

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1530 of 2019**

Arising Out of PS. Case No.-5 Year-1998 Thana- CHHATAPUR District- Supaul

1. Subodh Yadav Son of Devnandan Yadav Resident of Village- Hasanpur Ward No. 2, P.S.- Chhatapur, District- Supaul.
2. Binod Yadav Son of Ram Nandan Yadav Resident of Village- Hasanpur Ward No. 2, P.S.- Chhatapur, District- Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1486 of 2019

Arising Out of PS. Case No.-5 Year-1998 Thana- CHHATAPUR District- Supaul

1. Sushil Yadav Son of Ram Nandan Yadav Resident of Village - Hasanpur Ward No. 02, P.S.- Chhatapur, Distt - Supual.
2. Devanand Yadav @ Devnandan Yadav Son of Late Mahabir Yadav Resident of Village - Hasanpur Ward No. 02, P.S.- Chhatapur, Distt - Supual.
3. Surat Lal Yadav Son of Late Raghu Yadav Resident of Village - Hasanpur Ward No. 02, P.S.- Chhatapur, Distt - Supual.
4. Dharendra Yadav Son of Late Raghu Yadav Resident of Village - Hasanpur Ward No. 02, P.S.- Chhatapur, Distt - Supual.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 1530 of 2019)

For the Appellant/s : Mr. Ansul, Advocate
: Mr. Pranav Kumar Jha, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In Criminal Appeal (DB) No. 1486 of 2019)

For the Appellant/s : Mr. Y.C. Verma, Senior Advocate
: Mr. Pranav Kumar Jha, Advocate

For the Respondent/s : Mr. Ashwani Kumar Sinha, APP



**CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 23-02-2024

Heard learned senior counsel Sh. Y.C. Verma and learned counsel Sh. Ansul for the appellants and learned Additional Public Prosecutors appearing for the State.

2. These appeals have been preferred by the aforesaid appellants under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction dated 25.11.2019 and order of sentence dated 29.11.2019 passed by learned Additional District and Sessions Judge III, Supaul in Sessions Trial No. 35 of 2000 whereby and whereunder appellants, namely, Sushil Yadav, Devanand Yadav @ Devanandan Yadav, Surat Lal Yadav and Dharendra Yadav [in Cr. Appeal (DB) No.1486 of 2019] have been convicted under Sections 307, 326, 324 and 148 of Indian Penal Code and appellants, namely, Subodh Yadav and Vinod Yadav [in Cr. Appeal (DB) No.1530 of 2019] have been convicted under Sections 302, 307, 326, 324 and 148 of Indian Penal Code and sentenced accordingly as under:



Appellants in Cr. Appeal (DB) No.1486 of 2019

Appellants	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
1.Sushil Yadav 2.Devnandan Yadav	307 IPC	RI for 10 years	25,000/-	S.I. for 1 year
3.Surat Lal Yadav 4.Dhirendra Yadav	326 IPC	RI for 5 years	15,000/-	S.I. for 6 months
	324 IPC	RI for 2 years	5,000/-	S.I. for 3 months
All the sentences shall run concurrently.				

Appellants in Cr. Appeal (DB) No.1530 of 2019

Appellants	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
1.Subodh Yadav 2.Vinod Yadav	302 IPC	Life Imprisonment	25,000/-	S.I. for 1 year
	307 IPC	RI for 10 years	25,000/-	S.I. for 1 year
	326 IPC	RI for 5 years	5,000/-	S.I. for 6 months
	324 IPC	RI for 2 years	5,000/-	RI for 3 months
All the sentences shall run concurrently.				

3. Since the above captioned appeals arise out of common factual matrix and common judgment of conviction and order of sentence, we are disposing them by this common judgment.

4. The prosecution story, in brief, is that on 28.01.1998 at about 5:00 p.m. the informant Ramesh Yadav (PW-4) gave his fardbeyan recorded by police officer at Rajkiya Hospital, Chhatapur alleging that his brother Sadanand Yadav about 7 to 8 months ago had given advance money of Rs.21,000/- to Most. Asiya Devi for purchase of her 3 bigha land. The talk of



purchase was done through her brother-in-law Baidyanath Yadav but he was not doing registry and was doing talk with Dev Nandan Yadav. On that day, Baidyanath Yadav had come to the house of his sister-in-law Asiya Devi and after sometime talking with Dev Nandan Yadav, he was returning to his house and when he reached near the house of Dayanand Yadav (near *Kalmart*) then Sadanand Yadav (brother of informant) with informant (Ramesh Yadav) went there and told Baidyanath Yadav for settlement with respect to advance money taken and then to go, on which hot talks were started between Dev Nandan Yadav and Baidyanath Yadav with Sadanand Yadav. In the meantime, on the side of the road, son of Dev Nandan Yadav, namely, Subodh Yadav and Vinod Yadav son of Ram Nandan Yadav and Surat Lal Yadav, who were cutting soil and spreading on the road from before, on hearing talk, they came there with their kudal (spade) in their hands and Dev Nandan Yadav ordered to kill on which Vinod Yadav and Subodh Yadav from their spade assaulted on the head of Sadanand Yadav (brother of informant) causing head injury and he fell down on the earth. In the meantime, Duli Chand Yadav (died during trial) and Sushil Yadav also came there. Dev Nandan Yadav taking farsa from the hand of Sushil Yadav assaulted the informant on his head and



Duli Chand Yadav (died during trial) also hit kudal on his head causing head injury and Dharendra Yadav also assaulted the informant with lathi. He also fell down and started writhing. Brother Bikan Yadav (PW-2), nephew Amod Kumar Yadav (PW-9), Ram Chandra Yadav (PW-3), Shatrughan Yadav, Kailu Yadav (PW-7) came there and saw the occurrence and then accused fled away. Thereafter, his family members had taken the injured to the hospital on bullock cart. Sadanand Yadav died on about to reach to the hospital. The reason for the occurrence by the accused persons was due to dispute related to sell/purchase of land. The informant put his thumb impression on the fardbeyan (Ext.2) in presence of his brother Bikan Yadav (PW-2) and relative Bhupendra Mandal.

5. On the basis of the said fardbeyan, Chhatapur P.S. Case No.05 of 1998 was registered against the accused persons/appellants. The investigation of the case was carried out by the Investigating Officer (I.O., hereafter).

6. After completion of investigation, the police submitted charge sheet against seven accused persons. Thereafter cognizance was taken against the accused persons and the case was committed to the Court of Sessions on 25.02.2000 and charges were framed on 28.11.2005 against the



accused persons. During trial, co-accused Duli Chand Yadav died. The accused persons denied the allegations levelled against them and claimed to be tried.

7. In order to substantiate the charges, the prosecution adduced the following oral evidences:

- PW-1 Dr. Ghanshyam Singh (conducted postmortem of the deceased Sadanand Yadav)
- PW-2 Bikan Yadav
- PW-3 Ram Chandra Yadav
- PW-4 Ramesh Yadav (informant)
- PW-5 Haldhar Prasad Das (Medical Officer, who treated the informant)
- PW-6 Vishundeo Yadav (Hostile)
- PW-7 Kailu Yadav (Hostile)
- PW-8 Veena Devi
- PW-9 Amod Kumar Yadav

8. The prosecution also adduced the following documentary evidences:

- (i) Exhibit 1 Postmortem Report
- (ii) Exhibit 2 Signature of PW-2 on fardbeyan
- (iii) Exhibit 2/1 Inquest Report
- (iv) Exhibit 3 Injury Report of informant Ramesh Yadav
- (v) Exhibit 4 Signature of Amod Kumar Yadav on Seizure List

9. After completion of evidence on behalf of the prosecution, the statements of accused persons under Section 313 of the Cr.P.C. were recorded and they claimed to be innocent. It is evident from the cross-examination and suggestions given to prosecution witnesses that the defence took



the plea that there was previous enmity between the parties due to land dispute and the said suggestions were denied by the prosecution witnesses.

10. The defence has not produced any evidence either oral or documentary in support of its defence that there was previous enmity or land dispute between the informant and accused persons due to which they have been falsely implicated in this case and the prosecution witnesses have deposed falsely against them.

11. At the conclusion of trial, the Trial Court convicted the appellants and sentenced them as aforesaid. Being aggrieved by the said judgment of conviction and order of sentence, the appellants filed these appeals.

12. It will be most appropriate to note the findings given by the learned Trial Court for convicting the accused persons/appellants and sentencing them accordingly.

13. The learned Trial Court in the impugned judgment has given following findings:-

- (i) After careful perusal of the evidence on record, it is apparent that Ramesh Yadav, who was the injured of the incident, his brother Sadanand Yadav and other family members were interested to purchase the land from Asiya Devi through her brother-in-law(*bahnoi*) Baidyanath Yadav and for that Rs.21,000/- was paid by Sadanand Yadav. Meanwhile, Baidyanath



Yadav started talking with another person, namely, Devnandan Yadav for selling the land. Neither they were selling the land nor they were returning the advance money of Rs.21,000/- to his brother. On the date of alleged occurrence, Baidyanath Yadav had come to his sister-in-law (*saali*) Asiya Devi and when he was returning to his village along with Devnandan Yadav, the brother of informant saw Baidyanath Yadav. On asking by Sadanand Yadav, the informant went to talk with Baidyanath Yadav thereafter hot talks were started between them. Near the place of occurrence (near *Kalmart*) Subodh Yadav, Vinod Yadav and Surat Lal Yadav were cutting soil and filling the same on the road.

- (ii) Accused Dev Nandan Yadav ordered to kill on which accused Vinod Yadav and Subodh Yadav assaulted with spade on the head of Sadanand Yadav who came to rescue the informant causing injury.
- (iii) Devnandan Yadav taking *Farsa* from the hand of Subodh Yadav gave *Farsa* blow on the head of informant. Duli Chand Yadav also assaulted the informant with spade. Dharendra Yadav had also assaulted with *lathi*.
- (iv) All the accused persons assaulted the informant Ramesh Yadav and Sadanand Yadav.
- (v) On account of assault, Sadanand Yadav died and his brother Ramesh Yadav became badly injured. All prosecution witnesses have supported the incident. Certainly the spade was used in the incident which is deadly weapon. Sadanand Yadav and Ramesh Yadav were assaulted on their head which shows that the accused persons had intention to kill them.
- (vi) The prosecution has fully proved the charge against the accused persons/appellants beyond



shadow of doubt.

14. Learned counsel for the appellants has submitted that the accused persons have been falsely implicated in this case. There are several contradictions in the statements of the witnesses examined by the prosecution. The informant (PW-4) in the trial improved the prosecution case to become an eye witness of the occurrence. He has further submitted that apart from PW-4 (informant), other witnesses are not the eye witnesses of the occurrence as they were only hearsay witnesses, who later on came at the place of occurrence. He has next submitted that the witnesses belong to the same family being close relative and their testimonies cannot be relied upon being the interested witnesses. It has also been submitted that the I.O., who recorded fardbeyan of informant, prepared inquest report, investigated the case, inspected the place of occurrence and took the statement of witnesses under Section 161 Cr.P.C., has not been examined, as such the accused persons have been deprived of the opportunity to cross-examine him which highly prejudice the case. He has contended that the injury report and the postmortem report were not considered by the Trial Court which *prima facie* shows that both documents do not support the prosecution case. It has further been contended that the learned



Trial Court has failed to appreciate the fact by careful scrutiny of evidence, which is required in a case where there is previous enmity between the parties. From evidence of witnesses, it can be concluded that they are wholly unreliable, hence, it may not be proper for the Court to hold the accused persons/appellants guilty.

15. On the other hand, the learned Additional Public Prosecutors for the State have submitted that the prosecution has been able to prove its case. The injured witness and the eye witnesses, who are natural witnesses of the incident, cannot be termed as interested witnesses merely because they are related to the deceased and there is no reason to disbelieve them and their deposition cannot be brushed aside. There is no material contradiction in the deposition of witnesses and minor discrepancies highlighted by the prosecution would never be fatal for the prosecution case and such discrepancies are natural. Non-examination of I.O. has not prejudiced the defence in any way. He has further submitted that, all the witnesses examined during the trial have stood the test of cross-examination and their version is consistent. It is further submitted that there being no merit in these appeals filed by the accused persons/appellants and the impugned judgment of conviction and order of sentence



are in accordance with law, therefore, these appeals are liable to be dismissed.

16. We have carefully perused the records and proceedings and considered the submissions advanced by learned counsel for the parties.

17. The appellate Court is empowered to reappreciate the entire evidence on record for the purpose of ascertaining as to whether the accused persons or any of them had committed any offence or not and if the impugned judgment and order is ultimately found to be clearly unreasonable and perverse then such judgment and order can be set aside by the appellate Court.

18. Before we proceed to notice the rival submissions in order to have a clear understanding of the context in which the submissions on behalf of the parties have been made, it would be apposite to notice the testimony of the prosecution witnesses.

19. PW-1 is Dr. Ghanshyam Singh, who had conducted the postmortem of the deceased Sadanand Yadav on 29.01.1998, deposed that all the injured were found ante-mortem. On external examination, he found following injuries on the dead body of deceased Sadanand Yadav.

- (i) Sharp cutting injury 3''x ½''x deep to brain substance cutting scalp bone left parietal



- region-caused by sharp cutting substance.
- (ii) Sharp cutting injury 2½" x ½" x deep to brain substance cutting occipital bone in occipital region (left) - caused by sharp cutting weapon.
 - (iii) Sharp cutting injury 3½" x ½" x deep to brain substance cutting scalp bone in mid part of the scalp, slightly left to mid part-caused by sharp cutting weapon.
 - (iv) Sharp cutting injury 2" x ½" x deep to brain substance cutting scalp bone of frontal part.
 - (v) Lacerated wound 3" x 1" x deep to scalp bone frontal and mid part caused by hard and blunt substance.
 - (vi) Abrasion ½" x ¼" left hand dorsal surface.
 - (vii) Abrasion 1" x ¼" left side chest wall lateral surface.
 - (viii) Abrasion 1" x ¼" left side chest wall (back).

20. The cause of death of the deceased was due to haemorrhage and shock and the time since death was within 24 hours. In his cross-examination, he has admitted that it is not mentioned that haemorrhage and shock is cumulative effect of the injury or injuries.

21. It is clear from the medical evidence that injury nos.1 to 4 were incised wounds and considering the condition of the dead body and nature of injuries, in our view, it is clear that the deceased died due to haemorrhage and shock on account of the injuries caused to him although the doctor (PW-1) has not categorically stated that the death of deceased Sadanand Yadav was caused by such injuries. The prosecution has successfully proved identity, death and cause of death of Sadanand Yadav,



deceased.

22. PW-5 is Dr. Haldhar Prasad Das, who had treated Ramesh Yadav (PW-4) at Chhatapur Hospital, District Supaul on 28.01.1998 at 04.45 p.m. and prepared injury report (Ext. 3) and found eight injuries on the body of the injured, which are as under:

1. Incised injury 6 cm x ½ cm x bone deep on middle of frontal scalp extends from middle of forehead to backward.
2. One incised injury 5 cm x ½ cm x bone deep parallel to injury no.01, 3 cm away on Rt side.
3. One bruise 4 cm x 3 cm on left wrist.
4. One bruise 10 cm x 5 cm on dorsum of left foot.
5. One bruise 5 cm x 3 cm on lateral side of left ankle.
6. One lacerated injury 3 cm x 1cm on middle Rt. leg.
7. One abrasion 3 cm x 1 cm on left scalp region.
8. One bruise 5 cm x 1 cm on lateral aspect of left arm in upper part.

23. According to him, injury nos.1 and 2 were caused by sharp cutting weapons like *farsa* and *kudal* etc. and injury nos.4 to 8 were simple caused by hard and blunt weapon. Regarding injury no.3, the patient was referred to Sadar Hospital Supaul. In his cross-examination, he has stated that he has not mentioned the nature of injury in respect of injury nos.1 & 2 whether it was simple or grievous. He clarified that bone deep means touching the level of the bone. He further deposed that these injuries may be or may not be fatal for life of a person.

24. Section 320 I.P.C. specifies the kinds of hurt that



are designated as grievous hurt and Section 326 I.P.C. provides punishment for causing grievous hurt by dangerous weapons or means. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 must be strictly passed and eighth clause is no exception to the general rule of law that a penal statute must be construed strictly. The doctor (PW-5) who examined the injured (PW-4) has not given clear finding as to whether the incised injuries caused to the informant are simple or grievous.

25. The star eye witness being Ramesh Yadav (PW-4), who is brother of the deceased Sadanand Yadav, was himself injured in the incident. Apart from him, there were other witnesses claiming eye witness such as PW-2, PW-3, PW-8 & PW-9 i.e. Bikan Yadav, Ram Chandra Yadav, Veena Devi and Amod Kumar Yadav, respectively.

26. PW-4 Ramesh Yadav is the informant of this case.

In his examination-in-chief, he has stated that:

- (i) On 28.01.1998 at about 3:00 p.m. he along with his brother Sadanand Yadav (deceased), father Bachcha Yadav and elder brother Bikan Yadav (PW-2) were at his door. His brother Sadanand Yadav sent him to call Baidyanath Yadav. Devan Yadav was also there with Baidyanath Yadav. Devan Yadav's nephew Sushil Yadav, son Subodh Yadav, Surat Lal Yadav all were cutting soil and throwing it on the road. The informant went there. He has further stated that



Baidyanath Yadav had taken Rs.21,000/- as earnest money for the land and when the informant asked him to settle the same then Devan Yadav resisted.

(ii) Devan Yadav ordered to assault the informant, upon which Vinod Yadav, Subodh Yadav, Sushil Yadav, Surat Lal Yadav, Duli Yadav and Devan Yadav started assaulting him with spade. Vinod Yadav and Subodh Yadav assaulted him with spade on his head due to which he got head injury and blood started coming out.

(iii) By then, Sadanand Yadav (brother of informant) came at the spot. Then leaving aside the informant, all accused persons started assaulting Sadanand Yadav with *lathi* and spade. *Farsa* blow was given to his brother by Devan Yadav due to which he sustained head injury and blood started coming out. As a result of which, Sadanand became unconscious.

(iv) Thereafter, Kailu Yadav, Shatrughan Yadav, Bishundeo Yadav came there and brought him (Sadanand Yadav) on bullock cart to Chhatapur but near the hospital, Sadanand Yadav died. The informant was treated at the hospital.

(v) He has further stated that there was a land of Most. Asiya Devi and her brother-in-law was the *malik*, therefore, he had paid Rs.21,000/- to the brother-in-law of Asiya Devi as earnest money and dispute arose on the point to return the earnest money and the incident happened. He had given his fardbeyan in Chhatapur Hospital before SHO, Baleshwar Singh. He identified his thumb impression put on the fardbeyan. As witness, Bikan Yadav (PW-2) and Bhupendra Yadav had also put their signatures on the same.

27. In his cross-examination, PW-4 has stated that he



had given the statement and re-statement before the police what he has stated in the Court that Vinod Yadav and Subodh Yadav had given spade blow on his head causing head injury to him and Devan @ Devnandan had given *farsa* blow to his brother Sadanand who became unconscious. In paragraph 19, he has stated that when Baidyanath was talking then Subodh, Sushil and Surat were cutting soil and only they had spade in their hands and no other accused persons were present there. Other persons came there when they had already been assaulted. In paragraph 23, he has stated that Vinod, Devan, Subodh, Sushil, Surat Lal etc. came there after the occurrence of assault. In paragraph 25, he has further stated that when accused fled away from the place of occurrence then all persons, family women, brother Bikan, father Bachcha Yadav, mother, sister-in-law, wife of deceased Sadanand Yadav reached there.

28. For analysing the evidence of PW-4, it is useful to note the statement of PW-4 in the fardbeyan with respect to the manner of incident. In fardbeyan, the informant (PW-4) has stated that:

- (i) Subodh Yadav, Vinod Yadav and Surat Lal Yadav were cutting the soil and had spade in their hands.
- (ii) Vinod Yadav and Subodh Yadav had assaulted Sadanand Yadav with their spade on his head.



- (iii) Devnandan Yadav assaulted with *farsa* (taking from Sushil Yadav) on the head of informant.
- (iv) Duli Chand Yadav (died during trial) hit kudal on the head of informant.
- (v) Dharendra Yadav assaulted the informant with *lathi*.

29. In his deposition before the Court, the informant

(PW-4) has stated that:

- (i) Sushil Yadav, Subodh Yadav and Surat Lal Yadav were cutting the soil. Here, Sushil Yadav has been added and Vinod Yadav has been left out.
- (ii) Vinod Yadav and Subodh Yadav had assaulted with spade on the head of informant. Here, allegation against Vinod Yadav and Subodh Yadav is that they had given spade blow on the head of informant not on Sadanand Yadav (deceased) as stated in fardbeyan.
- (iii) Devnandan Yadav had given *farsa* blow on Sadanand Yadav whereas in fardbeyan, the same was on informant not on Sadanand Yadav.
- (iv) Vinod Yadav, Subodh Yadav, Sushil Yadav, Surat Lal Yadav, Duli Yadav and Devan Yadav assaulted the informant on his head with spade. Here, along with Duli Chand Yadav, the name of other accused persons also included.
- (v) All the accused persons assaulted Sadanand Yadav with *lathi* and spade. This was improvement during the statement before the Court.



30. It appears from the aforesaid analysis that:

- (i) PW-4 has not come with true facts with respect to the manner of occurrence and there are material improvements and contradiction from the fardbeyan which creates reasonable doubts in the version of prosecution case.
- (ii) PW-4 admitted that Vinod Yadav, Devan Yadav, Subodh Yadav, Sushil Yadav and Surat Lal Yadav came after the occurrence, then there is no question of their involvement in the crime.
- (iii) PW-4 further admitted that when accused persons fled away from the place of occurrence, then his brother Bikan Yadav (PW-2) and other family members came, which shows that they were not the eye witnesses.

31. PW-2 Bikan Yadav in his examination-in-chief has stated that the date of alleged occurrence was of 28.01.1998, at about 2:00-2:30 p.m., and he was at his door. At that time Baidyanath Yadav and Devan Yadav were crossing nearby his house. By that time, Sadanand Yadav told the informant Ramesh Yadav to call Baidyanath Yadav back. Thereafter, Ramesh Yadav went there to call Baidyanath Yadav. At that time, Devan's son Subodh, Surat Lal Yadav and Dharendra all were cutting soil at *Kalmart* and throwing it on the road. They all assaulted Ramesh. Devan had given order to assault Ramesh. He has further stated that Surat Lal Yadav, Dharendra Yadav,



Duli Yadav, Devnandan Yadav, Vinod Yadav and Sushil had assaulted Ramesh. When Sadanand Yadav came to save him, Sushil Yadav and Devan assaulted him with *farsa*. Then, he has stated that Vinod Yadav had assaulted him with *farsa*. Then again he has stated that Sadanand was assaulted with spade due to which he died and Ramesh became senseless. He has further stated that Sadanand got injuries on his head and temporal region. The injured were brought to the Chhatapur hospital on a bullock cart. Ramesh was referred to Supaul and Sadanand was sent for postmortem. He has also stated that he had put his signature on the fardbeyan of Ramesh, which was marked as Ext.2. He has further stated that he had put his signature on the inquest report, which was marked as Ext.2/1.

32. In his cross-examination, PW-2 has stated in paragraph 18 that on *hulla* of *mar-pit*, Sadanand Yadav had gone and thereafter (15-20 minutes later) he had gone there alone, then family members had run towards the place of occurrence. He had seen Sadanand Yadav and Ramesh in unconscious condition. In paragraph 21, he has stated that first of all he went to the police station. He had signed on F.I.R. and on inquest report and after that both injured were sent to hospital. In paragraph 22, he has stated that Sadanand was died in the way



to hospital, Ramesh was treated and was sent to Supaul in unconscious condition from where he returned after 5-6 days.

33. PW-3 Ram Chandra Yadav son of PW-2, in his examination-in-chief, has stated that on the date of alleged occurrence he was at his door along with his father Bikan Yadav, uncle Ramesh Yadav and uncle Sadanand Yadav. When Baidyanath Yadav along with Devan Yadav was going to village Raghunathpur then his uncle Sadanand Yadav told to Ramesh Yadav to call Baidyanath Yadav back. Thereafter Ramesh Yadav went to call Baidyanath Yadav. He has further stated that despite taking Rs.21,000/-, Baidyanath Yadav was not doing the registry of land in his favour that is why Baidyanath Yadav was called. Devan Yadav's son and others were cutting soil there. Meanwhile, Devnandan Yadav, Vinod Yadav, Subodh Yadav, Dharendra Yadav, Surat Lal Yadav and Sushil Yadav surrounded him (Ramesh Yadav) and started assaulting with spade. When he, his uncle and Amod Yadav reached there, they saw that Devan Yadav and Subodh Yadav were assaulting Sadanand Yadav with spade due to which Sadanand Yadav got injuries on his hand and head. Surat Lal Yadav also assaulted Sadanand Yadav with spade. Dharendra Yadav assaulted Sadanand Yadav with *lathi*.



34. In his cross-examination, PW-3 has admitted that on his father and Sadanand Yadav, accused Vinod Yadav has lodged Chhatapur P.S. Case No.06 of 1998 but he does not know its status. He further stated that he reached at the place of occurrence after reaching of his father (PW-2).

35. It is pertinent to mention here that PW-2 in his deposition also admitted that he had gone to the place of occurrence on *hulla* of *mar-pit* and had seen the informant and the deceased in unconscious condition. After him, his family members reached at the place of occurrence. Thus, deposition of PW-2 also shows that PWs-3, 8 and 9 are not the eye-witnesses of the occurrence.

36. PW-6 Vishundeo Yadav was declared hostile. PW-7 is Kailu Yadav who has deposed that on the day of incident when he was going to Chhatapur Bazar, he reached near *Kalmart* where Sadanand Yadav was assaulted on that place, who died but who had assaulted him, he cannot say. He was declared hostile. In cross-examination, he has stated that when he reached at *Kalmart*, no one was present there and Veena Devi (PW-8) reached there after him. He cannot say how Sadanand Yadav and Ramesh Yadav got injury.

37. PW-8 Veena Devi is wife of PW-2, who in her



examination-in-chief, supported the prosecution case and has stated that Sadanand Yadav had negotiated with Asiya Devi for purchase of 3 *bigha* land six months prior to the occurrence. Sadanand Yadav had given Rs.21,000/- to Asiya Devi through her brother-in-law (*bahnoi*) Baidyanath Yadav. Asiya Devi did not execute the sale deed in favour of Sadanand and they started talking with accused Devnandan Yadav, Vinod Yadav and Subodh Yadav. On the date of occurrence, Baidyanath Yadav was going through *Kalmart*. On asking by Sadanand Yadav, Ramesh Yadav went to call Baidyanath Yadav. Thereafter hot talks were started between them. Baidyanath Yadav and Devan Yadav started assaulting Ramesh Yadav. When Sadanand Yadav saw the incident, he went to save him (Ramesh). The other accused persons were cutting soil nearby. Vinod Yadav, Subodh Yadav, Sushil Yadav started assaulting Sadanand with spade due to which Sadanand Yadav fell down. Dhirendra was armed with *farsa* and Surat Lal Yadav was armed with *lathi*. They also assaulted Sadanand. Devnandan Yadav ordered to kill Sadanand Yadav stating that if Sadanand is alive, he will keep quarrelling. Accused persons fled away assaulting Sadanand. The injured was brought to the Chhatapur Hospital by Bachcha Yadav and Bikan Yadav on a bullock cart. During course of reaching



hospital, Sadanand died. She has stated that she was also present on the bullock cart.

38. In her cross-examination, PW-8 has stated that at the time of incident she was at her house, when she reached at the place of occurrence, the informant and Sadanand both were fallen into a ditch.

39. PW-9 Amod Yadav is son of PW-2, who in his examination-in-chief, has stated that on the alleged date of occurrence, he was at his home. His father, uncle Ramesh Yadav and Sadanand Yadav were at their home. He has stated that Baidyanath Yadav and Devnandan Yadav were crossing nearby his house. His uncle Sadanand Yadav told his another uncle Ramesh Yadav to call Baidyanath Yadav. Neither Baidyanath Yadav returns money nor does the registry of land. When Ramesh Yadav went to call Baidyanath Yadav then Devnandan Yadav and Ramesh Yadav were indulged in hot exchange. Upon which, Vinod Yadav, Subodh Yadav started assaulting Ramesh Yadav. On seeing the scuffle, Sadanand Yadav went to save Ramesh Yadav thereafter all accused persons, namely, Vinod Yadav, Subodh Yadav, Sushil Yadav, Dharendra Yadav, Surat Lal Yadav started assaulting. They all were cutting soil on the side of the road. Ramesh Yadav and Sadanand Yadav both



sustained injuries assaulted by spade. Sadanand Yadav became senseless. Blood was started coming out from his head. On *hulla*, the accused persons fled away. The injured were brought to the hospital with the help of villagers. Before reaching the hospital, Sadanand died on bullock cart. The police collected blood stained soil from the place of occurrence on the next day and prepared seizure list on which he had put his signature, which was marked as Ext.4. He has stated that the reason behind the occurrence was the negotiation for purchase of 3 *bigha* land from Asiya Devi through her brother-in-law Baidyanath Yadav in which Rs.21,000/- as earnest money was given. Despite that, Baidyanath Yadav neither got the sale deed executed nor he returned the money. He has stated that there was a talk for selling the land from another person.

40. PW-9 in his cross-examination has stated that after reaching Ramesh Yadav, to save him, Sadanand Yadav reached firstly. The *mar-pit* took place for about 5-10 minutes and about 15-20 spade blows might have been given. His father (PW-2) reached firstly and at that time Sadanand and Ramesh were unconscious and lying in a ditch. When he and his father reached, there was no one present.

41. In the fardbeyan and in inquest report Bhupendra



Mandal is also a witness but he has not been examined by the prosecution. On perusal of inquest report, it would be evident that though it is stated that murder has been caused by *farsa*, *kudal* (spade) and *lathi*, the column meant for noting the circumstances in which offence was committed has been left blank despite the circumstances and the manner in which the offence was committed was known to the I.O., as the inquest report was prepared by him after 30 minutes of recording of *fardbeyan*, not mentioning the same in the relevant column creates doubt about the bona fide of inquest report. PW-2 Bikan Yadav in his cross-examination deposed that he had signed on inquest report in police station. The inquest report was prepared in hospital.

42. The purpose of preparing inquest report by I.O. is to find out *prima facie* the nature of injuries and the possible weapons used in causing those injuries as also the possible cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal and in what manner or by what weapon or instrument the injury on the body of the deceased appear to have been inflicted. It would be apposite to note that in the evidence of PW-3, Ram Chandra Yadav, it has come that I.O. had collected the blood stained



earth but the same had not been produced before the Trial Court nor sent for examination to the Forensic Science Laboratory. Under the circumstances, the alleged recovery of blood stained earth from the place of occurrence becomes highly doubtful. The weapons of assault on injured and deceased Sadanand i.e. *farsa*, spade and *lathi* were not recovered.

43. It is to be ascertained on the basis of the oral and documentary evidence adduced during trial, as to whether or not the Trial Court rightly came to the conclusion of guilt of the appellants. On analysis of the prosecution witnesses, as stated above, it is clear that except the injured witness (PW-4), no other witnesses are eye witness to the occurrence. There are material contradictions in prosecution evidences. Although informant (PW-4) is the injured witness but in his deposition before the Court, he has deposed material contradictory from his previous statement in *fardbeyan* with respect to the manner of incident of assault by the appellants on informant and deceased Sadanand Yadav which gives the reasonable doubt in the prosecution case and involvement of appellants in the occurrence. The shadow of doubt arose in prosecution case and the prosecution failed to bring on record the truth.

44. In the present case, from perusal of the prosecution



evidence, it appears that Ramesh Yadav (PW-4) is informant and also injured in the occurrence and is brother of deceased Sadanand Yadav. Bikan Yadav (PW-2) is brother of Ramesh Yadav (PW-4) whereas Ram Chandra Yadav (PW-3) and Veena Devi (PW-8) are the son and the wife of Bikan Yadav (PW-2) respectively. Thus, the eye-witnesses are family members of injured and deceased. Admittedly, there was land dispute between the parties relating to purchase of land of Most. Asiya Devi.

45. The law is now well settled with respect to credibility of interested witnesses. In case of **State of U.P. vs. Ballabh Das and others (1985) 3 SCC 703**, the Hon'ble Supreme Court on interested witnesses observed as under:

“The dominant question to be considered in the instant case is whether the witnesses, despite being interested, have spoken the truth and are creditworthy. Once it is found by the court, on an analysis of the evidence of an interested witness that there is no reason to disbelieve him then the mere fact that the witness is interested cannot persuade the court to reject the prosecution case on that ground alone.”

46. It is well settled that the evidence of interested witnesses has to be examined with great care and caution to obviate possibility of false implication or over-implication. In cases involving group enmities, it is not unusual to rope in



persons other than who were actually involved. In such a case, court should guard against the danger of convicting innocent persons and scrutinize evidence carefully and if doubt arises, benefit should be given to the accused.

47. The Hon'ble Supreme Court in **Yogesh Singh vs. Mahabeer Singh, A.I.R. (2016) 5160** on the subject interested/inimical witnesses in paragraph nos. 24 to 28 held as under:

“Testimony of Interested/Inimical Witnesses:

24. *On the issue of appreciation of evidence of interested witnesses, Dalip Singh v. State of Punjab, AIR 1953 SC 364 = 1954 SCR 145, is one of the earliest cases on the point. In that case, it was held as follows:*

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.”

25. Similarly, in **Piara Singh v. State of Punjab, (1977) 4 SCC 452 : AIR 1977 SC 2274**, this Court held:

“It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is



creditworthy there is no bar in the Court relying on the said evidence.”

26. In **Hari Obula Reddy v. The State of Andhra Pradesh, (1981) 3 SCC 675**, a three-judge Bench of this Court observed:

“.. it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.”

27. Again, in **Ramashish Rai v. Jagdish Singh, (2005) 10 SCC 498**, the following observations were made by this Court:

“The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence.”

28. A survey of the judicial pronouncements of this Court on this point leads to the inescapable conclusion that the evidence of a closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or



to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (See Anil Rai v. State of Bihar, (2001) 7 SCC 318; State of U.P. v. Jagdeo Singh, (2003) 1 SCC 456; Bhagalool Lodh v. State of U.P., (2011) 13 SCC 206; Dahari v. State of U.P., (2012) 10 SCC 256; Raju @ Balachandran v. State of Tamil Nadu, (2012) 12 SCC 701; Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298; Jodhan v. State of M.P., (2015) 11 SCC 52).

48. In the present case, we find that evidence of witnesses examined by the prosecution i.e. PW-2, PW-3, PW-4, PW-8 and PW-9 belong to the same family of informant and their relations were strained with the appellants on account of land dispute. PW-7 and PW-8 have been declared hostile who had not supported the prosecution case. The evidence of the alleged eye witnesses except the injured raises serious doubts on the point of their presence at the time of actual occurrence of assault on informant and deceased Sadanand Yadav. The evidence of informant (PW-4) also creates serious doubts due to material contradictions. There were independent witnesses available but they have been withheld from the Court and the Court would draw adverse inference under Section 114(g) of the Evidence Act for non-examination of independent witnesses.

49. The further point arises for consideration, in view of the submission advanced, is “whether in the present case, non-examination of the I.O. is fatal to the prosecution case, and



on that count, the impugned judgment deserves to be set aside?”

50. It is well settled that statement given to police during investigation under Section 161 Cr.P.C. cannot be read as an ‘evidence’. It has a limited applicability in a court of law as prescribed under Section 162 Cr.P.C. It is ‘previous statement’ under Section 145 of the Evidence Act and, therefore, can be used to cross-examine a witness for limited purpose to ‘contradict’ such a witness. The contradiction in two statements would not always result in totally discredit the witness. Section 145 read with Section 155 of the Evidence Act, have to be applied carefully in a given case. In **Rammi vs. State of M.P. (1999) 8 SCC 649**, the Hon’ble Supreme Court had held as under:-

“24. When an eye-witness is examined at length it is quiet possible to him to make some discrepencies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But Court should bear in mind that it is only when discrepencies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too a serious view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

51. If any of the prosecution witnesses give any



evidence contrary to their previous statement recorded under Section 161 Cr.P.C. or if there is any omission of certain material particulars, the previous statement of these witnesses could be proved only by examining the I.O. who must have recorded the statement of these witnesses under Section 161 Cr.P.C. A Court has to see whether the evidence of I.O. is essential for the case of prosecution to succeed or not. It is contended and pointed out that there is material contradiction in the statements of the prosecution witnesses before the Court and recorded by the I.O. and as such, the valuable right of the accused has been prejudiced.

52. In **Tahsildar Singh vs. State of U.P. AIR 1959 SC 1012**, it was held that to contradict a witness would mean to 'discredit' a witness. Therefore, unless and until the former statement of the witness is capable of 'discrediting' a witness, it would have little relevance. A mere variation in the two statements would not be enough to discredit a witness. The purpose of the cross-examination of a witness in terms of Section 145 and 155 of the Evidence Act is to bring contradictions in the two statements of the witness.

53. In **Ambika Prasad vs. State (Delhi Admn) (2000) 2 SCC 646** the Hon'ble Supreme Court held that the criminal



trial is meant for doing justice and not just to the accused but also to the victim and the society so that law and order is maintained. It was held that a Judge does not preside over the criminal trial merely to see that no innocent man is punished. It was held that a Judge presides over criminal trial also to see that a guilty man does not escape. It was held that both are public duties which the Judge has to perform. It was held that it was unfortunate that the I.O. had not stepped into the witness box without any justifiable ground. It was held that non-examination of I.O. could not be a ground for disbelieving eye witnesses.

54. In the case of **Bahadur Naik vs. State of Bihar (2000) 9 SCC 153** it was held by the Hon'ble Supreme Court that non-examination of I.O. was of no consequence when it could not be shown as to what prejudice had been caused to the appellant by such non-examination.

55. In a criminal case, the evidence of the I.O. has its own importance, but non-examination of the I.O. is not fatal in all the cases. It is well settled that mere non-examination of I.O. does not in every case cause prejudice to the accused or affects the credibility of the prosecution version.

56. The Hon'ble Supreme Court in **Ram Dev vs. State**



of U.P. [1995 Supp (1) SCC 547] observed that non-examination of I.O. does not in any way create any dent in the prosecution case, much less affect the credibility of otherwise trustworthy testimonies of the eye witnesses. It was, however, indicated that it is always desirable for the prosecution to examine the I.O.

57. In **Behari Prasad vs. State of Bihar (1996) 2 SCC 317** it was held that a case of prejudice likely to suffer mostly depends upon facts of each case and no universal straitjacket formula should be laid down that non-examination of I.O. *per se* vitiate the criminal trial.

58. Admittedly, the I.O. has not been examined in this case. As stated above, it is well settled that non-examination of I.O. *ipso facto* does not discredit the prosecution version. The right of bringing on record the contradictions in the statement of witnesses made before the I.O. is a very valuable right of the accused and by showing that, the witness has made improvements or has given evidence, which contradicts his earlier statement, the accused is able to satisfy the Court that the witness is not a reliable witness. It is a valuable right of the accused.

59. In the present case, the police Sub-Inspector



Baleshwar Prasad Singh recorded the fardbeyan of the informant and took up investigation himself, prepared the inquest report of the deceased Sadanand Yadav. In our view, in fact and circumstances of the case, I.O. is a material witness and non-examination of I.O. has definitely prejudiced the appellants since the appellants lost opportunity to cross-examine the I.O. on the point of recording of fardbeyan of informant, visit of I.O. at the place of occurrence, inquest report, seizure of blood stained soil and contradictions in the statement of prosecution witnesses before the I.O.

60. Thus, in our opinion, non-examination of I.O., in the present case, is a serious infirmity resulting in prejudice being caused to the appellants. Hence, on this score also conviction of the appellants cannot be sustained.

61. In the light of above discussions and taking into consideration the facts and circumstances of the case and the evidences available on record, we are of the considered view that the prosecution has miserably failed to prove the charges levelled against the accused/appellants beyond all reasonable doubts thereby entitling the accused/appellants for acquittal.

62. In the result, the instant appeals deserve to be allowed and are allowed with the following orders:



I. The appeals are allowed.

II. The impugned judgment of conviction dated 25.11.2019 and order of sentence dated 29.11.2019 passed by learned Additional District and Sessions Judge III, Supaul in Sessions Trial No. 35 of 2000 thereby convicting the appellants and sentencing them, accordingly, is set aside.

III. The appellants are acquitted of the charges levelled against them and held to be proved against them by the learned Trial Court.

IV. The appellants, namely, Subodh Yadav, Binod Yadav [in Cr. Appeal (DB) No.1530 of 2019] and Sushil Yadav [in Cr. Appeal (DB) No.1486 of 2019], who are in jail custody, be set at liberty forthwith, if not required in any other case.

V. The appellants, namely Devanand Yadav, Surat Lal Yadav, Dharendra Yadav [in Criminal Appeal (DB) No.1486 of 2019], who are on bail, are discharged from liabilities of their bail bonds and sureties.

63. The aforesaid appeals, accordingly, stand disposed of.

64. Let a copy of this judgment be dispatched to the Superintendent of concerned jail forthwith for compliance and record.



65. The Trial Court records of the instant appeals be returned to the Trial Court forthwith.

66. Interlocutory application(s), if any, also stand(s) disposed off, accordingly.

(Sunil Dutta Mishra, J)

I agree
Arvind Srivastava, J

(Arvind Srivastava, J)

Harish/-

AFR/NAFR	AFR
CAV DATE	01.12.2023
Uploading Date	26.02.2024
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