

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.578 of 2013

Arising Out of PS. Case No.-54 Year-2009 Thana- RANIYATALAB District- Patna

Murari Yadav, S/o Late Ramchandra Yadav, R/o Village-Dhana, P.S. Rani Talab, District-Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 121 of 2013

Arising Out of PS. Case No.-54 Year-2009 Thana- RANIYATALAB District- Patna

1. Jawala Yadav S/o Krishna Yadav R/o Village- Dhana, P.S.- Rani Talab, District- Patna
2. Ganesh Yadav S/o Krishna Yadav R/o Village- Dhana, P.S.- Rani Talab, District- Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 274 of 2013

Arising Out of PS. Case No.-54 Year-2009 Thana- RANIYATALAB District- Patna

1. Kamlesh Yadav S/o Sri Nanhu Yadav Resident of Village Shardha Chapra, P.S. Rani Talab (Kanpa), P.O. Saidabad, District Patna.
2. Ram Babu Yadav S/o Sri Munarik Yadav Resident of Village Shardha Chapra, P.S. Rani Talab (Kanpa), P.O. Saidabad, District Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 578 of 2013)

For the Appellant/s : Mr. Dharendra Kumar Sinha, Adv.
For the Respondent/s : Mr. D.K.Sinha, A.P.P.
For the Informant/s : Mr. Shashi Anugrah Nr. Singh, Sr. Adv.



Mr. Sanjay Kumar, Adv.
(In Criminal Appeal (DB) No. 121 of 2013)
For the Appellant/s : Mr. Dharendra Kumar Sinha, Adv.
For the Respondent/s : Mr. Ajay Mishra, A.P.P.
For the Informant/s : Mr. Shashi Anugrah Nr. Singh, Sr. Adv.
Mr. Sanjay Kumar, Adv.
(In Criminal Appeal (DB) No. 274 of 2013)
For the Appellant/s : Mr. Vikramdeo Singh, Adv.
For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.
For the Informant/s : Mr. Shashi Anugrah Nr. Singh, Sr. Adv.
Mr. Sanjay Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
And
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 24-01-2019

As the aforesaid three criminal appeals have cropped up from the same judgment and order of conviction and sentence, hence, they are taken up together for consideration and disposed of by this common judgment.

2. Heard learned counsels for the appellants, learned counsel for the informant and learned APPs for the State on the aforesaid three criminal appeals.

3. The aforesaid three criminal appeals have been preferred against the judgment and order of conviction dated 30.01.2013 and of order of sentence dated 05.02.2013 passed by Additional Sessions Judge-I, Danapur in Sessions Trial No. 993 of 2010 arising out of Rani Talab P.S. Case No. 54 of 2009 whereby the learned trial court convicted the accused namely, Murari Yadav, Ganesh Yadav, Jwala Yadav,



Kamlesh Yadav and Rambabu Yadav for the offence punishable under Section 302/34 of the Indian Penal Code and further convicted accused Murari Yadav under Section 27 of the Arms Act and sentenced all the aforesaid five accused persons to undergo R.I. for life and also slapped them with a fine of Rs. 20,000/- each and in case of default of payment of fine to further undergo R.I. for one year under Section 302/34 of the Indian Penal Code and further sentenced convict Murari Yadav to undergo R.I. for three years and also slapped him with a fine of Rs. 3000/- and in case of default of payment of fine to further undergo R.I. for three months under Section 27 of the Arms Act. All the sentences were directed to run concurrently.

4. The factual matrix of the case is that Rani Talab P.S. Case No. 54 of 2009 was instituted under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act against accused Murari Yadav, Ganesh Yadav, Jwala Yadav, Lakshman Yadav, Rambabu Yadav, Lalbabu Yadav and Kamlesh Yadav on the basis of fardbeyan of Ramakant Yadav S/o Ramlala Yadav recorded by S.I. Sanjay Kumar S.H.O. P.S. Rani Talab on 17.04.2009 at 03:15 PM near village Sharda Chapra with the allegation, in succinct that on 17.04.2009 he



was fishing in the Nahar Chart located towards East-South of village Sarda Chapra along with his younger brother Umakant Yadav, cousin Lalbabu Yadav, nephew Tapan Yadav. In the meantime, at around 2:45 PM, his villagers, namely, Murari Yadav, Ganesh Yadav, Jwala Yadav descended there and grilled about the person fishing. On replying by him about fishing by them, they entered into squabble. In the meantime, their associates, namely, Lakshman Yadav, Rambabu Yadav, Lalbabu Yadav and Kamlesh Yadav also arrived there and they also entered into squabbling with them slating them. Lakshman gave order to gun down the informant and his brother Umakant Yadav. Responding the same, Ganesh Yadav, Jwala Yadav Rambabu Yadav, Lalbabu and Kamlesh Yadav caught hold Umakant Yadav and Murari Yadav whipping out the pistol from his waist resorted firing upon the Umakant Yadav which hit under his left armpit and he instantly died on the spot. Ganesh Yadav also resorted firing upon him by country made pistol which misfire. Then he rushed to the east of the canal making hulla. Responding the same, villagers of his adjoining villages congregated there. Then the accused persons left the scene.

5. The aforesaid case was investigated by the



police and after conclusion of the investigation, the I.O. submitted chargesheet under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act against Murari Yadav, Ganesh Yadav, Jwala Yadav, Kamlesh Yadav and Rambabu Yadav showing accused Lakshman Yadav as absconder and keeping the investigation pending against accused Lalbabu Yadav. I.O. further submitted Final Form showing the accused Lalbabu Yadav as not sent up. Hence, five accused persons faced the trial.

6. On receiving the chargesheet and the case diary and perusing the same, the learned trial court took cognizance of the offence against the aforesaid five accused persons and committed the case to the court of sessions and after commitment and on transfer finally the case came in *seisin* of the Additional Sessions Judge-I, Danapur for trial.

7. Charge against accused Ganesh Yadav, Jwala Yadav, Kamlesh Yadav, Rambabu Yadav and Murari Yadav was framed under Section 302/34 of the Indian Penal Code and further charge against accused Murari Yadav was framed under Section 27 of the Arms Act. Charge was read over and explained to them by the court to which they pleaded not guilty and claimed to be tried.



8. To substantiate its case, in ocular evidence, the prosecution has examined altogether eight prosecution witnesses namely, Tapan Yadav as PW-1, Lalbabu Yadav as PW-2, Rahul Kumar as PW-3, Ramlala Yadav as PW-4, Ritesh Kumar as PW-5, informant Ramakant Yadav as PW-6, Dr. Anil Kumar Bhartiya, who conducted autopsy of the cadaver of the deceased as PW-7, and I.O. Vijay Kishore Upadhyay as PW-8. The prosecution has also filed and proved some documents by way of documentary evidence in the case.

9. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. The accused persons have neither adduced any ocular nor documentary evidence in buttress of their case.

10. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

11. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict Murari Yadav has preferred Cr. Appeal (DB) No. 578



of 2013, convicts Jwala Yadav & Ganesh Yadav Cr. Appeal (DB) No. 121 of 2013 and convicts Kamlesh Yadav and Ram Babu Yadav Cr. Appeal (DB) No. 274 of 2013.

12. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

13. It is submitted by learned counsels for the appellants that PW-1 (Tapan Yadav), PW-3 (Rahul Kumar) and PW-4 (Ramlala Yadav) do not happen to be eye witness of the occurrence as PW-1 has stated in his cross-examination that he was not fishing at the place of occurrence at the time of occurrence rather had arrived there for purchasing the fish and also denied to disclose the name of the persons indulged in the fishing at the place of occurrence and PW-3 and PW-4 have given altogether different statement before the court than given before the I.O. under Section 161 Cr.P.C. regarding witnessing of the occurrence indicating that they do not happen to be eye witnesses of the occurrence. As per the prosecution case, following the order given by Lakshman Yadav to gun down the informant and his brother Umakant Yadav, Ganesh Yadav, Jwala Yadav, Rambabu Yadav, Lalbabu



Yadav and Kamlesh Yadav caught hold Umakant Yadav and then Murari Yadav resorted firing upon him which hit under his left armpit. But, PW-1, PW-2, PW-5 and PW-6 examined by the prosecution have not stated about catching hold Umakant Yadav by the aforesaid accused persons preceding to resorting firing upon him by Murari Yadav which creates serious doubt about the prosecution case. As per the account of PW-2 (Lalbabu Yadav), PW-5 (Ritesh Kumar) and informant PW-6, Tapan Yadav (PW-1), Rahul Kumar (PW-3) and Ramlala Yadav (PW-4) were also fishing along with the informant and his brother at the place of occurrence at the time of occurrence, but PW-1 (Tapan Yadav) has denied to be indulged in the fishing while PW-3 and PW-4 have stated before the I.O. that they had arrived at the place of occurrence after the occurrence. Hence, the aforesaid material contradiction between the testimony of the aforesaid witnesses creates serious doubt about credibility and sanctity of the testimony of the aforesaid three witnesses, namely, PW-2 (Lalbabu Yadav), PW-5 (Ritesh Kumar) and PW-6 (Ramakant Yadav). It is further submitted that as per account of PW-2, the fire was made from five hands i.e. 7 ½ feet while as per the account of PW-6, it was made from three deg i.e. around 5



feet, but doctor PW-7 has found charring ring surrounding the wound of entry which creates serious doubt about the sanctity and credibility of the aforesaid ocular evidence of the said witnesses. As the charring or blackening mark can be made on the wound, if it is fired from maximum two feet by means of pistol. Thus, inconsistent ocular evidence of the prosecution also does not stand corroborated by the medical evidence. It is also submitted that as per the account of PW-2, PW-3 and PW-4 mud was smeared on the person of the deceased Umakant Yadav at the time of fishing, but I.O. PW-8 has not found any mud on the person of the deceased as evident from the inquest report prepared by the I.O. As per the account of PW-2, there were foot prints of 20-25 persons on the wet soil at the place of occurrence, but I.O. has not found any such foot print at the place of occurrence. Likewise, as per the account of PW-2 and PW-5 around 1 ½ Kg. fishes were fished at the place of occurrence and the same was kept on the ground at the place of occurrence, but I.O. has not found any fish at the place of occurrence. Likewise, as per the account of PW-3 and PW-6, chhipa and bowls were being used to extricate the fishes and there were four chhipas and bowls at the place of occurrence, but I.O. has not found any



evidence of fishing at the place of occurrence and not finding the aforesaid material objective evidence at the place of occurrence by the I.O. creates serious doubt about the prosecution case and genesis of the occurrence does not stand established by the prosecution case. It is further submitted that as per the account of PW-6 and the I.O. PW-8, there is animosity between the parties as three criminal cases of murder, dacoity and assault have been lodged by the appellant Murari Yadav against the informant which is pending against him and due to aforesaid animosity, the prosecution has falsely implicated the appellants in the case with ulterior motive. It is further submitted that as per the witnesses account, several persons were also fishing at the place of occurrence and several cowherd were grazing their cattle in the vicinity of the place of occurrence, but barring the witnesses examined by the prosecution, who happen to be family members and interested witnesses of the case, none of the independent witness of the occurrence has been examined by the prosecution and no plausible and convincing reason has been assigned by the prosecution for their non-examination. Hence, adverse inference shall be drawn against the prosecution. Thus, the prosecution has utterly and miserably failed to substantiate the



prosecution case against the appellants beyond all reasonable doubt by adducing consistent, trustworthy and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellants by the learned trial court is liable to be set aside and the appellants are entitled to be acquitted. Learned counsel for the appellants placed reliance upon the verdict of Hon'ble Apex Court rendered in ***Satna Singh Vs. State of Punjab reported in AIR 1956 S.C. 526*** in buttress of their argument.

14. On the other hand, learned counsel for the informant and learned APP for the State advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that though PW-3 and PW-4 do not happen to be eye witness of the occurrence, but PW-1, PW-2, PW-5 and PW-6 happen to be eye witnesses of the occurrence and they have fully supported the prosecution case. The consistent ocular evidence of the aforesaid witnesses also stands corroborated by the medical evidence. Though there is some discrepancies and contradictions discernible in the testimony of the witnesses, but said discrepancies do not happen to be material rather minor in nature and do not touch the core of the case and learned trial court correctly



appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and these appeals are shorn of merit and are liable to be dismissed. Learned counsel for the informant placed reliance upon the verdicts of Hon'ble Apex Court rendered in *Leela Ram (Dead) through Duli Chand Vs. State of Haryana and Anr. reported in (1999) 9 SCC 525* and *Aizaz and Ors. Vs. State of Uttar Pradesh reported in (2008) 12 SCC 198* in buttress of his argument.

15. From perusal of record, it appears that to substantiate its case, the prosecution has examined altogether six material witnesses in the case. But, from perusal of testimony of PW-1 (Tapan Yadav), PW-3 (Rahul Kumar) and PW-4 (Ramlala Yadav), it appears that they do not happen to be eye witnesses of the occurrence and their testimonies are not worth credence and reliable. As though PW-1 (Tapan Yadav) has made an abortive bid to support the prosecution case by stating in his examination-in-chief in consonance to the prosecution case that at the time of occurrence, he was fishing at the place of occurrence, Ramakant, Lalbabu Yadav, Ramlala Yadav, Rahul Yadav, Ritesh Yadav and others were also fishing there. In the meantime, Murari Yadav, Ganesh



Yadav, Jwala Yadav, Lakshman Yadav, Rambabu, Lalbabu and Kamlesh descended there and intercepted them and started assaulting. Thereafter, Murari Yadav whipping out the pistol from his waist resorted firing which hit left rib of Umakant. Ganesh Yadav also resorted firing upon Ramakant Yadav, but he left unhurt. From perusal of aforesaid testimony of PW-1, it appears that along with his aforesaid companions, PW-1 was also fishing at the place of occurrence at the time of occurrence. But, in quite contradiction to the aforesaid examination-in-chief, he has stated in paragraph 9 of his cross-examination that he had divulged to the I.O. that he had gone to the place of occurrence for fish. He had not divulged him about fishing by him rather he had gone there to purchase the fish. Thus, the aforesaid material contradiction in the statement of PW-1 eloquently indicates that he is damn liar. Though, PW-1 (Tapan Yadav) happens to be nephew of the informant and the deceased and other witnesses examined by the prosecution also happen to be informant and his family members and they were also fishing at the place of occurrence at the time of occurrence and they must be acquainted to the PW-1. But, PW-1 in paragraph 9 of his cross-examination has failed to disclose the name of the persons indulged in fishing



at the place of occurrence at the time of occurrence. Hence, the aforesaid statement of PW-1 creates serious doubt about the prosecution case of fishing by the informant and other witnesses at the place of occurrence at the time of occurrence.

16. PW-3 (Rahul Kumar) and PW-4 (Ramlala Yadav) have also made an abortive bid to support the prosecution case by stating in their respective examination-in-chief in consonance to the prosecution case claiming themselves to be eye witness of the occurrence and their presence at the place of occurrence at the time of occurrence being indulged in fishing there. But, from perusal of testimony of aforesaid witnesses, it appears that attention of the aforesaid witnesses has been drawn by the defence regarding contradiction in their statement given before the court and that before the I.O. under Section 161 Cr.P.C. in respect of witnessing of the occurrence of resorting firing upon the deceased by Murari Yadav in paragraphs 14 and 5 respectively of their cross-examination and I.O. in paragraph 11 of his cross-examination has corroborated the aforesaid contradiction between the statement of aforesaid witnesses as given before the court and that given before him under Section 161 Cr.P.C. regarding aforesaid material aspect of the case by



stating that witness Rahul Kumar had not given statement before him about witnessing of resorting firing by Murari rather has stated about listening of the occurrence from the informant and witness Ramlala Yadav had divulged him about arriving at the place of occurrence listening hulla and finding huge crowd there. He has also stated about witnessing of the dead body of Umakant there. Thus, PW-3 and PW-4 appears to have taken altogether different stand before the court regarding aforesaid material aspect of the case. Hence, the aforesaid witnesses do not appear to be worth credence and reliable as eye witness of the occurrence and in my considered opinion, they do not happen to be eye witness of the occurrence.

17. In view of the aforesaid testimony of PW-1, PW-3 and PW-4 as discussed by me hereinabove, the aforesaid witnesses were not present at the place of occurrence at the time of occurrence and were not indulged in fishing there. But, in quite contradiction to the aforesaid aspect of the case, PW-2 (Lalbabu Yadav) in paragraph 7 of his cross-examination has stated that besides him and deceased Umakant, PW-1 (Tapan Yadav) and Ramakant (PW-6) were also fishing at the place of occurrence at the time of



occurrence and likewise, PW-5 (Ritesh Kumar) has stated in paragraph 9 of his cross-examination that besides him, Ramakant Yadav, Lalbabu Yadav, PW-3 (Rahul Kumar), PW-4 (Ramlala Yadav) and PW-1 (Tapan Yadav) were also fishing there and PW-6 has stated in paragraph 1 of his examination-in-chief that besides him and his brother Umakant, Ritesh Kumar and Lalbabu Yadav, witnesses Tapan Yadav PW-1, Rahul Kumar PW-3 and Ramlala Yadav PW-4 were also fishing there at the time of occurrence. Thus, in view of the aforesaid testimony of PWs-1, 3 and 4, they were not indulged in fishing at the place of occurrence at the time of occurrence. But, in quite contradiction to the aforesaid testimony of said witnesses, PW-2, PW-5 and PW-6 have taken their name to be present there and indulged in fishing at the place of occurrence along with them. The aforesaid material contradiction between the testimony of the aforesaid witnesses also creates serious doubt about credibility and sanctity of the testimony of PW-2, PW-5 and PW-6 and said witnesses also do not appear to be worth credence and reliable.

18. PW-2 (Lalbabu Yadav) has stated in paragraph 8 of his cross-examination that fire was made from the distance of five hand i.e. 7 ½ feet and informant PW-6 has



stated in paragraph 16 of his cross-examination that his brother was shot from the distance of three deg i.e. around 5 feet. But, from perusal of testimony of doctor PW-7, who had conducted the autopsy of cadaver of the deceased and postmortem report of the deceased marked as Ext-3, it appears that doctor has found firearm wound of entrance 1 inverted margin oval in shape, size 1cm x ¼” with surrounding charring ring of 2mm, present over left mid auxiliary line at the level of nipple. As per the Medical Jurisprudence and Toxicology authored by MODI, if a firearm is discharged very close to the body or in actual contact, subcutaneous tissues over an area of two or three inches around the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with unburnt grains of gunpowder or smokeless propellant powder. The adjacent hairs are singed, and the clothes covering the part are burnt by the flame. If the powder is smokeless, there may be a greyish or white deposit on the skin around the wound. Blackening is found, if a firearm like a shotgun is discharged from a distance of not more than three feet and a revolver or pistol discharged within about two feet. Hon’ble Apex Court in *Satna Singh Vs. State of Punjab (supra)*, has been pleased



to observe that if there were burnt edges of the wound, the distance between the muzzle and the victim would only be a few inches and not more than nine inches. Thus, in view of the aforesaid fact and observation of Hon'ble Apex Court, I find that inconsistent ocular evidence of the witnesses also does not stand corroborated by the medical evidence.

19. From perusal of record, it appears that PW-1 (Tapan Yadav) happen to be nephew of the informant and deceased, PW-2 (Lalbabu Yadav) is cousin of the informant and the deceased, PW-3 (Rahul Kumar) is son of the deceased, PW-4 (Ramlala Yadav) is father of the informant and deceased, PW-5 (Ritesh Kumar) is son of the informant and PW-6 (informant) himself. Thus, the aforesaid material witnesses examined by the prosecution happen to be informant and his family members and they are interested witnesses of the case. It is settled principle of law that the testimony of the interested witness should not be discarded outrightly rather should be scanned and scrutinized cautiously. On careful and cautious scanning and scrutiny of the testimony of the aforesaid witnesses as discussed by me hereinabove, I find that there is vital and material contradictions in the testimony of the aforesaid witnesses and they do not happen to be



consistent, worth credence and reliable.

20. As per account of PW-3 (Rahul Kumar) as given by him in paragraph 8 of his cross-examination some strangers were also fishing at the place of occurrence at the time of occurrence and some were witnessing the occurrence and as per the account of informant (PW-6) as given by him in paragraph 15 of his cross-examination at the time of fishing besides them, some other persons were also present there, who were of the Village Dhana i.e. (villager of the informant) and besides them people of Sharda Chapra were grazing their buffalo there and were 20-25 in numbers and as per the account of PW-8 I.O. as given by him in paragraph 5 of his examination-in-chief, he had recorded the statement of independent witnesses, namely, Ramdhari Yadav, Tetar Yadav, Rajaram Yadav, Surendra Verma, Suryanath, Rampyare Yadav, Ramprasad Yadav and Dhanpat Yadav regarding the occurrence, but none of the aforesaid independent witnesses has been examined by the prosecution in substantiation of the prosecution case and no plausible and convincing reason has been assigned for their non-examination. Hence, adverse inference is drawn against the prosecution and the aforesaid aspect of the case also creates doubt about the prosecution



case.

21. PW-2 (Lalbabu Yadav) has stated in paragraph 5 of his cross-examination that blood had fallen at 1-2 feet where deceased was lying. PW-3 (Rahul Kumar) has stated in paragraph 10 of his cross-examination that blood from the body of the deceased had fallen on the ground. PW-5 (Ritesh Kumar) has stated in paragraph 12 of his cross-examination that blood was oozing from below armpit of Umakant and had fallen at some distance where he had fallen. PW-6 (Ramakant Yadav) has stated in paragraph 17 of his cross-examination that blood had fallen on the ground where Umakant was lying. He has also stated in paragraph 18 of his cross-examination that blood had fallen on his shirt and waist. But, I.O. PW-8 has stated in paragraph 6 of his cross-examination that S.H.O. had seized blood stained soil, but he could not disclose as to what happened of the said blood stained soil. In paragraph 7 of his cross-examination, he has stated that he has not written in the case diary about seizure of the blood stained soil and about stain of blood on the attire of the deceased. PW-2 (Lalbabu Yadav) has stated in paragraph 5 of his cross-examination that mud was smeared on the person of the deceased. PW-3 (Rahul Kumar) has stated in



paragraph 13 of his cross-examination that mud was smeared on the person of his father (deceased) at the time of fishing, PW-4 (Ramlala Yadav) has stated in paragraph 3 of his cross-examination that mud was smeared on the person of Umakant (deceased) and PW-6 (Ramakant Yadav) has stated in paragraph 20 of his cross-examination that police had witnessed mud smeared on the person of Umakant (deceased). But, I.O. PW-8 in paragraph 8 of his cross-examination has stated that in inquest report finding of mud on the person of the deceased has not been adverted. PW-2 (Lalbabu Yadav) has stated in paragraph 6 of his cross-examination that there was foot prints of 20-25 persons on the wet soil, who were present at the place of occurrence. But, I.O. has not reported about finding any foot prints at the place of occurrence. PW-3 has stated in paragraph 6 of his cross-examination that about $\frac{1}{2}$ -1 Kg. fishes were fished, which were left at the place of occurrence. PW-5 (Ritesh Kumar) has stated in paragraph 9 of his cross-examination that 1- 1 $\frac{1}{2}$ Kg. fishes were fished during two hours. The fished fishes were kept on the ground at the place of occurrence. But, I.O. PW-8 has stated in paragraph 8 of his cross-examination that he neither found any fished fishes at the place of occurrence nor seized the same.



PW-3 (Rahul Kumar) has stated in paragraph 13 of his cross-examination that water was being separated by means of chhipa. PW-6 (Ramakant Yadav) has stated in paragraph 14 of his cross-examination that chhipa and bowl were being used to extricate fish and there were four chhipas and bowls. But, I.O. PW-8 in paragraph 8 of his cross-examination has stated that no evidence of fishing at the place of occurrence has been adverted by him in the case diary. Thus, from perusal of aforesaid testimony of said witnesses, it appears that I.O. has not found any evidence of fishing like chhipa and bowl, fished fish, foot prints of the persons present at the place of occurrence at the time of occurrence, blood on the place of occurrence and on the attire of the deceased, mud on the person of the deceased etc. Thus, genesis of the occurrence which is fishing by the deceased and the witnesses at the place of occurrence at the time of occurrence does not stand established by the prosecution due to not finding of any objective evidence regarding the same at the place of occurrence by the I.O.

22. As per the prosecution case, Ganesh Yadav, Jwala Yadav, Rambabu Yadav, Lalbabu Yadav and Kamlesh Yadav caught hold Umakant Yadav and then Murari Yadav



resorted firing upon Umakant Yadav below left armpit. But, from perusal of testimony of PWs-1, 2, 5 and 6, it appears that they have not supported the aforesaid prosecution case of catching hold the deceased by the aforesaid accused persons preceding to making assault upon him by Murari Yadav which creates serious doubt about prosecution case.

23. Informant (PW-6) has stated in paragraph 8 of his cross-examination that three criminal cases of dacoity, murder and assault with the accused Murari are pending against him. I.O. PW-8 has also stated in paragraph 9 of his cross-examination that during the course of investigation, it was surfaced that there is animosity between the parties. Thus, from perusal of the aforesaid testimony of the said witnesses, it appears that there is serious animosity between the parties. Animosity cuts both the edges. But in view of the aforesaid inconsistent ocular evidence of the prosecution not corroborated by the medical evidence, all the material witnesses being family members and interested witness of the case, non-examination of any independent witness of the occurrence, not establishment of genesis of the occurrence by finding any objective evidence at the place of occurrence by the I.O., false implication of the appellants at the hand of the



prosecution party due to aforesaid animosity cannot be ruled out.

24. The verdicts of Hon'ble Apex Court rendered in *Leela Ram (Dead) through Duli Chand (supra) and Aizaz and Ors. (supra)* relied upon by the informant are not applicable in the case under hand as the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charges levelled against the appellants beyond all reasonable doubt by adducing convincing, cogent, consistent and worth credence evidence.

25. Having regard to the discussions made by me hereinabove, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charges levelled against the appellants beyond all reasonable doubt by adducing convincing, cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court against the appellants is set aside and the appellants are acquitted of all the charges levelled against them. As the appellants Jawala Yadav and Ganesh Yadav of Criminal Appeal (DB) No. 121 of 2013 are on bail, they are discharged from the liability of the bail bonds while as the



appellant Murari Yadav of Criminal Appeal (DB) No. 578 of 2013 and Kamlesh Yadav and Ram Babu Yadav of Cr. Appeal (DB) No. 274 of 2013 are in custody, they are directed to be released forthwith from the custody, if not wanted in any other case. Accordingly, the aforesaid three Criminal Appeals are allowed.

(Prakash Chandra Jaiswal, J)

Rakesh Kumar, J.

rohit/-

(Rakesh Kumar, J)

AFR/NAFR	AFR
CAV DATE	17-01-2019
Uploading Date	24-01-2019
Transmission Date	24-01-2019

