

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No. 567 of 2013**

Arising Out of PS. Case No.-90 Year-2006 Thana- DELHA District- Gaya

1. Santosh Yadav S/O Late Rajbali Yadav, Resident Of Mohalla- Baraki Delha, Vijay Bigha, Police Station- Delha, District- Gaya.
2. Rohit Yadav @ Rohit Kumar Yadav, S/O Late Raj Bali Yadav, Resident Of Mohalla- Baraki Delha, Vijay Bigha, Police Station- Delha, District- Gaya.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 597 of 2013

Arising Out of PS. Case No.-90 Year-2006 Thana- DELHA District- Gaya

Guddu Yadav, S/O Late Rajbali Yadav, Resident Of Mohalla - Baraki Delha Vijay Bigha, Police Station - Delha, District Gaya.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 567 of 2013)

For the Appellant/s : Mr. Rajendra Narayan, Senior Advocate
: Mr. Ajay Kumar Thakur, Advocate
: Mr. Sunil Kumar Yadav, Advocate
For the Respondent/s : Mr. A.M.P.Mehta, APP
For the Informant : Mr. Sanjay Kumar Tiwary, Advocate

(In CRIMINAL APPEAL (SJ) No. 597 of 2013)

For the Appellant/s : Mr. Rajendra Narayan, Senior Advocate
: Mr. Ajay Kumar Thakur, Advocate
: Mr. Sunil Kumar Yadav, Advocate
For the Respondent/s : Mr. A.M.P.Mehta, APP
For the Informant : Mr. Sanjay Kumar Tiwary, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT**

Date: 09-07-2025

Heard Mr. Rajendra Narayan, learned senior counsel for the appellants assisted by Mr. Ajay Kumar Thakur, and Sunil Kumar Yadav, Advocates, Mr. A.M.P.Mehta, learned counsel for the State as well as Mr. Sanjay Kumar Tiwary,



learned counsel for the Informant.

2. The present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C') challenging the Judgment of conviction dated 31.07.2013 and order of sentenced dated 02.08.2013 passed in Sessions Trial No. 42 of 2007 / Trial No.298 of 1989 in connection with Delha P.S. Case No. 90 of 2006 / G.R. No. 2767 of 2006 passed by learned Adhoc Additional District & Sessions Judge-IV, Gaya whereby and where under the appellants have been convicted for the offence punishable under Section 307 read with 34 of the Indian Penal Code and Section 27 of the Arms Act (hereinafter referred as "IPC"). In Cr. Appeal (SJ) No.567 of 2013, the appellants, namely, Santosh Yadav and Rohit Yadav have been sentenced to undergo rigorous imprisonment for ten years and fine of Rs. 5,000/- for the offence punishable under Section 307 read with 34 of the IPC and in default of payment of fine, further sentence to undergo six months rigorous imprisonment. In Cr. Appeal (SJ) No.597 of 2013, the appellant, namely, Guddu Yadav has been sentenced to undergo rigorous imprisonment for ten years and fine of Rs. 5,000/- for the offence punishable under Section 307 read with 34 of the IPC and in default of payment of fine,



further sentence to undergo six months rigorous imprisonment. He has further been sentenced to undergo rigorous imprisonment for three years and fine of Rs.5,000/- for the offence punishable under Section 27 of the Arms Act and in default of fine further sentence to undergo six months rigorous imprisonment. However, both the sentences shall run concurrently for the appellant, namely, Guddu Yadav in Cr. Appeal (SJ) No. 597 of 2013.

3. The case of the prosecution in brief is that on 21.11.2006 at about 7 PM. when the informant was coming on a motorcycle after collecting money and reach near the wine shop of appellant Santosh Yadav, he was asked to stop motorcycle where the appellants Rohit Yadav and Guddu Yadav also standing and at the order of appellants Santosh Yadav and Guddu Yadav fired from his country made pistol causing injury to right scapula of Ramchandra Yadav and another fired which hit to one Mukesh Kumar. It is further alleged that appellant Santosh Yadav took out Rs.25,000/- from the pocket of the informant and appellant Rohit Yadav took out golden chain. On the sound of firing as well as hulla of the informant's, brother namely, Ramjee Prasad Yadav his son and sala came and the informant was taken to police station and from there to hospital



where the fardbeyan was given and the FIR was recorded.

4. Further on the basis of the fardbeyan of the informant, Delha P.S. Case NO. 90 of 2006 was lodged against above named accused/appellants for the offence punishable under Sections 341, 307, 326, 379, 504 read with 34 of the IPC and Section 27 of the Arms Act. The Investigation Officer recorded the statement of the injured and after finding the occurrence to be true, while continuing the investigation against other co-accused/appellants, he submitted charge-sheet against accused/appellant, namely, Santosh Yadav vide charge-sheet no. 12 of 2007 dated 16.02.2007 under Sections 341, 307 and 504 read with 34 of the IPC and under Section 27 of the Arms Act. Thereafter cognizance by the learned Trial Court on 22.02.2007 and on compliance of Section 207 of the Cr.P.C., case was committed to the Court of Sessions on 28.02.2007. Thereafter the Investigation filed supplementary charge sheet no. 57 of 2007 vide dated 20.06.2007 against accused/appellant Guddu Yadav and thereafter submitted supplementary charge sheet no.86 of 2007 dated 28.07.2007 against the accused/appellant Rohit Kumar Yadav. After compliance of Section 207 of the Cr.P.C., case against these two accused/appellants was committed to the court of Sessions on 11.07.2007 and



07.02.2008 respectively and all three accused/appellants face trial simultaneously.

5. On behalf of the prosecution, total 13 witnesses were examined to substantiate the charge leveled against the accused/appellants, out of them, PW-1 Banti Kumar (son of the informant), PW-2 Ramji Yadav (brother of the informant), PW-3 Surendra Kumar (cousin of the informant), PW-4 Ramshray Prasad, PW-5 Pawan Kumar, PW-6 Jitendra Kumar, PW-7 Ajay Kumar Verma, PW-8 Kapil Paswan, PW-9 Sachidanand Prasad, PW-10 Ramchandra Yadav (informant), PW-11 Arvind Kumar, PW-12 Lalan Prasad Singh and PW-13 Mukesh Kumar (injured). On behalf of the prosecution, documentary evidences were produced including signature of the informant on the fardbeyan, signature of Munna Prasad Yadav and Banti Prasad were marked as Ext-1, 1/1 and 1/2. Further injury report and fardbeyan of Ramchandra Yadav and Mukesh Yadav which were marked as Ext-2, 2/1 and 3. PW 3, 4, 5, 6, 7, 8, and 9 were declared hostile by the prosecution.

6. PW-1 in his examination-in-chief has stated that the occurrence took place at 7 PM on 21.11.2006. He was near Astha Medical Hall and saw that his father was coming from Chauraha by a motorcycle accompanying a person and



when his father arrived near Delhas bus stand, he saw that appellant Santosh Yadav stopped his father and then other co-appellants arrived who were the brother of appellant Santosh Yadav. The appellant Santosh Yadav told something to their brothers and thereafter they fired gun shot injury on the right leg of the victim. Accused/appellant Rohit Yadav took away gold chain from the neck of his father and appellant Santosh Yadav took away Rs.25,000/- from the pocket of his father. PW-1 further stated that his father was recorded the statement before the police and his father told that he was returning after recovering the remaining amount and he had Rs. 25,000/- which Santosh took away.

6.i. In his cross examination, he stated that his house would be at a distance of 100-200 mtr from Delha Bus stand and wine shop of Santosh is nearby the bus stand itself. He further stated that he has been sent to jail in one matter and the informant of the same was Santosh Yadav. The case in which he was sent to jail was on the same day of the occurrence and for that occurrence, he is adducing evidence here. He stated that Ramchandra Yadav is his father and the fact that land bearing Khata No. 129, Plot No. 111 was purchased from Rambali Yadav through a sale deed is not known to me. He do not know



Rambali Yadav nor he is involved in the business of his father.

6.ii. He was wearing shirt pant at that time and he picked his father up and took him to police station by a motorcycle. Ramji Yadav drove the motorcycle and he went to police station on another motorcycle. His clothes were also stained in blood and his uncle's clothes were also stained with blood. He further stated that he reached the police station on his motorcycle, which is registered in the name of his father and again stated that motorcycle belonged to Ramashray Yadav, R/o-Delha. We reached at the hospital at 7.20 hrs. At first father got treated, and after gaining consciousness his statement was recorded. He gained consciousness after about 4 hours.

6.iii. After he got conscious, he inquired from his father about how much money he had with him, then he answered about the same. This is not the fact that he has not witnessed any occurrence, and adduced false evidence. This is not the fact that there is an ongoing land related dispute with the accused persons and for this reason he have adduced false evidence on behalf of his father.

7. PW-2 in his examination-in-chief stated that the occurrence took place at about 7:00 PM on 21-11-06. He was having tea at the tea stall nearby Delha Bus Stand. At that



instant, he saw his brother Ramachandra Yadav coming from East to West accompanying Ramashray ji on a motorcycle and when they came near the bus stand, near Santosh's liquor shop, Santosh Yadav stopped his brother's motorcycle with his hand. Santosh's brothers Guddu and Rohit also came there. Both of them talked and he heard the sound of a gunshot. He saw that Guddu Yadav had a revolver and he loaded the bullet again and fired which hit a passerby. Guddu Yadav shot Ramchandra Bhai and he got injured and fell down there. He along with Munna Yadav and others went there and picked up his injured brother and brought him to the police station on a motorcycle.

7.i. He further stated that Santosh Yadav took out the money from his brother's pant pocket. He also witnessed that Rohit snatched the gold chain from his brother's neck. His brother told in the hospital that he was bringing Rs. 25,000 /- and the said amount was snatched by accused Santosh. His brother's statement was recorded in Pilgrim Hospital Gaya. The reason for the occurrence is that accused Santosh Yadav used to demand extortion from his brother and when he did not pay, he committed this crime.

7.ii. In his cross-examination, he stated that Munna Yadav is the brother-in-law of his brother Ramchandra,



but he do not know that Munna Yadav is an accused in another case against whom a case is pending under Section 302 of the IPC. He has gone to jail twice and a case has been filed against them for the occurrence which took place that day itself, in that case they went to jail. The second case was of assault, in which the petrol pump staff is the informant. His brother Ramchandra has also gone to jail once. He do not know that another case of embezzlement of money is also pending against him. Ramdeo Yadav was his brother and he was killed in a police encounter.

7.iii. His brother Ramchandra has a cement shop on Tekari Road, in front of his house. To the north of P.O., there is Alka Medical Hall, and to the south is the house of Dharmendra Kumar. There are many shops in the building of Alka medical hall. There are several shops in the house of Dharmendra Kumar. He was taking tea at the tea cart at that time. The bus stand is 200 yards away from the place where he was taking tea. The gunshot was fired along with the sound of the generators. He had half of my tea when he heard the sound and he kept the tea there and 7-8 people were also there. He saw his brother Ramchandra lying there. He saw three accused persons fleeing from the distance of 10 meters. The accused persons were running away in a street. There was a little blood



at the place of occurrence in about one span diameter. Motorcycle was on stand.

7.iv. He got his motorcycle which was parked near the tea shop. His brother's son Banti Yadav picked up Ramchandra and made him sit on his motorcycle and he took him to the Police Station. From the police station, the SI took his brother to hospital in a jeep. He showed the blood stains on his clothes, Banti's clothes, motorcycle to the SI. There is no shop of Ramashrey Prasad near Alka Medical hall. Surendra Kumar is his cousin. Ramchandra Yadav was not unconscious while being taken to hospital. He gave statement to the SI after reaching hospital. He do not know whether he gave statement during the treatment or after it because he had gone to buy medicine.

7.v. His house is in the street facing north/west. Rambali Yadav is his neighbor. He know that Ramchandra bought land from Devendra Paswan on registered sale deed. It is not the case that he was not taking tea at the time of incident and there was no generator running. It is not the case that no incident happened in front of the house of Dharmendra Kumar.

8. PW-10 in his examination-in-chief stated that he is the informant of this case and the occurrence occurred on



21.11.2006 at 7 pm while he was returning home after making demands of his money. When he reached Delha bus stand, Santosh Yadav waived his hands at his and asked him to stop. Thereafter, both of his brothers Guddu Yadav and Rohit Yadav came there and Santosh Yadav told them that he had demanded Rs. 50,000/-(fifty thousand) extortion from him which he had not given, so he asked them to kill him. Guddu Yadav took out revolver from his waist and fired in front on which he turned towards right and the bullet hit him in the right shoulder blade. Thereafter, they loaded the bullet and fired again which hit a person named Mukesh Kumar in his right thigh who was going on road. After that, Rohit Yadav took away the gold chain from his neck and Santosh Yadav took Rs. 25,000/- (twenty five thousand) from his pocket. Ramji Yadav and Munna Yadav took him to the police station from where he was taken to Pilgrim Hospital. Delha police station Sub-Inspector recorded him fardbeyan there. The Sub Inspector read out him fardbeyan to him which he signed after finding it to be correct which was marked exhibit-8. Munna and Banti also signed it which he identify. They were marked as ext-8/1 and 8/2.

8.i. In his cross-examination, he stated that bus stand is just adjacent south to the paved road which goes from



Delha to Tekari. Pucca house of Dharmendra Kumar, s/o Rameshwar Vishwakarma is south of the occurrence and there is brick soling between the same house and the road. To the north of the main road of the occurrence are Alka Medical Hall and a shop named Surendra Vastralaya, to the south of the crime scene is the pucca house of Dharmendra Kumar. He have heard the name of Rambali Yadav and he don't know that Rambali Yadav had purchased a plot of land through registered sale deed from Pokhraj Prasad s/o Heera Sah on 12.10.96 on Delha Hulalganj Tekari road. He had never purchased that land from Devendra Paswan, not even on 21.11.96.

8.ii. He further stated that there is paved road also beside the brick soling. He had fallen on the same paved road. People had taken him to the Delha police station. He had told the Sub Inspector about the incident, he also asked him to be taken to the hospital. He went to the hospital with them. He gave his statement at the Pilgrim Hospital before the SHO of Delha police station. The SHO read out his statement to him, finding which to be correct, he signed. He had got it written in the fardbeyan that hearing the gunshot and hulla (alarm), his brother, brother-in-law(wife's brother), son and several villagers came at the place of occurrence. His brother Late Ramdev



Yadav was killed in an encounter near Gaya jail gate, no case for the same is ongoing. Munna Yadav is his brother-in-law. He is a resident of New colony, Chhotki Delha. There is no ongoing rape case in which he is co-accused with Munna Yadav. Complaint case registration no. 706 of 2006 lodged by Kalpana Kumari was not a rape case against us. He don't know whether his brother-in-law Munna Yadav is an accused in Delha police station case no. 60 of 2000 under Section-396 of the IPC. His brother Ranjit Rai and he himself had gone to jail in the complaint case no. 2059 of 2008 which was lodged by Madanlal. It is not true that many cases have been undergoing against him, his brother and his brother-in-law.

8.iii. He do not remember whether he have got registered khata no. 129 plot an old 111 new 1076 in the name of his father Rameshwar Yadav on 21.11.96 through registered sale deed from some person or fake sale deed. He do not know whether he have to do anything with that land or not. He don't know whether Rambali Yadav, father of the accused Santosh Yadav had purchased the same land on 12.10.1996 through registered sale deed or not. It is not true that there has been enmity between many people and me and my family and someone from the crowd shot me the bullet whom he did not



identify and with intention of taking possession of the above mentioned land he implicated all members of a family. It is not true that Santosh himself had brought me to the hospital in injured condition and had got me treated.

9. PW-11 in his examination-in-chief stated that on 21.11.2022, he was posted at Pilgrim Hospital, Gaya as D.S. On the same day, he examined Ramchandra Yadav and found following injuries:

*I] Lacerated Wound perfused bleeding right scapular region 1/2" * 1/2".
Advised X-ray Right shoulder,
A/P-X-ray done I.G.M. System at pilgrim Hospital, Gaya. X-ray shows radio opaque foreign body simulating bullet surgical remove bullet done on 21.11.2006 and pressure bullet
M/I Cut mart over right hand
Age of injury- 2 hours
Nature of injury- simple but dangerous to life by firearm. Police has forwarded the injured before me.
This injury report along with X-ray plate are available and injury report is in my pen and bears my signature.
It is hereby marked as Ex.9.*

On the same day, he also examined Mukesh Kumar son of Lalan Ram at 8:30 pm resident of Kharkhura PS. Delha, Gaya and found the following injuries on his person.

*Lacerated Wound intric wound. Size- 1/6*1/6 R-4 thigh. Exit wound 1/4*1/4 right*



thigh.

M/I old scar mark at abdomen.

Age on injury-two hours.

Nature of injury- simple caused by fire alarm.

This injury report is also in my pen and bears my signature. It is hereby marked as Ex. 9/1

9.i. In his cross-examination, he stated that he does not know which Dr. has prepared X-ray report. He further stated that he does not found any swelling on the injuries of Ramachandra and injuries sustained may be caused by distant firing. He prepared the inventory and gave to Sub-Inspector. Gun Firing may be from approx 25 to 30 ft.

10. PW-12 in his examination-in-chief stated that on 21.11.2006, he was posted as Assistant Sub-Inspector in Delha PS and at that time, the In-charge of Delha PS was Vipin Kumar Mishra. Fardbeyan of Ramchandra Yadav is in the handwriting of the A.S.I. C. K. Jha which bears the signature of Vipin Kumar Mishra and of Ramchandra Yadav also. There are signatures of Banti Kumar and Munna Prasad Yadav also as witnesses which he identify. The fardbeyan was marked as exhibit- 8/3. He recorded the statement of the injured Mukesh Kumar and he recorded the statements of Ramasray Prasad, Ramji Yadav, Banti Kumar. He arrested the FIR accused Santosh Yadav and did not inspect the place of occurrence that



night. He recorded the statement of Rameshwar Yadav.

10.i. He further stated that the place of occurrence is brick footpath north of the concrete house of Dharmendra Kumar in colony- Badki Delha which is immediately south to the Gaya Tekari main metalled road located near Bus Stand situated in the colony- Badki Delha Vijay Bigha and immediately south to the road. This is the place where it is said that the bullets were fired by the accused persons. To the north of the spot is Gaya Tekari main metalled road and to the immediate north of the road there are shops named Alka Medical and Surendra Vastralaya. To the south of the spot there is concrete house of Dharmendra Kumar, S/o- Rameshwar Vishwakarma. In the east-west, there is main metalled road connecting Gaya Tekari. He recorded the statement of Jitendra Kumar and the statement of Ramchandra Yadav again.

10.ii. He submitted charge-sheet under Sections 341, 307, 504 read with 34 IPC and Section 27 of arms act. The witness Surendra Kumar had stated that he had gone to Alka medical to buy medicine at Delha bus stand in evening 7:00 PM on 21.11.06. Santosh Yadav's liquor shop is there, where a few persons were creating a ruckus after being intoxicated and



there was a dispute. It was a little dark by then, that time a sound of a gunshot was heard and there was a ruckus after hearing the sound of gunshot, people started running here and there and after that when the sound of gunshot stopped, then it was seen that a person was lying injured on the road and he Identified him as Ramchandra Yadav and his right ribcage was hit with bullet and Ramchandra Yadav was saying that Guddu Yadav had shot him. There it was also known that one more boy named Mukesh Kumar was also hit by bullet in his right thigh while he was going home.

10.iii. In his cross-examination, he stated that he took the charge of investigation on 21.11.06 at 10:00 PM in the night Pilgrim hospital is under the jurisdiction of Kotwali police station. It is known from para 2 of the fardbeyan that the fardbeyan of injured Ramchandra Yadav was recorded by Delha Police stations in-charge Vipin Kumar in Pilgrim hospital at 8:10 in the night. Prepared the injury report of injured Ramchandra Yadav in which injury was found on the backside of the rib cage the second injured Mukesh Kumar had injury on the backside of his thigh. Injured Ramchandra Yadav had gone to the police station. When he reached the hospital at 10:10 in the night, he was unconscious at that time, he was conscious



when he went to the police station but he did not record the fardbeyan there. When injured Ramchandra Yadav was brought to the police station, then accused Santosh Yadav was also with him, the DSP had recorded the statement of Santosh Yadav in the police station. The DSP mentioned about land dispute between the injured and the accused.

10.iv. The place of occurrence is adjacent to Alka medical and Surendra Vastralay, the building of Dharmendra Kumar is also there. There is mostly rush at the road due to bus stand. It was dark at the time of incident. He did not record the statement of any person from Alka medical or Surendra Vastralay or house of Dharmendra Kumar. He had recorded the statement of Suresh Kumar, he had stated that the bullet was fired from a distance and could not recognize anyone due to darkness. Rambali Yadav had bought land through registered Kevala in Delha road from Pokhram Prasad on 12.10.1996 whose khata number is 129 plot number is 111 and the same land was bought by father of Ramchandra Yadav, Rameshwar Yadav on 21.11.1996 from a second person and the dispute was because of that land. He further stated that he did not find anything on the place of occurrence.

11. PW-13 in his examination-in-chief stated that



occurrence is of 21.11.2006 at about 7:00 PM. He further submits that he was returning from library, when he reached near Delha Bus stand, he heard gun shot firing and saw people running away and while running he received gun shot in right thigh. He further stated that his treatment has been conducted in Pilgrim Hospital and he does not know who fired gunshot. In his cross-examination he stated that accused is standing in the Court and he was not present at the place of occurrence.

12. Learned counsel for the appellants submits that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence from the perusal of the evidences adduced on behalf of the prosecution it is crystal clear that the occurrence took place on 21.11.2006 at 7:00 PM while the same was registered at 10:00 PM while the distance from the P.O to P.S was only 4 km, and there is no explanation about the delay of 3 hours. He next submits that PW-1, 2 and 10 have clearly stated that after the occurrence that informant went at the police station and thereafter at the hospital. The statement which he gave at the police station has not been brought on record nor the police officer who prepared



the injury report or recorded the subsequent Fardbeyan of the informant was examined the prosecution in the present case.

13. Learned counsel appearing on behalf of the appellant in Cr. Appeal No. 597 of 2013 submitted that PW-1 has allegedly stated that when his father came near Delha Bus Stand Santosh Yadav gave signal to stop and his father stopped. Chunna Yadav and Rohit also arrived and thus as per PW-1 the place of occurrence is Delha Bus Stand. In para-9, PW-1 has stated that occurrence took place at Gaya-Tekari Road in front of Alka Medical and Wine shop. PW-1 who is son of the informant claims to be a chance witness and in para-11 he stated that he has gone to take medicine of headache at Alka Medical. In para-12 he has stated that his father has got down at Bus Stand at the instance of Santosh Yadav

13.i. He further submitted that PW-2 who is brother of the informant also claims to be a chance witness and he allegedly stated that place of occurrence is near the wine shop of Santosh. In para-8 he stated that near the place of occurrence the house of Dharmendra Kumar is situated on the north side there is Alka Medical. He next submits that PW-12 is the Investigating Officer who stated that place of occurrence is situated in mohalla Barki Delha near Bus Stand situated at Vijay



Bigha on the southern side of main Tekari Road, North side of the house of Dharmendra Kumar of mohalla Barka Delha and the place of occurrence was brick soiling road where the injured has received injury on its north side and after the place of occurrence the Kharanja goes to the main metal road and on the northern side of the main road there is Alka Medical shop and Surendra Vastralay, southern side the house of Dharmendra Kumar and east to west is Gaya Tekari Main road.

13.ii. He further contended that from the aforesaid facts it is clear that there is variation in the exact place of occurrence. Learned counsel relied upon the judgments passed by Hon'ble Supreme Court in *Munna @ Satish Vs. State of U.P., (2023) 1 SCC 714 (Para-20 and 21)*:

“20. Re: place of occurrence: There is a great amount of uncertainty about the place of occurrence of the crime. As per the FIR, as well as the evidence of PW-1 and PW-6, the incident took place in the passage in front of the verandah where the Deceased and PW-6 were sitting in two chairs facing each other. It is at this place that the accused are alleged to have fired at the Deceased causing as many as seven gunshot injuries on his body. Inspector Chob Singh (PW-7) who was cross-examined about the place of occurrence has stated that he has not found blood spots on the chair or the floor around the chair. This contrasts with the testimony of PW-1, who,



in his cross-examination, stated that when the Deceased was lying on the bullock cart in a cot, blood was oozing out from him, which is relatable to the injuries sustained at the place of occurrence.

21. It is unnatural that not even single drop of blood could be traced or recovered from the chair or the floor where the Deceased and PW-6 were sitting, casting a serious doubt about the veracity of the prosecution's story regarding the place of the incident. It is common knowledge that a place where a severe bodily injury occurs, it naturally leaves a trail of the incident⁹. It is also common for the prosecution to collect proof of blood-stained earth, clothes, or other materials, from where the incident would have occurred."

13.iii. He further submits that there is case and counter case and all witnesses have admitted that they are accused. There is only one independent injured witness in the present case namely Mukesh Kumar (PW-13). PW-13 namely Mukesh Kumar is an independent injured witness and in para-2, he stated that the accused was present are of *mohalla*, he knows them and they were not seen at the place of occurrence.

13.iv. In the present case PW-1 is the son of the informant, PW-2 is brother of the informant and PW-10 is the informant himself and they all are interested and partisan and they are accused in the case lodged from the accused side also and from their statement it will be evident that they are of



criminal background and PW-1 and 2 claimed to be a chance witness. The only independent and injured witness is PW-13 who has specifically stated that the appellant was not seen at the place of occurrence.

14. Learned counsel appearing on behalf of the appellant in Cr. Appeal No. 567 of 2013 submitted that family member of the informant have criminal background which can rule out enmity with many persons whereas PW-1 and PW-10 stated that they have no criminal antecedent. It has also come on record that the informant Ramchandra Yadav along with others had after the alleged occurrence gone to the police Station but no F.I.R was lodged by him or no one else there so much so that it has also come or recorded that the accused committed. Santosh Yadav has also accompanied him this totally falsifies the prosecution case of implicating Santosh Yadav and his brother Guddu Yadav appellants and Rohit Yadav. Close relative and interested witnesses have been examined and other witnesses declared hostile by the prosecution.

14.i. He further submits that from perusal of deposition of PW-1 it appears that in Para 6 he admitted that he had gone to jail in a case. He had stated in Para-7 that he had no knowledge of out of purchased of land bearing plot no. 111,



Khata no. 129. He states that his father had purchased a land. PW2 in his cross examination in Para-5 and 6 admitted that he had gone to jail earlier two occasion. In para 11 he had stated that he had not seen taking Rupees from his brother. From perusal of evidence of PW-5 reveals that he is not an eye witness to the occurrence only he had heard the fire of arms while he was purchasing vegetables.

14.ii. PW-10 is the informant of the case, who in his cross-examination at para-3 admitted that on 12.01.1996, Rambali Yadav has purchased land from Pokhraj Prasad of Delha Dularganj, Tekari Road. In Para-6 of the Cross-Examination he stated that he has four brothers out of whom, Rajdev Yadav died in encounter at Gaya jail gate all of them are accused in several cases. In para-10 in suggestion he denied that he had received firearm injury from the crowd of the Bus stand and the Santosh Yadav has taken him to the hospital for doctor treatment.

14.iii. PW-12 is the I.O Lalan Prasad Singh, in para 11 of the Cross-Examination states that he had taken charge of investigation on 21.11.2006 at 11:15 hrs. and on the next para 12 speaks that he taken charge at 10:00 PM and in Para-13 of cross examination he speaks that there was land dispute between



the prosecution side and the defense side as mention in Dy. S.P supervision and he also admitted that the time of occurrence is of night hour and there was a crowd in a Bus Stand and at the time of occurrence there was dark at place of occurrence and no statement taken at the place of occurrence and Suresh Kumar told that due to darkness none of the Miscreants identified, it has also mention that Rambali Yadav has purchased bearing Khata no. 129, Plot No. 111 and the same land was purchased by father of Ram Chandra Yadav on 21.11.1996 from the other persons. There was no sign of mark of the incident on the place of occurrence.

14.iv. PW-13 is the probationer S.I namely Mukesh Kumar who had received injury at his thigh, in cross-examination deposed that in the Delha Bus Stand head the firing and the people was running here and there, during which he received injuries. Although he had not seen the person who had fired. He had denied the identification of the accused persons, from perusal of the injury report which make as Exhibit 2, 2/1 there is nature of Injury Simple cause by fire arms. From perusal of aforesaid it reveals that there is a dispute w.r.t a land situated at Gaya, Delha, Dularganj, Tekari Road, Khata no. 129, Plot no. 111. The time of occurrence is at 7 'o' clock and there was a dark



night and a crowd at bus stand and heard the alarm of fire arm which might be from the crowd and only interested and relative witnesses deposed although they are contradicted from each other, no independent witness supported the prosecution case and the prosecution party including injured are a veteran criminal, might be received injury from the crowd side of the Bus Stand which corroborated by the I.O of the case, there is no sign of blood or cloth or any incriminating produced before the trial court, which itself shows that the prosecution, miserably failed to prove its case beyond shadow of all reasonable doubt.

15. Learned counsels further submitted that as this appeal is of the year 2013 and occurrence is of the year 2006, where, the appellants have suffered and undergone persistent agony on the account of the same and are struggling for the defence since last 18-19 years. So, the appellants should have been acquitted from the conviction as sentenced against them.

16. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellants beyond shadow of all reasonable



doubts. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

17. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court. I have thoroughly perused the materials on record as well as given thoughtful consideration to the submissions advanced by both the parties.

18. On deeply studied and scrutinized all evidences, it is evident to note that in the present case there is specific allegation against all the appellants which has also been corroborated by independent witnesses (PW-11) doctor and (PW-12) IO as injury caused by accused namely Guddu Yadav to the victim has also been proved by injury report. PW-11 stated that nature of injury is simple but dangerous to life by firearm. Moreover, the presence of other witnesses at the place of alleged occurrence cannot be disbelieved as there is no evidence on record which can contradict the fact that they were not present at the place of occurrence. As far as the allegation against Santosh Yadav and Rohit Yadav is concerned both the appellants were already present at the place of alleged occurrence and Guddu Yadav in premeditation with other



appellants fired upon the victim. The charge framed against all the accused/appellants are under Section 307 read with 34 of the IPC and to attract the principle of Common Intention which has been provided under Section 34 of the IPC, three essential ingredients must be full filled which are as follow:-

- i. Presence of the accused*
- ii. Participation of the accused and*
- iii. Prior meeting of mind or premeditation of mind.*

19. It is a settled principle of law that for convicting the accused with the aid of Section 34 of the IPC the prosecution must establish prior meetings of minds. It must be established that all the accused had pre-planned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused. It is evident that there was prior meeting of mind among all the appellants to commit the alleged offence. It is also crystal clear from the fact of the present case that the offence has been committed in furtherance of common intention of all. Hence, the appellant Santosh Yadav and Rohit Yadav have joint liability for the alleged offence and the principle of common intention will attributable towards both of them.



20. Moreover, it is also crystal clear from the deposition of all witnesses that they all are natural witnesses and not the chance witnesses as they were present near the place of occurrence nearby medical shops, bus stand, tea stall, and wine shop and the house of Dharmendra Kumar also situated near the place of occurrence. PW-1 in para-11 of his deposition stated that he was in the Alka Medical store. PW-2 in para-1 and 9 stated that he was having tea at the tea stall near the place of occurrence and in para-8, he stated that to the south direction of the place of occurrence there is a house of Dharmendra Kumar, so the presence of all the prosecution witnesses at the place of occurrence can not be attributed as chance witnesses and they all can be considered as natural witnesses. It is evident from record that there was enmity between informant and accused persons and also long going land dispute. Any person knowing opposite party for so long would identify him even in the darkness either by voice or body structure/physical appearance. PW-13 in his deposition stated that he knows the accused persons prior to the alleged occurrence, so his denial that accused persons were not present at the place of occurrence is not reliable.

21. The Hon'ble Apex Court in the case of



Ezajhussain Sabdarhussain and another v. State of Gujarat

(2019) 14 SCC 339, para-15 observed that:

“15. The essence of the joint liability during the criminal act in furtherance of such common intention has been discussed by a two Judge Bench of this Court in Ramashish Yadav and Others (supra) wherein it was held as under: “Section 34 lays down a principle of joint liability in the doing of a criminal act. The essence of that liability is to be found in the existence of common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. The distinct feature of Section 34 is the element of participation in action. The common intention implies acting in concert, existence of a prearranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts. It requires a prearranged plan and it presupposes prior concert. Therefore, there must be prior meeting of minds. The prior concert or meeting of minds may be determined from the conduct of the offenders unfolding itself during the course of action and the declaration made by them just before mounting the attack. It can also be developed at the spur of the moment but there must be prearrangement or premeditated concert.””

22. The judgement referred by the learned counsel for the appellant is completely different from the fact and circumstances of the present case, as in the referred judgement there is dispute upon the place of occurrence but in



the present case there is no dispute regarding the same. In the present case as all the witnesses described the place of occurrence in same manner and corroborated by each witnesses. It is evident that all the witnesses are natural witnesses, so, the description regarding place of occurrence provided by these witnesses are reliable. So the judgement referred by the learned counsel for the appellants is not helpful for the appellants.

23. So, considering all the materials available on record and aforesaid judgements, this court is of the view that the Judgement of conviction dated 31.07.2013 passed in Sessions Trial No. 42 of 2007 / Trial No.298 of 1989 in connection with Delha P.S. Case No. 90 of 2006 / G.R. No. 2767 of 2006 passed by learned Adhoc Additional District & Sessions Judge-IV, Gaya, the charges levelled against them is proved beyond shadow of all reasonable doubt, so the conviction against them is upheld and affirmed under Sections 307 read with 34 of the IPC.

24. The Hon'ble Apex Court in the case of *State of U.P. vs Tribhuwan, (2018) 1 SCC 90* has laid down that, time spent in custody by a convicted person, both as an under-trial and as a convicted person, may be considered as jail sentence awarded to him and he may get the advantage of set-off under



Section 428 of Cr.P.C.

25. Further, it is evident that the appellants have got sufficient judicial custody and there are no adverse report against the appellants about their conduct otherwise the same would have been brought to our notice by learned counsel for the State. As this appeal is of the year 2013 and occurrence is of the year 2006, where, the appellants have suffered and undergone persistent agony on the account of the same and are struggling for the defence since last 11-12 years, the sentence of the appellants is reduced to period undergone and the appellants stands discharged of the liabilities of their bail bonds, if any.

26. Accordingly, the Appeal is partly allowed.

27. Office is directed to send back the trial court records and proceedings along with a copy of this judgment to the trial court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

sunnykr/-

AFR/NAFR	NAFR
CAV DATE	20.06.2025
Uploading Date	09.07.2025
Transmission Date	09.07.2025

