

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.356 of 2019**

Arising Out of PS. Case No.-189 Year-2016 Thana- UDWANTNAGAR District- Bhojpur

BHARAT MAHTO Son of Shri Bhola Mahto, Resident of village-Bibiganj,
P.S-Udwantnagar, District-Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 337 of 2019

Arising Out of PS. Case No.-189 Year-2016 Thana- UDWANTNAGAR District- Bhojpur

KUNWAR MAHTO Son of Bhola Mahto Resident of Village- Bibiganj, P.S.-
Udwantgagar, District- Bhojpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 356 of 2019)

For the Appellant/s : Mr. Prince Kumar Mishra, Advocate
Ms. Priyanka Kumari, Advocate
Mr. Sanjiv Kumar, Advocate

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

(In CRIMINAL APPEAL (DB) No. 337 of 2019)

For the Appellant/s : Mr. Prince Kumar Mishra, Advocate
Ms. Priyanka Kumari, Advocate
Mr. Sanjiv Kumar, Advocate

For the Respondent/s : Km. Shashi Bala Verma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 03-04-2026

These are two appeals filed by Kunwar Mahto and
Bharat Mahto respectively, assailing the judgment and order of
conviction dated 21.01.2019 passed by the learned Additional
District and Sessions Judge-III, Bhojpur at Ara in Sessions Trial



No.214 of 2017 arising out of Udwantnagar Police Station Case No.189 of 2016 dated 27.04.2016, whereby and whereunder the above-named two appellants were convicted under Sections 235(1) of the Cr.P.C. and sentence to suffer imprisonment for life for the offences punishable under Section 302/34 I.P.C. on payment of fine of Rs.20,000/- each, in default, of payment of fine further imprisonment for six months each. The appellants were also convicted and sentenced to suffer imprisonment for the offence punishable under Section 27 of the Arms Act for three years each and also to pay fine of Rs.2,000/- each, in default, of payment of fine, further imprisonment for one month each.

2. It is pertinent to mention at the outset that the F.I.R. case was instituted against three persons. Beside the appellants, one Manoj Yadav was also an F.I.R. named accused, but the case in the Trial Court against him was abated due to his death during trial.

Factual Matrix

3. On 27.04.2016 at about 01:30 p.m., one Godhan Mahto of village-Bibiganj under P.S.-Udwantnagar made a statement before the Police Officer of Ara Nagar Police Station at the District Hospital, Ara, alleging inter-alia, that on the same date a marriage ceremony of his nephew Munna Mahto was



being performed in his house. Grooms party were about to proceed to village-Harigaon and on this occasion, the musicians were playing music standing on the pathway running East to West. At about 11:45 A.M., the accused persons, namely, Manoj Yadav, Bharat Mahto, Kunwar Mahto appeared in front of the house of the informant. Accused-Manoj Yadav and Bharat Mahto brought out a country made pistol from their waist and opened fired at the son of the informant, namely, Ratan Mahto from close distance. On receiving gunshot injury, the son of the informant fell down. In the meantime, Kunwar Mahto also fired at him. Hearing the sound of firing, the neighboring people came to the place of occurrence, but the accused persons fled away. The informant immediately took his son to the District Hospital at Ara, but the Medical Officer declared him dead.

4. It is also stated by the informant that the father of Bharat Mahto and Kunwar Mahto transferred a piece of land measuring about 02 katha to his brother Raghu Mahto about 2-4 years before the incident. On the issue of transferring the said land, a dispute was going on between Raghu Mahto and Kunwar Mahto, a title suit was also pending between the parties. Due to such dispute, the above-named accused persons committed murder of the son of the informant resorting to gunshot injury.

5. The statement of Godhan Mahto was recorded by



one Dil Kumar Bharti, ASI of Police at Ara Nagar Police Station at 01:30 p.m.

6. The said Dil Kumar Bharti also held inquest over the dead body of deceased Ratan Mahto. The said F.I.R. was transmitted to Udwanagar Police Station and formal F.I.R. was drawn on 27.04.2016 at about 07:30 p.m. under Section 302/34 of the I.P.C.

7. The S.H.O., Udwanagar Police Station entrusted S.I.-Manoj Singh, Incharge of Gajrajganj O.P. to investigate into the case.

8. On completion of investigation, police submitted charge sheet against the accused persons/appellants under Section 302/34 I.P.C. and Section 27 of the Arms Act before the learned Chief Judicial Magistrate, Bhojpur at Ara.

9. On commitment of the case, the learned Sessions Judge transferred the case record to the Court of the learned Additional District and Sessions Judge-III, Bhojpur at Ara for trial and disposal.

10. It appears on perusal of the Lower Court Record that accused Manoj Yadav died even before framing of charge in Sessions Trial No.214 of 2017. The charge was framed against the present appellants under Section 302/34 I.P.C. and Section 27 of the Arms Act. The accused/appellants pleaded not



guilty when the charge was read over and explained to them.
Hence, the Trial.

11. We now proceed to examine the evidence produced on behalf of the prosecution during the Trial.

12. During trial, prosecution examined six witnesses. They are PW-1-Munna Mahto, who is the nephew of the informant and whose marriage was scheduled to be performed on the date of occurrence; PW-2-Godhan Mahto, is the informant himself; PW3-Vishwanath Mahto, father of the informant; PW4-Shiv Kumar Mahto, who is the brother of the informant; Manoj Kumar, the I.O., who was examined as PW-5 and PW-6-Dr. Krishna Nand Sinha was the Medical Officer, who conducted postmortem examination over the dead body of the deceased Ratan Mahto.

13. The formal F.I.R., Fardbeyan, Inquest Report of the deceased and Postmortem Report were exhibited during Trial.

14. PW1-Munna Mahto stated in his Examination-in-Chief that his marriage was arranged from his maternal uncle's house. At about 11:45 A.M., he was standing in front of the door of their house. The musicians and band players were playing music on the pathway running East to West in front of their house. At that point of time, the accused person, namely,



Manoj, Bharat and Kunwar came in front of their house and all of them fired at Ratan on his head and chest. On receiving gunshot injuries inflicted by Manoj and Bharat, Ratan fell down on the ground. Then, Kunwar fired on the right arm of Ratan. Ratan was taken to hospital and he was declared dead.

15. It is ascertained from his cross examination that there is a lane running East to West in front of their house having 4-5 feet in width. There was no one in the lane at the time. The said lane is approximately 100 yards long attaching to the main Motorable road on both sides. PW-1 could not state as to whether the accused persons came from East or West direction. However, it was stated by him that the incident took place within 1 and 2 minutes. He also deposed that at that point of time his maternal uncle and maternal grandfather were in the cowshed situated just opposite to their pucca house adjacent to the lane. By the time, the uncle and grandfather reached the place of occurrence, the accused had fled away from the same.

16. PW2-Godhan Mahto being the informant corroborated his statement in his Examination-in-Chief. He claimed himself to be the eye witness of the occurrence. In his Examination-in-Chief, he also stated that he was in the cowshed and his son was standing in front of the door of the cowshed. PW-2 corroborated the evidence of PW-1, stating on oath that



Manoj fired at the head, Bharat fired at the right side of rib cage and Kunwar Mahto fired at the right hand of Ratan. It is ascertained from his cross examination that PW-2 has two brothers, namely, Shiv Kumar and Raghu. All three brothers are separated in mess but live in the same house. He admitted that a piece of land was purchased by Raghu Mahto from the fire arm of the accused persons and over the said land a dispute and litigation was going on. PW-2 said that the lane running from East to West in between their residential house and cowshed is six feet wide. From cross examination, it is further found that PW-2 saw the incident from a distance of about 03 feet away where his son had received gunshot injury. During cross examination, he also stated that no villager said anything about their presence in the scene of occurrence or they would have seen the accused persons committing murder of Ratan.

17. PW-3-Vishwanath Mahto, is the father of the informant, it is found from his Examination-in-Chief that at the relevant point of time, he was collecting disposable plates used by the guests from the courtyard after having their lunch. He also stated that approximately 50 persons took their lunch sitting in the courtyard, which is 08 feet in length and 08 feet in width. About 15-16 persons were also waiting to take lunch. While they were serving food to the guests, PW-3 should be heard the



sound of firing. According to PW-3, women members of the family were performing marriage rituals on the western side roof and Munna, the bride groom, was being bathed on the western side roof. He also stated that the musicians were playing bands and people were standing on all sides to enjoy music and dance. Ratan was also standing there, where he was shot dead.

18. PW4-Shiv Kumar Mahto, stated in his evidence that he was inside the cowshed when the incident took place. Shiv Kumar Mahto gave the same account of the incident like other witnesses. He was also a witness to the inquest report of the deceased. It transpired from his cross examination that there were 50 persons standing at the door at the time of incident. Ten persons of their village were also present near the place of occurrence. The music was being played very loudly. PW-1-Munna Mahto was on the roof of the house to attend marriage rituals. In cross-examination of PW-4 itself, it was taken by the defence that though there were 50-60 persons present at the place of occurrence, nobody dared to say anything about the incident.

19. PW-5, Manoj Kumar is the Investigating Officer, who took up the investigation of the case, on being directed by the SHO of Udwantnagar Police Station of Ara



Sadar Hospital Police Camp recorded the Fardbeyan of the informant and prepared Inquest Report of the dead body of the deceased. During investigation, PW-5 visited the place of occurrence, it is stated by him that the house of the informant is North facing on the PCC lane at Village-Bibiganj. The offence was committed on the lane in front of the house of the informant. On the opposite side of the house of the informant, there is a cowshed in the neighborhood there is a house of one Kunwar Mahto after the house of the informant.

20. It is pointed out from the cross-examination of PW5 that the alleged incident took place on 27.04.2016 at about 11:45 A.M., one Dil Kumar Bharti, ASI of Police attached to Ara District Hospital Police Camp held inquest over the dead-body of the deceased at 12:00 noon. Fardbeyan of the informant was recorded at 01:30 P.M. The Investigating Officer being the Incharge of Gajrajganj O.P. received Fardbeyan at 03:00 P.M. from local Chowkidar and started investigation of the case before intrestment of investigation to him by the S.H.O. Udwantnagar Police Station. The F.I.R. was registered at about 07:30 P.M. and only then PW-5 was entrusted to investigate into the case.

21. PW-6, Dr. Krishna Nand Sinha was the Medical Officer, who conducted autopsy over the dead-body of Ratan



Mahto. He found the following injuries on the person of the deceased:-

“Injury No.1(wound of entry):-
Right side frontal area with charring margin 1x3
inch X 1x3 inch

Injury No.2 (Wound of exit):- Back
area of skull 2x3 inch X 2x3 inch, deep
lacerated wound.

Injury No.3 (Wound of Entry):-
Lacerated round 1x3 X 1x3 inch deep round
wound on right lower arm, lateral side of
dorsum part

Injury No.4 (Wound of exit):-
Lacerated wound right lower arm lateral ventral
part 1x2 X 1x2 inch deep.

Injury no.5 (Wound of exit):- Right
side chest mid part. lacerated wound 1/3 inch x
1/3 inch deep with charring margin. that is
wound of entry no wound of exit found. on
chest x-ray a bullet like metal left hyllum of in
mid part.”

22. During cross-examination, he stated that Injury Nos.3 and 4 can be inflicted when the injured is in standing position. The said injury was caused approximately about a distance of 12 feet. The Medical Officer also found a bullet stuck in the hyllum of the chest. The said bullet was extracted.

23. This is all about the evidence on behalf of the



prosecution.

24. On the basis of the evidence of the witnesses, on behalf of the prosecution, the appellants were examined under Section 313 of the Cr.P.C.. Defence case as disclosed from the trend of cross examination of the witnesses on behalf of the prosecution and examination of the accused under Section 313 of the Cr.P.C. appears to be complete denial of the prosecution case.

25. It is contended on behalf of the appellants that they were falsely implicated in this case due to land dispute between them and the uncle of the deceased.

Submission on behalf of the appellants in Appeals

26. Learned Advocate on behalf of the appellants at the outset submit that the evidence on record clearly suggests that the presence of PW-1 to PW-4, who claimed themselves to be the eye witnesses of the occurrence are absolutely doubtful. In order to substantiate his contention, it is pointed out by the learned Advocate on behalf of the appellants that according to PW-1 at the time of occurrence, he was standing in front of the door of their house. However, from the evidence of PW-3 and PW-4, it is ascertained that PW-1 was taking bath on the western side roof of the house while some rituals of marriage were being performed. Therefore, from the evidence of PW-3 & PW-4,



presence of PW-1 in front of the door of the house remains not only doubtful, but absolutely false. So PW-1 had no occasion to see the incident. Therefore, he is not a competent witness to say when, where and how the incident took place.

27. Secondly, it is further submitted by the learned Advocate for the appellants that PW-2, who is the informant in this case stated that at the time of occurrence he was present in the cowshed. On the contrary, according to PW-1 his maternal uncle and his whole family were in the courtyard (आँगन) at the time of occurrence. Similarly, PW-3, who is the grandfather of the deceased stated on oath that he was collecting disposable plates (पत्तल) from the courtyard after the lunch taken by approximately 50 persons. PW-2-Godhan Mahto and PW-4-Shiv Kumar Mahto were serving food to *Baraties*.

28. The learned Advocate for the appellants further submits that the I.O. did not prepare the sketch map of the place of occurrence. However, from the description of place of occurrence as recorded in the case diary, the learned Advocate for the appellants prepared a sketch map of the house of the informant to show that it is impossible for anybody to see any incident that takes place at the lane in front of the house of the informant from the courtyard. Therefore, PW2, PW3 and PW4 also did not see the incident, as claimed by them in their



evidence.

29. The learned Advocate for the appellants also referred to the evidence of PW4-Shiv Kumar Mahto and submitted that though PW-4 claimed that, at the time of occurrence, he was present in the cowshed (गऊशाला) watching the band party play music, his statement is proved to be false when confronted with the evidence of PW-1 and PW-3.

30. The learned Advocate for the appellants further submits that in these appeals, PW-5 started investigation even hours before the registration of F.I.R. He also submits that one Dil Kumar Bharti, Incharge of Ara Hospital Police Out Post recorded the statement of the informant at about 12:00 Noon and prepared inquest over the dead-body of the deceased at about 01:30 p.m.. Surprisingly enough, the said Dil Kumar Bharti has not been examined as a witness during trial of the case. It is submitted by him that the said Dil Kumar Bharti is a material witness and non-examination of the said witness is fatal for the prosecution.

31. The learned Advocate for the appellants further submits that as per the evidence of PW-3, there were 50-60 people present in the courtyard of their house after taking lunch. About 15-16 people were waiting to take lunch. Local villagers were enjoying music and dance being performed on account of



the marriage of Munna, but the prosecution could not produce any independent witness of the same village as the eye witness of the occurrence.

32. In support of his contention, he refers to a decision of Apex Court in the case of *Takhaji Hiraji V. Thakore Kubersing Chamansing*, reported in (2001) 6 SCC 145. In paragraph No.19 of the aforesaid judgment, it was observed by the Hon'ble Supreme Court:-

“19.It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case.

33. It is further observed by the Hon'ble Supreme Court:-

“.....In such a case the court ought to scrutinise the worth of the evidence



adduced. The court of facts must ask itself whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses.....”

34. The learned Advocate on behalf of the appellants has raised serious question on the act and process of investigation conducted by the I.O. even before the registration of F.I.R.. In this regard, he refers to the evidence of PW-5 where he stated that he received the Fardbeyan from the local Chowkidar at about 03:00 P.M.. Upon receiving the Fardbeyan, he opened the case diary and started investigation even before the F.I.R. was returned to him after endorsement by the S.H.O. of the concerned police station entrusting him with the investigation of the case.

35. The learned Advocate for the appellants under the facts and circumstances has questioned about the delay in registration of F.I.R., stating that the incident took place on



27.04.2016 at about 11:45 A.M.. Fardbeyan of PW-2 was recorded at about 01:30 P.M. and the F.I.R. was registered after a lapse of about 06 hours at about 07:30 P.M.

36. Last but not the least, it is submitted by the learned Advocate for the appellants that the appellants were not properly examined under Section 313 of the Cr.P.C. and they were deprived of their right to explain the incriminating circumstances allegedly appearing against them.

37. In support of his contention, he refers to the following decisions of the Hon'ble Supreme Court :- *Reena Hazarika Vs. State of Assam*, reported in (2019) 13 SCC 289, (Para-19 to 21); *Satbir Singh Vs. State of Haryana*, reported in (2021) 6 SCC 1, (Para-22); *Kalicharan Vs. State of U.P.*, reported in (2023) 2 SCC 583 (Para27 to 29).

38. Thus, it is concluded by him that contradictions and inconsistencies in the testimony of the alleged eye-witnesses, which casts doubt on the presence of the eye witnesses at the place of occurrence, the non-examination of any independent witnesses from the village where the alleged incident took place, and the discrepancies between the ocular and medical evidence were not properly considered by the Trial Court, and the appellants were entitled to the benefit of doubt in view of the above-mentioned contradictions and inconsistencies



in the prosecution case.

39. The learned Advocate on behalf of the State-Respondent has supported the judgment delivered by the Trial Court. It is further submitted by her that it is very often our experience in day-to-day life that persons who have not themselves experienced the loss or suffering do not come forward even to extend a helping hand to a person in need. The villagers in spite of their presence at the side of occurrence generally do not come forward to depose against the accused persons for fear of incurring the enmity and wrath of the dreaded accused persons, who do not hesitate to finish a human life in presence of number of people.

40. Under such circumstances, it is not expected now a days to demand presence of independent witnesses.

41. It is further submitted by the learned Advocate for the State-Respondent that the villagers are now divided politically, socially and similar to the old days villagers do not come forward in most of the cases to assist the victims of offence. Therefore, in these appeals it was only PW-2 being the father of the deceased and his uncle (PW4) took the deceased to the hospital for medical treatment, no villager, as per record, accompanied them, though, about 60-70 persons came to the house of the deceased to enjoy the lunch on account of marriage



of Munna Mahto.

42. Thus, she invited us to decide the case on the basis of the available witnesses. It is further submitted by her that PW-1 to PW-4 are the most natural witnesses. Their evidence cannot be discarded on the ground of interestedness being close relatives of the deceased.

43. On the contrary, the Court has to consider that the family members of the deceased would not depose against an innocent person while allowing the real culprits to escape prosecution.

44. Under the premises aforesaid, the learned Advocate for the State has referred to the evidence of the witnesses and submits that there is no reason to overturn the decision of the Trial Court in the instant case.

Our Findings

45. The fate of these appeals solely depends upon adjudication of the question as to whether PW-1 to PW-4 were eye witnesses of the occurrence or not. If so, the evidence of the said witnesses can solely be accepted against the accused, specially when prosecution failed to examine any villager or any independent witness to corroborate their evidence. Secondly, whether the evidence of the alleged eye witnesses suffers from material contradictions. Thirdly, whether their evidence should



not be considered on the ground of interestedness and whether investigation of the case was satisfactorily made leading to the filing of charge-sheet against the accused persons. Last but not the least, whether the appellants got reasonable opportunity to explain incriminating circumstances appearing against them.

46. At the outset, we are inclined to record that the learned Advocate on behalf of the State-Respondent rightly submits that we are living in a society where most of the people who do not suffer any loss or injury, are not inclined to come forward to depose against an accused. This is an attitudinal change crypt in the mindset of the people. It is our common experience that the eye witnesses and bias tenders leave the place without disclosing a criminal offence that takes place within their sight and hearing. Therefore, in most of the criminal cases, where some heinous offences happened, the Court finds only the persons of the family of the victim coming forward to depose. If the evidence of the said witnesses is discarded on the ground of interestedness, there will be no evidence to prove the charge against the accused.

47. In these appeal, the incident took place on the date of marriage of PW-1 at about 11:45 A.M. There were 50-60 people inside the house of the informant, who took lunch at that point of time, 15-16 people were waiting for lunch. A band party



was playing music on the lane in front of the house. Local villagers were enjoying music and dance. At such place where many people were present, three assailants appeared at the place of occurrence in front of the cowshed of the informant and opened three rounds of fire on the deceased and left the place unobstructed.

48. We have perused the case diary. The I.O. tried to examine local people and other villagers, who might have seen the incident, but everybody expressed their ignorance and stated that they did not know anything as to how and by whom deceased was murdered.

49. At this stage, it is our duty to appreciate the evidence of PW-1 to PW-4 independently and consider whether their evidence should be discarded due to material contradictions or whether the contradictions appearing in the evidence of the above-named witnesses should be treated as material or minor contradictions that do not suffer the ultimate decision taken by the Trial Court.

50. It is stated by PW-1 in his evidence that at the time of occurrence, he was standing in front of the door of their house (दरवाजा). It is explained by the learned Advocate for the State that in Bhojpur area, दरवाजा does not mean the entrance door. दरवाजा is the front portion of the house, leading to the



entrance door after the said front portion of the house there is generally a courtyard (आंगन), where women members of the family generally stay. Male members of the family are generally not allowed to go to the courtyard (आंगन) from दरवाजा. From the sketch map prepared on behalf of the appellants there is a six feet passage between the entrance door and the door of the courtyard. The PCC lane where the incident took place is visible from the said passage. Therefore, anybody can witness about what had happened on the lane on the date and time of occurrence standing on the passage of the house of the informant.

51. It is true that PW3 and PW4 stated in their evidence that at the time of occurrence, Munna was taking bath on the western side roof and women members of the family were performing some rituals of marriage. So, there is a discrepancy as to the place where PW-1 remained present at the time of occurrence. The question that arises for adjudication at this stage is as to whether such contradictions is material in nature touching the root of the decision or minor contradictions.

52. It is needless to say that in a marriage house, on the date of marriage, there are many people present and involved in different works. As per example, PW-3 stated on oath that at the time of occurrence he was collecting disposable



plates of the persons, who took lunch. His two sons, including the informant were serving food to the guests. PW-4 on the other hand, stated that at the time of occurrence he was inside the cowshed situated just opposite side of the lane where the incident took place. Therefore, the house of the informant was crowded at the relevant point of time when the incident took place.

53. In such circumstances, the narration of one witness about the presence of another at a particular place, even if found to be contradictory, such contradiction is absolutely immaterial and minor in nature. If we visualise the layout of the house and the presence of so many people on the date and time of occurrence, the contradictions pointed out by the learned Advocate for the appellants are found to be minor in nature.

54. The learned Advocate on behalf of the appellants raised this question very seriously, as to why Dil Kumar Bharti, who recorded the Fardbeyan of the informant and prepared Inquest of the dead-body of the deceased Ratan Mahto was not examined. The said Dil Kumar Bharti is an ASI of Police attached to Ara District Hospital Police Out Post. He recorded the Fardbeyan at about 12 Noon on the basis of the statement made by PW-2 and prepared inquest over the dead-body of the deceased at about 01:30 P.M.



55. The learned Advocate on behalf of the appellants has further raised question about the authenticity of Inquest Report of before registration of Udwantnagar P.S. Case No.189 of 2016.

56. Section 174 of the Cr.P.C. empowers a police officer as hereunder:-

“174. Police to enquire and report on suicide, etc.-- (1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation. and draw up a report of the apparent cause of death, describing such



wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.”

57. It is needless to say that investigation or an inquiry under section 174 Cr.P.C. is distinct from investigation as contemplated under Section 154 relating to commission of cognizable offence. This is clearly decided in *Manoj Kumar Sharma Vs. State of Chhattisgarh*, reported in *(2016) 9 SCC 1*. Therefore, non-examination of ASI, Dil Kumar Bharti cannot be stated to be suppression of material witness by the prosecution, when the Fardbeyan and inquest had been marked exhibits in the Trial Court without any objection, question of examination of the said witness cannot be held to be material.

58. It is found from record that the I.O. of the case, (PW-5) received the Fardbeyan at about 03:00 p.m. at Gajrajganj O.P. On receipt of such information, he started investigation of the case and proceeded for the place of occurrence. Thereafter, the FIR was sent to Udwantnagar Police



Station and the Officer Incharge registered formal F.I.R. being Udwantnagar P.S. Case No.189 of 2016 dated 27.04.2016 at about 07:30 p.m.

59. Section 156(1) of the Cr.P.C. states as such :-

“(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.”

60. Careful reading of the above provisions states that any officer in charge of a police station is empowered to investigate any cognizable case and the power of a police officers to investigate cannot be called in question on the ground that the case was one which such officer was not empowered under Section 156(1) to investigate.

61. In these appeals, though PW-5 started investigation at 03:00 P.M. after receiving the information of commission of cognizable case of murder at Village-Bibiganj within the jurisdiction of his Out Post, his action cannot be



called in question on the ground that he was entrusted by the S.H.O., Udwanagar Police Station on 27.04.2016 at 07:30p.m.

62. In this respect also, we do not find any illegality in respect of commencement of investigation in these appeals.

63. The learned Advocate on behalf of the appellants also criticized the Trial Court judgment on the ground that the appellants were not properly examined under Section 313 of the Cr.P.C. and the incriminating circumstances were not asked to them. On perusal of the form of recording examination of accused under Section 313 of the Cr.P.C., we find that except the formal questions, the accused persons/ appellants were asked the following questions:-

“प्रश्न:- क्या आपने गवाहों की गवाही सुनी है?

उत्तर:- जी हाँ।

प्रश्न:- आपके विरुद्ध साक्ष्य है कि आप अन्य अभियुक्तों के साथ मिलकर दिनांक 27.04.2016 को समय करीब 11:45 अजे दिन में ग्राम बीबीगंज में वादी गोधन महतो के दरवाजे पर समान उद्देश्य से हथियार लेकर गये, क्या कहना है ?

उत्तर:- जी नहीं।

प्रश्न:- आपके विरुद्ध यह भी साक्ष्य है कि आप अपने हाथ में लिए अवैध पिस्तौल से वादी के पुत्र रतन महतो को हाथ में गोली मार दिया जिससे उसकी मृत्यु हो गई, क्या कहना है ?

उत्तर:- जी नहीं।”

64. The above mentioned questions put to the accused persons clearly suggest that they were asked to explain the incriminating circumstances, appearing against them. There



is no infirmity in the examination of the accused under Section 313 of the Cr.P.C. Therefore, the decisions of the Hon'ble Supreme Court cited on behalf of the appellants in these appeals are not applicable.

65. As a result of what has been stated above, we come to the conclusion that there is no ground to over turn the order passed by the learned Trial Judge in Sessions Trial No.214 of 2017 arising out of Udwantnagar Police Station Case No.189 of 2016.

66. Accordingly, both the appeals are dismissed. However, there shall be not order as to costs. The judgment of conviction and sentence are affirmed.

67. Lower Court Records be sent to the Court below alongwith a copy of this judgment.

68. The appellants be supplied with the copy of the judgment passed by this Court forthwith.

(Bibek Chaudhuri, J)

(Chandra Shekhar Jha, J)

mdrashid/-

AFR/NAFR	
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