

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

**CRIMINAL APPEAL (DB) No.305 of 2021**

Arising Out of PS. Case No.-32 Year-2004 Thana- ADHAOURA District- Kaimur (Bhabua)

=====

MIRA YADAV @ RAM RUP YADAV S/O LATE RAMBALI YADAV @  
DHORHA YADAV R/O VILLAGE-BABHANI KALA, P.S-ADHAURA,  
DISTRICT-KAIMUR (BHABUA).

... ... Appellant/s

Versus

THE STATE OF BIHAR

... ... Respondent/s

=====

with

**CRIMINAL APPEAL (DB) No. 359 of 2021**

Arising Out of PS. Case No.-32 Year-2004 Thana- ADHAOURA District- Kaimur (Bhabua)

=====

MEWALAL KHARWAR S/O LATE KHAJUR SINGH R/o village- Banki,  
P.S.- Manchi, District- Sonebhadra

... ... Appellant/s

Versus

THE STATE OF BIHAR

... ... Respondent/s

=====

with

**CRIMINAL APPEAL (DB) No. 459 of 2021**

Arising Out of PS. Case No.-32 Year-2004 Thana- ADHAOURA District- Kaimur (Bhabua)

=====

LALLU SINGH Son of Raban Singh Resident of Village- Babhanikala, P.S.-  
Adhaura, District- Kaimur (Bhabhua)

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

*Acts/Sections/Rules:*

*Sections 147, 148, 149, 302, 120B of the Indian Penal Code*

*Section 27 of Arms Act*

*Section 17 of Criminal Law Amendment Act*

*Cases referred:*

*Chotkau versus State of Uttar Pradesh reported in (2023) 6 SCC 742*

*Javed Shaukat Ali v. State of Gujrat, reported in (2023) 9 SCC 164*

*Application - against the judgement of conviction for the offences punishable under section 302 of IPC and under section 27 of Arms Act.*

*Held - There are serious contradictions in the accounts of petitioner's eye-witnesses. - IO has not been examined. - No cogent and reliable evidence was adduced by the prosecution.*

*(Para 28)*

*Appeal is allowed. (Para 29)*

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... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 305 of 2021)

For the Appellant/s : Mr. Sourendra Pandey, Adv.  
Mr. Rajesh Kumar Mishra, Adv.

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 359 of 2021)

For the Appellant/s : Mr.Prabhakar Singh, Adv.

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 459 of 2021)

For the Appellant/s : Mr. Manoj Kumar, Adv.  
Mr. Pawan Kumar Singh, Adv.



For the Respondent/s : Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
and  
HONOURABLE MR. JUSTICE SHAILENDRA SINGH  
ORAL JUDGMENT  
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)**

**Date : 09-05-2024**

1. Heard the parties.
2. All these three appeals have arisen out of the same judgement hence, they are being decided together by a common judgement.
3. These appeals have been preferred against the judgement of conviction dated 25.03.2021 and order of sentence dated 26.03.2021 passed by learned Fast Track Court-I, Bhabua in Sessions Trial Case No. 205/ 2008, arising out of Adhaura P.S. Case No. 32/ 2004, whereby the appellant, Mewalal Kharwar has been convicted for the offences punishable under section 302 of the Indian Penal Code (in short IPC) and under section 27 of Arms Act and sentenced to undergo life imprisonment with a fine of Rs. Two lacs for the offence punishable under section 302 of the IPC and in default of payment of fine, to further undergo simple imprisonment of one year and for the offence under section 27 of Arms Act he has been sentenced to undergo rigorous imprisonment of five years with a fine of Rs. 20,000/- and in default of payment



of fine, to further undergo simple imprisonment of six months. The other appellants have been convicted under section 302 with the aid of section 120B of the IPC and sentenced to undergo life imprisonment with a fine of Rs. Two lacs and in default of payment of fine, they have been directed to undergo simple imprisonment of one year.

4. The appellants stood charged for the offences punishable under sections 147, 148, 149, 302 read with section 120B of the IPC and under section 27 of Arms Act and also under section 17 of Criminal Law Amendment Act (in short CLA Act).

**Prosecution story**

5. The substance of prosecution's story is as follows:-

As per informant, father of the deceased, on 19.11.2004 his son named AvrajYadav @ Anraj Yadav was going from his house to attend the Chhath festival in the southern side of his house and he (informant) also started going behind him to attend the Chhath festival, then in the lane in front of the house of Prakhand Pramukh, Ramjag Kharwar, his co-villagers, Mira Yadav @ Ram Rup Yadav, Indradev Yadav, Lalmuni Baitha, Lallu Singh, Laxmi Singh and Kedar Yadav were warming themselves sitting around the bonfire and 8-10 persons, who were in police uniform



and having rifles and guns, were also standing there. The informant further alleged that as soon as his son proceeded in southern side and he was at the distance of a few Gaj from his co-villagers and others then the persons, who were warming themselves around the bonfire, revealed the identity of his son and also asked to kill him and then the armed persons caught hold of his son and took him towards near a Banyan tree where Chhath festival was being celebrated and thereafter one person rang a whistle then 20-25 persons armed with rifles and guns wearing black dress and police uniform came there and they threatened the villagers to kill them if anyone of them opposed and they revealed themselves as members of the Peoples War Group. The informant further alleged that among the extremists, one Mewalal Kharwar (appellant), was the leader and on his indication the other extremists tied the hands of his son from behind and they took him towards a hill situated in southern side and then the villagers also started following them. The informant further stated in his F.I.R. that near Patai hill the accused/ appellant, Mewalal Kharwar fired several bullets on the chest of his son by using rifle which caused the death of his son on the spot, thereafter all the extremists went away towards southern side and amongst them Musa Mian, Binod



Singh, Bihari Uraon, Ghamadi Uraon, Ibrar Mian, Sunder Singh and Raj Kumar Singh were identified by him.

6. The informant recorded his *Fard Bayan* giving the details of the above mentioned occurrence and on that basis, the F.I.R. was registered against 14 accused persons and some other unknown and trial of five accused persons was separated and the present appellants faced trial jointly in the Sessions Trial Case No. 205/ 2008 in which the impugned judgement of conviction and order of sentence were passed which are under challenge.

7. On behalf of prosecution, altogether nine witnesses were examined which are as under:-

- (i). PW 1- Rampati Yadav (informant);
- (ii). PW 2- Shambhu Yadav @ Shambhu Singh (An eye witness);
- (iii). PW 3-Dhanraj Yadav ( An eye witness);
- (iv). PW 4-Gulvas Ahmad;
- (v). PW 5-Rambriksha Singh;
- (vi). PW 6-Dr. Rishi Lal Pandey ( proved the writing of Dr. Pradeep Kumar Jha);
- (vii). PW 7-Baidyanath Ojha (second Investigating Officer);



(viii). PW 8- Dr. Pradeep Kumar Jha (relating to post mortem and inquest report of the deceased);

(ix). PW 9- Surendra Yadav (brother-in-law of the deceased, an eye witness).

8. In the documentary evidence the prosecution produced and proved the following documents, which were marked as exhibits in following manner:-

(i) Exhibit 1-Signature of Dr. Pradeep Kumar Jha upon the inquest report of the deceased;

(ii) Exhibit 2- A report given by Circle Officer;

(iii) Exhibit 3- Formal F.I.R.;

(iv) Exhibit 4- Seizure memo of the recovery of a live cartridge of rifle;

(v) Exhibits 5 & 6- F.I.R. and charge sheet of Adhaura P.S. Case No. 21 of 2012.

9. After completion of prosecution's evidence, the statements of the appellants were recorded by the trial court giving them an opportunity to explain the circumstances appearing against them from the prosecution's evidences which were denied by them and they claimed themselves to be innocent but they did not take any specific defence in their statements.





**Arguments**

10. Mr. Prabhakar Singh, learned counsel for the appellant, Mewalal Kharwar submits that the main witnesses upon which the prosecution placed reliance are PW 1, PW 2, PW 3 and PW 9, who are close relatives of the deceased but there are serious contradictions in their testimonies and their evidence is not sufficient to inspire confidence and the learned trial court on the same set of evidence of these witnesses acquitted the co-accused, Ghamadi Uraon, Awadhesh Uraon, Sundar Singh @ Shyam Sundar Singh, Raj Kumar Singh and Mihka Uraon and ironically, on the basis of same set of evidence the present appellants have been convicted and these witnesses described the manner of occurrence in different ways and in actual, there was no eye witness of the alleged occurrence. Learned counsel further submits that PW 1, PW 2, PW 3 and PW 9 made contradictory statements regarding the nature and type of the weapon used by the appellant, Mewalal Kharwar and the informant did not say anything regarding the presence of his sons (PW 2 and PW 3) and PW 9 at the place of occurrence in the F.I.R and amongst these witnesses, some stated that the deceased was caused injuries by the accused persons from front side but some of them stated that the accused fired from the back side at the deceased and regarding the accused



who is/ are said to have fired at the deceased, they also made contradictory statements. Learned counsel further submits that regarding the enmity between the appellants and the deceased the main witnesses of the prosecution made contradictory statements as PW 1 stated that there was no enmity between the appellant, Lallu Singh, accused, Lal Muni Baitha and the deceased but later on he stated that there was some land dispute in between them while PW 2 stated that the deceased had no enmity with the accused. Likewise PW 3 clearly stated that the accused had no dispute and enmity with the deceased except accused Lal Muni Baitha and appellant, Lallu Singh.

11. Mr. Sourendra Pandey, learned counsel for the appellant, Mira Yadav @ Ram Rup Yadav adopts the above mentioned arguments advanced on behalf of appellant, Mewalal Kharwar and additionally, he submits that there is no allegation against this appellant and he is not said to have fired at the deceased and the prosecution witnesses failed to reveal any act of this appellant as to show him having conspired with the appellant, Mewalal Kharwar and others who allegedly fired at the deceased and this appellant was entitled to be acquitted as on the same set of evidence some other accused were acquitted by the learned trial court and furthermore, there is no evidence against him to attract



the alleged offence. Learned counsel further submits that learned trial court convicted this appellant mainly on this ground that he and co-convict, Lallu Singh hatched up a conspiracy to kill the deceased but in this regard, the prosecution failed to produce any type of evidence and even regarding the presence of this appellant and co-convict, Lallu Singh, most of the prosecution witnesses made contradictory statements.

12. Mr. Manoj Kumar, learned counsel appearing for the appellant, Lallu Singh adopts the arguments advanced on behalf of the other appellants.

13. On the contrary, Ms. Shashi Bala Verma, learned Additional Public Prosecutor appearing on behalf of the State has argued that there is sufficient evidence to prove the charges against the appellants and PW 1, PW 2, PW 3 and PW 9, who are said to have witnessed the commission of the alleged occurrence, fully supported the case of the prosecution and they remained consistent regarding the manner of occurrence and the alleged occurrence was committed in furtherance of a conspiracy hatched up by the appellants, Mira Yadav @ Ram Rup Yadav, Lallu Singh and others with extremists. Learned A.P.P. further submits that as the murder was committed by the extremists, so, no independent person despite having seen the first part of the occurrence, came



forward to give evidence against the extremists and prosecution witnesses PW 2 and PW 3 were murdered after they had given their evidence in the present matter and in respect of their murder, the appellant Mira Yadav @ Ram Rup Yadav and others have been charge-sheeted in connection with Adhaura P.S. case No. 21 of 2012 which shows the daresness of the appellant Mira Yadav @ Ram Rup Yadav and others and the same is also sufficient to show the complicity of the said appellants and others in the alleged crime.

**Consideration and appreciation.**

14. Heard both the sides and perused the judgment and order impugned and also gone through the evidences which are on the case record of the trial court as well as the statements of the accused/ appellants.

15. In the instant matter, regarding the manner of occurrence the evidence of PW 1, PW 2, PW 3 and PW 9 are the most important as these witnesses claimed themselves to have seen the commission of the alleged occurrence and prosecution's case completely depends upon the testimonies of these witnesses. PW 2 and PW 3 are sons of PW 1, PW 9 is brother-in-law of the deceased and all these witnesses are relatives of the deceased and



the F.I.R. was lodged by the PW 1, who happens to be father of the deceased. While convicting the appellants the learned trial court reached to this conclusion that appellant Mira Yadav @ Ram Rup Yadav and Lallu Singh conspired to kill the deceased, Avraj Yadav @ Anraj Yadav and in pursuance of that conspiracy the appellant Mewalal Kharwar, who is alleged to be belonging to an extremist group, with several members of the said extremist group caught hold of the deceased when he was going to attend and celebrate Chhath festival in his village and thereafter the victim was taken towards a hill top where he was murdered by the appellant Mewalal Kharwar by using fire arm and he had no license for keeping the alleged fire arm in his possession and accordingly, the trial court convicted the said appellant for the offences punishable under section 302 of the IPC and section 27 of Arms Act and convicted the other appellants for the offence punishable under section 302 with the aid of section 120B of the IPC.

16. Now, we have to see whether the evidences and presence of PW 1, PW 2, PW 3 and PW 9 at the alleged places of occurrences, as claimed by them, are credible and believable or not.

17. As per F.I.R., which was lodged by the PW 1, father of the deceased, some villagers of the informant's village namely,



Mira Yadav @ Ram Rup Yadav, Indradev Yadav, Lalmuni Baitha, Lallu Singh, Laxmi Singh and Kedar Yadav were getting themselves warmed sitting around the bonfire in front of the house of Block Pramukh, Ramjag Kharwar where 8-10 persons wearing police uniform and equipped with fire arms, were also sitting and as soon as the victim reached near them while he was going towards the place of Chhath celebration, the said co-villagers indicated to the armed persons by saying that the victim was present and instigated them to kill him and thereafter the assembled armed persons caught hold of the victim and took him towards the southern side of the village near a Banyan tree where 20-25 persons wearing police uniform and carrying rifles and guns also arrived, from where the victim, who was in tied position, was taken towards the southern hill and then the appellant, Mewalal Kharwar opened fire by using rifle and caused fire arm injuries at the chest of the victim which resulted in his death on the spot. From this prosecution's story, three things are quite clear that the informant did not reveal the specific role of the assembled co-villagers who revealed and hinted about the presence of the victim being near the assembled extremists and the second thing is that the informant alone witnessed the commission of the alleged crime and the third thing is that the appellant Mewalal Kharwar was the



only assailant and regarding these relevant facts, now, we would appreciate the evidences of the material prosecution witnesses.

18. PW 1, the informant, deposed in the examination-in-chief that among the assembled co-villagers, one Ramjag Kharwar was also present who was identified by him. But his name did not find place in the F.I.R. He further stated in the examination-in-chief that the extremist, Bhola Lal caught hold of the victim but no such fact was revealed by the informant in his F.I.R. and moreover, the name of said extremist did not find place among the names of extremists who were identified by the informant, mentioned in the F.I.R. The said witness further deposed in paragraph No.2 of the examination-in-chief that his entire family went with him when the appellants and members of the extremist group were taking the victim away, but the presence of his family members was not revealed by the informant in the F.I.R. In the same paragraph, the informant stated that the first shot was fired by the appellant, Mewalal Kharwar and thereafter accused, Ghamandi Uraon, Shyam Sundar and Lalmuni Baitha fired at the victim. While as per the F.I.R., the appellant, Mewalal Kharwar was the only person who fired at the victim. The informant deposed in paragraph No. 3 of his examination-in-chief that his son (victim) had land dispute with the assembled co-villagers, but later on, in the cross-



examination he stated that there was no enmity between him and appellant, Lallu Singh and accused Lalmuni Baitha. PW 2, PW 3 and PW 9 claimed themselves to be eye witnesses of the occurrence whose evidence would be discussed later but as per the statement of this witness (PW 1) made in paragraph No.7 of his cross-examination, the witnesses, Shambhu Yadav @ Shambhu Singh, Dhanraj Yadav and Surendra Yadav reached at the place of main occurrence after the commission of firing.

19. PW 2, Shambhu Yadav @ Shambhu Singh, son of the informant, revealed the names of the co-villagers assembled near the bonfire as Lalmuni Baitha, Lallu Singh, Mira Yadav @ Ram Rup Yadav, Indradev Yadav, Laxmi Singh and Kedar Yadav and he did not reveal the name of Ramjag Kharwar as being present at the said place while the informant revealed the presence of the said person. This witness further deposed in examination-in-chief that 4-5 persons were also present with the co-villagers near the bonfire, but as per the informant, the number of extremists was 8-10. As per this witness, he also went behind his brother (victim) and he saw that when his brother reached near the house of Ramjag Kharwar, his co-villager Lalmuni Baitha indicated to others about the presence of the victim being at that place. But the informant made a general statement regarding the said indication





by all the assembled co-villagers and he did not reveal the name of specific person in the said act. The witness further deposed in his examination-in-chief that on whistling by the appellant, Mewalal Kharwar 10-20 armed persons also gathered there but such statement was not made by the informant. As per evidence of this witness, the first shot at the victim was fired by appellant Mewalal Kharwar and thereafter the second shot was fired by the co-accused, Lalmuni Baitha and then third shot was fired at the victim by co-accused, Shyam Sundar Singh. This statement is contradictory to the evidence of PW 1 as according to him the appellant Mewalal Kharwar was the only person who fired at the deceased. As per this witness, at the place of main occurrence, he, his father, uncle, cousin brother Ramgahan, deceased's wife, his two daughters and one son were also present but regarding the presence of these family members at the place of occurrence, the informant remained silent in the F.I.R. and moreover, the deceased's daughters and son and uncle of this witness were not produced by the prosecution as witnesses. The witness deposed in the cross-examination that the deceased had no dispute with the accused while as per evidence of PW 1 the deceased's family had a land dispute with appellant, Lallu Singh and accused, Lalmuni Baitha. The witness further deposed in the cross-examination in



paragraph No. 16 that he and PW 3, Dhanraj Yadav arrived at the place of occurrence after commission of firing but later at the same time he stated that all of them were present at the place of incident when the firing was being committed, so, the witness did not remain firm to his stand and his statement is contradictory to the statement of PW 1 regarding his and other's presence as eye witnesses. The witness further deposed in the cross-examination that when the accused started firing at his brother (deceased) he hugged the victim in order to save him and at that time there were 20-30 persons who opened fire at the victim. The said statement is completely contradictory to the statement of PW 1 as well as prosecution's story narrated in the F.I.R.

20. PW 2 deposed in the paragraph No. 21 of his cross-examination that the first statement was recorded by him before the police and he told the names of the culprits to the S.H.O. who recorded his statement and then he and Surendra Yadav (brother-in-law of the deceased) signed over the said statement. In view of this evidence, the statement of this witness recorded by the police officer must have been treated as an F.I.R. but the police acted upon the *Fard Bayan* of PW 1 though the said *Fard Bayan* has signature of this witness and Surendra Yadav but according to this witness, his written statement was only signed by him and



Surendra Yadav. The said circumstance clearly indicates that the first information regarding the occurrence given by this witness was withheld by the prosecution regarding which no explanation was given. The witness further deposed in the cross-examination that the appellant, Mewalal Kharwar was carrying a country made pistol (Katta) and the accused Shaym Sundar and Lalmuni Baitha were carrying rifles. Here, it is important to mention that PW 3, Dhanraj Yadav deposed in the cross-examination that the appellant, Mewalal Kharwar fired at the deceased by using a small revolver. Regarding the weapon which was being carried by the appellant, Mewalal Kharwar, the informant revealed in the F.I.R. that the said appellant fired by using a rifle and the same statement was made by him in his evidence before the trial court. So, regarding the type of weapon which was allegedly used by the appellant, Mewalal Kharwar, there is a serious contradiction among the testimonies of the material witnesses of prosecution. PW 1 deposed in the examination-in-chief that he had no acquaintance with the appellant, Mewalal Kharwar prior to the occurrence, so, the informant (PW 1) must have disclosed the source of identification of the appellant, Mewalal Kharwar in the F.I.R. but in this regard, he remained silent.



21. PW 3, brother of the deceased, deposed in the examination-in-chief that among the co-villagers assembled around the bonfire, Ramjag Kharwar was also present but no such statement was made by the informant. This witness further stated in the examination-in-chief that co-villagers, who had assembled near the bonfire, also went with the extremists towards the Banyan tree with the victim and thereafter the co-villagers called the appellant, Mewalal Kharwar (Commander). In respect of this manner of occurrence, PW 1 and PW 2 stated nothing. Likewise, in respect of the manner of main occurrence of firing this witness also stated contradictory facts to the statements of PW 1 and PW 2 as according to him, the first gun-shot was fired by the appellant, Mewalal Kharwar thereafter second shot was fired by Lalmuni Baitha and after that accused, Shyam Sundar and Ghamandi Uraon fired at the deceased. The informant did not say anything regarding the role of Lalmuni Baitha, Shyam Sundar and Ghamadi Uraon as an assailant in the F.I.R. and regarding the presence of Ghamadi Uraon as an assailant, PW 2 stated nothing. PW 3 stated in the cross-examination that the accused, firstly, surrounded the deceased before resorting to firing and thereafter they fired at the deceased from behind while as per PW 1 the accused fired at the deceased from the front side. Similar statement was made by PW



2. As such, regarding the manner of firing, there is serious contradiction among the statements of material witnesses of the prosecution. The witness further deposed in the cross-examination that he, the victim and his other family members were surrounded by the accused in front of the house of Ramjag Kharwar but such statement was not made by the informant and he claimed to be present at that place when the deceased was passing nearby the assembled co-villagers.

22. PW 9, Surendra Yadav, is also stated to be an eye witness of the occurrence. As per statement made by this witness in his examination-in-chief, the appellant, Lallu Singh, firstly, revealed the presence of the deceased (victim) being near the assembled co-villagers by indicating towards him. While as per PW 2, the said indication was made by accused, Lalmuni Baitha but PW 1 did not reveal the name of specific person relating to indicating or pointing at the presence of the victim near the bonfire, as such, there is serious contradiction among the statements of the prosecution witnesses regarding the manner of first part of the occurrence. The witness deposed that 3-4 shots were fired by the appellant, Mewalal Kharwar at the deceased by using rifle. This witness did not reveal the names of the accused, Lalmuni Baitha, Shyam Sundar and Ghamandi Uraon as assailants



and on this point, his statement is completely contradictory to the statements of other prosecution witnesses.

23. In the light of the above discussed evidences of the material witnesses of the prosecution, we find that regarding the manner of occurrence, number of the assailants and the presence of PW 1, PW 2, PW 3 and PW 9 at the places of occurrences there are serious contradictions which have been discussed above though the contradictions may occur due to several reasons such as long gap of period of time between the commission of occurrence and recording the evidence before the trial court, loss of memory etc. but where the prosecution witnesses claimed themselves to have seen and witnessed the entire occurrence from the beginning to end then the contradictions regarding the manner of occurrence as well as their presence at the P.O. and the weapons used in the crime cannot be ignored. Furthermore, in the present matter the prosecution failed to produce an independent person as a witness to prove the commission of the alleged occurrence as, admittedly, a large crowd of the villagers gathered at the place of occurrence and the above discussed contradictions in between the testimonies of the prosecution witnesses are of such high magnitude that a serious doubt regarding the truthfulness and credibility of these witnesses appears in our mind.



24. In the instant matter, the main Investigating Officer, who recorded the statements of the prosecution witnesses and did other main parts of the investigation, was not produced and examined by the prosecution which seriously prejudiced the defence of the appellants as they could not get an opportunity to cross-examine the main Investigating Officer in respect of the contradictions in the testimonies of the prosecution witnesses. Furthermore, the investigation remained defective as the prosecution did not produce any material to show the seizure of blood stained clothes of the deceased as well as recovery of the fire arms which were allegedly used in the commission of the alleged occurrence and also not lodging of the F.I.R. on the basis of statement of PW 2, who claimed to have recorded his statement firstly when the police visited the place of occurrence.

25. Here it is pertinent to mention that *Fard Bayan* of the informant was recorded on 19.11.2004 but the same was received in the court of learned Chief Judicial Magistrate on 24.11.2004 and regarding the said delay of five days, no explanation was given by the prosecution which also creates a serious doubt in the prosecution's case as the violation of the provision of section 157(1) of the Cr. P. C. was not explained by the prosecution and in this regard, the Hon'ble Apex Court in the



case of *Chotkau versus State of Uttar Pradesh* reported in (2023)

6 SCC 742 observed as follows:-

*“Section 157(1) CrPC requires the officer-in-charge of the police station to send the FIR, “forthwith” in Section 157(1) CrPC is to be understood in the context of the given facts and circumstances of each case and a straitjacket formula cannot be applied in all cases. But where ocular evidence is found to be unreliable and thus unacceptable, a long delay has to be taken note of by the Court”.*

26. In the instant matter, the ocular evidence of the main prosecution witnesses, discussed above, is found to be unreliable so the said long delay in sending the F.I.R. to the jurisdictional Magistrate cannot be ignored and the same appears to be fatal to the prosecution’s case.

27. Further we find that the same trial court acquitted the accused, Ghamandi Uraon, Awadhesh Uraon, Sundar Singh @ Shyam Sundar Singh, Raj Kumar Singh and Mihka Uraon on the same set of evidence while the evidence of PW 1, PW 2, PW 3 and two others which had been taken in the trial court, was adopted by the trial court in respect of the said accused who faced trial separately and considering the evidences of these witnesses the learned trial court acquitted the said accused while convicted the appellants and among these witnesses, three witnesses are material





witnesses but the said approach of the trial court is completely not acceptable and the same is against the settled principle of law and in this regard the Hon'ble Supreme Court in the case of ***Javed Shaukat Ali v. State of Gujrat***, reported in ***(2023) 9 SCC 164*** has categorically held in the paragraph No. 15 of its judgement that.....

*“15. When there is similar or identical evidence of eye witnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination.”*

### **Conclusion**

28. After having discussed the evidences of the prosecution witnesses, we are of the view that the prosecution's case completely depends upon the evidence of PW 1, PW 2, PW 3 and PW 9 who claimed themselves to have seen the entire occurrence from the beginning to end but in view of the serious contradictions appearing from their testimonies, as discussed above, they do not appear to be eye witnesses of the alleged occurrence and the prosecution failed to produce and examine the



main Investigating Officer which seriously prejudiced the defence of the appellants and regarding the conspiracy allegedly hatched up by appellants, Lallu Singh and Mira Yadav @ Ram Rup Yadav to kill the deceased with the help of extremists, no cogent and reliable evidence was adduced by the prosecution and the approach of the trial court in convicting the appellants on the same set of evidence of the main witnesses of the prosecution and in acquitting some of the accused, who were carrying similar nature of allegation like the appellant, Lallu Singh, was not proper. Accordingly, we conclude that though the prosecution established the killing of the victim by the members of an extremist group but failed to establish its case with regard to the alleged involvement of the appellants in the said crime and in view of above discussed facts the appellants are entitled to get the benefit of doubt. So, the judgement and order impugned convicting and sentencing the appellants for the offences, for which they were charged, are set aside and the appellants are acquitted of the offences charged. In the result, these appeals stand allowed.

29. All the appellants are in jail so they are directed to be released at once if their custody is not required in any other case.

30. Let the judgement's copy be sent to the learned trial court and the concerned Superintendent of Jail for needful.



31. Let the L.C.R. be sent back to the trial court.

**(Rajeev Ranjan Prasad, J)**

**( Shailendra Singh, J)**

BKS/-

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