IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.948 of 2018

Arising Out of PS. Case No.-623 Year-2015 Thana- FORBESGANJ District- Araria

==========

Birendra Yadav Son of Raghu Yadav @ Rahunath Yadav, resident of Village-Pothia, P.S.- Simraha, District- Araria.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

==========

with

CRIMINAL APPEAL (DB) No. 982 of 2018

Arising Out of PS. Case No.-623 Year-2015 Thana- FORBESGANJ District- Araria

==========

1. Kamlesh Yadav
2. Bablu Yadav, Both Sons of Raghu Yadav, @ Raghunath Yadav Resident of Village-Pothia, P.S.-Simraha, District-Araria.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

==========

Appearance :

(In CRIMINAL APPEAL (DB) No. 948 of 2018)

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Diwakar Upadhyaya, Advocate Mrs. Kiran Thakur, Advocate Mrs. Sushmita Mishra, Advocate Mr. Mudit Meet, Advocate Mr. Deepak Kumar, Advocate Mr. Pranshu Kumar
For the Respondent/s	:	Smt Usha Kumari No-1, Spl. P.P.
For the Informant	:	Mr. Dharmesh Kumar, Advocate

(In CRIMINAL APPEAL (DB) No. 982 of 2018)

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Diwakar Upadhyaya, Advocate Mrs. Kiran Thakur, Advocate Mrs. Sushmita Mishra, Advocate Mr. Mudit Meet, Advocate Mr. Deepak Kumar, Advocate Mr. Pranshu Kumar
For the Respondent/s	:	Smt Usha Kumari No-1, Spl. P.P.
For the Informant	:	Mr. Dharmesh Kumar, Advocate

==========

WEB COPY

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 05-08-2026

These two appeals arise out of the judgment of conviction dated 13.07.2018 and order of sentence dated 19.07.2018 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST Act, Araria in Special SC/ST No. 74 of 2016 / Trial No. 18 of 2016 arising out of Forbesganj (Simraha) P.S. Case No. 623 of 2015.

2. Criminal Appeal (DB) No. 948 of 2018 has been preferred by appellant Birendra Yadav, whereas Criminal Appeal (DB) No. 982 of 2018 has been preferred by appellants Kamlesh Yadav and Bablu Yadav.

3. By the impugned judgment, the learned trial court found the appellants guilty of the offences punishable under Sections 302/34 of the Indian Penal Code, Section 27 of the Arms Act and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The appellants were sentenced to undergo rigorous imprisonment for life and fine under Section 302/34 IPC, rigorous imprisonment for three years under Section 27 of the Arms Act and rigorous imprisonment for life

WEB COPY

under Section 3(2)(v) of the SC/ST Act with the sentences directed to run concurrently.

4. The prosecution case originates from the fardbeyan of Anuradha Devi (PW-10), wife of the deceased Mahanand Ram, recorded on 08.11.2015 at about 7:00 A.M.

5. According to the informant, on the night of 07.11.2015, after taking dinner, she and her husband Mahanand Ram went to sleep in the verandah of their house. At about 1:00 A.M., she woke up on hearing the sound of gunfire and allegedly saw accused Birendra Yadav catching hold of her husband while accused Bablu Yadav fired at his head. Thereafter, accused Kamlesh Yadav also allegedly fired at the head of her husband. It is alleged that upon her raising alarm, the accused persons fled from the place of occurrence.

6. The informant further alleged that there existed a long-standing dispute relating to about 82 decimals of land allotted to her family under a Government scheme and that the accused persons had earlier threatened her husband in connection with the said land dispute. According to her, the aforesaid dispute furnished the motive for the occurrence.

7. On the basis of the aforesaid fardbeyan, Forbesganj (Simraha) P.S. Case No. 623 of 2015 was instituted for offences

WEB COPY

punishable under Sections 302/34 of the Indian Penal Code, Section 27 of the Arms Act and Section 3(2)(v) of the SC/ST Act against Birendra Yadav, Bablu Yadav and Kamlesh Yadav.

8. Upon registration of the First Information Report, investigation commenced. The Investigating Officer visited the place of occurrence, recorded the statements of witnesses and caused the post-mortem examination of the dead body of Mahanand Ram to be conducted.

9. Upon completion of investigation, charge-sheet was submitted against all the accused persons for offences punishable under Sections 302/34 IPC, Section 27 Arms Act and Section 3(2)(v) of the SC/ST Act.

10. Cognizance was taken and the case was committed to the Court of Sessions. Charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.

11. In order to establish its case, the prosecution examined twelve witnesses including the informant (PW-10), the doctor who conducted the post-mortem examination (PW-6), the Investigating Officer (PW-12) and the officer who proved the formal First Information Report (PW-11). The prosecution also proved the fardbeyan, formal FIR and post-mortem report.

WEB COPY

12. The defence of the accused, as gathered from the trend of cross-examination and their statements recorded under Section 313 Cr.P.C., is one of complete denial and false implication on account of previous enmity and land dispute. The defence also brought on record certified copies of earlier criminal cases to demonstrate inimical relations between the parties.

13. Upon appreciation of the evidence on record, the learned trial court convicted and sentenced the appellants in the manner indicated above, giving rise to the present appeals.

14. Learned counsel appearing on behalf of the appellants submits that the conviction recorded by the trial court is unsustainable both on facts and in law.

15. It is argued on behalf of the appellants that except PW-10, none of the prosecution witnesses is an eyewitness to the occurrence. PW-1 claims only to have seen certain persons running away from the place of occurrence, while PW-2, PW-3, PW-4, PW-5, PW-7, PW-8 and PW-9 admittedly reached the place of occurrence after the incident had already taken place.

16. Learned counsel further submits that the prosecution witnesses themselves have admitted long-standing land disputes and prior criminal litigations between the parties. PW-1, PW-2, PW-3 and PW-10 have all acknowledged the existence of enmity

WEB COPY

between the accused and the prosecution side. It is therefore contended that the possibility of false implication cannot be ruled out.

17. It is further contended that the medical evidence does not support the ocular version. While PW-10 alleged that three accused persons fired separately at the deceased causing three gunshot injuries, the post-mortem report reveals only two firearm injuries. According to the defence, the discrepancy strikes at the root of the prosecution case.

18. Learned counsel also points out that although PW-10 stated that blood had spread over the bedding, clothes and surrounding area and further claimed that one bullet had been recovered, the Investigating Officer admitted that no blood-stained articles were seized and no bullet, cartridge or firearm was recovered from the place of occurrence. Such omissions, according to the appellants, create serious doubt regarding the fairness and reliability of the investigation.

19. It is lastly submitted that the prosecution has failed to establish the charges beyond reasonable doubt and the appellants are entitled to benefit of doubt.

20. Learned Special Public Prosecutor appearing for the State supports the judgment of conviction.

WEB COPY

21. It is submitted that the evidence of PW-10, the widow of the deceased and an eyewitness to the occurrence, is cogent, natural and trustworthy. Merely because she is related to the deceased, her testimony cannot be discarded if otherwise found reliable.

22. Learned counsel for the State further contends that the presence of PW-10 at the place of occurrence is natural and undisputed. Her account of the occurrence is substantially corroborated by the prompt lodging of the FIR, the medical evidence regarding firearm injuries and the surrounding circumstances proved during trial.

23. It is submitted that previous enmity, though admitted, provides a motive for the crime and by itself is not a ground to reject otherwise credible testimony. According to the prosecution, the learned trial court has correctly appreciated the evidence and no interference is warranted.

24. In light of the rival submissions advanced on behalf of the parties, the following questions arise for consideration:-

(i) Whether the prosecution has succeeded in proving beyond reasonable doubt that Mahanand Ram died a homicidal death on account of firearm injuries?

WEB COPY

(ii) Whether the evidence of PW-10 inspires confidence and can safely be relied upon for recording conviction?

(iii) Whether the inconsistencies pointed out by the defence in relation to medical evidence, investigation and recovery are of such nature as to create a reasonable doubt regarding the prosecution case?

(iv) Whether the conviction and sentence recorded by the learned trial court call for interference in appeal?

25. We have heard the learned counsel appearing for the appellants and the learned Special Public Prosecutor for the State at length. We have also carefully perused the oral and documentary evidence available on record together with the impugned judgment.

26. At the outset, it is required to be considered whether the prosecution has been able to establish that Mahanand Ram died a homicidal death.

27. In this regard, the evidence of PW-6, Dr. Rohit Kumar Jha, who conducted the post-mortem examination over the dead body of the deceased, assumes significance. The witness found one circular firearm wound with charring over the left side of the scalp and another lacerated wound over the right side of the face above the ear. On dissection, he found fracture of the skull

WEB COPY

bone with laceration of the brain and blood clot inside the cranial cavity. According to the doctor, death was caused due to haemorrhage and shock resulting from the aforesaid firearm injuries. The injuries were ante-mortem in nature and sufficient in the ordinary course of nature to cause death. In his cross-examination, the witness clarified that no bullet was found inside the scalp as the projectile had passed through and through. He further opined that the injuries could have been caused by any type of firearm including a country-made pistol.

28. The post-mortem report has been proved as Exhibit-2 and nothing substantial could be elicited in the cross-examination of the doctor to discredit either his findings or his opinion regarding the cause of death.

29. The medical evidence stands corroborated by the testimony of PW-1, PW-2, PW-3, PW-4, PW-5, PW-7, PW-8 and PW-9, all of whom reached the place of occurrence shortly after the incident and consistently deposed that the deceased was lying on the verandah with firearm injuries on his head. Their evidence, though not proving the identity of the assailants, unmistakably establishes that the deceased had suffered firearm injuries before his death.

WEB COPY

30. The defence has also not disputed that Mahanand Ram died on account of firearm injuries. The consistent stand of the defence is that the appellants have been falsely implicated because of previous enmity and land dispute and that the actual assailants remain unknown.

31. Having regard to the unimpeached medical evidence coupled with the surrounding circumstances brought on record, this Court has no hesitation in holding that the prosecution has successfully established that Mahanand Ram died a homicidal death caused by firearm injuries.

32. The next and the more crucial question which falls for consideration is whether the prosecution has been able to prove beyond reasonable doubt that it was these appellants and none else who caused the homicidal death of Mahanand Ram.

33. Since the identity of the assailants principally rests upon the ocular version of the prosecution witnesses, it becomes necessary to examine the evidence of each witness separately in order to ascertain whether the prosecution has been able to establish the guilt of the appellants beyond reasonable doubt.

34. PW-1, Birendra Ram, is not an eyewitness to the actual occurrence. His evidence discloses that upon hearing about the incident, he proceeded towards the place of occurrence and

WEB COPY

allegedly saw the three accused persons running away carrying pistols in their hands. According to him, when he reached the place of occurrence, he found the deceased lying in a pool of blood while the informant was unconscious. It is only after she regained consciousness that she allegedly disclosed the names of the assailants to him.

35. Thus, the testimony of PW-1 does not establish that he witnessed the assault upon the deceased. At the highest, his evidence is confined to having allegedly seen three persons fleeing from the vicinity of the place of occurrence.

36. It is also pertinent to note that in paragraph 6 of his cross-examination, PW-1 candidly admitted that there had been a land dispute between his side and the accused persons for about one year prior to the occurrence and further admitted that all the prosecution witnesses were on inimical terms with the accused persons on account of such dispute. This admission assumes significance while appreciating his evidence.

37. PW-1 further admitted that he reached the place of occurrence about fifteen minutes after he had gone out to answer the call of nature. He also admitted that he did not find any empty cartridge at the place of occurrence. Although he claimed that it was a moonlit night and visibility was clear up to about 20 to 25

WEB COPY

feet, he could not describe the clothes worn by any of the accused persons except stating that they generally wore shirts and trousers.

38. The evidence of PW-1, therefore, cannot be treated as that of an eyewitness to the occurrence. His testimony is relevant only to the limited extent that he claims to have seen certain persons allegedly fleeing from the place of occurrence. The evidentiary value of such testimony would necessarily depend upon independent corroboration from other reliable evidence available on record.

39. PW-2, Gudari Ram, deposed that on hearing the sound of gunfire at about 1:00 A.M., he came out of his house and found the wife of the deceased crying. On reaching the place of occurrence, he found the dead body of Mahanand Ram lying on the verandah. The police arrived in the morning, recorded the statement of the informant and sent the dead body for post-mortem examination.

40. Significantly, PW-2 nowhere claimed to have witnessed the actual occurrence or to have seen any of the accused persons either committing the assault or fleeing from the place of occurrence. His testimony is confined to the fact that he heard the sound of firing and thereafter saw the deceased lying dead. In his cross-examination, he admitted that Birendra Yadav had earlier

WEB COPY

instituted a criminal case in which he himself was an accused. Thus, previous enmity between him and the accused also stands admitted.

41. PW-3, Bechan Ram, admittedly was not present at the place of occurrence at the relevant time. According to him, he was in village Purvalakshmipur and came to village Pothiya only in the morning after receiving information regarding the incident. He found the deceased lying dead with firearm injuries and learnt from the informant that the accused persons had committed the murder.

42. The testimony of PW-3 is therefore purely hearsay so far as the occurrence is concerned. More importantly, in his cross-examination, he admitted that there existed land dispute between him and the accused persons and further admitted that Birendra Yadav had instituted a criminal case against him in which he was also a witness. He also admitted that the dispute between the parties was essentially a land dispute and not a caste dispute.

43. PW-4, Devanand Ram, stated that at about 5:00 A.M., while taking out his cattle, he heard cries and went to the house of the deceased where he found Mahanand Ram lying in a pool of blood with firearm injuries. In his cross-examination, he admitted that the police had not examined him during

WEB COPY

investigation. He is admittedly not an eyewitness to the occurrence.

44. PW-5, Ashok Kumar Sah, likewise stated that he reached the place of occurrence in the early morning after hearing cries and found the deceased lying dead on the verandah. He did not witness the assault. His evidence merely establishes his presence after the occurrence. In cross-examination, he admitted that Devanand Ram had reached the place of occurrence along with him.

45. PW-7, Manoj Ram, who is a nephew of the deceased, also reached the place of occurrence only in the morning after receiving information regarding the incident. He categorically admitted in paragraph 3 of his cross-examination that he had not witnessed the occurrence. His evidence, therefore, is of no assistance in establishing the identity of the assailants.

46. PW-8, Md. Rais, similarly stated that on hearing hue and cry he came to the place of occurrence and found the deceased lying dead on the verandah with blood-stained clothes and bedding. He candidly admitted in cross-examination that he had not witnessed the occurrence.

47. PW-9, Ramesh Sah, also reached the place of occurrence at about 6:30 A.M. and found the deceased lying dead

WEB COPY

with firearm injuries. In his cross-examination, he admitted that whatever knowledge he possessed regarding the incident was not based upon his personal observation. His evidence is therefore confined to the post-occurrence circumstances.

48. From the evidence discussed above, it becomes manifest that none of PW-2 to PW-9 claims to have witnessed the actual occurrence. Their evidence merely establishes that after the incident they reached the place of occurrence and found the deceased lying dead with firearm injuries. Their testimony undoubtedly lends assurance to the prosecution case regarding the factum of homicidal death, but it does not advance the prosecution case with regard to the identity of the assailants.

49. It is equally significant that previous enmity and land dispute between the accused persons and several of these witnesses have been admitted by the witnesses themselves during cross-examination. Such admissions do not by themselves render their evidence unacceptable; nevertheless, they require the Court to scrutinize their testimony with greater caution while evaluating the prosecution case.

50. Consequently, the entire edifice of the prosecution case regarding the participation of the appellants substantially rests upon the testimony of PW-10, Anuradha Devi, the widow of the

WEB COPY

deceased, who claims to be the sole eyewitness to the occurrence. The credibility, consistency and intrinsic worth of her evidence, therefore, assume decisive importance in determining whether the prosecution has succeeded in establishing the guilt of the appellants beyond reasonable doubt.

51. PW-10, Anuradha Devi, is the informant of the case and widow of the deceased. She is the only witness who claims to have actually witnessed the occurrence. It is, therefore, necessary to examine her evidence with utmost care. It is well settled that conviction can be founded on the testimony of a solitary eyewitness provided the Court finds such evidence wholly reliable and inspires confidence.

52. PW-10 deposed that on the night of 07/08.11.2015, after taking dinner, she and her husband were sleeping on the verandah of their house. At about 1:00 A.M., she woke up on hearing the sound of a gunshot and immediately saw Birendra Yadav firing at the head of her husband with a pistol. According to her, when she attempted to save her husband, Birendra Yadav abused and assaulted her by kicking her to the ground. She further stated that Kamlesh Yadav and Bablu Yadav, who were standing nearby armed with pistols, thereafter fired one shot each at the

WEB COPY

head of her husband. According to the witness, after committing the offence, all the three accused fled towards the road.

53. PW-10 further deposed that the accused persons had earlier threatened to kill her husband because of the dispute relating to the land allotted to their family under the Government scheme. According to her, the appellants intended to dispossess them from the said land and the murder was committed on account of the said dispute.

54. The witness proved her signature on the fardbeyan, which has been marked as Exhibit-1/2. She also stated that the police recorded her statement at the place of occurrence after she regained consciousness.

55. During her lengthy cross-examination, the defence could not shake her presence at the place of occurrence. She consistently maintained that she was sleeping beside her husband on the verandah when the occurrence took place. The place where she was sleeping, the layout of the house and the surrounding boundaries were described by her in considerable detail. Her presence at the place of occurrence appears to be most natural, there being no suggestion that she was elsewhere at the relevant point of time.

WEB COPY

56. The witness stated that an electric bulb installed in the verandah was burning throughout the night. She further stated that all the accused had their faces uncovered and were known to her from before, as they belonged to the same village. She specifically identified Birendra Yadav as the person who first fired at her husband and thereafter assaulted her when she attempted to intervene. According to her, Kamlesh Yadav and Bablu Yadav also fired at the deceased one after another.

57. It has been argued on behalf of the appellants that the identification of the accused during the night is doubtful. We are unable to accept the submission in its entirety. The accused were admittedly known to the witness from before. The occurrence is alleged to have taken place on the verandah of her own house where, according to her, an electric bulb was burning. Identification of known persons under such circumstances cannot be equated with identification of strangers requiring a test identification parade.

58. It is true that PW-10 admitted the existence of a long-standing land dispute between her family and the accused persons. She also admitted that the land in dispute had originally belonged to the accused before it was allotted to her family under the Government scheme. Previous enmity between the parties,

WEB COPY

therefore, stands established from the evidence of the prosecution itself.

59. The existence of previous enmity, however, is a double-edged weapon. While it may furnish a motive for false implication, it may equally provide the motive for commission of the crime. It is, therefore, not safe to reject the testimony of a witness solely on the ground of admitted enmity. What is required is a careful scrutiny of such evidence to ascertain whether it is intrinsically reliable and receives assurance from other circumstances appearing on record.

60. The defence has further pointed out that PW-10 stated that all the three accused fired at the deceased and that a total of three shots were fired, whereas the doctor found only two firearm injuries on the body of the deceased. It has also been pointed out that while PW-10 claimed that one bullet had been recovered, the doctor categorically stated that no bullet was found inside the body as it had passed through and through.

61. These aspects undoubtedly require careful consideration. However, it is equally well settled that where trustworthy ocular evidence is available, minor inconsistencies with medical evidence would not necessarily demolish the prosecution case unless the medical evidence completely rules out

WEB COPY

the ocular version. Whether the discrepancies pointed out by the defence are of such magnitude as to render the testimony of PW-10 unreliable shall be considered while evaluating the medical evidence and the investigation in the succeeding paragraphs.

62. It was also suggested to PW-10 that she was not sleeping with her husband on the verandah and that she had falsely implicated the accused persons due to previous litigation and village politics. The witness emphatically denied all such suggestions. Nothing substantial could be elicited during her lengthy cross-examination to show that she was not present at the place of occurrence or that she had not witnessed the incident.

63. Nevertheless, since the conviction recorded by the learned trial court substantially rests upon the testimony of PW-10 alone, her evidence cannot be examined in isolation. The same is required to be tested on the anvil of the medical evidence, the evidence of the Investigating Officer and the surrounding circumstances brought on record. It is only after such cumulative evaluation that the Court can determine whether her testimony inspires confidence sufficient to sustain the conviction of the appellants beyond reasonable doubt.

64. Having discussed the ocular testimony of the prosecution witnesses, particularly PW-10, it is now necessary to

WEB COPY

examine whether the same finds support from the medical and investigative evidence brought on record.

65. PW-6, Dr. Rohit Kumar Jha, conducted the post-mortem examination over the dead body of Mahanand Ram on 08.11.2015 at about 12:30 P.M. He found one circular firearm wound with charring over the left side of the scalp and one lacerated wound over the right side of the face above the ear. Upon dissection, fracture of the skull bone, laceration of the brain and blood clot inside the cranial cavity were noticed. In the opinion of the doctor, death was caused due to haemorrhage and shock resulting from the aforesaid firearm injuries.

66. During cross-examination, PW-6 categorically stated that no bullet was recovered from the body of the deceased as the projectile had passed through and through. He further deposed that the injuries could have been caused by any type of firearm, including a country-made pistol. Nothing substantial could be elicited in his cross-examination so as to discredit either the post-mortem findings or the opinion regarding the cause of death.

67. Thus, the medical evidence conclusively establishes that Mahanand Ram died a homicidal death as a result of firearm injuries sustained on his head.

WEB COPY

68. Coming to the investigation, PW-12, the Investigating Officer, deposed that after registration of the case he visited the place of occurrence, prepared the inquest report, recorded the statements of witnesses and, upon completion of investigation, submitted charge-sheet against the accused persons.

69. However, the cross-examination of PW-12 discloses certain deficiencies in the investigation. The Investigating Officer admitted that although blood stains were found at the place of occurrence, no blood-stained clothes, bedding or any other blood-stained material were seized. He further admitted that neither any empty cartridge nor any bullet was recovered from the place of occurrence. He also admitted that no sketch map of the place of occurrence was prepared during investigation.

70. The Investigating Officer further admitted that though the prosecution case revolves around a longstanding land dispute between the parties, he did not investigate the pending litigation relating to such dispute. He also admitted that the statement of Rita Devi, who, according to the prosecution witnesses, had first raised alarm after seeing the deceased lying injured, was not recorded during investigation.

71. It is also evident from the evidence of the Investigating Officer that the accused persons were not

WEB COPY

interrogated during investigation after their arrest, nor was any firearm allegedly used in the commission of the offence recovered.

72. The aforesaid omissions undoubtedly indicate that the investigation was not as meticulous as it ought to have been. Nevertheless, it is equally well settled that every lapse or omission on the part of the Investigating Officer does not necessarily result in acquittal. The effect of such deficiencies has to be assessed in the backdrop of the entire evidence available on record. If the substantive evidence of trustworthy witnesses inspires confidence, defective investigation by itself would not be sufficient to discard an otherwise reliable prosecution case. Conversely, where the prosecution case itself suffers from material infirmities, lapses in investigation assume greater significance while extending the benefit of doubt to the accused.

73. It is, therefore, necessary to examine whether the ocular evidence of PW-10, viewed in the light of the medical evidence, the admitted enmity between the parties and the deficiencies noticed in the investigation, is sufficient to establish the guilt of the appellants beyond reasonable doubt.

74. It is now necessary to examine whether the evidence adduced by the prosecution is sufficient to bring home the guilt of the appellants beyond all reasonable doubt.

WEB COPY

75. The prosecution case substantially rests upon the testimony of PW-10, Anuradha Devi, who claims to be the sole eyewitness to the occurrence. The remaining witnesses, except PW-1 to a limited extent, admittedly reached the place of occurrence after the incident had taken place. Their evidence, therefore, is confined to the circumstances existing immediately after the occurrence and does not directly establish the identity of the assailants.

76. It is a settled principle of criminal jurisprudence that conviction can be based on the testimony of a solitary eyewitness provided such testimony is found to be wholly reliable and inspires confidence. Equally well settled is the principle that where such witness is closely related to the deceased and previous enmity between the parties is admitted, the evidence requires careful and cautious scrutiny. Relationship by itself is no ground to discard testimony; however, the Court must satisfy itself that the evidence is free from embellishment and receives assurance from the surrounding circumstances.

77. In the present case, PW-10 is the widow of the deceased and her presence at the place of occurrence cannot ordinarily be doubted, since according to the prosecution itself the deceased was sleeping in the verandah of his own house and the

WEB COPY

witness was sleeping beside him. Her presence, therefore, appears natural.

78. At the same time, the prosecution evidence itself establishes that there existed a longstanding dispute over possession of agricultural land between the parties. PW-1, PW-3 and PW-10 have admitted such dispute in unequivocal terms. The defence has also brought on record that criminal litigations were pending between the parties prior to the present occurrence. The admitted enmity, therefore, constitutes a relevant circumstance which cannot be ignored while appreciating the testimony of the solitary eyewitness.

79. The defence has drawn the attention of this Court to certain inconsistencies emerging from the prosecution evidence. According to PW-10, all the three accused persons fired at the deceased and all the shots hit the head region. She further stated that a total of three shots were fired. The medical evidence, however, records two firearm injuries over the head region. PW-6 has also stated that no bullet was recovered from the body as the projectile had passed through and through. On the other hand, PW-10 stated that one bullet was recovered and was seized by the police. These aspects require consideration while assessing the overall reliability of the prosecution version.

WEB COPY

80. The investigation also suffers from certain admitted omissions. The Investigating Officer has conceded that although blood stains were found at the place of occurrence, blood-stained clothes, bedding and other articles were not seized. No empty cartridge or bullet was recovered from the place of occurrence. No sketch map of the place of occurrence was prepared. The statement of Rita Devi, who according to the prosecution witnesses had first raised alarm, was also not recorded during investigation. These deficiencies cannot be ignored.

81. It is equally true that lapses on the part of the investigating agency cannot by themselves constitute a ground for discarding an otherwise reliable prosecution case. Courts have consistently held that an accused cannot claim acquittal merely because the investigation was defective, if the substantive evidence on record establishes his guilt beyond reasonable doubt. At the same time, where the prosecution case rests substantially upon the testimony of a solitary eyewitness, deficiencies in investigation assume greater significance while testing the overall credibility of the prosecution version.

82. The Court is, therefore, required to examine whether the inconsistencies pointed out by the defence are merely minor discrepancies, which are bound to occur in the testimony of

WEB COPY

truthful witnesses, or whether they are material contradictions going to the root of the prosecution case. It is equally necessary to determine whether the evidence of PW-10, read as a whole and in conjunction with the surrounding circumstances, inspires such confidence as would justify sustaining the conviction recorded by the learned trial court.

83. It is keeping the aforesaid principles in view that the rival submissions advanced on behalf of the parties are required to be considered.

84. Before adverting to the rival submissions advanced on behalf of the parties, it would be apposite to notice the settled principles governing appreciation of ocular evidence in a criminal trial.

85. It is well settled that no particular number of witnesses is required for proving a fact. Section 134 of the Indian Evidence Act expressly provides that no particular number of witnesses shall, in any case, be required for the proof of any fact. In Namdeo v. State of Maharashtra, (2007) 14 SCC 150, the Hon’ble Supreme Court held that conviction can safely be recorded on the testimony of a solitary eyewitness if the Court finds such witness wholly reliable and his evidence inspires

WEB COPY

confidence. The emphasis is on the quality of evidence and not on the quantity thereof.

86. Equally settled is the principle that the testimony of a related witness cannot be discarded merely because of his or her relationship with the deceased. In Dalip Singh v. State of Punjab, AIR 1953 SC 364, the Constitution Bench observed that ordinarily a close relative would be the last person to screen the real culprit and falsely implicate an innocent person. The same principle has consistently been reiterated by the Hon'ble Supreme Court in State of U.P. v. Krishna Master, (2010) 12 SCC 324, wherein it was held that evidence of a related witness is not to be rejected on the ground of relationship alone, though such evidence should be subjected to careful scrutiny.

87. The law is equally well settled that previous enmity is a double-edged weapon. While it may furnish a motive for commission of the offence, it may also provide a motive for false implication. Therefore, where previous enmity between the parties is admitted, the Court is required to examine the evidence with greater care so as to satisfy itself that the prosecution version is free from exaggeration or embellishment.

88. So far as the present case is concerned, PW-10 is the sole eyewitness to the occurrence. Her presence at the place of

WEB COPY

occurrence appears to be natural, as according to the prosecution case itself she was sleeping beside her husband on the verandah of their house. The defence has not been able to demonstrate any circumstance suggesting that she was not present at the place of occurrence.

89. At the same time, it has come in evidence from PW-1, PW-3 and PW-10 that there existed a longstanding dispute regarding possession of agricultural land between the family of the deceased and the accused persons. The evidence further reveals that litigations were pending between the parties even prior to the present occurrence. The admitted enmity, therefore, obliges this Court to scrutinize the testimony of PW-10 with greater caution.

90. Learned counsel for the appellants has contended that the ocular version is inconsistent with the medical evidence inasmuch as PW-10 stated that all the three accused persons fired separately at the deceased, whereas the post-mortem report records only two firearm injuries. It is also urged that PW-10 spoke about recovery of one bullet, whereas the doctor (PW-6) categorically stated that no bullet was recovered from the body.

91. The law relating to appreciation of ocular and medical evidence is no longer res integra. In Solanki Chimanbhai Ukabhai v. State of Gujarat, (1983) 2 SCC 174, the Hon’ble

WEB COPY

Supreme Court held that where the ocular evidence of a trustworthy witness is found reliable, minor inconsistencies with medical evidence would not justify rejection of the prosecution case unless the medical evidence completely rules out the possibility of the occurrence having taken place in the manner alleged. Similar principles have been reiterated in Thaman Kumar v. State of Union Territory of Chandigarh, (2003) 6 SCC 380.

92. Whether the discrepancy regarding the number of shots fired constitutes a material contradiction or merely an inconsistency arising from the traumatic circumstances in which PW-10 witnessed the occurrence is a matter which requires consideration in the context of the evidence as a whole. The Court cannot isolate one circumstance and ignore the cumulative effect of the entire evidence.

93. The defence has also laid considerable emphasis upon the lapses in investigation. PW-12, the Investigating Officer, admitted that no blood-stained clothes or bedding were seized, no empty cartridge or bullet was recovered from the place of occurrence, no sketch map was prepared and the statement of Rita Devi, who allegedly first raised alarm, was not recorded during investigation.

WEB COPY

94. There can be no dispute that these omissions disclose certain deficiencies in the manner in which the investigation was conducted. Nevertheless, it is equally well settled that every defective investigation does not necessarily result in acquittal of the accused. In C. Muniappan v. State of Tamil Nadu, (2010) 9 SCC 567, the Hon'ble Supreme Court held that negligence or omission on the part of the investigating agency cannot by itself be a ground to discard otherwise reliable evidence. Similar observations were made in State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715, wherein it was held that criminal justice should not be made a casualty because of lapses committed by the investigating agency.

95. At the same time, where the prosecution case substantially rests upon the testimony of a solitary eyewitness, the deficiencies in investigation cannot be brushed aside altogether. Such omissions become relevant while assessing whether the prosecution has succeeded in proving its case beyond reasonable doubt.

96. It is also a settled principle that minor discrepancies, inconsistencies or omissions which do not go to the root of the prosecution case are liable to be ignored. In Leela Ram v. State of Haryana, (1999) 9 SCC 525, the Hon'ble Supreme Court observed

WEB COPY

that normal discrepancies are bound to occur due to errors of observation, lapse of memory and passage of time, and unless such discrepancies materially affect the substratum of the prosecution case, they should not be treated as fatal.

97. Applying the aforesaid principles to the facts of the present case, this Court is required to determine whether the testimony of PW-10, when read in conjunction with the medical evidence, the evidence of the remaining prosecution witnesses and the admitted surrounding circumstances, inspires confidence sufficient to sustain the conviction recorded by the learned trial Court, or whether the cumulative effect of the discrepancies and investigative omissions creates a reasonable doubt entitling the appellants to the benefit thereof.

98. The rival contentions are, therefore, required to be examined in the light of the aforesaid settled principles of criminal jurisprudence before arriving at the final conclusion regarding the guilt or otherwise of the appellants.

99. Upon a cumulative appreciation of the evidence on record, it emerges that the homicidal death of Mahanand Ram on account of firearm injuries stands conclusively established from the medical evidence of PW-6, which also finds corroboration from the testimonies of PW-1 to PW-5 and PW-7 to PW-9, who

WEB COPY

reached the place of occurrence immediately after the incident and found the deceased lying dead with firearm injuries on his person. The factum of homicidal death has not been seriously disputed by the defence.

100. The principal controversy, however, relates to the identity of the assailants. In this regard, the prosecution has principally relied upon the testimony of PW-10, the widow of the deceased, who has consistently maintained from the inception that the appellants were the perpetrators of the crime.

101. It is true that PW-10 is an interested witness in the sense that she is the wife of the deceased. However, she cannot be characterised as an unreliable witness merely on account of such relationship. As held by the Hon'ble Supreme Court in Dalip Singh v. State of Punjab (AIR 1953 SC 364) and reiterated in State of U.P. v. Krishna Master, (2010) 12 SCC 324, evidence of a related witness cannot be discarded solely because of relationship if it is otherwise found to be natural, cogent and trustworthy.

102. The presence of PW-10 at the place of occurrence is most natural. The occurrence took place on the verandah of her own house where she and her husband were sleeping. No material has been brought on record by the defence to probabilise the suggestion that she was not present at the place of occurrence. In

WEB COPY

fact, the defence itself suggested to her during cross-examination that she had slept inside the house with Rita Devi, which suggestion was categorically denied. Except such suggestion, no evidence has been adduced to displace her presence at the place of occurrence.

103. The prompt lodging of the First Information Report also lends assurance to her version. The fardbeyan was recorded within a few hours of the occurrence and the names of all the three appellants were specifically disclosed therein. There is no material to indicate that sufficient time was available to falsely implicate the appellants after deliberation or consultation.

104. Learned counsel for the appellants has emphasised that there existed previous enmity and land dispute between the parties. Indeed, the evidence of PW-1, PW-3 and PW-10 clearly establishes such enmity. However, as observed by the Hon'ble Supreme Court in several decisions, previous enmity is a double-edged weapon. While it may provide a motive for false implication, it equally furnishes a motive for commission of the offence. Therefore, the mere existence of enmity cannot be treated as a circumstance sufficient to discard otherwise reliable evidence.

105. The defence has next argued that PW-10 stated that three shots were fired, whereas the post-mortem report records

WEB COPY

only two firearm injuries. In our considered opinion, this discrepancy, viewed in isolation, is not sufficient to demolish the prosecution case. The occurrence admittedly took place during the dead of night. The witness had suddenly awakened from sleep, witnessed the brutal assault upon her husband and herself was allegedly assaulted by one of the accused. Minor discrepancy regarding the exact number of injuries or shots fired is not wholly unexpected in such traumatic circumstances.

106. In ***Leela Ram v. State of Haryana, (1999) 9 SCC 525***, the Hon'ble Supreme Court observed that normal discrepancies are bound to occur in the testimony of truthful witnesses on account of normal errors of observation, lapse of memory and mental disposition. Unless such discrepancies affect the core of the prosecution case, they should not be magnified so as to reject otherwise reliable evidence.

107. Equally, the contention regarding non-recovery of the weapon of offence, cartridges or blood-stained articles also does not, by itself, render the prosecution case unacceptable. The Investigating Officer has undoubtedly admitted certain omissions during investigation. However, as held in ***C. Muniappan v. State of Tamil Nadu, (2010) 9 SCC 567*** and ***State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715***, lapses or negligence on the

WEB COPY

part of the investigating agency cannot by themselves constitute a ground for acquittal if the substantive evidence adduced by the prosecution is otherwise trustworthy.

108. The Court is conscious of the fact that the investigation in the present case cannot be said to be flawless. Certain omissions on the part of the Investigating Officer are evident from the record. Nevertheless, those omissions do not appear to have caused such prejudice to the defence as would completely undermine the otherwise consistent version of the eyewitness.

109. Having considered the evidence in its entirety, this Court finds that the testimony of PW-10 remains consistent on the material particulars, namely, the place of occurrence, the participation of the appellants, the manner in which the assault commenced and the motive behind the crime. Her evidence receives assurance from the prompt First Information Report, the medical evidence establishing firearm injuries on the head of the deceased and the surrounding circumstances proved by the other prosecution witnesses.

110. We are, therefore, of the considered opinion that the prosecution has succeeded in proving beyond reasonable doubt that the appellants, in furtherance of their common intention,

WEB COPY

caused the homicidal death of Mahanand Ram by inflicting firearm injuries upon him. The findings recorded by the learned trial Court insofar as the offences punishable under Section 302 read with Section 34 of the Indian Penal Code are concerned, do not suffer from any perversity warranting interference by this Court.

111. The appellants have also been convicted under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The correctness of the said conviction also requires independent examination.

112. Section 3(2)(v), as it stood applicable on the date of occurrence, contemplated enhanced punishment where a person, not being a member of a Scheduled Caste or Scheduled Tribe, committed an offence punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person belonged to a Scheduled Caste or Scheduled Tribe.

113. The scope and ambit of the aforesaid provision have been authoritatively explained by the Hon'ble Supreme Court in ***Dinesh alias Buddha v. State of Rajasthan, (2006) 3 SCC 771***, wherein it was held that mere proof that the victim belongs to a Scheduled Caste or Scheduled Tribe is not sufficient. The

WEB COPY

prosecution must further establish that the offence was committed because the victim belonged to such caste or tribe.

114. The same principle has been reiterated in ***Ashrafi v. State of Uttar Pradesh, (2018) 1 SCC 742***, wherein the Hon'ble Supreme Court observed that the prosecution is required to prove the existence of a nexus between the commission of the offence and the caste of the victim before recording conviction under Section 3(2)(v) of the Act.

115. In the present case, the prosecution evidence, including the testimony of PW-10, consistently attributes the motive behind the occurrence to a longstanding dispute relating to possession of agricultural land. The prosecution witnesses themselves have admitted that litigation between the parties had been continuing for a considerable period with respect to the said land.

116. PW-10 specifically deposed that the land had originally belonged to the accused persons and was subsequently allotted to the family of the deceased under the Government scheme, which ultimately led to the dispute. Similar admissions have also been made by PW-1 and PW-3 during their respective cross-examinations.

WEB COPY

117. Significantly, none of the prosecution witnesses has deposed that the appellants committed the offence because the deceased belonged to a Scheduled Caste. No evidence has been adduced to establish that any caste-related abuse was hurled at the time of occurrence or that the offence was motivated by the caste identity of the deceased. The prosecution case, as unfolded throughout the trial, is founded entirely upon the alleged land dispute between the parties.

118. Thus, although the prosecution has succeeded in establishing that the deceased belonged to a Scheduled Caste, the essential ingredient required under Section 3(2)(v), namely that the offence was committed on the ground of the caste of the victim, has not been established by cogent evidence.

119. In view of the law laid down by the Hon'ble Supreme Court in Dinesh alias Buddha (supra) and Ashrafi (supra), the conviction of the appellants under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act cannot be sustained.

120. Accordingly, while the conviction and sentence of the appellants under Section 302 read with Section 34 of the Indian Penal Code and the other applicable provisions are liable to be considered on their own merits, the conviction recorded under

WEB COPY

Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act deserves to be set aside.

121. Having bestowed our anxious consideration to the entire evidence available on record, the submissions advanced on behalf of the respective parties and the legal principles governing appreciation of evidence, we are of the considered opinion that the prosecution has succeeded in establishing beyond reasonable doubt that Mahanand Ram met a homicidal death on the intervening night of 07/08.11.2015 and that the appellants were responsible for causing his death.

122. The testimony of PW-10, though that of a related witness, inspires confidence. Her presence at the place of occurrence is natural and stands established from the surrounding circumstances. Her evidence on the material particulars of the occurrence has remained consistent throughout and has not been shaken in cross-examination. The prompt lodging of the First Information Report and the medical evidence substantially corroborate her version regarding the homicidal assault.

123. The discrepancies highlighted by the learned counsel for the appellants with regard to the number of firearm injuries, recovery of bullets and certain omissions during investigation are, in the facts and circumstances of the present

WEB COPY

case, not of such magnitude as to demolish the substratum of the prosecution case. They are either attributable to defective investigation or constitute minor inconsistencies which do not affect the core prosecution version.

124. The admitted enmity between the parties, in our opinion, cannot by itself constitute a ground for discarding the otherwise reliable testimony of PW-10. As noticed hereinbefore, previous enmity is a double-edged weapon. While it may furnish a motive for false implication, it equally supplies a motive for commission of the offence. In the present case, no material has been brought on record to probabilise false implication.

125. We are, therefore, in agreement with the finding recorded by the learned trial Court that the prosecution has proved the charge under Section 302 read with Section 34 of the Indian Penal Code against all the appellants beyond reasonable doubt. The conviction under the said provision consequently calls for no interference.

126. So far as the conviction under Section 27 of the Arms Act is concerned, the same requires independent consideration. The earliest version of the prosecution as contained in the fardbeyan attributes the role of catching hold of the deceased to appellant Birendra Yadav, whereas the actual firing is

WEB COPY

attributed to appellants Bablu Yadav and Kamlesh Yadav. However, while deposing before the Court, PW-10 improved her version by stating that appellant Birendra Yadav also fired upon the deceased before the other two appellants fired. The learned trial Court has not adverted to this material inconsistency while recording conviction under Section 27 of the Arms Act.

127. Since the allegation of use of firearm against appellant Birendra Yadav emerges only from the improved version of PW-10 and not from the earliest version of the prosecution, it would not be safe to sustain his conviction under Section 27 of the Arms Act solely on the basis of such improvement. Accordingly, the conviction of appellant Birendra Yadav under Section 27 of the Arms Act deserves to be set aside. However, the evidence on record is sufficient to sustain his conviction under Section 302 read with Section 34 of the Indian Penal Code.

128. However, for the reasons already recorded while considering the applicability of Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, we are of the considered opinion that the prosecution has failed to establish that the offence was committed on the ground that the deceased belonged to a Scheduled Caste. The evidence unmistakably points towards a dispute relating to possession of

WEB COPY

land as the immediate cause of the occurrence. In the absence of evidence establishing the essential statutory ingredient required under Section 3(2)(v) of the Act, the conviction recorded under the said provision cannot be sustained.

129. Consequently, the conviction and sentence of all the appellants under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are set aside. The conviction and sentence of appellant Birendra Yadav under Section 27 of the Arms Act are also set aside. However, his conviction and sentence under Section 302 read with Section 34 of the Indian Penal Code are affirmed. The conviction and sentence of appellants Bablu Yadav and Kamlesh Yadav under Section 302 read with Section 34 of the Indian Penal Code as well as under Section 27 of the Arms Act are affirmed.

130. In view of the foregoing discussion, the impugned judgment of conviction and order of sentence passed by the learned trial Court require modification only to the extent indicated hereinabove. Save and except the modifications regarding the conviction under Section 27 of the Arms Act in respect of appellant Birendra Yadav and the conviction under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes

WEB COPY

(Prevention of Atrocities) Act, the findings recorded by the learned trial Court call for no interference.

ORDER

131. The conviction and sentence of all the appellants under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are set aside.

132. The conviction and sentence of appellant **Birendra Yadav** under Section 27 of the Arms Act are also set aside.

133. The conviction and sentence of appellant **Birendra Yadav** under Section 302 read with Section 34 IPC are affirmed.

134. The conviction and sentence of appellants **Bablu Yadav and Kamlesh Yadav** under Sections 302/34 IPC and Section 27 of the Arms Act are affirmed.

(Bibek Chaudhuri, J)

(Rana Vikram Singh, J)

suraj/-

AFR/NAFR	AFR
CAV DATE	22.06.2026
Uploading Date	05.08.2026
Transmission Date	05.08.2026

WEB COPY