has also stated that the accused persons are still threatening him. In cross-examination, P.W. 4 has stated that one person, namely Mahendra Singh of his village was murdered leading to Rajendra Singh filing a case bearing Sarmera P.S. No. 41 of 2004 under Section 302 of the IPC in which 17 persons including Jai Kumar Yadav, Arbind Yadav, Bhushan @ Shashi Bhushan Yadav and Subhash Yadav are accused. In the said case, Mahavir Chauhan, Vishun Chauhan, Dinu Chauhan, Alphu Chauhan and Ganesh Chauhan are witness and its case number is Sessions Trial Case No. 554 of 2007, which is pending before the learned Court of FTC-IV.

29. In his cross-examination, P.W.4 has stated that his Bathan is open, all the accused persons were going quietly and neither he became frightened nor he was beaten up by anyone. P.W. 4 has further stated that the indiscriminate firing had taken place near the *bathan* and when the persons engaged in firing gunshots had fled away, he had gone near the *Chabutra* where he found that Kailash Yadav (P.W.-2), Shashi Bhushan (P.W.-5)



and Bimal (P.W.-10) had been injured and Suresh Yadav, Panchayat Sevak was lying dead. He has also stated that Suresh Yadav had fallen down from the *Chabutra* and as far as the three injured persons are concerned, while Kailash Yadav (P.W.-2) had fallen down from the *Chabutra*, the other two injured persons had fallen on the *Chabutra*. He has also stated that he had found injuries on the left arm and left leg of Kailash Yadav (P.W.-2). He had also seen injuries inflicted on the head of Bhushan @ Shashi Bhushan (P.W.-5) by butt. As far as Bimal Yadav (P.W.-10) is concerned, P.W. 4 has stated that he cannot remember as to on which part of his body, gunshot injury had been inflicted. P.W.-4 has also said that he had not seen any bullet hole in the clothes of the three injured persons but he had seen two injuries on the back of Suresh Yadav and the clothes of the deceased as also that of the three injured persons were smeared with blood and blood had also fallen on the *Chabutra* and below the *Chabutra* where Suresh Yadav had fallen.

30. In paragraph No. 11 of his cross-examination, P.W.4 has stated that he cannot say as to who reached the place of occurrence first but 50 persons had arrived there, out of whom he can state the name of some people. He has also stated that even after the accused persons had fled away the petromax was



burning and it had not been damaged. In paragraph No. 12 of his cross-examination, P.W. 4 has stated that police had arrived at 9-10 pm in the night and his statement was recorded by the police on the second day of the occurrence, however, he has also stated that he was present when the police had arrived at the place of occurrence first. He has next stated that before the police came he had come to know about the murder of Shrawan Yadav and the police had stayed at the place of occurrence for about half an hour. He has also stated that the police had taken all the three injured persons to Sarmera Hospital for treatment, who were conscious and thereafter, they were taken to Sadar Hospital, Biharsharif for treatment. He has next stated that he had also gone to Biharsharif and returned in the morning. He has stated that he had told the police that he was sitting at the *Bathan* in front of his house and that 15-16 persons had come, out of whom he had disclosed the name of the persons whom he had recognized. He has also stated that he had told the police that Shashi Bhushan (P.W.-5) was hit on his head by butt of the gun.

31. P.W.5 Shashi Bhushan Kumar @ Bhushan Yadav has stated in his testimony that the occurrence dates back to five and a half years at about 7-8 pm in the evening when he was at the *Chabutra* of Arbind Yadav (P.W.-6) and along with him Kailash



Yadav (P.W.-2), Arbind Yadav (P.W.-6), Bimal Yadav (P.W.-10) and Panchayat Sevak Suresh Yadav (deceased) were also present and at that time from the western side, Sudarshan Chauhan, Ganesh Chauhan, Lalit Chauhan, Krishna Yadav, Jagu Yadav, and Dinesh @ Police Yadav had arrived and as soon as they arrived, all the accused persons said that all of you should enter into a compromise and if you do not do so then you will have to suffer adverse consequences. P.W. 4 has further stated that thereafter, Krishna Yadav had hit him by butt of the gun on his head resulting in his head being smashed, whereafter all the accused persons started firing indiscriminately leading to one bullet hitting Suresh Yadav resulting in his death. Kailash Yadav (P.W.-2) and Bimal Yadav (P.W.-10) also sustained gunshot injuries, whereafter the accused persons went towards the eastern side where Asadi puja was taking place near the temple and there all the accused persons had chased Shrawan Yadav and hit him with gunshot leading to his death. P.W.-5 had recognized the accused persons standing in the dock, namely Ganesh, Krishna and Jadu.

32. In his cross-examination, P.W. 5 has stated that he had seen the accused persons when they had come near him, however he had not tried to run away but as soon as the accused



persons came there they had hit him with the butt of the gun resulting in him falling down on the ground, whereafter he got up as soon as the accused persons had fled away, whereupon he saw Suresh Yadav lying dead, who had been hit on the back by two bullets, one was small hole and the other one was big hole. He has also stated that the clothes of Suresh Yadav were soaked with blood, Kailash Yadav (P.W.-2) had fallen down on the *Chabutra* and after 10-20 minutes, witnesses had arrived there including Gauri Yadav, his wife Meera, Rajeev Kr., Ramesh Kr. etc. P.W. 5 has also stated that immediately after the accused persons had fled away, Arbind Yadav (P.W. 6) had arrived there. P.W. 5 has further stated that his treatment had taken place at Sarmera Hospital and after being assaulted, the members of the prosecution party were not in a position to talk with each other. P.W.5 has stated in his cross-examination that petromax was burning throughout the night and he had told the police that Krishna Yadav had hit by butt.

33. P.W. 6 Arbind Yadav is the informant of this case and he has stated in his deposition that he has filed the present case. The occurrence dates back to 04.07.2006 at about 7:30 pm in the evening when he was sitting on the *Chabutra* in front of his house and along with him his grandfather Kailash Yadav (P.W.



2), Gram Sevak, Suresh Yadav (deceased), Bhushan Yadav (P.W. 5), Dr. Bimal Yadav (P.W.10) and Shashi Bhushan Yadav (P.W.5) were sitting there and they were talking amongst each other as also on that day in the village near the Devi Sthan, Asari puja was being performed and at that time from the western side i.e. from the Chauhan Toli, Krishna Yadav, Jadu Yadav, Dinesh Yadav, Ganesh Chauhan, Sudarshan Chauhan and Naresh Chauhan had arrived there, whereafter Kishan Yadav said that if they did not compromise the case, they would suffer adverse consequences and then Krishan Yadav had hit on the head of Bhushan Yadav (P.W. 5) by butt of the gun leading to blood oozing out, whereupon all the accused persons started firing indiscriminately leading to the grandfather of P.W.-6 Kailash Yadav (P.W.-2), Suresh Yadav (deceased) and Bimal Yadav (P.W.-10) being hit by gunshots, resulting in Suresh Yadav having died on the spot on account of being hit by gunshots, whereas grandfather of P.W.-6 had also become injured. Thereafter, all the accused persons went away towards the Devi Sthan and on the northern of the Devi Sthan, he heard that Shrawan Yadav was also hit by bullet leading to his death.

34. In paragraph No. 2 of his examination-in-chief, P.W.6 has stated that the motive for the present occurrence is that in the





past his brother was killed and in the said case Krishna, Jadu, Kapil Yadav etc. are accused and the accused persons of the said case wanted to forcibly compromise the matter. P.W.6 has also stated that the police had come in the village after the occurrence and he had made his statement before the Officer-in-Charge, who had written the same, whereafter the same was read over to him and finding the same to be correct, he had made his signature over the same. The said fardbeyan also bears the signature of Subhash Yadav (P.W.-3), which has been marked as Exhibit-3/2. In paragraph No.3 of his examination-in-chief, P.W.6 has stated that the inquest report of Suresh Yadav was made in carbon copies, which bears his signature, which he has identified and the same has been marked as Exhibit-4 (with objection). In fact, inquest report of deceased Shrawan Yadav was also prepared in carbon copies, which also bears his signature, which he has identified and the same has been marked as Exhibit-5 (with objection). He has also stated that seizure list was prepared, which bears his signature, which he has identified and the same has been marked as Exhibit-6. He has next stated that he had filed one protest petition against the Investigating Officer, which also bears his signature and the same has been marked as Exhibit-7. P.W.-6 had recognized the



accused Jadu Yadav and Ganesh Chauhan, who were present in the dock.

35. P.W.-6 has stated that he, Jai Kumar Yadav (P.W.-1), Bushan @ Shashi Bhushan (P.W.-5), Yogi @ Yogendra Yadav (P.W.4) are agnates and witness Kailash Yadav (P.W.2) is his grandfather. P.W.6 has described the area in and around the place of occurrence in detail in paragraphs No. 7 to 9 of his deposition. In paragraph No. 10 of his cross-examination, P.W.6 has stated that while they were sitting on the *Chabutra* and were talking about puja, all the accused persons had arrived there silently and he had seen rifle/gun in their hands, only after they had come absolutely close to the *Chabutra* leading to P.W.6 becoming scared, whereafter he had moved a bit towards the window adjoining the *Dalan*. He has also stated that he was not fired upon but the accused persons had fired 5-6 gunshots and then they had gone towards the temple side. P.W.-6 has stated that he was the target of the accused persons and after the accused persons had gone away, he came near the *Chabutra* where he saw that Suresh Yadav was lying dead towards the southern-eastern side of the *Chabutra* and he had also seen one sign of gunshot injury in the stomach of Suresh as also his clothes were soaked with blood apart from lot of blood having



fallen down at the place where he had fallen. In fact, P.W.-6 had also found Kailash Yadav (P.W.-2), Bhushan (P.W.-5) etc. to have been injured and three persons namely Kailash (P.W.-2), Bimal Yadav (P.W.-10) and Bhushan @ Shashi Bhushan Yadav (P.W.-5) had fallen down over the *Nad*. P.W.-6 has also stated that his grandfather had received injury on the left arm and petromax was burning in middle of the *Chabutra*. He has also stated that after 15-20 minutes of him reaching there, villagers had also arrived there including Yogi Ji, Bhikhari Yadav, Guddu etc. and while Gram Sevak had died, rest of the injured persons were conscious. P.W. 6 has next stated that he had talked with the injured persons and then all the three injured persons were sent to Sarmera Hospital in a police vehicle after the police had arrived there. The statement of P.W.-6 was recorded at the place of occurrence i.e. at the *Chabutra*, which was smeared with blood. He has also stated that while Suresh Yadav resides at Islampur, Bimal Yadav resides at Musapur, which is at a distance of 1-1½ kilometers. He has also stated that *Chabutra* was inspected by the police and the petromax was burning at that time. P.W.6 has stated that he had stated before the police that Krishna Yadav had assaulted Bhushan Yadav on his head by butt of the gun, whereafter indiscriminate firing was resorted to.



36. P.W.7 is Dr. Ajay Kumar Sinha, who has stated in his deposition that on 04.07.2006, he was posted as Medical Officer at Primary Health Centre, Sarmera and on the said day he had examined the injured persons, namely Bimal Yadav (P.W.-10), Shashi Bhushan Yadav (P.W.-5) and Kailash Yadav (P.W.-2) and after examining the said injured persons, he had prepared the injury reports of all the three injured persons in his hand writing as also had signed the same which he has identified and the same has been marked as Exhibits-X, X/1 and X/2, on account of the same being photo copies. In his cross-examination, P.W. 7 has stated that the injury reports have been prepared after examination on the basis of the requisition sent by the police. The police had sent three requisitions and on its back he had prepared the report, however at the moment the police requisitions and original injury reports are not before him. P.W. 7 has next stated that on perusal of the photocopy of the injury report of the injured Bimal Yadav (P.W.-10), it appears that charred injury has been found which can be inflicted from very close range. The time of injury is 24 hours, which means above 18 hours and below 24 hours. He has also stated that he had kept the opinion reserved, which he had given afterwards. He had referred the injured Bimal Yadav to Sadar Hospital, Biharsharif.



X-ray report was also sent. P.W.7 has also stated that in a firearm injury from rifle only one pellet is there but from gun many pellets are there and in the present case it is gun injury. P.W.7 has further stated that injured Shashi Bhushan (P.W.-5) has sustained injury inflicted by bullet of gun and injured Kailash Yadav (P.W.-2) has also sustained injury inflicted by bullet of gun. P.W. 7 has stated that he had referred Kailash Yadav to Sadar Hospital, Biharshariff.

37. P.W. 8 Abhinandan Mandal is the Investigating Officer of the present case and he has stated in his evidence that on 04.07.2006 he was posted as Officer-in-Charge, Sarmera Police Station and on that day, he received information by way of rumor that firing was being resorted to at Mohanpur, whereafter he had registered a *sanha* to the said effect and then along with Sub-Inspector of Police, Santosh Kumar, Sub-Inspector of Police, Vivran Singh, Assistant Sub-Inspector of Police, Dhananjay Kumar Singh and Saif Armed Force as also along with District Armed Force had proceeded to the place of occurrence i.e. Mohanpur village. Upon reaching village Mohanpur along with the aforesaid officers and police force, he found that dead body of one person was lying on the *Chabutra* in front of the house of Arbind Kumar Yadav and three persons



had been injured. It had been told that the accused persons had fled the village, whereafter P.W.8 alongwith the police force had proceeded towards the direction in which the accused persons had fled away and on the way they found one more dead body lying in the *pane* near the house of Sudhir Yadav. Thereafter, they returned to the door of the house of Arjun Kumar Yadav (should be Arbind Kumar Yadav) and recorded his fardbeyan. P.W. 8 has identified the fardbeyan to have been written in his writing, which also bears the signature of Arbind Kumar and the same has been marked as Exhibit-8.

38. P.W.8 has further stated that he had then prepared the inquest report of Suresh Yadav in carbon copy, which also bears the signature of two independent witnesses, namely Subhash Yadav (P.W.-3) and Arjun Kumar, which is also in his writing and bears his signature, which he has identified and the same has been marked as Exhibit-9. P.W.-8 had then prepared the inquest report of deceased Shrawan Yadav, which also bears the signature of two independent witnesses, namely Subhash Yadav (P.W.-3) and Arjun Kumar Yadav, which is in his writing and the same has been marked as Exhibit-10. P.W.-8 is stated to have then recorded the restatement of the informant and then he had recorded the statement of the injured persons, namely Bimal



Kumar (P.W.-10), Kailash Yadav (P.W.-2) and Shashi Bhushan Yadav (P.W.-5). Thereafter, he had sent the said three injured persons for treatment to Sarmera Primary Health Centre for which he had issued necessary requisition. P.W.8 has further stated that the first place of occurrence of the present case is the *Chabutra* made of cement situated over the land in front of the north facing house of the informant located at village Mohanpur. P.W. 8 has further stated that it has been said that at the said *Chabutra* while some persons were talking to each other, the accused persons had arrived there and fired from their weapons resulting in murder of Suresh Yadav and three persons having been injured. He has also stated that towards the eastern-southern corner and towards the northern corner as also below the *Chabutra*, lot of blood had fallen. He has next stated that on the northern side of the *Chabutra*, 1.315 and 2.12 bore khokhas (empty cartridges) were present on the ground. P.W.8 has further stated that the second place of the occurrence is at a distance of 100 yards from the first place of occurrence, situated on the eastern-northern side of the temple and there the accused persons, while fleeing away had killed Shrawan Kumar by firing gunshots and the dead body of Shrawan Kumar laced with mud and blood was found there.



39. In paragraph No. 9, P.W. 8 has stated that he had prepared seizure list at the place of occurrence, which is in his writing and bears his signature as also bears the signature of two independent witnesses, namely Arjun Kumar Yadav and Subhash Yadav (P.W.-3), which he has identified and the same has been marked as Exhibit-11. Thereafter, he had sent both the dead bodies for postmortem examination to Sadar Hospital, Biharsharif and had then returned back to the police station, whereafter on the basis of the fardbeyan of Arjun Kumar Yadav (should be Arbind Kumar Yadav), he had registered Sarmera P.S. Case No. 34 of 2006 under Sections 147/148/149/341/302/324/307 IPC and Section 27 of the Arms Act. P.W.-8 has identified the formal FIR, which he had registered on the basis of the aforesaid fardbeyan, which is in his writing and bears his signature, which has been marked as exhibit. In paragraph No. 11, P.W. 8 has stated that upon returning back to the police station, he had himself assumed the investigation of the said occurrence, whereafter he had recorded the statement of the witnesses, received the postmortem report and after orders of the Senior Police Officers as also finding the case to be true, had filed charge-sheet against the named accused persons. In paragraph No. 12, P.W.8 has stated that witness Subhash Yadav





(P.W.3) has stated before him that on the date of occurrence, puja was taking place in the village and after the puja programme had come to an end, Shrawan Yadav was sitting near the temple and talking to other persons, where petromax was burning and at that time sound of gunshot firing was heard towards the house of Arbind Kumar Yadav, leading to commotion and stampede in the village, whereafter Shrawan Yadav had gone towards the temple and the accused persons had chased him and fired gunshot on him leading to him falling there, whereupon all the accused persons had fled towards the garden.

40. P.W. 8 has also stated that P.W. 3 had told him that he had recognized the accused persons in the light of petromax, whose names are Jadu Yadav, Krishna Yadav @ Krishnan, Dinesh Kumar @ Police, Sudarshan Chauhan, Ganesh Chauhan and Lalit Chauhan of village Mohanpur. Sudarshan Chauhan and Ganesh Chauhan were armed with rifle and the rest of the accused persons were armed with gun. They were firing while running away and when the accused persons had fled away, P.W. 3 along with other persons had gone to the house of Arjun Kumar Yadav (should be Arvind Kumar Yadav) where they saw Panchayat Sevak lying dead and Bimal Kumar (P.W.-10),



Kailash Yadav (P.W.-2) and Shashi Bhushan Yadav (P.W.-5) had been injured. P.W.8 has further stated that after registering *sanha*, he had not written any number on the same. P.W.-8 has stated that he has mentioned in Paragraph No. 2 of the case diary that one dead body was found and three persons were injured, namely Kailash, Bimal and Subhash Yadav. Thereafter, the injury reports of all the said three injured persons were prepared. Again, he has stated that he had issued the requisition for all the three injured persons, copy whereof was not documented. P.W.8 has further stated that he has not written as to on which part of the body of the three injured persons he had found injuries and he had also not recorded as to on which khata number and plot number the dead body was found. He has also stated that he had no prior acquaintance with Subhash Yadav and the persons standing there had told him about Subhash Yadav. In paragraph no. 14, P.W. 8 has stated that he had firstly recorded the fardbeyan and then prepared the inquest report. He has also stated that he had recorded the statement of the injured persons, namely Bimal Kumar, Kailash Yadav and Shashi Bhushan Yadav at Mohanpur village. He has also stated that since it was night time, he had inspected the place of occurrence in the light of petromax, however he did not seize the petromax.



He has also stated that petromax was burning from before but second petromax was also brought there, however the first petromax had not been damaged.

41. In paragraph No. 15, P.W. 8 has stated that he had not found any sign of people having sat on the *Chabutra* and there was no *chatai* (mat) /*dari* (carpet). He had found blood on the *Chabutra* but there was no mark of violence. There was blood on the eastern-southern corner of the *Chabutra* and on the floor and he had seized blood as also blood soaked with mud, however the same was not sent to the forensic laboratory for examination. He had also not sent the seized *khokha* (empty cartridge) to forensic laboratory for examination, however P.W.-8 has stated that the blood-soaked mud and *khokha* (empty cartridge) are kept in the *malkhana*. P.W. 8 has stated that he had not recorded the statement of Bishwanath Yadav and Manoj Yadav whose houses are situated on the boundary of the place of occurrence. He has stated that he had also not recorded the statement of Sudhir Yadav whose house is situated on the boundary of the second place of occurrence and he had also not seized blood from the second place of occurrence. In paragraph No. 16 of his cross-examination, P.W.8 has stated that when he reached at the place of occurrence, he found that one dead body



was lying and three persons had been injured, where some people said that the accused persons have fled away. P.W.8 has next stated that as per paragraph No. 5 of the case diary, inquest report of Suresh Yadav was prepared but his kurta and white *ganji* (vest) were not having any type of hole. In paragraph No. 6 of the case diary, inquest report of Shrawan Yadav has been mentioned. In the case diary, P.W.8 has mentioned about gun shot injury on the left side of the right temporal region of Shrawan Yadav and he has also mentioned that he was wearing white *sando ganji* (vest), red *langot* (nappy) and green *lungi*, however, he has not mentioned about any hole in the clothes or the same being laced with blood. In paragraph No. 18 of his cross-examination, P.W.8 has stated that in Paragraph No. 14 of the case diary, he has mentioned that he had seized *khokhas* (empty cartridges) and blood-soaked mud from the first place of occurrence, which he had written in the case diary at about 10:05 in the night, however he had not mentioned about the source of light used for preparing the seizure list. In para No. 15 of the case diary, P.W.8 has recorded the statement of P.W.3 Subhash Yadav. In paragraph no. 16 of the case diary, P.W.8 has recorded about sending both the dead bodies for postmortem examination.



42. In paragraph No. 19 of his cross examination, P.W.8 has stated that on 05.07.2006 at 5:30 am in the morning, he had returned back to the police station along with the fardbeyan, seizure list and seizure exhibits and on the basis of the same the present case was registered and he had undertaken investigation of the said case prior to registering of same, right from the place of occurrence itself. P.W.8 has also stated that prior to registering the case, he had already recorded the fardbeyan of the informant, his restatement, the statement of the witnesses apart from preparing the seizure list, injury report etc. In paragraph No. 22 of his cross-examination, P.W.8 has stated that in paragraph No. 38 of the case diary, he had recorded the statement of Bhikhari Yadav (P.W.9). P.W. 8 has also stated that he had not found any criminal antecedent of Ganesh and Lalit Chauhan. P.W.8 had neither found any arms with Yagu Yadav, Krishna Yadav etc. nor they were possessing any license. P.W.8 has also stated that till the time he had completed the investigation, the injury reports of the injured persons had not been received and without the same he had filed the charge-sheet. P.W.8 has further stated that in paragraph No. 37 of the case diary, he had recorded the statement of Jai Kumar Yadav, wherein he had not given any statement to the effect that from



western side sound of gunshot firing was heard, however Jai Kumar had said that his brother had fallen down. In paragraph No. 36 of the case diary, P.W8 had recorded the statement of Yogendra Yadav (P.W.4), who has said that while he was sitting at his *bathan*, 15-16 people came from the western side, while 15-16 police personnel came from Beldar Tola and on account of indiscriminate firing, Kailash Yadav (P.W.-2) and Bimal Yadav (P.W.-10) were hit by bullets. P.W. 8 has also stated that during the course of investigation he had not recorded the statement of any independent witness except those belonging to Yadav's caste.

43. P.W. 11 Dr. Anil Kumar Jang Bahadur has stated in his evidence that on 05.07.2006, he was posted as medical Officer, Sadar Hospital, Biharsharif and on that day, he had conducted postmortem of the dead body of Shrawan Yadav and he had found the following ante mortem injuries:-

*“(1). Lacerated wound on right temporal region measuring 7"x7" x cavity deep with blackening with laceration of brain tissue, where wound of entry and exit hemorrhaged.*

*(2). Lacerated wound on left side abdomen at the level of midline with charred and inverted margin with plug clock in injury.*



*On dissection- Scalp fracture, brain tissue lacerated, chest intact, lung intact, pale, heart- all chamber empty.*

*Abdomen filled with plug.*

*Laceration of structure on left side of abdomen with lodging of bullet on vertebra which was taken out and police requested to take it from the office.*

*Bladder empty.*

P.W. 11 has further stated in his examination-in-chief that in his opinion, death occurred due to hemorrhage and shock caused by above noted injuries caused by firearm such as rifle or gun. He has stated that the time lapsed since death is within 24 hours and in normal course injury caused by firearm will cause a person's death. He has further stated that the aforesaid postmortem report is in his writing and bears his signature, which has been marked as Exhibit-12. Further, he has stated that rigur mortis is present on upper and lower limbs.

44. P.W.11 has further stated that on 05.07.2006 itself, he had conducted the postmortem examination of the dead body of Suresh Yadav and had found the following ante-mortem injuries on his person:-

*“(I). Lacerated wound on angle of scapula of right side chest measuring half inch x ½" x cavity deep with blood clots with charred and inverted margin.*



*(2). Lacerated wound on right side abdomen measuring 3" x 2" x cavity deep with blood clot and inverted margin; Both above wounds communicative with each.*

*On dissection- Skull Intact, brain tissue intact and pale, chest right side contain filled by blood, lower part of right lung lacerated, heart - all chambers empty;*

*Abdomen stomach contain nothing, liver, Spleen, Kidney intact, bladder empty, Abdominal filled with blood."*

P.W.11 has stated in his examination-in-chief that in his opinion, death occurred due to hemorrhage and shock caused by above noted injuries caused by firearms. He has stated that the time elapsed since death is within 24 hours and rigor mortis is present on the upper and lower limbs. He has also stated that fire arms is sufficient to cause death. P.W. 11 has further stated that the aforesaid postmortem report has been prepared in his writing and bears his signature and the same has been marked as Exhibit-12/A. P.W. 11 has stated in his cross-examination that rigor mortis decides as to how long back the death of deceased has taken place and after 2-3 hours of death, rigor mortis starts increasing and rigor mortis develops in 24 hours, however the same develops in the body of different persons at different time. P.W.11 has further stated that rigor mortis starts increasing from eyes and tongue and after 36 hours it starts vanishing. He has also stated that after 24 hours rigor mortis starts and after 36





hours, it starts vanishing. P.W. 11 has next stated that it is not a fact that rigor mortis starts vanishing after 24 hours. P.W.11 has stated that the findings, upon conducting postmortem examination of both the dead bodies, were different. Upon being asked as to whether the firearm was used from a distance or from close, P.W. 11 has answered- within three feet. He has further stated that he cannot say what type of weapon was used by criminals but the death was caused by firearms. P.W.11 has referred to the postmortem examination of Suresh and has stated that rigor mortis was found on upper and lower limbs of the dead body and rigor mortis started after 24 hours. He has also stated that two injuries were found on his body and firearm was used from a distance of 2"-3", however he cannot say whether the injury was caused by using the firearm from upward position or downward position.

45. After closing the prosecution evidence, the learned Trial Court recorded the statement of the aforesaid appellants on 07.05.2013 under Section 313 of the Cr.P.C. for enabling them to personally explain the circumstances appearing in the evidence against them, however they claimed to be innocent.

46. The learned Trial Court, upon appreciation, analyzing and scrutiny of the evidence adduced at the trial has found the



aforesaid appellants guilty of the offence and has sentenced them to imprisonment and fine as stated above, by the impugned judgment and order.

47. We have perused the impugned judgment of the learned Trial Court, the entire materials on record and have given thoughtful consideration to the rival submissions made by the learned Senior Counsels for the appellants, the learned APP for the State as well as the learned Senior Counsel for the informant. The first and foremost aspect, which is required to be adjudged is as to whether any ocular evidence is available on record to prove the guilt of the aforesaid appellants for the offences with which they have been charged. The prosecution has led the evidence of Jay Kumar (P.W.1), Kailash Yadav (P.W.2), Yogendra Yadav (P.W.4), Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5) and Arbind Yadav (P.W.6), who is also the informant of the present case apart from having examined Dr. Ajay Kumar Sinha (P.W. 7, the Doctor who had examined the 3 injured persons), Dr. Anil Kumar Jang Bahadur (P.W.11), the Doctor, who had conducted postmortem of the dead body of the deceased persons, namely Shrawan Yadav and Suresh Yadav) and Abhinandan Mandal (P.W. 8, the investigating officer of the present case) to prove the guilt of the accused



persons and based on the same, the learned Trial Judge has convicted the appellants whereas on the contrary, the appellants have primarily taken the defense that the informant i.e. P.W.6 is not an eye-witness, the story of indiscriminate firing is belied from the evidence on record, medical evidence rules out possibility of the ocular evidence being true and the prosecution has failed to name specifically the accused, who have shot the injured and the deceased apart from contending that the evidence on record indicates the possibility of Naxalites having attacked the injured and killed the deceased. In this regard, upon examining the evidence of Jay Kumar (P.W.1), we find that he has stated in his deposition that while he was sitting at *Devi Sthan*, he had heard the sound of gunshot firing on the western side, whereafter he along with his brother Shrawan Yadav had started running, however in the meantime, accused Sudarshan Chauhan and Lalit Chauhan had fired gunshots on the temple of his brother resulting in him falling down and dying instantly, whereafter he had gone to the *Chabutra* situated near the house of the informant, namely Arbind Yadav where he saw Suresh Yadav lying dead as also saw that Kailash Yadav (P.W.2), Bimal Kumar (P.W.10) and Bhushan Yadav (P.W.5) have sustained gunshot injuries. He has also stated that gunshots were fired by



the appellants and Sudarshan Chauhan as also Lalit Chauhan.

48. In the aforesaid context, we have also examined the evidence of Kailash Yadav (P.W.2), Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5) and Arbind Yadav (P.W.6), who all have stated in unison that while they were sitting at the *Chabutra* in front of the house of the informant along with Panchyat Sevak, namely Suresh Yadav and Dr. Bimal Kumar, the appellants and other accused persons, armed with country made rifle and gun had arrived there from the western side i.e. from Nonia Tola / Chauhan Toli, whereafter Krishan Yadav (appellant of the third case) had asked the informant and others to enter into a compromise, failing which they would suffer adverse consequences and then Krishna Yadav had hit on the head of Bhushan Yadav (P.W.5) by butt of the gun leading to blood oozing out, whereupon Krishna Yadav and the aforesaid appellants of the first two Appeals as also other accused persons had started firing indiscriminately leading to Kailash Yadav (P.W.2), Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5), Bimal Kumar (P.W.10) and Suresh Yadav having been inflicted with gunshot injuries, resulting in death of Suresh Yadav instantly on the spot. These witnesses have claimed to have identified the accused persons in the light of petromax, which



was burning at the said *Chabutra*. The said witnesses have further stated that the accused persons had thereafter, gone towards the *Devi Sthan* where “*Asadi Puja*” was taking place and then they heard that Shrawan Yadav has been hit by gunshots leading to his instant death. In fact, these witnesses have not only proved the place of occurrence i.e. *Chabutra* situated in front of the house of the informant but also the time of occurrence i.e. in between 7:00-8:00 pm, apart from recognizing the appellants to be the perpetrator of the crime as also they have identified the appellants and other accused persons in the light of petromax and on account of it being a moonlit night. Thus, we find that Kailash Yadav (P.W.2), Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5) and Arbind Kumar (P.W.6) as also for that matter Bimal Yadav (P.W. 10) are eye-witnesses to the occurrence in question and all of them have fully supported the mode and manner of occurrence as narrated by the informant in his fardbeyan.

49. Now coming to the evidence of Yogendra Yadav (P.W.4), he has stated in his evidence that while he was sitting at the *Bathan* in front of his house, he saw that from the western side i.e. from Beldari Toli / Chauhan Toli, 15-16 persons including the appellants of the aforesaid three Appeals had arrived whom



he had recognized in the light of petromax, which was burning at the *Chabutra* of the informant (P.W.6) and all the accused persons were armed with rifles/guns, whereafter he heard Krishan Yadav (appellant of the third case) saying loudly that if the case is not compromised, consequences will be bad, whereupon all the accused persons started firing indiscriminately resulting in Kailash Yadav (P.W.2), Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5), Bimal Yadav (P.W.10) and Suresh Yadav sustaining gunshot injuries leading to instant death of Suresh Yadav. P.W.4 has also stated that Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5) was assaulted by butt of gun on his head leading to his head being smashed. After having resorted to indiscriminate firing at the *chabutra* situated in front of the house of the informant, all the accused persons had gone towards *Devi Sthan* where Shrawan Yadav was shot at and he died instantly on the spot. P.W. 4 has next stated that after the accused persons had gone away, he had gone to the *Chabutra* where he found Kailash Yadav (P.W.2), Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5) and Bimal Kumar (P.W.10) lying in an injured condition while Suresh Yadav was lying dead. He had also seen injuries on the left arm and left leg of Kailash Yadav (P.W.2) apart from having seen



injuries inflicted on others. Thus, we find that Yogendra Yadav (P.W.4) is also an eye-witness to the alleged occurrence and has supported the mode and manner of occurrence.

50. We have also perused the evidence of Dr. Ajay Kumar Sinha (P.W.7), who was posted as Medical Officer at Primary Health Centre, Sarmera on 04.07.2006 and on the said date he had examined the injured persons, namely Bimal Kumar (P.W.10), Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5) and Kailash Yadav (P.W.2), whereafter he had prepared the injury reports of all the three injured persons in his handwriting as also had signed the same, which he has identified and the same has been marked as Exhibits X, X/1 and X/2, on account of the injury reports being photocopies of their original. At this juncture, it would be relevant to mention that the prosecution had given an application before the learned Trial Court on 24.04.2012 for requisitioning the injury report of all the three injured persons, whereafter the learned Trial Court vide order dated 15.05.2012 had requisitioned the same and then the carbon copies of the three injury reports of Bimal Yadav, Kailash Yadav and Shashi Bhushan @ Bhushan Yadav were received and the said fact has been recorded in the order dated 25.05.2012, passed by the learned Trial Court. Thereafter, Dr.



Ajay Kumar Sinha, who had prepared the said three injury reports was examined and cross-examined as P.W.7 on 2.6.2012. P.W.7 has stated in his deposition that upon perusal of the injury report of the injured Bimal Yadav (P.W.10), it appears that he was inflicted with charred injury from a very close range and as far as injuries sustained by Kailash Yadav (P.W.2), Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5) and Bimal Yadav (P.W.10) are concerned, they have all sustained injuries inflicted by bullet of gun. Thus, we find that the gunshot injuries sustained by Kailash Yadav (P.W.2), Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5) and Bimal Yadav (P.W.10) stands proved beyond all reasonable doubt and moreover, credibility of the testimony of Dr. Ajay Kumar Sinha (P.W.7) has neither been challenged nor shaken.

51. At this juncture itself, it would be relevant to consider the evidence of Dr. Anil Kumar Jang Bahadur (P.W.11), who has stated in his deposition that on 05.07.2006, he was posted as Medical Officer, Sadar Hospital, Biharsharif and on that day, he had conducted the postmortem of the dead body of Shrawan Yadav and Suresh Yadav, whereafter he had prepared the postmortem report in his writing, which also bears his signature. A bare perusal of the postmortem report of the deceased Suresh





Yadav shows that he had sustained firearm injury on his chest and right-side abdomen, though both the wounds have been shown to be communicative with each other, resulting in his death on account of hemorrhage and shock caused by the said firearm injuries. Thus, we find that the death of Suresh Yadav has been caused due to firearm injury, attributable to the accused persons, which remains undisputed as also stands proved beyond all reasonable doubt.

52. Now coming to the evidence of Abhinandan Mandal (P.W.8) i.e. the Investigating Officer of the present case, who was posted as Officer-in-Charge, Sarmera Police Station on 04.07.2006, we find that he has proved the fardbeyan, formal FIR, inquest report of the deceased Suresh Yadav and Shrawan Yadav respectively as also the seizure list prepared by him at the place of occurrence. We further find that P.W.8 had recorded the statement (fardbeyan) of the informant, whereafter he had recorded the restatement of the informant, the statement of injured persons, namely Bimal Yadav (P.W.10), Kailash Yadav (P.W. 2), Shashi Bhushan Kumar @ Bhushan Yadav (P.W. 5) and other witnesses. P.W.8, in his deposition has stated about the first place of occurrence being the *Chabutra* situated over the land in front of the north facing house of the informant at village



Mohanpur while the second place of occurrence being situated at a distance of 100 yard from the first case of occurrence, i.e. at the eastern-northern side of the temple. P.W.8 had also found lot of blood having fallen on and below the *Chabutra* as also he had found *khokhas* (empty cartridges) on the northern side of the *Chabutra*, whereafter he had prepared seizure list at the place of occurrence in his writing and the same not only bears his signature but also the signature of two independent witnesses, namely Arjun Kumar Yadav and Subhash Yadav (P.W.3). P.W.8 has stated in his evidence that he had sent both the dead bodies for postmortem examination, had drawn the formal FIR, conducted investigation and filed charge-sheet against the FIR named accused persons including the appellants of the aforesaid three cases. P.W.8, in his deposition, has referred to preparation of injury reports of all the three injured persons and issuance of requisition for their examination by the Doctor as also has stated that he had inspected the place of occurrence in the light of petromax, which was burning from before and had not been damaged. P.W.8 has next stated in his evidence that after he had reached at the first place of occurrence, he found that one dead body was lying and 3 persons had been injured while the accused persons had fled away. Thus, the mode and manner of



the aforesaid occurrence stands fully corroborated from the evidence of Abhinandan Mandal (P.W.8) and from the evidence of the other witnesses, as discussed hereinabove in the preceding paragraphs.

53. Now coming to the evidence of Subhash Yadav (P.W.3), Bhikhari Yadav (P.W.9) and Bimal Kumar (P.W.10), we find that though they have been declared hostile but all of them have supported the mode and manner of occurrence. It is a well-settled principle of law that the evidence of a hostile witness cannot be discarded as a whole and relevant parts thereof which are admissible in law as also which are consistent with the case of the prosecution or defense can be relied upon and used by the prosecution or the defense. Reference in this regard be had to a judgment rendered by the Hon'ble Apex Court in the case of *C. Muniappan Vs. State of T.N.*, reported in (2010) 9 SCC 567 as also the one rendered in the case of *Selvamani Vs. State Rep. by the Inspector of Police*, reported in 2024 SCC OnLine SC 837.

54. Yet another aspect of the matter is that Kailash Yadav (P.W.2) and Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5) are injured eye-witnesses and it is a well-settled law that an injured witness is granted special status and they offer an



extremely valuable piece of evidence. In this regard, reference be had to a judgment rendered by the Hon'ble Apex Court in the case of *Abdul Sayeed vs State of Maharashtra*, reported in (2010) 10 SCC 259, wherein it has been held that where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in-guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. It has also been held that convincing evidence is required to discredit an injured witness.

55. It would be apt to refer to a judgment rendered by the Hon'ble Apex Court in the case of *Birbal Nath vs State of Rajasthan*, reported in 2023 SCC Online SC 1396, wherein it has been held that greater evidentiary value is attached to the injured witness unless compelling reasons exist to doubt the same. It would also be apposite to refer to a judgment rendered by the Hon'ble Apex Court in the case of *Balu Sudam Khalde & Anr. vs. State of Maharashtra*, reported in (2023) 13 SCC 365, paragraph No. 26 whereof is reproduced herein below:-

*"26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:*



*26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*

*26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*

*26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*

*26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.*

*26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.*

*26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”*

56. As far as the issue of credibility of a related/interested witness is concerned, we are tempted to quote paragraph no. 26 of an old classic judgment rendered by a Three Judges Bench of the Hon'ble Apex Court, in the case of ***Dalip Singh and Others vs. The State of Punjab***, reported in ***AIR 1953 SC 364***, which is



reproduced herein below:-

*“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”*

57. Now adverting to the contentions raised by the learned Senior counsels for the appellants to the effect that Arbind Yadav (P.W.6) is not an eye-witness inasmuch as after the accused persons had arrived he got scared and had hid himself in the *Dalan*, we find that on the contrary, P.W. 6 (informant) has stated in his deposition that after the accused persons armed with rifle /gun in their hands had come absolutely close to



*Chabutra*, he became scared, whereafter he had moved a bit towards the window adjoining the *Dalan*, meaning thereby that he was in a position to watch the aforesaid occurrence in question and in fact he had also seen the accused persons including the appellants of the aforesaid appeals having engaged in indiscriminate firing leading to death of one person and firearm injuries being sustained by three other persons. Thus, it cannot be said that P.W.6 is not an eye-witness to the aforesaid occurrence in question. Moreover, as discussed hereinabove in the preceding paragraphs, we find that Kailash Yadav (P.W.2), Yogendra Yadav (P.W.4), Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5) and Bimal Yadav (P.W.10) are also eye-witnesses to the aforesaid occurrence in question, regarding which the defense has failed to demonstrate otherwise.

58. The learned Senior Counsel for the appellants has next argued that in view of the evidence of the Investigating Officer (P.W.8) to the effect that Yogendra Yadav (P.W.4) has stated before him that while from west 15-16 people had come, from Beldar Tola 15-16 police personnel came, thus in all probability the attack was carried out by Naxalites, however we find from the records that during the course of trial no such evidence has been led which would show that the attack was carried out by



Naxalites and moreover, the defense has failed to confront Yogendra Yadav (P.W.4) with his statement made before the police so as to elicit any contradiction, hence the said argument advanced by the learned Senior Counsel for the appellants of the second and third case does not merit any consideration. The learned Senior Counsel for the appellants of the second and third case has also submitted that the medical evidence completely rules out the possibility of ocular evidence being true, hence the ocular evidence is fit to be disbelieved, however on the contrary we find from the discussions made hereinabove in the preceding paragraphs that there is no inconsistency between the medical evidence and the ocular evidence, hence this submission advanced by the learned Senior Counsel for the appellants of the second and third case is also fit to be rejected.

59. Yet another argument which has been advanced by the learned Senior Counsel for the appellants of the second and third case is to the effect that the Investigating Officer could not have started investigation before registration of the FIR and moreover, he could not have assumed investigation himself, once he had recorded the fardbeyan and registered the formal FIR, being an interested person. The answer to the said argument put forth by the learned Senior Counsel for the





appellants is quite simple inasmuch as under the Cr.P.C., there is no bar for the Investigating officer to start investigation upon reaching the place of occurrence and assuming investigation himself though he had recorded the fardbeyan and registered formal FIR. In fact, the Hon'ble Apex Court in a judgment rendered in the case of ***Mukesh Singh vs. State (NCT of Delhi)***, reported in ***(2020) 10 SCC 120***, has even gone to the extent of holding that there is no absolute bar on the informant investigating a case and the mere fact that the informant is the investigator does not by itself render the investigation bias or unfair. Now coming back to the present case, we find that the defense has not raised any concern, whatsoever regarding unfair investigation by the Investigating Officer or bias at any stage and moreover, even during the course of trial, nothing has been elicited by the defense while cross-examining the Investigating Officer i.e. P.W.8 to show that the Investigating Officer had conducted investigation in a biased manner. At this juncture, we may also gainfully refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Dhanjay Singh @ Shera & Ors. vs. State of Punjab***, reported in ***(2004) 3 SCC 654***, wherein it has been held that a defective investigation becomes irrelevant if the eye-witness testimony is clear and trustworthy.



60. As regards the contention raised by the learned Senior Counsel for the appellants of the second and third case to the effect that it has not been specifically stated as to which accused person had inflicted which firearm injury on which injured person/ deceased as also with respect to the argument advanced by the learned Senior Counsel for the appellant of the first case to the effect that while the appellant of the first case was armed with country made rifle, the injuries found on the three injured persons have been stated by Dr. Ajay Kumar Sinha (P.W.7) to be gunshot injuries and as far as the deceased Suresh Yadav is concerned, the Doctor has not specified whether he had sustained gunshot injury or rifle injury, hence the guilt of the appellants does not stand proved beyond all reasonable doubt, we find that in the present case since the appellants of the aforesaid appeals and other accused persons had engaged in indiscriminate firing, leading to three persons sustaining firearm injuries and being injured badly, apart from one person having died at the first place of occurrence on account of firearm injury and another person having died at the second place of occurrence due to firearm injury and the mode and manner of occurrence, as narrated by the informant in his fardbeyan, having stood substantiated by the ocular evidence led by the



prosecution as also the presence of the appellants at the place of occurrence having stood proved by the evidence led by the prosecution, it is not necessary to connect the injuries sustained by various injured persons/deceased with the accused/appellant who had inflicted the same.

61. We also find that with the aid of Section 34 of the I.P.C., all the appellants stand jointly liable for the offence committed under Section 302 of the I.P.C. inasmuch as all the accused persons including the appellants of the aforesaid appeals had arrived together at the place of occurrence, armed with country made rifle / gun and it is apparent from the evidence on record that they shared a common intention to commit a criminal act, as aforesaid and had in fact in furtherance of their pre-mediated concert and common intention engaged in indiscriminate firing resulting in three persons sustaining firearm injuries and two persons having died on account of firearm injuries, hence all the aforesaid appellants stand jointly liable for the offence committed under Section 302 of the I.P.C. It is a trite law that Section 34 does not create a distinct offence but is a principle of constructive liability and in order to incur a joint liability for an offence, there must be a pre-mediated concert between the accused persons for doing the act actually



done and moreover, the prosecution is not required to prove that an act was done by a particular person. Reference in this connection be had to the judgments rendered by the Hon'ble Apex Court in the case of *Gulab vs. State of Uttar Pradesh* (supra) as also the one rendered in the case of *Vasant @ Girish Akbarasab Sanavale & Anr. vs. The State of Karnataka* (supra).

62. We, upon perusal of the evidence on record find that the ocular evidence of Jay Kumar (P.W.1), Kailash Yadav (P.W.2), Yogendra Yadav (P.W.4), Shashi Bhushan Kumar @ Bhushan Yadav (P.W.5) and Arbind Yadav (P.W.6) are cogent, convincing, creditworthy and reliable as also have stood the test of cross-examination apart from being totally reconcilable and consistent with the medical evidence, hence there is no reason to create any doubt about the guilt of the appellants of the aforesaid appeals in the alleged occurrence, which stands proved beyond all reasonable doubt.

63. Thus, taking into account an overall perspective of the entire case, emerging out of the totality of the facts and circumstances, as indicated hereinabove and considering the evidence, which has been brought on record to prove the allegations levelled against the appellants beyond pale of any



reasonable doubt as well as considering the credibility and trustworthiness of the evidence of the prosecution, which has not been discredited during the course of cross-examination coupled with the injury reports as also the postmortem report and for the reasons mentioned hereinabove, we find that there is no reason to create any doubt in our minds. Therefore, there is no reason to create any doubt about the guilt of the appellants of the aforesaid three appeals in the alleged occurrence which stands proved beyond all reasonable doubt. Hence, having examined the materials available on record, we do not find any apparent error in the impugned judgment of conviction and order of sentence, thus the same does not require any interference.

64. Accordingly, the aforesaid appeals i.e. Criminal Appeal (DB) No. 940 of 2017, Criminal Appeal (DB) No. 1058 of 2017 and Criminal Appeal (DB) No. 1065 of 2017 stand dismissed.

65. In view of the fact that the aforesaid appeals have stood dismissed, the bail bonds of the sole appellant of the first case i.e Criminal Appeal (DB) No. 940 of 2017 and the appellants of the second case i.e Criminal Appeal (DB) No. 1058 of 2017, who were granted bail during the pendency of the present appeal by an order dated 11.03.2024 are hereby cancelled and they are



directed to surrender before the learned Trial Court within a period of four weeks from today for being sent to jail for serving the remaining sentence. As far as the sole appellant of the third case i.e. Criminal Appeal (DB) No. 1065 of 2017 is concerned, he is already in custody, hence he is directed to serve the remaining sentence.

**(Mohit Kumar Shah, J)**

I agree.  
**(Shailendra Singh, J)**

**(Shailendra Singh, J)**

Ajay/-

AFR/NAFR	AFR
CAV DATE	24.4.2025
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