

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.298 of 1996

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Against the judgment of conviction, dated 17.07.1996, and the order of sentence, dated 20.07.1996, passed, by Shri S. M. Haque, 1st Additional Sessions Judge, Madhepura, in Sessions Trial No. 74 of 1989, arising out of Alamnagar Police Station Case No. 70 of 1988

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1. YOGENDRA MANDAL S/O Bhuneshwar Mandal R/O Vill.- Baraki Fatoriya, P.S.- Alam Nagar, Dist.- Madhepur
2. Bindeshwari Mandal S/O Devi mandal R/O Vill.- Baraki Fatoriya, P.S.- Alam Nagar, Dist.- Madhepur (**Case against the appellant has been abated vide Hon'ble Court's order dated- 29-11-2025**)
3. Adhiklal Mandal S/O Langnath Mandal R/O Vill.- Baraki Fatoriya, P.S.- Alam Nagar, Dist.- Madhepur (**Case against the appellant has been abated vide Hon'ble Court's order dated- 29-11-2025**)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sidhendra Nr. Singh

For the State : Mr. Sujit Kumar Singh

Ms. Surya Nilambari, Advocate, appears as Amicus Curiae

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
and
HONOURABLE MR. JUSTICE ALOK KUMAR

JUDGMENT AND ORDER
C.A.V.

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

Date : 21-07-2026



The present appeal has been preferred against the judgment of conviction, dated 17.07.1996, and the order of sentence, dated 20.07.1996, passed by the learned Additional Sessions Judge-I, Madhepura, in Sessions Trial No.74 of 1989, arising out of Alamnagar Police Station Case No. 70 of 1988, whereby the sole surviving appellant, Yogendra Mandal, was convicted for the offence punishable under Sections 302 read with 34 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for life.

2. The prosecution case, as unfolded in the fardbayan of the informant, Ganesh Mandal (PW 9), is that in the night intervening 12th and 13th July, 1988, at about 8 PM., he was serving food to the members who had come to attend the marriage ceremony of his niece. At that time, his co-villagers, Bindeshwari Mandal (died during the pendency of this appeal), Yogendra Mandal (the appellant) and Adhik Lal Mandal (died during the pendency of this appeal), against whom a murder case had been pending since 1986, came to his doorstep and owing to previous enmity, Bindeshwari Mandal called the son of the informant, namely, Rajendra Mandal, whereupon Rajendra accompanied them towards west of the house.



3. It has further been alleged by the informant that after some time, he heard a noise from that direction and on hearing the same, he, along with his other sons, Tej Narayan Mandal and Bachneshwar Mandal, co-villagers Valmiki Mandal, Lucho Mandal and others, rushed towards the western side of the house and in the torch light, saw Bindeshwari Mandal, Yogendra Mandal and Adhik Lal Mandal running towards the south-west. The informant saw that Yogendra Mandal was having a .303 rifle, but he could not see what other accused persons were carrying.

4. The informant further stated that he found his son, Rajendra Mandal, dead lying supine in his kheri field and blood was oozing out of the left side of his chest. He also stated that at the time of the occurrence, it was drizzling and the night was very dark and due to fear of the accused persons, he did not follow them. He further stated that the villagers had also witnessed the occurrence.

5. The informant has further stated that the accused persons had called his son, took him behind the house and shot him dead.

6. On the basis of the aforesaid fardbayan, Alamnagar Police Station Case No. 70 of 1988, dated 13.07.1988, was



registered against the accused persons for the offences punishable under Section 302/364/120-B of the Indian Penal Code.

7. Upon completion of the investigation, the police submitted charge-sheet no. 56 of 1988, dated 30.09.1988, against the accused persons. The learned Magistrate took cognizance for the offences punishable U/s 364/302/120-B/34 of Indian penal code, against the accused person on 29.11.1988 and thereafter, the case was committed to the Court of Sessions on 12.05.1989.

8. On 17.08.1989, charges were framed Under Section 302 read with Section 34 of the Indian Penal Code against the accused persons, which were read over and explained to them in Hindi, to which they pleaded not guilty and claimed to be tried.

9. The prosecution, in order to substantiate its case, has examined thirteen witnesses and also exhibited some documents on its behalf. List of prosecution witnesses and exhibits are being mentioned hereunder in tabular form:-

List of Prosecution Witnesses :

Prosecution witness no.	Name of witness	Description
1.	Babulal Mandal	Uncle of deceased
2.	Tej Narayan Mandal	Brother of deceased
3.	Lucho Mandal	Villager
4.	Suresh Mandal	Son-in-law of informant
5.	Dr. J.B. Singh	Doctor



6.	Bhagwan Mandal	Tendered witness
7.	Deonarayan Yadav	Formal witness
8.	Bachneshwar Mandal	Brother
9.	Ganesh Mandal	Informant
10.	Lalan Kumar Jha	Formal witness
11.	Kusmi Devi	Wife of Informant
12.	Umesh Mandal	Seizure list witness
13.	Navin Prasad Yadav	Formal witness

List of Exhibits on behalf of the prosecution :

Exhibit No.	Description of the Exhibit	Date/attested
1	Post Mortem report of the deceased (Rajendra Mandal)	27.07.1990
2	F.I.R	02.09.1991
3	Inquest Report	07.09.1993
4	Seizure list	06.06.1994
5	Charge sheet	06.04.1995

10. After closure of the prosecution evidence, the statement of the appellants were recorded under Section 313 of the Code of Criminal Procedure on 01.07.1996, to which they denied and claimed to be tried.

11. The defence has not chosen to examine any witness in support of its case. No oral evidence has been adduced on behalf of the accused to substantiate the defence plea or to rebut the evidence led by the prosecution. Likewise, no documentary evidence has been brought on record by the defence in support of its contentions.



12. Learned Counsel for the sole surviving appellant has, at the outset, submitted that the judgment of conviction is against the weight of evidence and has been rendered on mere presumption of guilt. It is contended that the prosecution has failed to prove its case beyond reasonable doubt, in as much as the testimonies of the prosecution witnesses suffer from material contradictions and inconsistencies.

13. Learned Counsel for the appellant further submitted that the evidence of the prosecution witnesses, when appreciated in its proper perspective, does not inspire confidence and is wholly insufficient to sustain the conviction.

14. It was contended that PW 1, who is the own brother of the informant, is an admittedly interested witness. His evidence is confined only to the fact that the accused persons allegedly called the deceased from the marriage ceremony and took him towards the western side of the house.

15. Learned Counsel further submitted that PW 2, has made substantial improvement during the course of trial. While the First Information Report does not disclose that anyone had actually witnessed the firing, PW 2, for the first time before the Court, claimed to have seen Yogendra Mandal firing at the deceased. His testimony also suffers from material inconsistencies



on vital aspects of the prosecution case and, therefore, cannot safely be relied upon.

16. It was further submitted that PW 4, being the son-in-law (damaad) of the informant, is also an interested witness. More importantly, he admittedly reached the place of occurrence only after hearing the sound of firing. His knowledge regarding the identity of the assailants is entirely derived from what was allegedly narrated to him by others. His evidence, therefore, is purely hearsay and has no substantive evidentiary value insofar as the actual occurrence is concerned.

17. Learned counsel also pointed out that PW 6 was merely tendered for cross-examination and has not furnished any substantive evidence in support of the prosecution case. Likewise, PW 7 is only a formal witness and his evidence does not advance the prosecution case regarding the identity or involvement of the appellants. PW 11, who was expected to support the prosecution, has turned hostile and has not implicated the appellants in the commission of the offence.

18. It was next submitted that the Investigating Officer could not be examined during the trial as he had died before his evidence could be recorded.



19. Learned Counsel further submitted that the investigation itself suffers from serious lapses, which strike at the root of the prosecution case. Although the prosecution alleges that the appellants were identified in the light of a torch, no torch was ever seized or produced during the investigation. Likewise, no blood-stained earth or blood sample was collected from the alleged place of occurrence for forensic examination. Even the blood-stained clothes (bandi) worn by the deceased at the time of the occurrence were not seized by the Investigating Officer. These omissions assume considerable significance because the prosecution case is founded upon circumstantial evidence and identification in darkness. Such defective investigation creates a serious dent in the prosecution story and substantially weakens the evidentiary value of the prosecution case.

20. Learned *Amicus Curiae* submitted that the entire prosecution case is founded exclusively on circumstantial evidence and that the very circumstances sought to be relied upon by the prosecution have not been proved beyond reasonable doubt. It was contended that in a case resting solely on circumstantial evidence, every link in the chain must be firmly established and the chain so proved must be complete so as to exclude every hypothesis consistent with the innocence of the accused.



According to the learned *Amicus Curiae*, the prosecution has failed to satisfy this settled legal requirement.

21. It was further submitted that the prosecution principally relies upon the circumstances of "last seen together" and the alleged identification of the appellants while fleeing from the place of occurrence. However, neither of these circumstances inspires confidence. Learned counsel pointed out that the informant (PW 9) himself has rendered the prosecution version doubtful by raising uncertainty regarding the source and manner of identification. The occurrence admittedly took place on a dark and drizzling night, yet the prosecution has failed to establish the source, intensity or reliability of the alleged torchlight by which the appellants were said to have been identified. No torch was seized during investigation or produced before the Court. Consequently, the very foundation of the prosecution's case regarding identification remains unsubstantiated.

22. PW 2 has introduced material improvements during trial, whereas PW 3 has failed to corroborate the prosecution on the crucial aspect of seeing the appellants fleeing from the place of occurrence. These inconsistencies strike at the very root of the prosecution case and render the evidence wholly unreliable.



23. It was next submitted that despite the admitted presence of a large number of villagers and marriage guests at the place of occurrence, the prosecution has not examined a single independent witness. All the material witnesses examined by the prosecution are either close relatives of the deceased or otherwise closely connected with the informant. In a case admittedly arising out of previous enmity between the parties, the failure of the prosecution to examine any independent witness assumes considerable significance and casts a serious doubt on the fairness and credibility of the prosecution case. Nevertheless, it was submitted that the absence of the Investigating Officer has undeniably prejudiced the defence in proving material omissions and contradictions in the statements of the prosecution witnesses. At the same time, learned *Amicus Curiae* submitted that the Court is not rendered powerless merely because the Investigating Officer could not be examined. Referring to Section 165 of the Indian Evidence Act, 1872 (corresponding to Section 168 of the Bharatiya Sakshya Adhiniyam, 2023), it was contended that the Court possesses wide powers to put questions to any witness at any stage of the proceedings in order to discover or obtain proper proof of relevant facts. The Court, therefore, is duty-bound to independently scrutinize the evidence on record and satisfy itself



that the prosecution has discharged its burden of proving the guilt of the appellants beyond reasonable doubt.

24. Learned *Amicus Curiae* lastly submitted that when the prosecution case is examined as a whole, the cumulative effect of the material improvements, inconsistencies in the testimony of the witnesses, absence of independent corroboration, doubtful identification in adverse lighting conditions, defective investigation and the incomplete chain of circumstances creates more than a reasonable doubt regarding the involvement of the appellants. It was, therefore, urged that the appellants are entitled to the benefit of doubt and that the impugned judgment of conviction and the consequent order of sentence deserve to be set aside.

25. On the other hand, learned Additional Public Prosecutor, appearing on behalf of the State, while opposing the appeal, submitted that the learned Additional Sessions Judge-I, Madhepura, after considering the evidence on record, has rightly convicted the appellant. The offences alleged against the appellant is heinous in nature and the prosecution witnesses examined during trial have fully supported the prosecution case.

26. Learned Additional Public Prosecutor, therefore, submitted that the impugned judgment of conviction do not suffer



from any legal infirmity and/or irregularity, warranting interference of this Court. The appeal, being devoid of merit, is fit to be dismissed.

27. I have heard Mr. Sidhendra Narayan Singh, learned Counsel appearing on behalf of the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor appearing on behalf of the State. Also heard Ms. Surya Nilambari, learned Counsel, appearing in this appeal as *Amicus Curiae*. I have also perused the materials available on records, including the Lower Court Record.

28. While considering the present appeal, I would like to re-appreciate the other ocular witnesses adduced on behalf of the prosecution.

29. It may be noted that the conviction of the appellant has been based upon the circumstantial evidence. Out of the 13 witnesses examined by the prosecution, PW 1 and PW 2 (brothers of the informant), PW 8 (Bachneshwar Mandal) and PW 9 (informant of this case) are the ones, who have supported the case of the prosecution by implicating the accused aforementioned in the alleged assault on, and killing of, Rajendra Mandal.

30. As far as PW 11 (Kusumi Devi) is concerned, she was declared hostile and nothing could be, admittedly, elicited from



her cross-examination by the prosecution, which could be said to have supported the case of the prosecution.

31. As far as PW 3 (Lucho Mandal) and PW 4 (Suresh Mandal) are concerned, their evidence were, admittedly, nothing, but hearsay and have to be, therefore, kept excluded from the purview of this Court's consideration.

32. As regards PW 6 (Bhagwan Mandal), suffice it to point out that he was tendered as a witness and no substantive evidence has been elicited from him by the prosecution to support the charge brought against the appellant.

33. So far as PW 7 (Deo Narayan Yadav), PW 10 (Lalan Kumar Jha), PW 12 (Umesh Mandal) and PW 13 (Raj Kishore Prasad Yadav) are concerned, they are the formal witnesses. PW 7 has proved that the First Information Report has been written by the then Station House Officer Sri Mahavir Thakur, which has been marked as Exhibit 2. PW 10 has proved that the inquest report is in the handwriting of Daroga Mahavir Thakur and bears his signature, which has been marked as Exhibit 3. PW 12 has proved the seizure list, which bears his signature and has been marked as Exhibit 4. The Investigating Officer of this case had died during the pendency of this appeal and, therefore, PW 12, Munshi, has



proved the charge sheet written and signed by the Investigating Officer, Mahavir Thakur and has been marked as Exhibit 5.

34. Bearing in mind the above aspects of the prosecution's case, I come to the evidence of PW 5 (Dr. J. B. Singh), who had, admittedly, conducted post mortem examination on the dead of Rajendra Mandal on 14.07.1988, at 10:30 AM. According to this witness's evidence, he examined the dead body of the deceased, Rajendra Mandal, with rigor mortis present and found following ante mortem injuries:

“One circular hole of 1 ½” in diameter in second space in left anterior auxiliary fold directing towards the chest cavity with charred margin.

On opening the chest cavity, 3rd rib fractured, left and right chest cavity were full of blood, penetrating through and through left chest, heart and right lung. The abdominal viscera were pale.”

35. The doctor (PW 5) had found a conical bullet in the right chest cavity, which was removed and handed it over to Havildar Md. Aayub in sealed condition.

36. The doctor (PW 5) has opined that the hole present in the left lung, heart and right lung were caused by bullet injury. He further opined that the cause of death was shock and hemorrhage



due to bullet injury and the injury was sufficient to cause death in ordinary course of nature.

37. In the cross examination, the doctor (PW 5) has stated that he had not mentioned in his report as to whether the blood was clotted or not and he further stated that one may live for 2 to 4 minutes after receiving such injury as he had found on the deceased.

38. Nothing, in particular, was elicited by the defence to show that the findings of the doctor and/or his opinion, with regard to the cause of death was incorrect. This apart, I, too, do not find anything inherently incorrect or improbable in the evidence given by PW 5.

39. It can, therefore, be safely included, and I do conclude, that Rajendra Mandal died as a result of having sustained the injury as has been mentioned by the doctor (PW 5) and the shock and hemorrhage, which resulted from the ante mortem injury aforementioned, became the cause of his death and that the injury, which had been inflicted on, and sustained by, the said deceased, was sufficient to cause death of a person in the ordinary course of nature, from recovery of a conical bullet, admittedly, the weapon of offence being a fire arm.



40. What also clearly follows from the discussion of the medical evidence on record is that the death of the said deceased was homicidal in nature. Whether the appellant, along with others were the ones, who had caused the death, of Rajendra Mandal, therefore, falls for consideration.

41. As already indicated above, in order to support their case, prosecution has relied upon the evidence of PW 1, PW 2, PW 8 and PW 9.

42. Now, coming to the evidence of PW 1, Babulal Mandal, who has deposed that at around 1 AM, when a barati was having dinner at his house, Bindeshwari Mandal, Yogi Mandal and Adhik Lal Mandal came to his house, called Rajendra Mandal outside and took him with them towards the western side of the house. Shortly thereafter, he heard the sound of a gunshot from that direction. On reaching the spot, he found Rajendra Mandal lying dead in a kheri field situated to the west of his house, at a distance of about ten poles. He further deposed that blood was oozing from the left side of the deceased's chest.

43. In his cross-examination, this witness (PW 1) has deposed that Ganesh Mandal (PW 9) is his brother. In a murder case of Naresh, the brother of this witness, Ganesh, is an accused and the accused persons of this case, namely, Yogi Mandal, Adhik



Lal Mandal and son of Bindeshwari Mandal, are prosecution witnesses in the said case. This witness has further deposed that the murder of Naresh Mandal had taken place prior to the present occurrence and he himself is an accused in the said murder case, which was still pending. This witness (PW 1) has further deposed that the accused persons, along with Chandrashekhar Mandal, Mahadev Mandal, Vasudev Mandal, Kishan Lal Mandal and Munishwar Mandal are gotias and they had not come in the marriage feast. At the time, when the baarati party were taking dinner, four or five persons from the locality were present there. The baraati were dining at the door and he, along with other local people, was serving them. This witness had further deposed that he, not only saw the accused persons calling Rajendra, but had heard also. After the murder of Naresh Mandal, the accused had come to his house for the first time in the night of the occurrence. According to him, his house and the house of Ganesh Mandal have two courtyards.

44. The witness (PW 1) had denied the suggestion of the defence that the accused persons were wholly innocent and had been falsely implicated on account of prior enmity. He also denied the suggestion that no such occurrence had taken place at the hands of the accused persons.



45. PW 2, Tej Narayan Mandal, in his examination-in-chief, has deposed that at 1 AM, on a Tuesday, while he was serving food to the baraati guests at the door of his house during the marriage ceremony of his cousin sister, at that time, Bindeshwari Mandal, Adhik Lal Mandal and Yogendra Mandal came there and Bindeshwari Mandal called his brother, Rajendra Mandal, saying that he had some work with him and, thereafter, all the three accused took Rajendra Mandal towards the western side of the house.

46. This witness (PW 2) has deposed that, after a short while, when he heard the sound of a pistol shot from the western direction, he immediately proceeded towards the place of occurrence and in the torch light flashed by his father, he saw Bindeshwari Mandal, Adhik Lal Mandal and Jogi Mandal running towards the south-west. He further deposed that Rajendra Mandal was lying in his own kheri field, situated about 50 yards to the west of the house. Rajendra had sustained a gunshot injury on the left side of his chest, blood was oozing from that wound and he was already dead.

47. This witness (PW 2) has further deposed that Jogi Mandal was carrying a .303 rifle, although he could not notice what, if anything, the other two accused were carrying. This



witness also deposed that a criminal case was already pending between the parties, though talks for reconciliation were in progress. He identified Bindeshwari Mandal, who was present in Court, and claimed to identify the remaining accused on seeing them.

48. In the cross-examination, this witness (PW 2) has deposed that the accused, namely, Bindeshwari Mandal, Yogi Mandal and Adhik Lal Mandal, had been invited to the wedding of his niece and they came at that time. He admitted that before the present incident, a murder case relating to the death of Naresh Mandal was pending between his family and the accused persons and that he himself was an accused in the said case. He further deposed that about two and a half months prior to the present occurrence, he had resumed meeting with the accused persons, as talks for reconciliation had commenced between the parties.

49. This witness (PW 2) has further deposed that when he was serving food to the wedding guests, apart from his family members, Valmiki Mandal, Lucho Mandal, Brahmi Mandal and Suresh Mandal were also present. He further stated that when the three accused arrived, the aforesaid persons were present at the door of the house, but did not stay at the door, called Rajendra Mandal and took him away.



50. This witness (PW 2) has further deposed that he had seen Yogi Mandal firing at Rajendra Mandal and as soon as the torchlight was flashed, all the three accused fled from the place of occurrence. He deposed that he had told the Investigating Officer that on hearing the sound of the gunshot, he rushed towards the place of occurrence and in the light of torch, he saw the firing. This witness, after moving about 25 cubits from the entrance of his house, had witnessed the shot being fired. As soon as the torchlight fell upon the accused persons, they fled from the spot. He further deposed that he saw Rajendra Mandal lying at a distance of about one cubit from the place where the shot was fired and had also seen him fall immediately after sustaining the gunshot.

51. This witness (PW 2) has further deposed that on hearing the gunshot, he raised an alarm, but no villager, apart from the witnesses, came to the place of occurrence at that time and the villagers assembled in the following morning only. He further deposed that Rajendra Mandal was wearing a *bandi* (half-coat), which had a hole corresponding to the gunshot injury. He further deposed that the dead body was lying on the pathway adjacent to the kheri field and blood had also spilled there. He further deposed



that the Investigating Officer arrived in the morning and the dead body was thereafter taken to the police station.

52. This witness (PW 2) further deposed that he had not stated before the Investigating Officer that talks for reconciliation were going on with the accused persons and he had not stated before the Investigating Officer that he had seen Yogi Mandal firing the shot in the light of the torch. Finally, this witness had denied the suggestion of the defence that being the brother of the deceased and owing to previous enmity, he had falsely implicated the accused persons in the case and asserted that the accused had, in fact, committed the offence.

53. PW 8, Bachneswar Mandal, in his examination-in-chief, has deposed that at the relevant time, he was present in his locality, Badki Fatoria, and was attending a wedding ceremony as his cousin was getting married that night, in which some members of the village community had gathered at his house and the wedding guests were being served food.

54. This witness (PW 8) has deposed that he heard the sound of gunshots from behind his house and on hearing the same, he went towards that direction and saw three or four persons running away in the light of the torch flashed by his father. Thereafter, he proceeded towards the adjoining kheri field and



found his cousin, Rajendra Mandal, lying supine and dead. He deposed that he noticed a gunshot injury on the chest of the deceased and blood was oozing out the wound. During his examination, the attention of the witness was drawn by the prosecution towards his previous statement, which he denied.

55. In the cross-examination by the prosecution, this witness (PW 8) has denied the suggestion that he had colluded with the accused persons and was suppressing the truth and giving a false statement in order to protect them. This witness had deposed that his statement was recorded by the police and he had admitted that at 1 AM, Bindeshwari Mandal, Adhik Lal Mandal and Jogi Mandal had come to his door and took his brother, Rajendra Mandal, towards the western side. He further admitted that he had also stated before the police that on hearing the noise coming from behind his house, when he went there, he saw Adhik Lal Mandal, Bindeshwari Mandal and Jogi Mandal running away in the light of the torch. This witness, however, denied the suggestion that he had stated before the police that he had seen a .303 rifle in the hand of Jogi Mandal.

56. In the cross-examination on behalf of the accused, this witness (PW 8) has deposed that he had not disclosed to the Investigating Officer the names of the persons, other than the



members of the wedding party, who had attended the feast. He deposed that he did not remember what facts he had stated or omitted to state before the Investigating Officer. This witness further deposed that he did not remember whether he had informed the Investigating Officer that the three accused persons had come out from his door or whether he had seen them running away. He further deposed that Yogi Mandal, Babulal Mandal and Tej Narayan Mandal had accompanied him towards the field situated behind the house as he had gone there to ascertain who had shot Rajendra Mandal. This witness had further deposed that the dead body of Rajendra Mandal was not lying adjacent to the bamboo fencing of the house but was found in the field. According to him, the body was lying in front of the hand pump situated behind the house. He further deposed that the hand pump was at a distance of about 50 feet or approximately 100 cubits, from his house. He further deposed that he had seen blood on the ground at the place where the body had fallen and the Investigating Officer had also inspected the said place.

57. PW 9, Ganesh Mandal (informant of this case), in his examination-in-chief, has deposed that the occurrence had taken place at around 1 AM during the night when a baarat party had arrived at his house on the occasion of marriage of his niece. At



the relevant time, he was serving food to the wedding guests. At that time, Bindeshwari Mandal, Yogendra Mandal and Adhik Lal Mandal came there. Immediately after their arrival, they called Rajendra Mandal, who was his son, and took him towards the western side. Shortly thereafter, a sound was heard from that direction and on hearing, he, along with Valmiki Mandal, Lucho Mandal, Brahmdev Mandal, Badrinath Mandal, Tej Narayan Mandal and others, proceeded towards the place of occurrence.

58. This witness (PW 9) has deposed that he had a torch in his hand and in its light, he found Rajendra Mandal lying dead. He further deposed that Rajendra had sustained a gunshot injury on his chest. He further deposed that in the torchlight, he saw Bindeshwari Mandal, Adhik Lal Mandal and Yogendra Mandal running away from the place of occurrence and Yogendra Mandal was carrying a .303 rifle in his hand and was running towards the south-west direction.

59. This witness (PW 9) has further deposed that it was drizzling at the time of occurrence. He further deposed that a criminal case was pending against the accused persons and due to the said case, the accused persons had committed the present occurrence. He further deposed that the said case was a murder case and had been decided against them. This witness further



deposed that on the following Wednesday, Lucho Mandal, Valmiki Mandal, Tej Narayan Mandal and Bachneshwar Mandal accompanied him to the police station along with the dead body of his son, Rajendra Mandal at 9 AM. He identified his signature on the First Information Report.

60. In the cross-examination, This witness (PW 9) has deposed that the police station is about one kilometre away from his village and no one had gone to the police station in the night of the occurrence.

61. This witness (PW 9) has further deposed that he had signed a written paper prepared by Valmiki Mandal at the police station and thereafter he was never shown the said document or permitted to see his signature again. He deposed that the wedding procession was that of Vilangraj and that the members of the wedding party had gone to sleep at about 9 to 10 PM. This witness has further deposed that after hearing some noise, his wife woke him up. He stated that he was sleeping at that time and, after getting up, he went through the back door of his house. According to him, the torchlight was dim and was directed towards the west and the place where the dead body was lying was at a distance of about two *ropes* from his house. He stated that the field in which Rajendra had fallen was a separate field situated at some distance.



62. This witness (PW 9) has further deposed that he saw the accused persons running away and that they must have been at a distance of about one and a half *ropes* from him. He explained that one rope was equivalent to 20 poles and each pole measured about six and a half cubits. He further stated that he had installed the battery in his torch about one month prior to the occurrence and that a person standing at a distance of about one rope could be clearly seen in the torchlight.

63. This witness (PW 9) has further stated that he reached the place of occurrence ten minutes after hearing the noise and other persons arrived there about ten minutes after him. However, he voluntarily clarified that all of them reached the place of occurrence almost simultaneously. He further stated that the witnesses were present at a distance of about five to six poles from the dead body.

64. This witness (PW 9) has further admitted that litigation was already pending between him and the accused persons. He stated that he himself was an accused in the murder case of Naresh Mandal, in which the deceased Rajendra Mandal was also an accused. He further stated that after the murder of Naresh Mandal, he was not on visiting terms with the family of the accused persons and such relations had resumed two months prior



to the present occurrence. He deposed that after the murder of Naresh Mandal and before the resumption of relations, the accused persons were not on visiting terms with his family and there had been no exchange of food or social relations between them.

65. This witness (PW 9) has further stated that the place of occurrence was situated towards the east of the village, though he voluntarily clarified that it might have been about two ropes away. This witness (PW 9) has denied the suggestion that his sons were accused in any theft or robbery case prior to the occurrence. He further denied the suggestion of the defense that his son was a criminal and had been killed for that reason or the accused persons had been falsely implicated in the present case.

66. Having carefully re-appreciated the entire evidence on record, this Court proceeds to examine whether the prosecution has succeeded in proving the guilt of the appellant beyond reasonable doubt.

67. The prosecution case is founded principally upon the evidence of related witnesses, namely PW 1, PW 2, PW 8 and PW 9, coupled with the alleged circumstance that the deceased was last seen alive in the company of the accused shortly before he sustained the fatal firearm injury. There is no eyewitness to the occurrence of firing of bullet upon the deceased, who could have



consistently and unequivocally narrated the entire sequence of occurrence from the act of taking away the deceased till the actual firing and death. The prosecution, therefore, sought to establish its case through a combination of direct and circumstantial evidence, clubbing the chain of the entire occurrence.

68. PW 1 deposed that the accused came to his house, called Rajendra Mandal outside and took him towards the western side of the house. Shortly thereafter, he heard a gunshot and found the deceased lying dead in the field. Significantly, PW 1 never claimed to have witnessed the actual firing nor did he state that he had seen any accused fleeing from the place of occurrence. His evidence is, therefore, confined to the circumstance that the accused allegedly took the deceased with them immediately before the occurrence.

69. During cross-examination, PW 1 admitted that both, he and the informant, were facing trial in the earlier murder case, in which the appellants were prosecution witnesses. This admission assumes considerable importance because it established a strong possibility of animosity and furnished a motive for false implication.

70. Another aspect which deserves notice is that PW 1 admitted that nearly four or five independent villagers were



present at the marriage feast. Despite their admitted presence by this witness, none of those independent persons had been examined by the prosecution to support the alleged fact that the appellants had taken the deceased away. The prosecution has offered no explanation for withholding such natural witnesses.

71. PW 2 occupied a peculiar position in the prosecution case. In his examination-in-chief, he deposed that after hearing the gunshot, he rushed towards the place of occurrence and saw the accused running away in the light of a torch. However, during cross-examination, he made a substantial improvement by asserting that he had actually witnessed Yogi Mandal firing at the deceased after covering a distance of about twenty-five cubits from the entrance of the house.

72. This improvement assumes significance because this witness further admitted that he had not stated before the Investigating Officer that he had seen Yogi Mandal firing in the torchlight. He also admitted that he had not stated before the Investigating Officer that reconciliation talks were going on between the parties.

73. An omission relating to the most important material part of the prosecution story, such as witnessing of the actual firing, cannot be treated to be a minor discrepancy. It amounts to



material improvement affecting the credibility of a witness. Thus, the claim of PW 2 of having witnessed the firing cannot be safely relied upon.

74. PW 8, though he admitted portions of his statement before the police during cross-examination by the prosecution, it is well settled that the previous statement recorded under Section 161 of the Code of Criminal Procedure, 1973, is not substantive evidence and can only be utilized for contradiction. The prosecution cannot rely upon the police statement itself as proof of the facts contained therein. Consequently, PW-8 lends no substantive support to the prosecution on the crucial aspect of identification of the assailants.

75. PW 9 is the informant and father of the deceased. He deposed that after hearing the sound, he proceeded towards the place of occurrence and saw the appellants running away in the torchlight. However, his own cross-examination reveals several inconsistencies. He initially stated that he reached the place of occurrence about ten minutes after hearing the sound and further stated that other witnesses arrived about ten minutes after him, but immediately volunteered that everyone had reached simultaneously. These inconsistent versions create uncertainty regarding the actual sequence of events.



76. More importantly, PW 9 admitted that the deceased was found in a field surrounded by maize crops. He further admitted that the appellants were at a considerable distance from him when allegedly identified through torchlight. His admission regarding previous enmity further necessitates cautious scrutiny of his testimony.

77. Upon an overall reading of the prosecution evidence, it emerged that PW 2 claimed to have seen the actual firing, whereas PW 1, PW 8 and PW 9 did not claim to have witnessed the firing itself. PW 2 admitted that this important fact was never disclosed before the Investigating Officer, rendering it a material improvement. The testimony of PW 8 is of limited evidentiary value. It corroborates the factum of the occurrence, the discovery of the deceased with a firearm injury, and the location where the body was found. However, it does not constitute reliable substantive evidence connecting the accused persons with the commission of the offence. His evidence, therefore, cannot, by itself, be made the basis for recording a finding of guilt against the accused and requires substantial corroboration from other reliable evidence on record. PW 2 and PW 9 claimed to have identified all three accused while fleeing. Although several independent villagers were admittedly present at the marriage feast, none has



been examined during the trial. One material witness, i.e. PW 11, did not support the prosecution and was declared hostile.

78. At the outset, it is evident that previous enmity between the parties stands admitted by almost every prosecution witness. PW 1 admitted that he and the informant were accused in the murder case of one Naresh Mandal; whereas the appellants were prosecution witnesses therein. PW 2 also admitted the pendency of the earlier murder case and further admitted that he himself was an accused in that case. PW 9, the informant, similarly admitted that both he and the deceased were accused in the murder case relating to Naresh Mandal. Thus, previous hostility between the parties is not a matter of inference, but an admitted fact.

79. The law is well settled that enmity is a double-edged weapon. While it may constitute a motive for commission of the offence, it equally furnishes a motive for false implication. Consequently, where prosecution evidence emanates from inimical witnesses, the Court is required to subject such evidence to careful scrutiny. Mere relationship with the deceased does not render a witness unreliable; nevertheless, where relationship is coupled with admitted and deep-rooted hostility, the Court must seek



assurance from independent and objective circumstances before sustaining a conviction.

80. In the present case, the Investigating Officer could not be examined during trial as he had died prior to the recording of evidence. Formal witnesses have merely proved the First Information Report, inquest report, seizure list and charge-sheet by identifying the handwriting and signatures of the deceased Investigating Officer. The substantive evidence of investigation is, therefore, conspicuously absent. It is true that non-examination of the Investigating Officer is not *per se* fatal to the prosecution.

81. The settled principle is that where reliable ocular and documentary evidence is otherwise available, the mere non-examination of the Investigating Officer does not necessarily vitiate the trial. However, where the prosecution case suffers from material contradictions, omissions or improvements, the examination of the Investigating Officer assumes considerable significance because he alone is competent to prove the statements recorded under Section 161 of the Code of Criminal Procedure, the preparation of the site plan, and the manner in which the investigation was conducted.

82. In the present case, several prosecution witnesses admitted during cross-examination that they had not stated before



the Investigating Officer certain facts which they later deposed before the Court. PW 2, for instance, admitted that he had not stated before the Investigating Officer that he had actually seen Yogi Mandal firing the bullet shot upon the deceased Rajendra Mandal in the torchlight. This omission assumes considerable importance because it relates to the very core of the prosecution case. Ordinarily, such contradictions and omissions are required to be proved through the testimony of the Investigating Officer in accordance with law.

83 Similarly, disputes have arisen regarding the exact place of occurrence, the position of the dead body, the direction from which the accused allegedly fled, the distance between the witnesses and the place of occurrence, and other material features of the prosecution case. In the absence of the Investigating Officer, the defence has been deprived of the valuable opportunity of confronting him with these aspects and testing the veracity of the investigation.

84. The prosecution has also failed to examine any independent villager despite the admitted presence of a large number of persons at the marriage feast inasmuch as PW 1 admitted that several local residents were serving food, PW 2 named a number of independent persons present at the venue and



PW 3 similarly admitted that many villagers had assembled there, yet none of those independent witnesses have been examined without any satisfactory explanation. The withholding of natural witnesses assumes importance in view of the admitted previous hostility between the parties.

85. Having carefully appreciated the evidence on record, this Court finds that the prosecution case substantially rests upon a chain of circumstantial evidence, namely: (i) the appellants allegedly called the deceased from the marriage ceremony; (ii) the deceased was last seen accompanying them; (iii) a gunshot was heard shortly thereafter; (iv) the deceased was found lying dead in the adjoining field with a firearm injury; (v) some prosecution witnesses claimed to have seen the appellants running away; and (vi) previous enmity allegedly supplied the motive.

86. It is trite that where the prosecution relies upon circumstantial evidence, each incriminating circumstance must not only be proved beyond reasonable doubt but all the circumstances, when taken cumulatively, must form a complete chain so as to exclude every reasonable hypothesis except the guilt of the accused. The law on this aspect stands settled in **Sharad Birdhichand Sarda v. State of Maharashtra**, reported in (1984) 4 SCC 116, wherein the Apex formulated the celebrated "five



golden principles" governing conviction based on circumstantial evidence. These principles require that:

“(i) the circumstances from which the conclusion of guilt is to be drawn must be fully established;

(ii) the circumstances so established must be consistent only with the hypothesis of the guilt of the accused;

(iii) the circumstances must be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one sought to be proved; and

(v) there must be a complete chain of evidence which leaves no reasonable ground for a conclusion consistent with the innocence of the accused.”

87. Applying the aforesaid principles to the present case, this Court finds that the prosecution has failed to establish an uninterrupted chain of circumstances. The first circumstance relied upon by the prosecution is that the appellants had called the deceased from the marriage feast. Though PW 1, PW 2, and PW 9 have spoken to this circumstance, all of them are admittedly closely related to the deceased and have also admitted previous hostility with the appellant. No independent witness from amongst the numerous villagers admittedly present at the



marriage ceremony has been examined to corroborate this circumstance. The withholding of such natural witnesses assumes significance, particularly when the prosecution seeks to establish the first and most important link of the chain through interested witnesses alone.

88. The second circumstance is the alleged "last seen together". It is well settled that the "last seen" theory is only a weak piece of evidence unless the time gap between the accused and the deceased being seen together and the discovery of the dead body is so small that the possibility of any other person intervening is completely ruled out.

89. In the present case, although the prosecution alleges that the deceased was taken away immediately before the firing, the evidence regarding the exact time gap, the distance travelled, and the sequence of events is far from consistent. PW 9 himself gave inconsistent versions regarding the time when he reached the place of occurrence, while PW 2 materially improved his testimony by claiming for the first time before the Court that he had actually witnessed the firing. Such inconsistencies diminish the evidentiary value of the "last seen" circumstance.

90. The third circumstance relied upon is that the appellants were seen fleeing from the place of occurrence.



However, this circumstance also does not inspire confidence. While PW 2 and PW 9 claimed to have identified the appellants in the torchlight, PW 3 categorically stated that he had not seen anybody running away and merely heard people saying that some persons had fled away. This contradiction goes to the root of the prosecution case because identification of the fleeing assailants constitutes an essential link in the chain of circumstances.

91. Further, the prosecution witnesses themselves admit that the occurrence took place at about 1 AM. in darkness, the deceased was lying in the field, and the alleged identification was made from a considerable distance through torchlight. More so, when the appellants were fleeing from the place of occurrence against the direction from which the prosecution witnesses had come, in the torch light, they will see their backs and not their faces, In the absence of any independent corroboration, such identification requires cautious scrutiny.

92. The prosecution has also relied upon motive arising out of previous enmity. It is well settled that motive alone can never take the place of proof. Equally settled is the principle that previous enmity is a double-edged weapon. While it may furnish a motive for the commission of the offence, it simultaneously provides a motive for false implication.



Consequently, motive by itself cannot complete an otherwise incomplete chain of circumstantial evidence.

93. Another important circumstance which cannot be ignored is the failure of the prosecution to produce independent corroborative evidence. Admittedly, several villagers and wedding guests were present at the place of occurrence. Nevertheless, the prosecution has examined only close relatives or persons closely associated with the informant. The unexplained non-examination of independent witnesses assumes considerable importance in a case founded primarily on circumstantial evidence.

94. Viewed from the aforesaid legal perspective, this Court finds that the prosecution has undoubtedly proved the homicidal death of Rajendra Mandal. Nevertheless, the circumstances relied upon to connect the appellants with the crime do not form a complete and unbroken chain. The evidence regarding the actual firing is inconsistent; the circumstance of identification of the fleeing appellants is contradicted by one of the principal witnesses; the alleged "last seen" evidence is supported only by interested witnesses; material improvements have surfaced and the prosecution has failed to examine independent witnesses despite their admitted presence. These



deficiencies create reasonable doubt regarding the completeness of the prosecution case.

95. In the facts and attending circumstances of the present case, the appellant ought to have been accorded benefit of reasonable doubt inasmuch as the prosecution had failed, in the light of the discussion of the evidence on record, to bring home the charges against the appellant beyond all reasonable doubt.

96. In the result and for the foregoing reasons, this appeal is allowed. The impugned conviction of the appellant and the sentence passed against him by the judgment and order, under appeal, are hereby set aside. The appellant is held not guilty of the offence, which he stand convicted of, and he is hereby acquitted of the same under benefit of doubt.

97. Since the appellant is on bail, his bail bonds are hereby cancelled and his sureties shall stand discharged.

98. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

99. This Court places on record its sincere appreciation for the valuable assistance rendered by learned *Amicus Curiae*, Ms. Surya Nilambari. Through careful preparation, objective submissions and dedicated efforts, the



learned *Amicus Curiae* has assisted the Court in the fair and effective adjudication of the matter. The Court acknowledges and commends such contribution with gratitude.

100. Let the *Amicus Curiae* be paid a sum of Rs. 10,000/- by the Patna High Court Legal Services Committee.

(Anil Kumar Sinha, J.)

Alok Kumar, J.: I agree.

(Alok Kumar, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
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