

Mithilesh Yadav vs The State Of Bihar on 13 October, 2026

Author: [Rajeev Ranjan Prasad](#)

Bench: [Rajeev Ranjan Prasad](#)

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.545 of 2023
Upendra Yadav & Another Versus The State of Bihar
=====

with
CRIMINAL APPEAL (DB) No. 574 of 2023
Binda Yadav @ Binda Lal Yadav Versus The State of Bihar
=====

with
CRIMINAL APPEAL (DB) No. 581 of 2023
Mithilesh Yadav Versus The State of Bihar
=====

with
CRIMINAL APPEAL (DB) No. 596 of 2023
Chandraghosh @ Chandrabhushan Singh @ Chandragosh Yadav
Versus
The State of Bihar
=====

with
CRIMINAL APPEAL (DB) No. 614 of 2023
Ajay Yadav & Others Versus The State of Bihar
=====

with
CRIMINAL APPEAL (DB) No. 616 of 2023
Ramkrishna Yadav @ Krishna Kumar & Another
Versus
The State of Bihar
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IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.545 of 2023

CNR No. BRHC010475552023

Arising Out of PS. Case No.-68 Year-1996 Thana- KARPI District- Jehanabad

- =====
1. Upendra Yadav, Son of Late Harinandan Singh, Resident of Village- Ashadi, PS- Karpi, District- Arwal.
 2. Dhananjay Yadav, S/O Ramswaroop Yadav @ Ram Swarup Yadav, R/O Village- Ashadi, P.S- Karpi, Distt.- Arwal.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 574 of 2023

CNR No. BRHC010475552023

Arising Out of PS. Case No.-68 Year-1996 Thana- KARPI District- Jehanabad

=====

Binda Yadav @ Binda Lal Yadav, Son Of Kaloot Yadav, Resident Of Village- Ashadi, P.S.- Karpi, District- Arwal.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 581 of 2023

CNR No. BRHC010475552023

Arising Out of PS. Case No.-68 Year-1996 Thana- KARPI District- Jehanabad

=====

Mithilesh Yadav, Son of Ramanand Yadav, Resident of Village- Ashadi, P.S.- Karpi, Dist- Arwal.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 596 of 2023

CNR No. BRHC010475552023

Arising Out of PS. Case No.-68 Year-1996 Thana- KARPI District- Jehanabad

District- Arwal.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 614 of 2023

CNR No. BRHC010475552023

Arising Out of PS. Case No.-68 Year-1996 Thana- KARPI District- Jehanabad

=====

1. Ajay Yadav S/O Late Kameshwar Yadav, R/O Village- Ashadi, PS. Karpi, Dist. Arwal.
2. Sushil Kumar @ Papu Kumar, S/O Late Kitab Lal Yadav, R/O Village- Ashadi, PS. Karpi, Dist. Arwal.
3. Bipin Kumar @ Brijnandan Singh S/O Rajdeo Yadav R/O Village- Ashadi, PS. Karpi, Dist. Arwal.
4. Rajendra Yadav, S/O Late Deochand Yadav, R/O Village- Ashadi, PS. Karpi, Dist. Arwal.
5. Naresh Yadav, S/O Baleshwar Yadav, R/O Village- Ashadi, PS. Karpi, Dist. Arwal.

... .. Appellants

Versus

The State of Bihar

... .. Respondents

=====

with

CRIMINAL APPEAL (DB) No. 616 of 2023

CNR No. BRHC010475552023

Arising Out of PS. Case No.-68 Year-1996 Thana- KARPI District- Jehanabad

=====

1. Ramkrishna Yadav @ Krishna Kumar, Son of Harihar Yadav, Resident of village - Asadhi, P.S.- Karpi, District - Arwal.
2. Daya Singh, Son of Anaksh Singh, Resident of village - Asadhi, P.S.- Karpi, District - Arwal.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

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Appearance :

(In CRIMINAL APPEAL (DB) No. 545 of 2023)

For the Appellants : Mr. Krishna Pd. Singh, Sr. Advocate
Ms. Meena Singh, Advocate

Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026
4/94

For the State : Mr. Satya Narayan Prasad, Addl.PP
(In CRIMINAL APPEAL (DB) No. 574 of 2023)
For the Appellant : Mr. Krishna Pd. Singh, Sr. Advocate
Ms. Meena Singh, Advocate
For the State : Mr. Bipin Kumar, Addl.PP
(In CRIMINAL APPEAL (DB) No. 581 of 2023)
For the Appellant : Mr. Alok Kumar, Advocate
For the State : Mr. Dilip Kumar Sinha, Addl.PP
(In CRIMINAL APPEAL (DB) No. 596 of 2023)
For the Appellant : Mr. Fanish Kumar Rai, Advocate
Mr. Anshul Aaryan, Advocate

Mr. Aditya Singh, Advocate
For the State : Mr. Dilip Kumar Sinha, Addl.PP
(In CRIMINAL APPEAL (DB) No. 614 of 2023)
For the Appellants : Mr. Fanish Kumar Rai, Advocate
Mr. Anshul Aaryan, Advocate
Mr. Aditya Singh, Advocate
For the State : Mr. Abhimanyu Sharma, Addl.PP
(In CRIMINAL APPEAL (DB) No. 616 of 2023)
For the Appellants : Mr. Fanish Kumar Rai, Advocate
Mr. Anshul Aaryan, Advocate
Mr. Aditya Singh, Advocate
For the State : Mr. Sujit Kumar Singh, Addl.PP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE KUMAR MANISH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 13-10-2026

These appeals have been preferred for setting aside the
judgment of conviction dated 03.04.2023 (hereinafter referred to
as the 'impugned judgment') and the order of sentence dated
12.04.2023

(hereinafter referred to as the 'impugned order') passed by learned Additional District and Sessions Judge-II, Jehanabad (hereinafter referred to as the 'learned trial court') in Sessions Trial Case No. 65 of 1998 arising out of Karpi (Arwal) P.S. Case No. 68 of 1996.

Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 5/94

2. By the impugned judgment, the appellants have been convicted for the offences punishable under [Sections 302/34, 307/34, 148](#) of the Indian Penal Code (in short '[IPC](#)') and [Section 27](#) of the Arms Act. By the impugned order, they have been sentenced to undergo rigorous imprisonment for life with a fine of Rs.5,000/- each under [Section 302/34](#) IPC and in default of payment of fine, they will further undergo six months' imprisonment. They have also been sentenced to undergo rigorous imprisonment for three years under [Section 148](#) IPC and further, under [Section 307/34](#) IPC, they have been sentenced to undergo rigorous imprisonment for ten years with a fine of Rs.3,000/- each and in default of payment of fine, they will further undergo three months' imprisonment. They have been further sentenced to undergo rigorous imprisonment for three years under [Section 27](#) of the Arms Act. All the sentences are to run concurrently.

Prosecution Case

3. The prosecution case is based on the fardbeyan of informant Shiv Narayan Singh (P.W 12). The fardbeyan was recorded by S.I. Laliteshwar Pandey (P.W 27) Officer in-charge of Sahar Telpa (O.P.) on 09.08.1996 at 5.00 am at Keyal Aahar near place of occurrence. The informant alleged that there is a big Ahar situated in north-west side of his village where water get stored for Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 6/94 irrigation, the villagers of Asadhi used to cut the Ahar and, therefore, due to aforesaid reason they were watching bandh and on the said night, the informant along with Bharat Singh (deceased) Manger Singh (deceased), Ram Niwas Singh (deceased) and Nawlesh Singh (deceased), Pramod Kumar (injured P.W 13), Karu Kurmi (P.W 2), Gung Kurmi (P.W 3) and Ravi Kurmi (P.W 21) were watching the said Ahar and they were in the Jhopari (hut) and on the alleged date in night i.e. 08.09.1996 at 11 pm, they heard movement (Ahat), he made query "who are you", then 30-40 unknown persons who were wearing half pant and ganji, came near the Jhopera armed with rifle and gun and one person told that they belong to a Party and asked them to be mum. Further it is

alleged that some persons came from western side and some remained in Eastern side. Further it is alleged that from western side one person came and took a lathi from Jhopari and assaulted Karu Kurmi, he also started assaulting Bharat Singh with lathi and further one person who was standing on eastern side flashed the torch and another person standing by the side of that person fired with rifle at Manger Singh causing injury on his right eye, the said person caused firearm injury to Bharat Singh on right hand and on neck and thereafter, the another person caused fire- arm injury to Ram Niwash Singh on right neck who died on the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 7/94 way to hospital and the same person caused fire-arm injury to Navlesh Singh causing injury on his neck. According to the informant, the same person also caused fire-arm injury to injured Pramod Kumar who was brought to Hospital, Jehanabad and further an another person assaulted Premnath Singh on his hand by lathi and thereafter, they went towards western side from the Bandh. It is further alleged that fifteen to thirty minutes after going of the accused persons, the informant, Bhola Singh, Premnath Singh, Karu Kurmi, Gung Kurmi, Ravi Kurmi were going towards eastern side of the village and on the way so many persons met in the raasta who were coming towards Bandh after hearing the sound of firing and thereafter they came to Jhopari and flashed the torch and found that Manger Singh, Nawlesh Singh and Bharat Singh had already died, Ram Niwas Singh and Pramod Singh were in injured condition. Some of them were crying and then some remained there for watching the dead body and some persons took Pramod Singh and Ram Niwash Singh to Hospital and some persons went to police for informing. Further, later on he got to know that Ram Niwas Singh died in the way and Premnath Singh was taken to Jehanabad Hospital. Further he also got to know that one accused person sustained fire-arm injury who was taken away by the accused persons and in clear words the informant stated in Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 8/94 the fardbeyan that this crime has been committed by Majdoor Kisan Sangram Parishad (M.K.S.P) Extremists, the informant and his associates have seen some of the accused persons from close range and they claimed to identify them by face, if shown to them. The fardbeyan was recorded by S.I Laliteswar Pandey (P.W 27) on which Premnath Singh (P.W 8) also signed.

4. On the basis of the fardbeyan Karpi P.S. Case No. 68 of 1996 dated 09.08.1996 was registered under [Sections 302, 307, 326, 342, 323, 34](#) IPC and [Section 27](#) of the Arms Act against unknown 30-40 M.K.S.P. extremists. After investigation police submitted chargesheet bearing Chargesheet No. 79 of 1996 dated 15.11.1996 against twenty four accused persons, namely, (1) Dharm Dev Yadav, (2) Dhananjay Yadav, (3) Sushil Kumar, (4) Rajaram Yadav, (5) Mithlesh Yadav, (6) Bipin Yadav, (7) Rajendra Yadav, (8) Paras Yadav, (9) Ram Krishan Yadav @ Krishan Kumar, (10) Ajay Yadav, (11) Baijnath Yadav, (12) Bhagwan Yadav, (13) Ramnarayan Yadav, (14) Chandraghosh @ Chandrabhushan Singh, (15) Baleshwar Yadav, (16) Daya Singh, (17) Satyendra Singh, (18) Vishwanath Singh, (19) Upendra Yadav, (20) Binda Yadav, (21) Naresh Yadav, (22) Ramraj Singh, (23) Basant Yadav (absconder) and (24) Nagendra Yadav (absconder).

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5. Vide order dated 18.01.1997 cognizance of the offences under [Sections 302, 342, 323, 307, 212, 201/34](#) IPC and [Section 27](#) of the Arms Act was taken. Sufficient materials were found to proceed against them. Thereafter, vide order dated 19.01.1998, the learned Magistrate directed the Office to prepare the police papers for supply to the accused persons in attendance. The learned Magistrate observed that all the processes were exhausted for securing presence of two absconded accused persons namely Nagendra Yadav and Basant Yadav and disposed of the Trial No. 453 of 1998 relating to the above two accused persons declaring them absconder and directed to deposit the records in the record room. The trial No. 302 of 1997 pertaining to rest of the twenty two accused were committed to the court of sessions where learned trial court numbered the trial as Sessions Trial No. 65 of 1998.

6. Charges were read over and explained to the twenty two accused persons in Hindi which they denied and claimed to be tried. Accordingly, charges were framed in Sessions Trial No. 65 of 1998 vide order dated 21.07.2003 for the offences punishable under [Sections 302/34, 307/34, 148](#) IPC and [Section 27](#) of the Arms Act.

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7. During trial, accused, namely, Raja Ram Yadav died and proceeding against him stood abated vide order dated 16.11.2011. Further, Paras Yadav died on 18.01.2023 in the hospital and vide order dated 02.02.2023, proceeding

against him also abated. So far as one absentee accused Ram Narayan Yadav is concerned, vide order dated 16.12.2014, separate record was opened against him being Sessions Trial No. 85 of 2014.

8. In course of trial, the prosecution examined as many as twenty seven witnesses and exhibited several documents. The list of prosecution witnesses and the documents are given hereunder in tabular form:-

List of Prosecution witnesses Prosecution Name of Witness Description of the Witness Witness No.
P.W-1 Yamuna Singh Hostile witness P.W-2 Karu Kurmi Hostile witness P.W-3 Gung Kurmi Hostile witness P.W-4 Chotan Singh Circumstantial witness P.W-5 Shyam Sumera Singh Circumstantial witness P.W-6 Janeshwar Singh Circumstantial witness P.W-7 Bhola Singh Eye Witness P.W-8 Premnath Singh Eye witness P.W-9 Dinesh Singh Circumstantial witness P.W-10 Ramjanam Mahto Hearsay witness P.W-11 Ramjeevan Kurmi Circumstantial witness P.W-12 Shiv Narayan Singh Informant P.W-13 Pramod Kumar Injured witness P.W-14 Dr. Sri Nath Prasad Medical Officer P.W-15 Vijay Sharma Hearsay witness P.W-16 Jagdish Kumar Hearsay witness P.W-17 Uday Sharma Hearsay witness P.W-18 Rajesh Kumar Hearsay witness P.W-19 Gorakh Nath Singh Second I.O.

PW-20	Gaya Mahto	Hostile witness
PW-21	Ravi Kurmi	Hostile witness

Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 11/94 PW-22 Jay Sri Singh Hearsay witness PW-23 Rameshwar Singh Hostile witness PW-24 Ramadhar Singh Hearsay witness PW-25 Dr. Jawaharlal Medical Officer PW-26 Dr. Ramadhar Singh Medical Officer PW-27 Lalitshwar Pandey First I.O.

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
Exhibit '1'	Signature of Prem Nath Singh (PW-8) on PW-8 Fardbeyan	
Exhibit '1/1'	Signature of Informant Shiv Narayan Singh PW-12 (PW-12) on Fardbeyan	
Exhibit '1/2'	Signature of the informant Shiv Narayan Singh PW-12 (PW-12) on protest petition.	
Exhibit '1/3'	Signature of Advocate Shyam Nandan Sharma PW-12 on protest petition	
Exhibit '2'	Signature of Dr. Sri Nath Prasad on injury report PW-14 of Pramod Kumar	
Exhibit '2/1'	Signature of Dr. Jawaharlal on Injury report of PW-25 Pramod Kumar	
Exhibit '2/2'	Signature of Dr. Ramadhar Singh on injury PW-26 report of Pramod Kumar	
Exhibit '3'	Signature of Vijay Sharma on inquest report of PW-15 deceased Mangal Singh.	
Exhibit '3/1'	Signature of Subodh Sharma on inquest report of PW-15 deceased Mangal Singh/Sharma	
Exhibit '3/2'	Signature of Jagdish Sharma on inquest report of PW-16 deceased Navlesh Kumar.	
Exhibit '3/3'	Signature of of Deepak Chandra Prakash on PW-16 inquest report of deceased Navlesh Kumar	
Exhibit '3/4'	Signature of Rajesh Sharma on inquest report of PW-18 deceased Ram Niwas Sharma	
Exhibit '4'	Signature of Uday Sharma on inquest report of PW-17 deceased Ram Niwas Sharma	
Exhibit '5'	Writing and Signature of S.I. Laliteshwar PW-27 Pandey on Fardbeyan	
Exhibit '6'	Signature of S.I. P.K. Sinha on Formal FIR.	PW-27
Exhibit '7'	Inquest report of deceased Bharat Sharma in the PW-27	

writing and signature of S.I. Laliteshwar Pandey. Exhibit '7/1' Inquest report of deceased Ram Niwas Sharma PW-27 in the writing and signature of S.I. Laliteshwar Pandey.

Exhibit '7/2' Inquest report of deceased Navlesh Kumar in the PW-27 writing and signature of S.I. Laliteshwar Pandey. Exhibit '7/3' Inquest report of deceased Mangal Singh in the PW-27 writing and signature of S.I. Laliteshwar Pandey. Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 12/94

9. Thereafter, the statements of the accused persons were recorded under [Section 313](#) of the Code of Criminal Procedure (in short '[CrPC](#)'). The accused persons in their 313 [CrPC](#) statement denied the prosecution case and pleaded innocence.

10. The defence has not produced any oral evidence but in the form of documentary evidence, the following documents have been marked exhibits:-

List of Exhibits on behalf of Defence Exhibit No. Description of the Exhibit Proved by/ Attested by
Exhibit 'A' The certified copy of school admission register 1971 of Rajkiya Vidyalaya Devkund School.

Exhibit 'B' Original work order issued by Keyal Mukhiya to Dhananjay Yadav (accused)

11. It appears from the records that the learned trial court delivered the judgment relating to the appellants and two other accused persons, whose case record was committed to the court of Session earlier, by a common judgment dated 03.04.2023 dealing the evidences of both the cases separately.

Findings of the Learned Trial Court

12. Learned trial court, after analysing the evidences available on the record found that the evidence of the witnesses, namely, PW-4, PW-5, PW-6, PW-9 and PW-11 are corroborated by the evidence of the eye witnesses, namely, PW-7, PW-8, PW-12 and PW-13 who have fully supported the case of the prosecution in Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 13/94 one tune. Learned trial court found that all the four eye witnesses were present at the place and time of the occurrence when accused persons fired upon the deceased and there is no reason to disbelieve their statements.

13. Learned trial court found that the evidence of circumstantial witnesses are also consistent in their deposition that soon before the occurrence they had seen the accused persons and they went towards aahar and soon after they heard the sound of firing, they came to village and with the villagers they reached at the place of occurrence and saw the dead bodies of Bharat Singh, Mangal Singh and Navlesh Sharma. Two persons namely Ram Niwas Sharma and Pramod Kumar were injured. Ram Niwas Sharma died on the way to hospital.

14. Learned trial court found that the ocular evidence is corroborated by the injury reports in which Doctors have found multiple injuries on the body of the injured Pramod Kumar (PW-

13).

15. Learned trial court, after considering all the facts and materials present on the records found that the prosecution case has been supported by PW-7, PW-8, PW-12 and PW-13 who are eye witnesses to the occurrence and also by PW-4, PW-5, PW-6, PW-9, PW-11 are circumstantial witnesses. PW-10, PW-15, PW- Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 14/94 16, PW-17, PW-18, PW-22 and PW-24 are hearsay witnesses. Learned trial court found that the evidence of the above witnesses has been corroborated by medical evidence as well as inquest report. Hence, there are sufficient, cogent and reliable evidences available to show that the accused persons fired on the deceased and injured.

16. Learned trial court, therefore, convicted the accused, namely, (1) Dhananjay Yadav, (2) Binda Yadav, (3) Sushil Kumar, (4) Mithlesh Yadav, (5) Bipin Yadav, (6) Rajendra Yadav, (7) Ram Krishna Yadav, (8) Ajay Yadav, (9) Chandraghosh Yadav, (10) Daya Singh, (11) Upendra Singh, (12) Naresh Yadav and (13) Baijnath Yadav for

the offences punishable under [Sections 302/34, 307/34, 148](#) IPC and [Section 27](#) of the Arms Act whereas rest of the accused persons, namely, (1) Dharam Dev Yadav, (2) Bhagwan Yadav, (3) Baleshwar Yadav, (4) Satyendra Singh, (5) Vishwanath Singh and (6) Ram Raj Yadav were acquitted by giving them benefit of doubt.

Submissions on behalf of appellants in Cr. Appeal (DB) No. 545 of 2023 and Cr. Appeal (DB) No. 574 of 2023

17. Mr. Krishna Prasad Singh, learned Senior Advocate assisted by Ms. Meena Singh, learned counsel has submitted that as per the FIR, two persons assaulted three with lathi and two Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 15/94 another persons fired at five persons. The informant alleged that Karu Kurmi (PW-2) and Bharat Singh (dead) were assaulted by lathi. The informant further alleged that Mangal Singh received fire-arm injury on the right eye and Bharat Singh (dead) received fire-arm injury on the right hand and neck. Ram Niwas Singh received fire-arm injury on right neck who died on way to hospital and Nawlesh Singh received fire-arm injury on neck and Pramod Kumar (P.W. 13) received fire-arm injury on leg. Further, Prem Nath Singh (P.W. 8) alleged to have received injury on his right hand by lathi.

18. Learned Senior counsel submits that during trial, PW-1, PW-2, PW-3, PW-20, PW-21 and PW-23 have been declared hostile. It is submitted that the inquest report witnesses, namely, PW-16 and PW-17 have deposed that they had signed on plain paper and the same suggests death due to fire-arm without the name of any accused. Learned Senior counsel submitted that all the four dead bodies were sent for post mortem through Chaukidar (not examined). Post mortem was held from 4.30 PM onwards by Dr. S.P. Sinha at Sadar Hospital, Jehanabad on 09.08.1996 but neither doctor was examined nor post mortem report was exhibited and brought on record. Thus, it is his Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 16/94 contention that murder is not proved by the prosecution as post mortem report is not a document which falls [u/s 293 \(4\)](#) CrPC.

19. Learned Senior counsel submits that the fardbeyan of the informant was recorded at 5.00 AM in presence of several villagers and all prosecution witnesses but the FIR was lodged against unknown because the informant did not whisper name of any of the accused persons. The informant did not say that the assailants were from Asadhi village. It is further submitted that during investigation, after about 82 days of the occurrence i.e. on 30.10.1996, the informant filed a protest petition against the Investigating Officer and doctor. In the protest petition, it is alleged that the I.O. is not arresting area commander of extremist organization. The protest petition was signed by the informant and his Advocate Shyam Nandan Sharma (Exhibit '1/2' and '1/3' respectively). Thus, it is clear that even after expiry of three months, the informant did not name any accused in the protest petition.

20. Learned Senior counsel submits that as per the evidence of the I.O., two dead bodies were found inside the hut, one was outside the hut at 'ahar' and another dead body was on the middle of road but the witnesses who claimed to be eye- witnesses said about the presence of three dead bodies inside the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 17/94 hut and one was outside which shows that they are not the eye-witnesses.

21. Learned Senior counsel for the appellants has submitted that no seizure list is exhibited or brought on record, though the first I.O. claimed in his deposition that three khokha and blood was found at place of occurrence but he did not say about the preparation of seizure list and its witnesses. As a result of which material exhibits are not produced in court and sent for F.S.L. and no seizure list witness turned up in support of seizure list.

22. On the point of source of identification, learned Senior counsel has submitted that the prosecution claimed that they identified accused persons/ appellants in torch light, torch was in possession of both sides who lit torch but no torch had either been seized from the appellant or produced by prosecution to the I.O. and in absence of any source of light, it is impossible to identify a few people amongst 30-40 unknown persons. Accordingly, it is submitted that the story of the prosecution of identification is not believable because except torch, there was no other source of light at the place of occurrence to see the occurrence and identify any accused. It is submitted that all the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 18/94 prosecution witnesses have given contradictory statements on the point of lighting of torch.

23. On the point of identification during trial, learned Senior counsel has submitted that appellant no. 1, namely, Upendra Yadav was identified by P.W.-4 and PW-7 who knew appellant prior to the occurrence. Appellant No. 2,

namely, Dhananjay Yadav was identified by PW-4, PW-6 and PW-7 who knew the appellant prior to the occurrence. PW-5 identified the appellant by face with the help of P.W. 4, P.W. 12 and PW-13. Appellant Binda Yadav (in Cr. Appeal (DB) No. 574 of 2023) was identified by PW-8 and PW-12 by name only. PW-9 had not taken name of these three appellants but claimed to identify other appellants as he was knowing the other accused persons prior to the occurrence.

24. Learned Senior counsel submits that no arm was seized from the place of occurrence or recovered from possession of any of the appellants.

25. Learned Senior counsel submits that there is no allegation of exploding bomb in the alleged occurrence but the injury report of PW-13 shows that his injuries were caused by explosive substance and not by fire-arm and the nature of injury was simple. The Doctor (PW-25) who examined PW-13 has Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 19/94 deposed in paragraph '2' of his deposition that fire-arm does not come under explosive substance.

26. It is submitted that the statement of PW-13 was recorded by Pirbahore Police Station on 09.08.1996 at PMCH where he did not name any of the appellant as accused. It is submitted that medical report of P.M.C.H. is not on record.

27. Learned Senior counsel has stated that the prosecution has developed its case after registration of the FIR as in the FIR, allegation of assault by lathi and fire-arm were attributed to only four accused persons but later on, it was attributed to six. Further, the motive was changed from naxal activities by M.K.S.P. to irrigation dispute.

28. Learned Senior counsel, on point of assault, has submitted that after lapse of 18 years of the occurrence i.e. in 2004, P.W-7 and PW-8 named several accused persons. They made specific allegation against five accused namely Upendra Yadav, Dhananjay Yadav, Basant, Nagendra and Chandra Kishore which contradict F.I.R. PW-11, PW-12, PW-13, PW-27, PW-29, PW-4 and PW-6 did not name any accused till the end of trial. PW-7 and PW-8 specifically stated at all accused assaulted Karu Kurmi and Bharat Sharma with lathi. They stated that Basant fired at Bharat Sharma, Dhananjay fired at Mangal Sharma, Chandra Kishore Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 20/94 fired in the leg of Pramod Sharma, Nagendra Yadav fired at Ramniwas Sharma and Upendra Yadav fired at Nawal Sharma. Thus, they raised number of persons who fired from 2 to 5.

29. Learned Senior counsel submits that PW-12 has stated in paragraphs '35' and '36' of his deposition that for the first time, he knew about the appellants from the confessional statement of the appellant Binda Yadav (not on record) which was being read by villagers at his house. Thus, it is submitted that the informant himself admits that either he is not an eyewitness to the occurrence or he did not identify any appellant at the place of occurrence. It is further submitted that PW-9 has contradicted the informant by stating that a meeting was held in the village to select names for making accused also against appellants for 2 days (para-27 and

28). It is further submitted that PW-27 also contradicted the informant by stating in paragraph '1' of his deposition that it was Gopal Prasad who first of all disclosed names of the accused persons in this case who was neither made chargesheet witness nor his statement under [Section 164](#) Cr.P.C. was recorded. PW-19 also stated in paragraph '3' of his deposition that he recorded confessional statement of co-accused Ramraj Singh @ Janeshwar Singh (acquitted) but his confessional statement is also not on record. These contradictions and silence of prosecution witnesses Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 21/94 for a long time prove that none of the prosecution witnesses are the eyewitnesses of the occurrence.

30. It is the submission of learned Senior counsel for the appellants that the question of identification is irrelevant because both the parties belong to the same village-Keyal. The prosecution party is resident of Kayal Basti and the appellants belong to Asadhi Basti, a tola of same village-Keyal. School, Hospital, Panchayat Bhawan, Market, Farming, PDS Dealer, Barbar, Pandit etc. all are common people of both basti, they know each other very well. The informant and some of the appellants are schoolmates since childhood. Further the deposition of P.W.-12 (para-22-28) indicates that wife of Dhananjay Yadav is a teacher in the same school where P.W. 12 is the

Secretary of the school Education Committee and that rangdari was demanded from his wife by extremists due to which a case was also lodged and in protest, the school was closed for a month.

31. Referring to the judgment of the Hon'ble Supreme Court in the case of [Durbal vs. State of Uttar Pradesh](#) reported in (2011) 2 SCC 676, learned Senior counsel has submitted that non-production of torch and seizure would prove fatal for the prosecution. Further, learned Senior counsel relied on the judgment of the Hon'ble Supreme Court in the case of Kapildeo Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 22/94 [Mandal Vs. State of Bihar](#) reported in (2008) 16 SCC 99 and submitted that when no recovery of fire arm used in crime was made and the medical evidence rules out injuries claimed to have been inflicted as per eye witness version, the Court can draw adverse inference that prosecution version is not trustworthy. Non- seizure and production of source of light, blanket, blood soil, khokha, lathi etc. from the place of occurrence has weakened the prosecution case.

32. Learned Senior counsel has relied upon the judgment of Hon'ble Division Bench of this Court in the case of [Sunayna Devi Vs. The State of Bihar and Anr.](#) passed in Cr. Appeal (DB) No. 271 of 2025 filed against judgment of acquittal, submitted that non-examination of the doctor who conducted the post mortem, the post mortem report not brought in evidence, failure to prove place of occurrence, non-recovery and production of used weapon, seizure list not having been prepared and there being no corroboration of oral evidence by the medical evidence shall prove fatal for the prosecution.

In Cr. Appeal (DB) No. 596 of 2023, Cr. Appeal (DB) No. 614 of 2023 and Cr. Appeal (DB) No. 616 of 2023

33. Mr. Fanish Kumar Rai, learned counsel for the appellants, while assailing the impugned judgment of conviction Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 23/94 and sentence submits that the prosecution emanates on the initial Fardbeyan of Shiv Narayan Singh (PW-12) who claimed himself to be an eyewitness against 30-40 unknown armed members of the MKSP (Mazdoor Kisan Sangram Parishad) extremist for alleged incident dated 08.08.1996 at around 11:30 PM causing death of four persons by fire arm and inflicting fire arm injuries upon Pramod Singh (PW-13). In his initial Fardbeyan, given at 5:00 AM on 09.08.1996, the informant categorically stated that one extremist also sustained fire arm injuries. The informant said at the end that he and his companions had seen the extremist from very near and can identify on seeing them.

34. It is submitted that in his re-statement given to police/first I.O. (PW-27/S1 Laliteshwar Pandey) around 12:30 PM, on the same day, the informant reiterated his earlier statement with addition that he heard an assailant saying that let us go, Binda has sustained fire arm injury and also he added that he lit torch on the assailants. The initial Fardbeyan was signed by the informant and also by PW-8 (Prem Nath Singh/an Eye Witness).

35. Learned counsel submits that statement of injured eyewitness (PW-13/Pramod Kumar) was taken on 09.08.1996 at 07:30 PM by ASI R.P. Singh of Pirbahore PS, Dist. Patna in the emergency department of PMCH, Patna, which was received and Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 24/94 recorded by the I.O. in the case diary on 17.08.1996. The said Fardbeyan was signed by PW-13 and also by his uncle named Chhotan Sharma, S/o Late Indradeo Sharma. PW-13, in his Fardbeyan before police did not name any of the assailants and also categorically stated that he did not identify persons who fired. However, in his examination-in-chief, he deposed contrary and identified accused Dhananjay Singh and in course of his cross-examination when confronted with his 161 statement, he lied and said it is wrong. In the present case, even the injured eyewitness is not wholly reliable because of material contradiction qua identification of accused.

36. Learned counsel further submitted that for the first time when the second I.O. took the investigation in his hand, the prosecution brought in a concocted story that co-villagers were also watching Aahar from the Panchayat Bhawan in the village, which is 1 kilometer away from the place of occurrence and some members of the group of assailants were identified in torch lights around half an hour before the incident, when assailants were walking in a queue and going towards Jhopri/hut at Aahar where victims along with co-villagers were watching Aahar. Referring to the statement of the I.O. (PW-27), it is submitted that this witness in his testimony before court has clearly stated that no witness had Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 25/94 told him that some people were also watching Aahar at Panchayat Bhawan. Further, referring to paragraph '28' of deposition of PW-9 learned counsel submits that this witness in his cross-examination admits

that on the second day after the date of incident, a meeting was held in the house of Naresh Singh in which 100-150 people participated and there it was decided as to who would be accused and who would be witness and only after decision people/witnesses went to the police.

37. Learned counsel submits that on bare reading of prosecution version as contained in the FIR and evidence of all 4 eyewitnesses and 5 circumstantial witnesses, it would transpire that prosecution story is highly improbable and inherently self-contradictory. Referring to the deposition of PW-7 who claims himself an eye-witness, learned counsel submits that this witness in his testimony stated that only assailants lit torch and no torch was lit by victim's side in the hut at Aahar. Referring to the depositions of the eyewitnesses, it is submitted that they claimed to have identified accused persons as named in their respective testimony in the torch lit by accused's side, whereas circumstantial witnesses claim that torch lit by them and in that light they identified members of the assailants group. At this stage, learned counsel submitted that no torch has been seized by the police and Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 26/94 produced before the Court as material objects, which creates serious doubts even about existence of torches and none production of physical objects/torches as the claimed source of lights would render order of conviction of the Appellants not sustainable in view of the judgment of Hon'ble Supreme Court of India in the case of [Durbal](#) (supra).

38. Reliance has been placed on the judgment of Hon'ble Supreme Court of India in the case of [Tamilselvan Vs. State Rep. by Inspector of Police, Tamil Nadu](#) reported in (2008) 7 SCC 755, wherein it was held that if the direction of the torch is in the direction of witnesses then it creates partial blindness and all the more difficult to see and identify faces of the accused persons. It is submitted that in the present case also, the identification of the appellants as claimed by the eyewitnesses mainly PW-7 and PW-8 is not humanly possible under torch light lit by appellants' side from east and west in the Jhopri in a chaotic situation of attack by mob of 30-40 assailants.

39. Learned counsel submits that admittedly, no TIP was conducted in this case by the police, and only some of the appellants have been identified by the witnesses for the first time in the dock before learned trial court after long gap of at least 8 years. Referring to the judgment of the Hon'ble Supreme Court of Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 27/94 India in the case of [Malkhansingh Vs. State of M.P.](#) reported in (2003) 5 SCC 746 : 2003 SCC (Cri) 1247, learned counsel submitted that TIP ought to have been conducted to corroborate identification in court after years. Thus, in this case conviction cannot be done on the basis of first time identification in Court after years, which inherently is in the nature of very weak evidence insufficient to convict accused person. Reliance has been placed on the judgments of the Hon'ble Supreme Court of India in the cases of [Dana Yadav @ Dahu & Ors. Vs. State of Bihar](#) reported in (2002) 7 SCC 295 and [Mulla Vs. State of U.P.](#) reported in AIR 2010 SC 942. These decisions are relied upon to buttress the submission that sole identification in dock could not have formed the basis of conviction. It is submitted that, if the version of prosecution in their evidence is believed that the accused persons were known to them since before then identification of the accused in Court with or without prior TIP after deciding names with mutual consent in a village meeting of 100-150 people loses any evidentiary value for conviction.

40. Learned counsel submits that the law is well settled that it is quality of the evidence and not quantity of the evidence and as such if a witness is wholly reliable, his/her sole evidence would be sufficient for conviction. Reliance has been placed on the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 28/94 judgment of the Hon'ble Supreme Court in the case of [Masalti Vs. State of Uttar Pradesh](#) reported in AIR 1965 SC 202; [Binay Kumar Singh Vs. State of Bihar](#) reported in AIR 1997 SC 322; [Chandra Shekhar Bind and Ors. Vs. State of Bihar](#) reported in (2001) 8 SCC 690; and [Ranjit Singh & Ors Vs State of M.P.](#) reported in AIR 2011 SC 255 to submit that at least two witnesses, who deposed in a consistent manner regarding the participation of the accused/appellant would be necessary to hold the accused guilty.

41. It is further submitted that PW-21 (though declared as hostile remained constant in his version) in his statement to police, he did not name anyone nor claimed to have identified anyone, except that he heard someone saying "Binda sustained gunshot injury". It is submitted that evidence of all 5 circumstantial witnesses is reduced to zero evidentiary value and is wholly unreliable in view of truthful disclosure made by PW-9 to the effect that in a meeting of 100-150 people post-incident, names of accused persons and witnesses were decided and only thereafter people/witnesses went to police to give statement. It is submitted that the story of pre-incident identification of accused persons by the circumstantial witnesses becomes suspect due to non-seizure and non-

production of their torches before the learned trial court. Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 29/94

42. Learned counsel submits that the appellants cannot be convicted on the basis of preponderance of probabilities and the identification of the accused persons by the witnesses in the court cannot be relied upon to convict them under the prevailing facts and circumstances of this case. Further, it is submitted that there is contradiction between medical evidence and oral evidence inasmuch as the eyewitnesses deposed that fire-arm injury was caused from very near to the body of all the four deceased persons, but postmortem report does not support this version as there is no charring/blackening/tattooing around merging of the wound in all the post mortem reports. Only charring has been found in the injury report of the injured witness. Thus it is submitted that as per medical jurisprudence, firing must have been done from more than 4 feet, but the eyewitnesses lied in this regard.

43. It is the contention of the learned counsel for the petitioner that the learned trial court has completely failed to properly examine the accused persons under [Section 313 Cr.P.C.](#), because rather than questioning them about the specific incriminating evidence, such as the identification of different accused by different witness, the court merely asked generalized questions regarding the charges. The accused persons were never confronted with or asked to explain as to who identified them or Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 30/94 where it occurred. It is submitted that it is a well-established legal principle that the court cannot base a conviction on material evidence that was never put to the accused for explanation. Therefore, the identification of the appellants at the place of occurrence near-Panchayat Bhawan by the witnesses violates these mandates and cannot be safely relied upon to uphold their conviction. Reliance is placed on the judgments of Hon'ble Supreme Court of India in the cases of '[State of U.P. Vs. Md. Iqram & Anr.](#)' (AIR 2011 SC 2296), Nawal Kishore Vs. State of Bihar (2004) 7 SCC 502; '[Dara Singh And Anr. Vs The State of Punjab](#)' (AIR 1952 P H 214); and '[Reena Hazarika Vs. State of Assam](#)' (AIR 2018 SC 5361) on the law point of compliance with 313 [Cr.P.C.](#)

44. Learned counsel submits that if a hostile group of 30-40 armed extremists were marching openly into a village, the prosecution version is inherently improbable, an advancing extremist mob would not march in an identifiable formation to permit torchlight identification, nor is it consistent with natural human conduct that witnesses would fail to raise an alarm for 30 minutes. None of these circumstantial witnesses and two eyewitnesses out of 4 gave statements to the first I.O. They all surfaced before the Second I.O. between 8 to 30 days after the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 31/94 incident, which is after the village meeting admitted by PW-9. It is submitted that the hostile witnesses have spoken truth in court qua identification saying they did not identify any perpetrator.

45. Learned counsel submits that there is a logical improbability of the prosecution's story. It is submitted that under the given facts and circumstances, the appellants are not assailing the crime by the actual perpetrators causing homicidal death of 4 persons and injuries sustained by injured witness, but what is under challenge is false implication of the appellants leading to their erroneous conviction by the learned trial court, as in this case the appellants ought to have been acquitted giving benefit of doubt, because the prosecution has failed to prove its case beyond shadow of any reasonable doubt qua all the 9 appellants in the above said set of 4 criminal appeals.

Submissions on behalf of the appellant in Cr. Appeal (DB) No. 581 of 2023

46. Learned counsel for the appellant submits that the initial fardbeyan of the informant (Shiv Narayan Singh PW-12) was recorded against 30 to 40 unknown armed members of the MKSP extremist outfit for the alleged incident dated 08.08.1996 at around 11:30 PM causing death of four deceased persons and injuring one persons and it was also stated that one extremist also Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 32/94 sustained fire arm injuries. The informant said that he and his companions had seen the extremist from very close and can identify after seeing them but in his re-statement given before first I.O. (PW-27/SI Laliteswar Pandey) around 12:30 PM on the same day the informant reiterated his earlier statement with addition that he heard an assailant saying that, let us go, Binda has sustained fire arm injury, and also he added that he lit torch on the assailants. The initial Fardbeyan was signed by the informant and also by PW-8 (Prem Nath Singh as an Eye Witness).

47. It is submitted that although according to the fardbeyan, 11 persons were present at the actual place of occurrence in Jhopri/hut out of which four persons died and 7 persons remained as witness of the actual occurrence and out of the most competent witnesses P.W. 2, P.W. 3 and P.W. 21 did not support the prosecution case and thus P.W. 7 Bhola Singh, P.W. 8 Premnath Singh, P.W. 12 informant Shiv Narayan Singh and P.W. 13 Pramod Singh injured remain as witnesses of actual occurrence.

48. Learned counsel submits that a new story was created for the first time by the Second I.O. (P.W.-19) in collusion with the prosecution side purposely to falsely implicate the accused persons to the effect that certain persons were present at the Panchayat Bhawan at the relevant time for the purpose to Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 33/94 watch the cutting of the Bandh of the Aahar. It is submitted that there was not even a whisper regarding the same in the Fardbeyan, which was recorded after a delay of five hours post-occurrence at the alleged place of occurrence itself, in the presence of a number of persons, including the witnesses. On the point of presence at the Panchayat Bhawan, altogether 7 witnesses were examined, out of whom PW-22 and PW-24 are admittedly hearsay witnesses. Thus, only five witnesses were examined in support of the prosecution case who claimed to have been present in the Panchayat Bhawan namely PW-4 (Chotan Singh), P.W. 5 (Shyam Sumera Singh), PW- 6 (Janeshwar Singh), PW-9 (Dinesh Sharma) and PW-11 (Ramjivan Kumar). It is submitted that, this is conclusively corroborated by paragraph '10' of the deposition of the First I.O. (P.W. 27), wherein he categorically stated that none of the witnesses ever stated before him that at the relevant time of occurrence, any person was present in the Panchayat Bhawan for the purpose of watching or protecting the Ahar Bandh.

49. Learned counsel submits that P.W. 2 Karu Kurmi is a hostile witness but, in his chief, he has stated that he was an eyewitness and saw the occurrence but in paragraph '3' of his deposition, he has stated that he did not identify any accused. He was declared hostile. He was one of the injured witnesses of the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 34/94 case and in paragraph '8' he has very clearly stated that the accused persons were outsiders and he had seen them but could not identify them. It is submitted that P.W. 4 namely Chhotan Singh has stated that he was in Panchayat bhawan along with others and upon noticing that some persons were coming from south towards west at Ahar, he lit torch on them and identified some of them including the appellant in the Court but nowhere it was mentioned that the appellant was present at the spot or not.

50. Learned counsel further submits that most of the witnesses examined by the prosecution have clearly stated that the accused persons were belonging to Ashadhi, known to each other from before and agricultural lands of the villagers are situated side by side but still in fardbeyan it has nowhere been stated that people of Ashadhi village committed the occurrence.

51. Learned counsel submits that PW-7 and PW-8 who claimed themselves eyewitnesses present in the hut when the occurrence took place and has named four persons as assailants but did not name the appellant to be assailant.

52. Learned counsel submits that the case turned out to be of massacre which was a result of deep rooted caste and class rivalry in rural Bihar. The issue raised it's ugly head in 80s and 90s and number of massacres took place. A large number of cases Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 35/94 arising out of them have been decided and most of them have resulted in acquittal. It is submitted that the trend that is discernible in all the cases is that the actual perpetrators of the crime come from distant places and they flee away after the occurrence. Most of the time, their identities are not known to the persons who witnesses any part of the occurrence. Since people die, there is a serious anger amongst the survivors. This results in look out for presumed sympathizer or facilitator. The gaze often falls on the caste men of the aggressor caste living in the village and in the vicinity. They are presumed to be co-conspirators by default. Then the process of transposing them as actual perpetrators of crime begins. This is a natural outcome of the anger and frustration of the victims in losing out their loved ones and the process is undertaken not under clever machination but out of urge to get people punished for bringing them misery.

53. Learned counsel for the appellant submits that the appellant herein is challenging the allegation that they are perpetrators of this heinous offence. In order to do that first of all they are setting up a case that the witnesses were not in a position, due to dark night, commotion and absence of a proper source of identification to actually

see the perpetrators or to witness the killings taking place. It is submitted that if the assailants were Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 36/94 known to the witnesses from before due to them being the residents of neighbouring village, their names must have found place in the FIR.

54. Learned counsel submits that it is trite law that the F.I.R. can be used only to corroborate or contradict the maker of it. The Hon'ble Supreme Court in the case of [Ram Kumar Pandey Vs. State of MP](#) reported in (1975) 3 SCC 815 has clearly held that if the version of a particular persons has gone into making of the F.I.R. then omission of such fact, affecting the case are relevant under [section 11](#) of the Evidence Act on which the veracity of the prosecution case can be tested. It is submitted that in the instant case, statement of the informant has been recorded in presence of large number of persons after 5 hours of the occurrence and thus the version in the FIR is relevant for testing the version of all the witness especially the eyewitnesses to the occurrence.

Submissions on behalf of the State

55. Learned Additional Public Prosecutor for the State has submitted that the learned trial court has rightly convicted the accused persons. Learned Additional Public Prosecutor submits that there was identification of the accused persons by witnesses, their presence and participation in the occurrence has been established and supported by corroborative evidence. Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 37/94

56. Learned Additional Public Prosecutor for the State has submitted in tabular form which prosecution witness identified which accused persons.

Name of convicts	Identified by P.Ws.
Upendra Yadav	P.W.4, 5, 6, 7, 8
Dhananjay Yadav	P.W.6, 7, 18, 11
Binda Yadav	P.W.4
Mithilesh Yadav	P.W.7
Chandra Ghosh @ Chandra Bhushan Singh	P.W.5, 7, 9, 11
Nagendra Yadav @ Nagendra Singh	P.W.6, 7, 8
Ajay Yadav	P.W.4, 6, 7, 8, 9, 13
Shushil Yadav @ Pappu Kumar	P.W.6, 9
Bipan Yadav @ Brajnandan Singh	P.W.5, 6, 8
Rajendra Yadav	P.W.4, 8, 9, 13
Naresh Yadav	P.W.4
Ram Krishna Yadav	P.W.6, 7, 9, 12, 13
Daya Singh	P.W.5, 6, 7, 13

57. Learned Additional Public Prosecutor for the State submits that the Hon'ble Supreme Court in the case of [Masalti versus State of U.P.](#) reported in AIR 1965 SC 202 mentioned how to appreciate evidence in cases where large number of accused persons sharing the common object. The relevant paragraph '16' of [the said judgment](#) has been relied upon.

58. Learned Additional Public Prosecutor submits that where the accused were known to the witness, the identification even in faint darkness was possible. Learned Additional Public Prosecutor submits that it has been held by the Hon'ble Supreme Court that when the persons are known, identification is possible Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 38/94 from the manner of speech, manner of walking gesticulating and special features of and a person.

59. Learned Additional Public Prosecutor for the State submits that the Hon'ble Supreme Court in the case of [Dome Yadav Vs. State of Bihar](#) reported in 2002 (7) SCC 295 regarding Test Identification Parade held in paragraph '6' that failure to hold Test Identification Parade does not make the evidence of identification in court inadmissible.

60. Learned Additional Public Prosecutor for the State submits that it is settled law that defective investigation does not automatically invalidate a prosecution case, if other credible evidence exists. Reliance in this regard has

been placed on the judgment of the Hon'ble Supreme Court in the case of [R. Baiju Vs. The State of Kerala](#) reported in 2025 SCC OnLine SC 795.

61. Learned Additional Public Prosecutor submits that the survivor testimony satisfies test for the core group particularly when corroborated by the medical finding of fire-arm injuries and the evidence of the I.O's. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of [Darbara Singh Vs. State of Punjab](#) reported in 2012 (10) SCC

476. Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 39/94

62. Learned Additional Public Prosecutor submits that where a witness to the occurrence is himself injured in the incident, the testimony of such a witness is generally considered to be very reliable as he is a witness that comes with a built-in- guarantee of his presence at the scene of the crime and is likely to spare the actual assailants in order to falsely implicate someone else. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of [Abdul Sayeed Vs. State of Madhya Pradesh](#) reported in 2010 (10) SCC 259. (para 28-31).

63. Learned Additional Public Prosecutor submits that in view of the above submissions, the impugned judgment and order of the learned trial court need no interference of this Court and the appeals deserve to be dismissed.

Analysis of Evidence of PWs 7, 8, 12 and 13 and Findings

64. In this case, the prosecution witnesses placed in the category of eyewitnesses are Bhola Singh (PW-7), Premnath Singh (PW-8), Shiv Narayan Singh (informant/PW-12) and Pramod Kumar (the injured witness/PW-13). We would, therefore, proceed to analyse the evidences of these prosecution witnesses at first instance.

65. In his examination-in-chief, PW-7 has stated that on 08.08.1996 (Thursday), in the night at about 11:30 PM, he was in Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 40/94 the hut near the aahar. With him Bharat Sharma, Shiv Narayan Sharma, Premnath Sharma, Gung Kurmi, Ram Niwas Sharma, Bhola Sharma, Karu Kurmi, Ravi Kurmi and Navlesh Sharma were also present in the hut. They were talking with each other. From near the hut, one torch light was flashed on them, there were 30-40 persons who were coming from the eastern side. Some of them moved towards the western side. They lit the torch on them and in the said light this witness and others identified them. PW-7 has stated that no torch light was flashed from his side and the accused persons had lit the torch from east and west side. In paragraph '3' of his deposition, he has named Basant Yadav, Nagendra Yadav, Dhananjay Yadav, Upendra Yadav, Mithilesh Yadav, Chandra Deep Yadav, Ajay Yadav, Binda Yadav, Baijnath Yadav, Raja Ram Yadav whom he identified. They were carrying rifles and guns.

This witness has stated that 5-7 persons entered into the hut and one of them asked the caste name from Bharat Sharma and Karu Kurmi. Basant Yadav shot at Bharat Sharma, Dhananjay Yadav shot at Mangal Sharma, Chandradeep Yadav shot at the leg of Pramod Sharma, Nagendra Yadav shot at Ram Niwas Sharma and Upendra Yadav shot at Navlesh Sharma. Nagendra Yadav fired towards west side then Binda Yadav (accused) shouted "vjs lkyk Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 41/94 gesa Hkh xksyh ekj fn;k". Bharat Sharma, Mangal Sharma, Navlesh Sharma died, Shrinivas Sharma and Pramod Sharma were injured. Pramod is also known as Naga Sharma.

In paragraph '5' of his deposition, PW-7 has stated that the accused persons lifted away Binda Yadav and while going they said "pkyhl lky dk fookn [kRe gks x;k ". Thereafter, some of the persons from the prosecution side proceeded towards the village while some of them stayed there for keeping watch. On way to village, Chhotan Sharma, Janeshwar Sharma, Shyam Sumer Sharma, Shatrudhan Sharma, Ram Jeevan Kurmi, Ram Janam Mahto met, they were told about the occurrence. The villagers told that they had seen 30-40 persons going and had also heard the sound of firing. In the hut, Bharat Sharma was lying on the blanket. The injured persons were taken away to the village and from village they were taken to Telpa. On way, the injured Ram Niwas Sharma died.

In paragraph '9' of his deposition, PW-7 has stated that his statement was recorded by police. This witness identified accused (1) Dhananjay Yadav, (2) Daya Yadav, (3) Ram Krishna Yadav and (4) Mithilesh Yadav who

were standing in the dock. He did not identify Dhananjay Yadav and Samvit Singh by their name but said that they were also from Asadhi village. This witness said that he Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 42/94 could also identify on seeing those accused who were not present in the dock. In his cross-examination, this witness has stated that he is engaged in agriculture farming. He has stated that the watch (vxksfj;k) was going on for some times past. He could not say that who were there on the date of occurrence in the watch team (vxksfj;k). He has stated that those who were engaged in (vxksfj;k) on the date of occurrence, he knows them. He has also stated that on way to the hut they had to cross through Panchayat Bhawan in village. In paragraph '22' of his deposition, this witness has stated that after entering into the hut, the accused persons lit the torch. He has stated in paragraph '24' that he could clearly see the face of all the accused persons. He used to visit Asadhi village, therefore, he knew the people of the Asadhi village. He has also stated that the agriculture farming of the village of the prosecution side and Asadhi village are attached.

66. This witness (PW-7) has stated that all the 7-8 accused who had entered into the hut had flashed the torch on the face of the people who were in agoriya. They had started firing. The firing had continued for about five minutes and till the firing was done, all the people were sitting. This witness claims that he had seen the accused persons killing and had seen that three persons had died. In paragraph '38' of his deposition, PW-7 has Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 43/94 stated that the injured persons were brought to the village road on a cot and from there they were taken to Telpa by a tractor but this witness had not gone to Telpa. In paragraph '40', PW-7 has stated that he had seen Darogaji coming from the western side but he had no meeting with him. The dead body was on the spot, he left for taking his meal to his home. He has stated that in the morning he went to the hut at 6:00 AM, around 100 persons had assembled there. He had not disclosed the name of the accused persons who were involved, whom he had identified. No one from the villagers asked the people who were in agoriya, whether they had identified any of the accused?

67. In paragraph '43' of his deposition, PW-7 has stated that till the time he was there near the hut, police was present but neither police had inquired anything from anyone of them nor he told anything to the police. In paragraph '44', this witness says that after taking meal, he stayed in the village itself. Before recording his statement before police, he had not stated to anyone that he had identified so and so accused person. In paragraph '45' of his deposition, he has stated that he had no talk with Shiv Narayan Singh (informant). This witness claimed that his statement was recorded on the next day but the defence suggested him that his statement was recorded after a week. The I.O. (PW- Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 44/94

19) has stated that the statement of this witness was recorded after a week.

68. On going through the evidence of PW-7, it does not inspire confidence of the Court. This witness claims that he was in agoriya and in his presence firing had taken place. He claims to have identified 7-8 accused who had entered into the hut and had flashed the torch and then they had indulged in killing. This witness had not received any injury in the occurrence. His conduct in not disclosing the name of the accused persons, whom he claims to have identified, is totally unnatural. He did not meet police when he saw police coming from the western side. When he met police near the hut, he did not disclose anything to the police. He has stated that he had not even talked to the informant and did not say to any of the villagers in the village about the identity of the accused. He had not accompanied the injured persons to Telpa and it is highly unbelievable that amongst 100 persons present at the hut, no one asked him about the identity of the accused and he did not disclose it to anyone. He made a misleading statement that his statement was recorded by police one day after the occurrence. According to him, it was the torchlight flashed by the accused, in which he identified them. In the case of (Tamilselvan) supra, the Hon'ble Supreme Court has, while appreciating the evidences, Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 45/94 held that if the direction of the torch is in the direction of the witness, it would cause partial blindness and it will make difficult to identify the accused. Paragraph '9' of the said judgment is reproduced hereunder:-

"9. Since it was the accused who allegedly carried torches, we find it difficult to believe how the prosecution witnesses could have identified the assailants. The position would have been different if the forest guards had been carrying torches and had been pointing them at the assailants, but here the position is just the reverse. In fact due to the torches of the assailants the prosecution witnesses

would have been partially blinded by the light of the torchlight, and would not have been able to identify anybody."

69. The another eyewitness is Premnath Singh (PW-8). He has stated in his examination-in-chief that on 08.08.1996 at 11:30 PM, he was in the hut engaged in agoriya. He says that 8-10 persons were in the hut for agoriya. He has named the deceased, informant, PW-7 and some other persons present in the hut. According to him, 30-40 persons were found coming from the eastern side. Contrary to the claim of PW-7, this witness says that someone from the witness side had flashed the torch and had seen 30-40 persons coming with guns and rifles. He has stated that Shiv Narayan Sharma asked as to "who were there", then a reply came that they were from the 'party'. Thereafter, the accused persons came near the hut and one of them took the lathi of the witness side and assaulted Bharat Sharma and Karu Sharma. From eastern Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 46/94 side, 7-8 persons who were having gun flashed the torch and entered into the hut and started asking the caste name. Bharat Sharma was shot at by Basant Yadav, Mangar Sharma was shot at by Dhananjay Yadav, Navlesh Sharma was shot at by Upendra Yadav. Nagendra Yadav shot at Ram Nivas Sharma. From the western side, a voice came "gesa Hkh xksyh ekj fn;k". Bipin Yadav said that "vjs fcUnk d' xksyh yx x;k". This witness has further stated that the injury of Binda Yadav was tied by tearing a ganji and some people lifted him away. This witness has stated that he tried to slip away from the eastern side of the hut but Bipin Yadav pushed him inside and said that "vkt pkyhl lky dk fookn [kRe dj fn,". This witness claimed that, in the hut, he found Ram Nivas Sharma and Pramod Sharma were injured whereas Mangar Singh, Bharat Singh and Navlesh Sharma had died.

70. In paragraph '11', this witness has stated that when police recorded the statement of Shiv Narayan Singh (PW-12) at the place of occurrence, he was present there and had put his signature on the said statement. He identified his signature which was marked Exhibit '1'. According to him, at that time, Darogaji had not recorded his statement. This witness identified the accused persons present in the dock and claimed that he can identify those accused also who had not come today.

Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 47/94 In his cross-examination, this witness has stated that Asadhi village is at a distance of 1-1/2 km from Kyal. In paragraph '23' and '24', he has stated that in the night of occurrence, 7-8 persons were engaged in agoriya and they knew the people of Asadhi village as they are acquainted with them. He has stated that after hearing the sounds of the movement, except 1-2 persons, all of them had sat down. He did not remember whether one person had flashed the torch or all of them had flashed the torch. He has stated that he had not flashed the torch. He has further stated that one by one they asked the caste name and shot at them. After killing, the accused persons went towards the western side. In paragraph '38' of his deposition, PW-8 has stated that before recording his statement before police, he had not disclosed to anyone that he knew the name of the accused persons because the circumstances were different. He had not disclosed to anyone even in his house that he knew the names of the accused persons. In paragraph 39, he has stated that after 7-8 days of the occurrence, police had recorded his statement. The S.P. and other officers had come at the place of occurrence as he heard but he had not gone to them to say that he was present at the time of occurrence and that he knew the name of the accused persons.

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71. This Court finds that this witness (PW-8) claims his presence at the place of occurrence and at the time of occurrence in the hut. He claims his acquaintance with the people of the Asadhi village. He also claims to have identified the accused persons but then this witness did not disclose the name of the accused persons to anyone in his family. He did not go to the police to disclose the name of the assailants. In this case, the fardbeyan of Shiv Narayan Singh (PW-12) was recorded on 09.08.1996 at 5:10 AM at the place of occurrence. This witness was present at the time of recording of the fardbeyan (Exhibit '5'). He put his signature thereon (Exhibit '1') but at this stage, he did not disclose the identity of the accused persons or that they were from Asadhi village. In his fardbeyan, Shiv Narayan Singh (PW-

12) has disclosed to a huge extent that there were enmity with the people of the asadhi village over the water in the ahar for purpose of irrigation. The people from Asadhi village were cutting the bandh of the ahar during the night hours secretly. PW-12 had, though, given the reasons as to why the people of Kyal were doing agoriya

during the night, he did not claim that the assailants were from village Asadhi. He has stated that the occurrence was done by the extremists of Mazdoor Kisan Sangram Parishad. PW-12 claimed that he had seen the extremists from a very close range Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 49/94 and he can identify them. The disclosure made by PW-8 after 7-8 days of the occurrence, would not inspire confidence of this Court. His conduct is quite unnatural. Even as S.P. and other officers came at the place of occurrence, he had not gone there. On the point of identification also, this witness is unable to inspire confidence of this Court. PW-7 and PW-8 are not consistent in saying that who flashed the torch in which they could identify these persons, whose names were disclosed in course of trial only. Their statements were recorded by I.O.(P.W.19) after 7-8 days of the occurrence. During their statements before the I.O. They did not disclose the name of the assailants or even their village name. Thus, PW-8 cannot be placed in the category of a wholly reliable witness and as an eyewitness of the occurrence.

72. Shiv Narayan Singh (PW-12), the informant of this case. The prosecution case disclosed in his fardbeyan has been stated in detail in paragraph '3' of this judgment, therefore, we are not reiterating the same. In his fardbeyan, he has given the place, date, time and manner of occurrence. He has given the reason for the vxksfj;k (watching) the bandh. It was a dispute over water for irrigation, according to this witness, villagers of Asadhi village used to breach/ cut the 'aahar'. This witness has stated that on 08.09.1996 at 11:00 PM, he along with other persons including Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 50/94 PW-7, PW-8, PW-13 and the four deceased were in the hut. They heard movement ('ahat'). This witness made a query -- 'who are you?', then 30-40 persons who were wearing half pants and ganji came near the 'jhopdi' with rifle and gun. They started assaulting Karu Kurmi and Bharat Singh with lathi. One of them flashed torch and the another person standing by the side of that person fired with rifle at Manger Singh. He has given the description of the occurrence but in his fardbeyan, the informant has clearly stated that this crime has been committed by Majdoor Kisan Sangram Parishad (M.K.S.P) Extremists and the informant and his associates had seen some of the accused persons from close range and they claimed to identify them by face, if shown to them. The informant has further stated in his fardbeyan that he got to know that one accused sustained firearm injury who was taken away by the accused persons.

73. In course of trial, the informant has reiterated his statements. In paragraph '2', he has stated that he heard the movement ('ahat') of some persons from eastern side then he thought that they are from village only. When they were at a distance of 4-5 yards, then the informant's side had flashed the torch and from the other side also those persons flashed the torch. The fact that from informant side torch was flashed is coming for Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 51/94 the first time in course of trial. They said that they are from the 'Sangathan'. They were armed with rifle and gun. They were in 25-30 in numbers. PW-12 has further stated that one of the persons from amongst them started assaulting Karu Kurmi by lathi, asked his name and caste, Karu Kurmi fled and fell down on the informant. He has stated that some persons had assaulted Bharat Singh also by lathi. From amongst them, one person flashed the torch and the another one shot at right eye of Manger Singh by his rifle. One another person fired on the neck of Bharat Singh by rifle and yet another person shot at Navlesh Sharma. The another one shot at Ram Nivas Sharma and another person shot at Pramod Kumar onto his thigh. Thus, in the hut only accused persons are said to have flashed the torch.

In paragraph '6', this witness (PW-12) has stated that from amongst the accused person a voice came that Binda Yadav had received a bullet. The accused persons lifted away Binda Yadav and said that "pkyhl lky dk fookn [kRe gks x;k ". His statement was recorded in the morning. The accused persons had threatened that if they would come out of the said hut, then one group is there and they would kill them. In paragraph '9', this witness has stated that after the departure of the accused persons, he, Bhola Singh and Premnath were going to inform in the village, on way to the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 52/94 village, the villagers who were coming, met. They informed the villagers that Navlesh Sharma, Manger Singh and Bharat Singh have died, Ram Niwas Sharma @ Shriniwas Sharma and Pramod @ Naga are injured. They returned with the villagers to the hut. He has stated that some of the villagers were doing vxksfj;k from the Panchayat Bhawan of the village, they had reached to the hut. This statement has come for the first time in trial. The villagers had taken the injured to the village and from there, they were taken to primary health centre, Telpa by a tractor. On way Ram Niwas Sharma @ Shriniwas Sharma died and the another injured was taken to PMCH for treatment.

74. This Court finds that, according to this witness (PW-

12), Darogaji came at the place of occurrence at 04:00 AM where his statement was recorded. Prem Nath Singh (PW-8) had also put his signature on the fardbeyan. This witness has identified his own signature as Exhibit '1/1'. In paragraph '13', he has stated that he had informed the police that from amongst the accused persons, one Binda Yadav had suffered bullet. PW-12 identified Dhananjay Singh in the dock (not by name) and said that he had shot at Manger Singh. PW-12 further claimed that he can identify the other accused who were present on that day on seeing their face. Defence objected to this claim of the witness. PW-12 has stated Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 53/94 that he had filed a protest petition in the court. He identified his signature thereon which was marked Exhibit '1/2'. He identified the signature of the Advocate Sharma on each of the pages. He has stated that he had given the protest petition against the doctor and the I.O. Police had recorded his statements in the morning at 5 O'clock. Blood had spread.

75. During his cross-examination, this witness (PW-12) has stated that he was Secretary of the School Education Samiti. On suggestion of the defence, he stated that he cannot say whether the school was closed or not because he was in Patna for a month and had returned on the date of his deposition. He had gone in connection with the operation of his maternal uncle. He denied the suggestion of the defence that the school was closed because his villagers were asking for rangdari. This witness has stated that he is permanently living in the village since the year 1999. Prior to 1999, he was not seeing his agriculture farming. He had studied in Rajkiya Madya Vidhyalaya at Telpa where students from Asadhi village were also studying. He was aware that who were the accused in the case but he denied the defence suggestion that Baidhyanath Yadav was studying with him or was after his batch. Regarding Dhananjay Yadav also he said that he cannot say whether he was studying with him or he was in his junior batch Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 54/94 because he did not know him. This witness has stated that his village and Asadhi are in one panchayat and the common market of both the village is Shahar Telpa. He has stated that the agriculture farming of both the villages are attached. He denied the suggestion of the defence that he was knowing the accused persons from before but was deposing wrongly at the instance of the villagers. In paragraph '29' he has stated that the Mukhiya, the Dafadar and Jamadar of his village were murdered but why they were murdered and who murdered them were not known to him. The defence suggested that they were murdered by the Extremists, however, the witness said that he was not aware of it. In paragraph '32' of his deposition, he has stated that in his statement he had told that from amongst the accused persons, one Binda Yadav had suffered bullet, this was told by the accused but who said that is not known to him. He had made his re-statement after his statement and had reiterated his statement. During his restatement he said about one of the accused Binda Yadav who had disclosed the name of the accused persons. Binda Yadav had not made statement in front of him. He has stated that he had not given any application for test identification parade of the accused persons. He had come to know about the name of the accused persons after reading the statement of Binda Yadav. This witness was suggested Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 55/94 by the defence that he was knowing all the accused persons, he was living in the village from beginning and he has not identified the killers of Manger Singh. He identified the accused in the dock who, on query, disclosed his name as Dhananjay Singh.

76. On going through the deposition of PW-12, this Court finds that he started living in village from the year 1999. He was not doing his agricultural farming earlier. This occurrence is of the year 1996, therefore, it seems difficult to believe that a person such as PW-12, who was not looking after his agricultural work and was not permanently residing in the village, would go for watch (agoriya) during the night hours.

Further, this Court finds that on the point of identification in the torchlight, this witness says in trial for the first time that when the assailants were at a distance of 4-5 yards, both sides had flashed the torch but at this stage, he does not claim to have identified the accused persons. either by their name or by their village name. During trial, he claims to have read the statement of Binda Yadav who had disclosed the names of the assailants and other accused but this statement of Binda Yadav is not on the record.

77. At this stage, when we examine the evidence of the first I.O. Laliteshwar Pandey (PW-27), in connection with the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 56/94 statements made by PW-12, it is found that he has proved the fardbeyan recorded on 09.08.1996 at 05:00 AM. PW-27 has stated that fardbeyan was written in his writing, he identified his signature thereon. This fardbeyan has been marked Exhibit '5'. On this very basis, Karpi P.S. Case No. 68 of 1996 was registered. He had recorded the statement of sixteen witnesses, prepared the inquest report of Bharat Singh at 'ahar' of village (Exhibit '1'), the dead body of Ram

Bilas Sharma was found on the road north to Telpa OP and the dead body of Nawlesh Kumar was found in the hut on the straw but the dead body of Bharat Sharma was outside the hut in the East side of blanket whereas the dead body of Mangal Singh was inside the hut on a plastic. He identified his signature on all the inquest reports which were marked as Exhibit '7', '7/1', '7/2' and '7/3' respectively. He has stated that for the first time, Gopal Yadav (not named in the chargesheet) had disclosed the name of the accused. This description of the circumstances prevailing at the place of occurrence is not corroborating rather contradicting the claim of PW-7, PW-8 and PW-12 that they saw the dead persons in the hut.

Analysis of Evidence of I.Os. (PW- 27 & 19)

78. I.O. (PW-27) has stated about the place of occurrence which is at a distance of one kilometer west to village Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 57/94 Kayal. He has stated about the hut present in a lonely place on the western bandh for watching (nigrani). He has given description of the hut being 15 feet in length, 6 feet in width and 6.5 inch in height. The hut was open from the east and west side, it was closed from north-south side. He had found the dead body of Mangar Singh and lot of blood had spread there. He had also found the dead body of deceased Bharat Sharma by the side of the hut, towards the western side of hut, the dead body of Nawlesh Sharma was found and blood had spread on the grass. The I.O. found three empty shells (khokha) of .303 lying besides the dead body of Bharat Sharma. But on record, there is no seizure list of 'khokha'. PW-27 does not disclose the name of the seizure list witnesses. Material exhibits have not been produced in Court and sent for FSL. PW-27 has categorically stated in paragraph '10' of his deposition that none of the witnesses ever stated before him that at the relevant time of occurrence, any person was present at the Panchayat Bhavan for purpose of watching of Aahar Bandh.

79. The I.O. has found that there was a dispute over water and towards the western side of the place of occurrence, there is a private land of Ramadhar Singh in which water were stored. In the north side, there is a land of Rameshwari Prasad Singh of village Kayal and the water flows through this land. In Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 58/94 the south also, the water were stored. At a distance of one and half kilometers from there, village Asadhi is situated. PW-27 had inspected the place of occurrence, recorded the fardbeyan of the informant and he had also stated about the presence of Prem Nath Singh (PW-8) at that time. He has stated that at the time of occurrence, the informant and Prem Nath Singh both were present. PW-27 has stated that in his re-statement, the informant had stated that one Binda criminal had received injury and the I.O. was requested to move quickly. But we find no evidence to show that any raid was conducted in the house of Binda Yadav.

80. This Court finds that I.O. had not conducted investigation about the affiliation of Sangram Samiti. He had not got recorded the statement of Gopal Yadav or Gopal Prasad as mentioned by the I.O.(P.W.19) under [Section 164](#) CrPC as according to him, the senior officers had not given him any instruction. He had not conducted any investigation to find out the truth in the statement of Gopal Prasad. He denied the suggestion that he had recorded the statement of Gopal Prasad in collusion with the informant's side. Who is this Gopal Prasad is not known. Neither his statement has been brought before the learned trial court, nor has he figured in the chargesheet.

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81. As regards the TIP, the I.O. has stated that ordinarily, the TIP is conducted in 'unknown cases' where the informant claims that he can identify. The I.O. has stated that in fardbeyan the informant had not taken anyone's name. We find no plausible reason has been stated for not conducting the T.I. parade.

82. The second I.O. is Gorakh Nath Singh (PW-19), who was the Incharge of Shahr Telpa PO on 16.08.1996. On that day, he had taken charge from PW-27. In course of investigation, he had recorded the statement of the witnesses Gong Kurmi (hostile), Bhola Singh (PW-7), Prem Nath Singh (PW-8), Shyam Sumera Singh (PW-5), Rameshwar Singh (PW-23), Chotan Singh (PW-4) and others who had supported the prosecution case. Thus, the statements of the two eyewitnesses (PW-7 and PW-8) were recorded by the second I.O. after 7-8 days. He had recorded the confession of Ramraj Singh. In his cross-examination, he has stated that on the date of occurrence, he was posted in the police station. He has stated that he had not got conducted TIP because he did not find it

necessary. In the fardbeyan, it was recorded that there were Extremists and the witnesses can identify them on seeing. He submitted chargesheet after finding that the occurrence was true. The injured Pramod Kumar had given some description of the accused persons and their clothes, but he had not stated Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 60/94 about the identification of the accused persons by their name. Thus, from the deposition of second I.O., it appears that Pramod Kumar (PW-13) had not given identification of the accused by name during his statement before police. The I.O. again said that he had not got conducted TIP because he did not think it necessary. PW-19 has further stated that he had not conducted TIP of Pramod Kumar because it was not required and he was badly injured. In paragraph '12', he has further stated that Pramod Kumar was in unconscious condition. He had recorded his statement on 16.09.1996. He did not think it necessary to get his TIP after he got well. He had submitted the chargesheet on 15.11.1996. Analysis of the evidences of Informant together with I.Os.

83. On a conjoint reading of the evidences of the informant (PW-12) together with the evidence of the first I.O. (PW-27) and the second I.O. (PW-19), this Court finds that so far as the place, date and time of occurrence are concerned, there would be no iota of doubt on the statement of PW-12. The question which remains is that of identification of the accused. The informant (PW-12) has not stated the name of the accused at the time of making of his fardbeyan or in his re-statement. Thus, even as he gives the reason behind the vxksfj;k (watch) and has stated that the villagers of Asadhi village used to breach/ cut the 'aahar' Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 61/94 which serves the storage of water for purpose of irrigation, he is not naming the accused persons. He has not stated that the accused persons were of village Asadhi. He claims to have seen some of them in the torchlight during the killing which took place in the hut. But to this Court, it appears that he claims his knowledge about the assailants on reading the statement of Binda Yadav. Who recorded the statement of Binda Yadav is not known. The so-called statement of Binda Yadav has not been brought on record in course of trial. During his statement under [Section 313](#) CrPC, the attention of Binda Yadav was not drawn towards his so-called statements. He was not told that he had received bullet injury in the occurrence. The informant claimed that he can identify the accused persons to whom he had seen from a very close range. During trial, he identified Dhananjay Singh as the assailant of Manger Singh but did not identify him by his name.

84. It is true that for the first time, after 8 years of the occurrence, this witness identified Dhananjay Singh (not by name). Defence has suggested to this witness that he was studying in school with Dhananjay, this witness has shown unawareness. In such circumstance, memory of the witness was required to be tested by holding a Test Identification Parade (TIP). Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 62/94

85. The defence has raised the plea that no TIP was conducted to identify the accused. We have noticed from the evidence of PW-27 (first I.O.) and PW-19 (second I.O.) that, they in their wisdom did not think it necessary to conduct TIP. This is a vital lapse on the part of the I.O. The defence suggested to PW-12 that he was knowing the accused persons from before which he had emphatically denied. The defence suggested that some of the accused persons were either studying with this witness or they were in their junior batch which this witness denied, whereafter, the defence has not brought on record any evidence to prove that these accused persons were studying with the informant. We will consider the consequences of not holding the TIP hereinafter at an appropriate place.

86. From the judgment of the learned trial court, this Court finds that so far as the injury of Binda Yadav is concerned, on 24.08.1996, the I.O. of the case had informed to the court that the accused has been arrested in injured condition while he was being treated in PMCH and after his discharge from hospital, he will be produced before the court. Subsequently, vide order dated 29.10.1996, I.O. had produced the accused Binda Yadav before the court and he was remanded accordingly. Again, vide order dated 28.11.1996, the accused in custody Binda Yadav filed a petition Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 63/94 praying therein that he had been treated in PMCH and for further check-up, he will go to PMCH and he had also filed discharge ticket from PMCH, consequently, he was sent to PMCH for treatment on his prayer.

87. We have noticed from the evidence of PW-27 that in the re-statement of the informant on the same day, on which the fardbeyan was recorded, the informant had disclosed to the I.O. that one of the miscreants had received bullet injury and he had requested the I.O. to proceed quickly. Unfortunately, Binda was arrested after

about 16 days of the occurrence. What kind of injuries were suffered by Binda Yadav is not known. The injury report of Binda and his treatment particulars of PMCH have not been brought before the learned trial court. During his statement under [Section 313](#) CrPC, it was not put to Binda that he had received bullet injury and that he had spoken "vjs lkyk gedks Hkh xksyh ekj fn;kA". Therefore, these incriminating circumstances were not put to him. This is a vital lapse on the part of the prosecution.

88. Pramod Kumar (PW-13) is the star witness of this case. He is injured witness of the occurrence. In his examination-in-chief, he has narrated the manner of occurrence which took place in the night of 8th August, 1996 in the hut at the Aahar (bandh). He has stated about the presence of Shiv Narayan Singh Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 64/94 (PW-12), Bharat Sharma (deceased), Mangla Singh (deceased), Ram Niwas Sharma (dead), Lokesh Kumar, Bhola Kumar, Premnath @ Rinku, Gungu Kurmi and Karu Kurmi in the vxksfj;k (watch). According to him, on hearing the movement (vkgV), Shiv Narayan Singh had flashed the torch and asked 'who are they?' Then a reply came that they were from sangathan. After hearing the name of sangathan, this witness and others silently confined themselves in the hut. Some of those persons who claimed themselves as members of the sangathan entered into the hut. He has stated that one of the persons from amongst the accused had assaulted Karu Kurmi by a lathi then Karu Kurmi (hostile) fell down on the body of Shiv Narayan Singh. The another person shot into the eyes of Mangar Singh. This witness claimed that he identified him but did not know his name. The third person fired on Bharat Singh and the fourth one shot at Navlesh Kumar. The fifth person had fired on Ram Niwas Singh from close range and sixth person shot at this witness over his knees. Therefore, PW-13 says that five persons had fired. This witness has further stated that from the western side of the hut, somebody shouted "eq>s Hkh xksyh yx x;hA" but he has not stated about the identity of the person by his voice. This witness showed his injuries to the court and the court observed that there were marks of injuries on the thighs and Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 65/94 on the left leg. In paragraph '6', this witness stated that the villagers had brought both the injured persons to the village, he had gone unconscious and he regained his consciousness in PMCH. He has stated in paragraph '7' that on 09.08.1996, his statement was recorded by the Daroga Ji in the PMCH. He identified his signature which has been marked as Exhibit 'A/2'. He claimed that in his statement, he had stated that he can identify the accused on seeing them. This witness identified Dhananjay Singh in the dock by looking at him but not by name and stated that he had shot at Mangar Singh but the other accused persons who had fired and shot at were not present in the dock. About the other accused, namely, (1) Ram Krishna Yadav, (2) Raja Ram Yadav, (3) Rajendra Yadav, (4) Ram Narayan Yadav, (5) Daya Singh and (6) Ajay Yadav who were present in the dock, this witness claimed that they were also present at the place of occurrence amongst the accused persons who had shot at the deceased. This witness claimed that if the accused who were involved in the killing are produced in front of him, he could identify them.

89. In course of his cross-examination, this witness expressed his unawareness that Dhananjay Yadav was presently the Circle Incharge of Bhartiya Communist Party. He also Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 66/94 expressed his unawareness that Dhananjay Yadav was a member at Circle Level of Kku&xqgkj. He also expressed his unawareness that the agriculture farming of his village and that of Asadhi village are attached/combined. He denied any knowledge that wife of Dhananjay Yadav was a teacher in the Middle School of his village. He denied the suggestion of the defence that he was concealing/suppressing that the wife of Dhananjay Yadav was a teacher in the school for 8-9 years. This witness has given the description of the hut which is matching with the description provided by the I.O.

90. In paragraph '33', he has stated that amongst the accused 15 were in the east side and about 15 were towards the west side of the hut and 5-6 persons were in the hut. The accused persons were 4-5 yards outside the house when he had seen them. The accused persons had flashed the torch when they were at a distance of 4-5 yards from the hut. In his information, no marpeet has ever taken place between the people of Kayal and Asadhi village. In paragraph '38', this witness has stated that all the persons were shot at from close range by the accused persons. In paragraph '40', this witness has stated that he regained consciousness in the evening of 09.08.1996. He had no talk with anyone else, except the Doctor and Daroga. At the time Darogaji Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 67/94 recorded his statement, Chhotan was present there. In his statement to Darogaji of Pribahor Police Station, he had stated that he can identify the accused persons on seeing their face. He denied the suggestion of the defence that he had stated that he did not identify the persons who had fired. He

denied the suggestion that in his statement, he had stated that after receiving the bullet injury, he had become unconscious. He had not given any information before senior officers for test identification of the accused persons. He has stated that Kurthi Bigha and Asadhi are the part of his village. In paragraph '46' of his deposition, this witness denied the suggestion that he was knowing Dhananjay Yadav from before and he further denied the suggestion of the defence that the accused persons of this case had no role in the occurrence and that the villagers had in collusion implicated them. This witness denied the suggestion that he had made a false statement. It is evident that PW-13 identified Dhananjay Singh in the dock for the first time after 8 years of occurrence. He did not know him, still his identification after 8 years directly in the dock requires a very close scrutiny before attaching evidentiary value to this identification. According to him, in the hut, accused persons were flashing the torch, so his claim to have identified not only 5-6 persons in the hut but also other 6 persons (not in hut) but said to Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 68/94 be present with the assailants are not convincing and inspiring confidence of this Court.

91. At this stage, this Court would notice the evidence of Dr. Sri Nath Prasad (PW-14). On 09.08.1996, he was posted at Sadar Hospital, Jehanabad. He had examined Pramod Kumar (PW-

13) being a member of the panel of the doctors. PW-14 found the following injuries on the body of Pramod Kumar (PW-13):-

"(1) One Lacerated wound 4" x 2" x $\frac{1}{4}$ " on inner side of left thigh.

(2) Multiple lacerated wound of $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{6}$ " on inner side of left thigh just above the injury no 1.

(3) Lacerated wound 3" x 2" x $\frac{3}{4}$ " on upper part of inner surface of right thigh.

(4) Multiple lacerated wound $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{6}$ "

on just below injury no (3).

(5) Lacerated wound 2" x 2" x $\frac{1}{3}$ " on lower part of right side of scrotum.

(6) Multiple lacerated wound $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{6}$ "

on just above the injury no 5.

Nature of injuries all are simple caused by explosive substance.

Age of injuries within six hours."

92. It may be noticed that in his opinion, PW-14 has given the nature of injuries:- simple caused by explosive substance. It is for this reason one of the submissions on behalf of Binda Yadav (appellant in Criminal Appeal (DB) No. 574 of 2023) is that the injuries caused to PW-13 are by explosive substance and Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 69/94 not by firearm. It has been submitted that claim of PW-13 about sustaining firearm injury in his thigh is falsified. It has also been submitted that on 09.08.1996, Pirbahor Police recorded the statement of PW-13 in which he did not name any of the appellants as accused. The I.O. (PW-19) has stated in paragraph '10' that the injured Pramod Kumar had not said to have identified the accused persons by name. He claim to have recorded statement of P.W.13 on 15.09.1996.

Analysis of evidence of PW-13 & PW-14

93. There is no iota of doubt that Pramod Kumar (PW-

13) was present at the place of occurrence and at the time of occurrence. He had occasion to face the ordeal as in his presence, some of the miscreants who claimed themselves members of sangathan entered into the hut, flashed their torch and then fired on the persons present in the hut in which four persons lost their life and this witness

(PW-13) got multiple injuries. PW-13 had identified Dhananjay Singh in the dock as one of the assailants who were amongst the persons making the firing. As regards other accused who were present in the dock, namely, Ramkrishna Yadav, Raja Ram Yadav, Rajendra Yadav, Ram Narayan Yadav, Daya Singh and Ajay Yadav. He has stated that they were also present with the assailants. On the point of identification, this Court finds Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 70/94 that while this witness has stated that 5-6 accused had entered into the hut and it is they who had made the firing, others were standing outside the hut in the eastern side and western side of the hut. To this Court, it appears that in no way it would have been possible for PW-13 to identify the accused persons who were standing outside the hut in the eastern and western direction. He could have identified the accused who had entered into the hut, if there were sufficient light. In this case, the only source of light is the torch which was flashed by the accused in the hut. We have noticed in earlier part of our discussion that the torch flashed in the direction of the witnesses would cause partial blindness to the witnesses. This Court finds that during their 313 [CrPC](#) statement, it was not put to them that they had been inside the hut, they flashed the torch and in that light, the witnesses identified them by their face. The accused were not put to explain that they were member of the 'Sangathan' (MKSP). This Court would discard his evidence as regards presence of other accused persons about whom he has stated that they were also present with the assailants. This Court has taken note of those names hereinabove.

94. As regards the nature of injury found on the body of PW-13, this Court finds that doctor had noted a number of injuries on the body of this witness. PW-14, PW-25 and PW-26 are the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 71/94 doctors of the panel who had examined PW-13 and recorded their opinion saying that all injuries were caused by explosive substance and the injuries were caused within 6 hours, we are of the opinion that the statement of the doctors that all injuries were caused by explosive substance cannot rule out the injuries having been caused to PW-13 by firearm. In his cross-examination, PW-25 has admitted that "...it is not mentioned about the presence of foreign material. Meaning thereby it was not found. ..." It seems highly improbable that in case of explosion of bomb, no foreign material would be present on the injuries of PW-13. PW-25 has stated that "...bomb is also explosive substance, firearm does not come under the explosive substance. ...". The opinion of PW-25 cannot rule out the ocular evidence of PW-13. We cannot lose sight of the fact that at one stage, the informant PW-12 had filed a protest petition against the I.O. and the doctor. This Court finds that in this case, the I.O. had not prepared the seizure list of the blanket, lathi, clothes, cot, slipper, blood and khokha etc. which were seized from the hut or nearby the hut. Those material exhibits were not sent to FSL and the gross negligence on the part of the I.O.'s. of this case is apparent on the face of the record. Unfortunately, the postmortem reports of the four deceased have not been bright on record, the doctor(s) who conducted their postmortem have not Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 72/94 been named and examined. Thus the cause of death and number of injuries suffered by them have not been proved from medical documents. The learned Additional Public Prosecutor for the State has heavily relied upon the Three Judges judgments of the Hon'ble Supreme Court in the case of [Krishna Mochi and Others Vs. State of Bihar](#) reported in (2002) 6 SCC 81 which takes note of the situations prevailing in the State of Bihar during that period. The Hon'ble Supreme Court has, in the said case, taken note of the laches on the part of the police and the Public Prosecutor. What has been held by the Hon'ble Supreme Court in paragraph '33' of its judgment in the case of [Krishna Mochi](#) (supra) are reproduced hereunder for ready reference:-

"33. Thus, in the present case where there was more or less a caste war between the haves and the have-nots, gruesome murder of 35 persons of one community in which several persons were injured, great commotion in the locality, people became panicky as the accused persons were members of MCC, which is a very violent organisation, even if the complicity of the accused is proved by credible evidence of one or two witnesses, it would not be unsafe to convict an accused, rather a duty is enjoined upon the court not to acquit an accused on this ground alone unless the prosecution case is otherwise found to be untrustworthy. It is well settled that in a criminal trial credible evidence of even a solitary witness can form the basis of conviction and that of even half a dozen witnesses may not form such a basis unless their evidence is found to be trustworthy inasmuch as what matters in the matter of appreciation of evidence of witnesses is not the number of witnesses, but the quality of their evidence. Thus, I do not find any substance in the submission of the learned counsel appearing on behalf of the appellants on this count."

Thus, what must be seen is that the complicity of the accused is proved by credible evidence of one or two witnesses. Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 73/94 On the point of Identification-Case Laws

95. We have discussed the depositions of all the four witnesses who have deposed as eye-witnesses of this occurrence. All of them claimed to have seen the assailants in the torchlight flashed in the hut. All the eye-witnesses have stated that the accused persons had flashed the torch inside the hut. If it is so, the torchlight would cause partial blindness to the witnesses and it would not be possible for them to identify the accused, particularly if the witnesses did not know them from before.

96. In view of the discussions made hereinabove, we are of the opinion that PW-13, is though a star witness of this case, his identification of Dhananjay Singh, whom he did not know earlier, as one of the assailants, after eight years of the occurrence cannot alone form basis of conviction. This is where the necessity of holding TIP is to be taken note of.

97. It is the submissions of the appellants that in this case, the accused persons are from a tola of village Keyal, some of the witnesses say that people of Keyal and Asadhi know each other, they are in the same panchayat, still they were not named in the First Information Report. They were not known to the informant and other eye-witnesses but no test identification parade was held. The accused persons were identified in the court for the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 74/94 first time, therefore, no reliance would be placed on such identification. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of [Dana Yadav](#) (supra). In this connection, this Court finds that the Hon'ble Supreme Court has beautifully explained the issues with regard to identification of an accused by a witness in court. In the case of [Dana Yadav](#) (supra), Section '9' of the [Evidence Act](#) deals with relevancy of the facts necessary to explain or introduce relevant facts. It says that the facts which establish the identity of any thing or person whose identity is relevant, insofar as they are necessary for the purpose, are relevant. So the evidence of identification is a relevant piece of evidence under [Section 9](#) of the Evidence Act where the evidence consists of identification of the accused at his trial. It has been held that the identification of an accused by a witness in court is substantive evidence whereas evidence of identification in test identification parade is though primary evidence but not substantive one and the same can be used only to corroborate identification of the accused by a witness in court. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the case of [Vaikuntam Chandrappa v. State of A.P.](#) reported in AIR 1960 SC 1340 which is a Three Judges Bench decision of the Hon'ble Supreme Court. The law laid down in Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 75/94 in [the said decision](#) has been reiterated in the case of [Budhsen v. State of U.P.](#) reported in (1970) 2 SCC 128, [Sk. Hasib v. State of Bihar](#) reported in (1972) 4 SCC 773, [Bollavaram Pedda Narsi Reddy v. State of A.P.](#) reported in (1991) 3 SCC 434, [Ronny v. State of Maharashtra](#) reported in (1998) 3 SCC 625 and [Rajesh Govind Jagesha v. State of Maharashtra](#) reported in (1999) 8 SCC 428. It has been held that the identification parade are held ordinarily at the instance of the Investigating Officer for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the persons who are alleged to have been involved in the offence.

98. It is well-settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law but the question would be that of its probative value? If a witness identifies the accused in court for the first time after eight years, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence. Reference in this regard may be made to the judgments of Hon'ble Supreme Court in Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 76/94 the case of [Kanta Prashad Vs. Delhi Admn.](#) reported in AIR 1958 SC 350, [Kanan Vs. State of Kerala](#) (1979) 3 SCC 319, [Jaspal Singh Vs. State of Punjab](#) reported in (1997) 1 SCC 510.

99. There is an exception to the ordinary rule, in this connection, the views expressed by Hon'ble Supreme Court in the case of [Dana Yadav](#) (supra) are being reproduced hereunder for a ready reference:-

"7. Apart from the ordinary rule [laid down in](#) the aforesaid decisions, certain exceptions to the same have been carved out where identification of an accused for the first time in court without there

being any corroboration whatsoever can form the sole basis for his conviction. In the case of Budhsen² it was observed: (SCC p. 132, para 7) "There may, however, be exceptions to this general rule, when for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration."

8. In the case of [State of Maharashtra v. Sukhdev Singh](#)¹² it was laid down that if a witness had any particular reason to remember about the identity of an accused, in that event, the case can be brought under the exception and upon solitary evidence of identification of an accused in court for the first time, conviction can be based. In the case of Ronny⁵ it has been laid down that where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely because no test identification parade was held. In that case, the accused concerned had a talk with the identifying witnesses for about 7/8 minutes. In these circumstances, the conviction of the accused, on the basis of sworn testimony of witnesses identifying for the first time in court without the same being corroborated either by previous identification in the test identification parade or any other evidence, was upheld by this Court. In the case of Rajesh Govind Jagesha⁶ it was laid

2. (1970) 2 SCC 128 : 1970 SCC (Cri) 343

12. (1992) 3 SCC 700 : 1992 SCC (Cri) 705

5. (1998) 3 SCC 625 : 1998 SCC (Cri) 859 6 (1999) 8 SCC 428 : 1999 SCC (Cri) 1452 Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 77/94 down that the absence of test identification parade may not be fatal if the accused is sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement or is arrested on the spot immediately after the occurrence and in either eventuality, the evidence of witnesses identifying the accused for the first time in court can form the basis for conviction without the same being corroborated by any other evidence and, accordingly, conviction of the accused was upheld by this Court. In the case of [State of H.P. v. Lekh Raj](#)¹⁶ it was observed (at SCC p. 253, para 3) that "test identification is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration". In that case, laying down the aforesaid law, acquittal of one of the accused by the High Court was converted into conviction by this Court on the basis of identification by a witness for the first time in court without the same being corroborated by any other evidence. In the case of Ramanbhai Naranbhai Patel¹⁷ it was observed:

(SCC p. 369, para 20) "It, therefore, cannot be held, as tried to be submitted by learned counsel for the appellants, that in the absence of a test identification parade, the evidence of an eyewitness identifying the accused would become inadmissible or totally useless; whether the evidence deserves any credence or not would always depend on the facts and circumstances of each case." The Court further observed "the fact remains that these eyewitnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well remain imprinted in their minds especially when they were assaulted in broad daylight". In these circumstances, conviction of the accused was upheld on the basis of solitary evidence of identification by a witness for the first time in court."

100. Keeping in view the aforementioned judgment of the Hon'ble Supreme Court when we examine the testimonies of PW-7, PW-8, PW-12 and PW-13, it is found that they have not pointed out any distinctive feature of the accused, they had not

16. (2000) 1 SCC 247 : 2000 SCC (Cri) 147

17. (2000) 1 SCC 358 : 2000 SCC (Cri) 113 Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 78/94 interacted with the accused persons and the identity of the accused are not sufficiently described in the fardbeyan of PW-12 in presence of PW-8. It is found that PW-12 claims

his knowledge about the accused persons from the statement of Binda Yadav but no such statement is available on the record. I.O. (PW-27) has stated about one Gopal had disclosed the names of the accused but Gopal was not made a charge-sheet witness. He has not been examined. Thus, there is no exception to the ordinary rule of prudence present. The I.O's of this case damaged the prosecution case by not following the safe rule of prudence to go for T.I.P. In absence of T.I.P., there is no corroborative evidence to the testimony of these witnesses on the identification.

101. This Court finds that both the I.O.s failed in their duty to conduct a bonafide fair investigation in this case. They decided not to apply for T.I.P. Even the senior police officers like Superintendent of Police did not supervise the ongoing investigation, they failed to ensure proper and fair investigation. It seems they were bent upon hushing up the whole prosecution case right from beginning.

102. In the kind of evidence present on the record, it is evident that in a case of brutal murder of four persons, the investigation was not proper, even as the informant had disclosed Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 79/94 in the fardbeyan that the villagers from Asadhi village used to breach/cut the ahar which serves as storage of water for irrigation and that the accused were persons of sangathan and the name of Dhananjay Singh and other accused who were resident of village had come in course of investigation of the case, no effort was made to conduct a raid in their houses to seize the firearms which were used in the occurrence.

Defective Investigation- Case Laws

103. We are aware that a defective investigation alone would not confer benefit to the accused. In the case of [Harendra Rai vs. State of Bihar and Ors.](#) reported in (2023) 13 SCC 563, the Hon'ble Supreme Court has held as under:-

"13. Before parting with this case, we consider it appropriate to observe that though the prosecution has to prove the case against the accused in the manner stated by it and that any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favour of the accused, yet in a case like the present one where the record shows that investigating officers created a mess by bringing on record Ext. 5/4 and GD Entry 517 and have exhibited remiss and/or deliberately omitted to do what they ought to have done to bail out the appellant who was a member of the police force or for any extraneous reason, the interest of justice demands that such acts or omissions of the officers of the prosecution should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed to favour the appellant. In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 80/94 confidence of the people not merely in the law-enforcing agency but also in the administration of justice."

104. Keeping in mind the judgment of the Hon'ble Supreme Court in the case of [Harendra Rai](#) (supra), we have examined the evidences available on the record. There is no iota of doubt that the investigating agency in this case has not conducted proper and fair investigation but at the same time, we are not finding any independent, credible piece of oral evidence inspiring confidence of this Court on the point of identification of the accused. Therefore, by applying the safe rule of prudence, in absence of any other clinching evidences, we would discard the dock identification of the accused. Even during their 313 [CrPC](#) statement, the prosecution did not put to them the source of identification or that they were identified in dock. The procedural integrity has not been maintained. To this Court, it appears that the prosecution has compromised with the procedural integrity.

105. In the present trial, PW-4, PW-5, PW-6, PW-9 and PW-11 have deposed as circumstantial witnesses. On going through their evidences, it is found that they have deposed on a set pattern. According to them, they were in the Panchayat Bhawan of village Kayal in the night of 08.08.1996. Chhotan Singh (PW-4) has stated that with him Shyam Sumera Singh (PW-7), Dinesh Singh (PW-9), Shatrughan Singh (not examined), Janeshwar Singh

Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 81/94 (PW-6), Rameshwar Singh (PW-23) and Ram Lakhan Singh (not examined) were present. They were talking with each other. In the meantime, they saw that from the southern side, some people came and were going towards the western side of the ahar. This witness claims that he and others (geyksxksa us) asked them that "who were they", then a response came from that side that they were from the sangathan. This witness has stated that Shyam Sumera Singh (PW-

7) had lit the torch on them. This witness also claims that he had also flashed the torch on them and they had identified Rajaram Singh, Binda Yadav, Ajay Yadav, Brajnath Yadav, carrying gun in their hand. This witness claims that Ram Krishna Yadav, Rajendra Yadav, Bhagwan Yadav and Upendra Yadav were carrying rifle. He has stated that after 15-20 minutes, he heard sound of firing by gun near the hut. He and others, being afraid of, fled towards the village and informed it to the villagers that they had heard sound of firing near the hut. He, along with villagers, was going to the aahar, on way, he met Shiv Narayan Singh, Bhola Sharma, Premnath Sharma, who were coming. They told him that murder had taken place. When this witness along with the villagers reached on the Ahar, then they found that Mangar Sharma, Bharat Sharma, and Navlesh Sharma were lying dead, whereas Ram Niwas Sharma and Pramod Sharma had suffered bullet and they Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 82/94 were crying. Both the injured were taken to the village and from there, they were taken to the hospital by a tractor, but on way, Ram Niwas Sharma died. Dispute over the irrigation water is the cause of occurrence. This witness has stated in his cross-examination that the distance between the place of occurrence and the Panchayat Bhawan is of one kilometer, and he has further stated that they were also doing rakhwali of the ahar from the Panchayat Bhawan. In paragraph '26' of his deposition, this witness has stated that he identified eight persons and had not identified others. In his statement, this witness has stated that they were about 30-40 persons. In paragraph '32', this witness has stated that no one from amongst them had told Shiv Narayan Singh about the identification of the accused persons. In paragraph '33', he has stated that Shiv Narayan Singh and the persons accompanying him had not told about identification of the accused persons.

106. Shyam Sumera Singh (PW-5) has also deposed on the same line with PW-4. In his examination-in-chief, this witness has stated that when he lit the torch, finding that 30-40 persons were going towards the western side, he identified Upendra Yadav, Sugreev Yadav, Bhagwan Yadav, who were carrying rifle, and Baidyanath Yadav, Bipin Yadav were carrying guns. In his cross-examination, this witness has stated that when he, along with the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 83/94 villagers, were going towards the hut, on way three persons were coming, they were Bhola Singh, elder son of Krishna Nandan Singh, and Rinku, son of Jaiballi. This witness has not stated about Shiv Narayan Singh and Premnath Singh.

107. On a bare perusal of the evidences of PW-4 and PW-5, it is evident that they claimed their presence at a distance of one kilometer from the place of occurrence, at the time of occurrence. They also went to the village and then from village, they went towards the aahar. PW-4 and PW-5 are not consistent about the persons whom they meet on way to the aahar. Both the witnesses claimed to have identified some of the accused persons but PW-4 has categorically stated that he and others with him had not told Shiv Narayan Singh (PW-12) about the identity of the accused persons. Similarly, Shiv Narayan Singh had not told them about the identity of the accused. Apparently, they are not eye witnesses of the occurrence and their claim of identification of some of the accused in course of trial would not carry any evidentiary value. This view gets further strengthened on looking into the evidence of Laliteswar Pandey (PW-27) who was the first I.O. of the case. In paragraph '10' of his deposition, he has stated that in his presence, no witness had stated that at the time of occurrence, some persons were doing rakhwali at the Panchayat Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 84/94 Bhawan. PW-27 has stated that he had recorded fardbeyan of the informant and at that time, Prem Nath was also present. It is, thus, evident that the story about presence of some persons in the Panchayat Bhawan and that they had identified some of the accused in the torch light while they were moving towards the Aahar has been developed only at a subsequent stage.

108. PW-6 Janeshwar Singh also claims his presence in the Panchayat Bhawan. He identified Bipin Yadav, Baidynath Yadav, Binda Yadav, Ajay Yadav, Nagendra Yadav, Upendra Yadav, Dhananjay and Pappu Yadav. According to him, Dhananjay was carrying a lathi whereas others were carrying gun. This witness has stated that immediately after arrival of police, he had returned home. He claimed that he was present at the hut till morning with about ten persons before arrival of police but during this period, no significant talk had taken place with

Shiv Narayan Singh. After 8-10 days of the occurrence, police had come to his residence and recorded his statement.

109. The another witness Dinesh Singh (PW-9) claims his presence at the Panchayat Bhawan. He has identified some of the accused. He has stated that Asadhi is only a tola of his village. According to this witness, the agriculture farming of his village and Asadhi village is attached with each other. In paragraph '11', Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 85/94 he has stated that the villagers of Asadhi and his village people knew each other from beginning. According to him, he and other persons reached at the hut after 40-45 minutes. In paragraph '22', he has stated that on way to the hut, he had met Shiv Narayan Singh who informed about the murder but this witness had not said anything to them. It is clearly stated in paragraph '23' that at the hut, there was no talk with Shiv Narayan Singh that so and so person had been seen by so and so. He returned his village and thereafter never went towards the hut. Till the time he was at the hut, no one had given any statement to police. This witness has stated that he and others had talked about the identification of the accused among themselves, on the next date, they had discussed it in the village but no consensus could be arrived at.

110. Dinesh Singh (PW-10) has stated that at the time of occurrence, he was in his house.

111. We have further noticed that in this case, Jamuna Singh (PW-1), Karu Kurmi (PW-2), Gung Kurmi (PW-3), Gaya Mahto (PW-20), Ravi Kumari (PW-21) and Rameshwar Singh (PW-23) have not supported the prosecution case. They have been declared hostile. The learned trial court has rightly found that PW- 10, PW-15, PW-16, PW-17, PW-18, PW-22 and PW-24 are the hearsay witnesses. They are villagers and only after hearing the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 86/94 sound of firing, they came out from the house and rushed to the place of occurrence. They have not indicated anything regarding identification or involvement of the accused.

112. This Court, therefore, finds that so far as the hearsay witnesses and circumstantial witnesses are concerned, their depositions are of no significance. The whole prosecution case depends on the evidences of the four witnesses, namely, Bhola Singh (PW-7), Prem Nath Singh (PW-8), Shiv Narayan Singh (PW-12) and Pramod Kumar (PW-13) who claimed themselves eye witnesses of the occurrence and the two I.Os. This Court is of the considered opinion that these witnesses are unable to establish the identity of the accused-appellants as perpetrator of the crime committed in the night of 08.09.1996 in the hut at the Aahar near village Kayal. Occurrence is true, but involvement of these appellants could not be established beyond all reasonable doubts. We are living in adversity system of law where hundreds of culprits may go escorted free but one innocent cannot be hanged. There is a saying of eminent English Jurist William Blackstone: "It is better that ten guilty persons escape, than one innocent suffer".

113. In the case of [Narendra Kumar vs. NCT of Delhi](#) reported in (2012) 7 SCC 171, the Hon'ble Supreme Court Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 87/94 observed: ".... However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence....".

114. In ultimate analysis, we find that, though, it is a case of unfortunate killing of four persons in the dead of night, due to complete indifferent attitude of the investigating agency, proper and fair investigation could not take place. We can see on the face of the materials on the record that the administration, responsible to conduct a free and fair investigation, had a different plan whereunder they remained totally inactive, grossly negligent and in the process did not abide by their own instructions/guidelines etc. in the matter of investigation of a criminal case.

115. In the case of [Mahavir Singh vs. State of Madhya Pradesh](#) reported in 2016 (10) SCC 220, the Hon'ble Supreme Court has observed as follows:-

"26. Here in the instant case, no doubt, an innocent man has lost his life at the hands of another man, and looking at the way in which the investigation was handled, we are sure to observe that it was

carried out in a lackluster manner. The approach of the investigating officer in recording the statements of witnesses, collecting the evidence and preparation of site map has remained unmindful. The investigating officer, dealing with a murder case, is expected to be diligent, truthful and fair in his approach and his performance should always be in conformity with the police manual and a default or breach Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 88/94 of duty may prove fatal to the prosecution case. We may hasten to add that in the present case the investigation was carried out with unconcerned and uninspiring performance. There was no firm and sincere effort with the needed zeal and spirit to bring home the guilt of the accused....."

116. In result, we set aside the impugned judgment and order of the learned trial court and acquit the appellants of the charges giving them benefit of doubt. The appellants are said to be in custody, they shall be released forthwith, if not wanted in any other case.

117. These appeals are allowed.

118. Before we part with this judgment, it would be necessary to observe that, though, it is a case of unfortunate killing of four persons in the dead of night, due to complete indifferent attitude of the investigating agency, proper and fair investigation could not take place. Further, we can see on the face of the materials on the record clearly show that the administration, responsible to conduct a free and fair investigation, had a different plan whereunder they remained totally inactive, grossly negligent and in the process did not abide by their own instructions/guidelines etc. in the matter of investigation of a criminal case.

119. In the case of [State of Gujarat versus Kishanbhai and Others](#) reported in (2014) 5 SCC 108 (paragraphs '19', '22' and '23'), the Hon'ble Supreme Court has taken note of this Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 89/94 aspect of the matter while acquitting the accused in a murder case. We reproduce paragraphs '19', '22' and '23' hereunder for a ready reference:-

"19. Every time there is an acquittal, the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the respondent-accused innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long- drawn litigation, spanning over a decade or more. The expenses incurred by an accused in his defence can dry up all his financial resources -- ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over.

22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore essential that every State Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 90/94 should put in place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of

refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers [referred to above](#). Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course-content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 91/94 handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

23. On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for.

Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months."

(underline is mine)

120. The judgment in the case of [Kishanbhai](#) (supra) has been followed by the Hon'ble Supreme Court in the case of [Ankush Maruti Shinde v. State of Maharashtra](#) reported in Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 92/94 (2019) 15 SCC 470 wherein once again the Hon'ble Supreme Court has taken a strict view in the matter of failure of a prosecution case because of sheer negligence or because of culpable lapses on the part of the Investigating Officer. We reproduce paragraph '17' of the judgment in the case of [Ankush Maruti Shinde](#) (supra) hereunder:-

"17. Murder and rape is indeed a reprehensive act and every perpetrator should be punished. Therefore, considering the observations made by this Court in [Kishanbhai](#)¹⁰, referred to hereinabove, we direct the Chief Secretary, Home Department, State of Maharashtra to look into the matter and identify such erring officers/officials responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, real culprits are out of the clutches of law and because of whose lapses the case has resulted into acquittal in a case where five persons were killed brutally and one lady was subjected to even rape. Therefore, we direct the Chief Secretary, Home Department, State of Maharashtra to enquire into the matter and take departmental action against those erring officers/officials, if those officers/officials are still in service. The instant direction shall be given effect to within a period three months from today."

Directions to the State

121. In recent times, this Court has given directions to the Department of Home, Government of Bihar and the DGP, Bihar to look into the matters in which due to lapses on the part of the Investigating Officers, acquittals have taken place. It is not [10State of Gujarat V. Kishanbhai](#), (2014) 5 SCC 108: (2014) 2 SCC (Cri) 457. Patna

High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 93/94 known whether the orders of this Court are being complied with and the directions in this regard have yielded any significant result. In the opinion of this Court, it is high time for the Department of Home, Government of Bihar, the DGP, Bihar and the Director, Directorate of Prosecution to sit together and review its policy in this regard.

122. We are of the opinion that the manner in which the Investigation Agency has conducted the investigation negligently, which has been discussed in preceding paragraphs, would be required to be reviewed by a team of Senior Police Officers.

123. We direct the Director General of Police, Bihar to constitute a three-member committee of Senior Police Officers of repute to take a view on the manner in which the investigation was done by the I.O. (not examined) and based on that report, take an appropriate view of the matter in administrative side within a period of three months from the date of receipt/production of the copy of this Judgment.

124. The action taken in this regard be informed to the appellants. The appellants shall be at liberty to pursue the matter.

125. This Court calls upon the Department of Home, Government of Bihar to apprise the Court as to its policy in the Patna High Court CR. APP (DB) No.545 of 2023 dt.13-10-2026 94/94 matter of reviewing the cases where lapses on the part of the prosecution and the investigation have been pointed out by this Court. In how many cases inquiries have been instituted and with what result be informed to this Court within one month from today. Such report of the Department of Home shall be placed before this Court for perusal even as these appeals stand allowed.

126. A copy of this judgment be also sent to the Department of Home Government of Bihar, Office of the Director General of Police, Bihar and the Director, Directorate of Prosecution, Government of Bihar.

127. Let a copy of this judgment along with the trial court's records be sent down to the learned trial court.

128. Let a copy of this judgment together with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J) (Kumar Manish, J) SUSHMA2/-

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