

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.197 of 1996**

1. Harihar Singh Yadav @ Harihar Singh.
2. Rameshwar Singh Yadav alias Rameshwar Singh.
Both sons of Bengali Singh Yadav.
Both resident of village-Barahana, Police Station-Harhi, District-Buxar.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

with
CRIMINAL APPEAL (DB) No. 258 of 1996

Radhey Shyam Singh Yadav @ Radhey Shyam Singh, son of Rameshwar Singh, resident of village-Barahana, Police Station-Harhi, District-Buxar.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

(In CRIMINAL APPEAL (DB) No. 197 of 1996)

For the Appellants : Ms. Surya Nilambari, Amicus Curiae.

For the State : Ms. Shashi Bala Verma, A.P.P.

Mr. Ajay Mishra, A.P.P.

(In CRIMINAL APPEAL (DB) No. 258 of 1996)

For the Appellant : Ms. Surya Nilambari, Amicus Curiae.

For the State : Mr. Shashi Bala Verma, A.P.P.

Mr. Ajay Mishra, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE A. M. BADAR)**

Date : 11-03-2022

Criminal Appeal (DB) No.197 of 1996 is filed by the appellant/original accused no.2 Harihar Singh Yadav and appellant/original accused no.3 Rameshwar Singh Yadav whereas Criminal Appeal (DB) No.258 of 1996 is filed by appellant/original



accused no.1 Radhey Shyam Singh Yadav. As both these appeals are arising out of the same Judgment, they are being decided together by this common Judgment. The appellants are challenging the Judgment and Order dated 16th May, 1996 and 17th May, 1996 respectively passed in Sessions Trial No.154 of 1993 by the learned 1st Additional Sessions Judge, Buxar whereby the appellants/accused nos.2 and 3, namely, Harihar Singh Yadav and Rameshwar Singh Yadav are convicted of the offence punishable under Section 302 read with 34 of the Indian Penal Code and appellant/accused no.1 Radhey Shyam Singh Yadav came to be convicted of the offence punishable under Section 302 of the Indian Penal Code. They all are sentenced to suffer imprisonment for life. For the sake of convenience, the appellants shall be referred in their original capacity as “an accused”.

2. Facts leading to the prosecution of the accused, projected from the police report can be narrated thus:

(a). Accused Radhey Shyam Singh Yadav, Harihar Singh Yadav and Rameshwar Singh Yadav are resident of village-Barahana falling within the jurisdiction of Itahri Police Station of District-Buxar. Members of the prosecuting party including the deceased are resident of village-Pithan Purwa falling under the jurisdiction of the same police station. Both these villages are situated in the vicinity of each other.

(b). The incident in question allegedly took place on 15.06.1992 in an agricultural field wherein a brick-kiln was situated.



That place was regularly being used by the ladies of the prosecuting party for the purpose of easing themselves. According to the prosecution case, at about 07.00 to 07.30 P.M. of 15.06.1992, Sadhna Devi (since deceased) along with her relatives such as P.W.1 Shardha Devi, P.W.2 Kausalia Giri, P.W.3 Lilavati Devi, P.W.4 Kumari Devi, P.W.8 Chandravati Devi and others had gone for easing themselves at the said agricultural field wherein the brick-kiln was situated. Their house as well as their temple was located near that place which was routinely used for easing by the women of the family of the prosecuting party. When all these women were relieving themselves, all accused persons holding guns in their hands came from the eastern direction. Accused Harihar Singh and Rameshwar Singh exhorted to kill Sadhna Devi. Thereupon accused Radhey Shyam Singh fired a bullet from the gun held by him. The bullet hit Sadhna Devi. By trading some distance Sadhna Devi fell down. Other ladies made hue and cry. That is how P.W.7 Birendra Giri and others including P.W.9 Ramdayal Kamkar rushed to the spot. They found Sadhna Devi in an injured condition having sustained bleeding wound at her abdomen. She as well as other ladies disclosed that after firing at Sadhna, accused persons flee from the spot. Sadhna Devi was then taken by P.W.7 Birendra Giri and others to the Primary Health Centre where P.W.13 Dr. Sanjay Das examined her and she was then referred to the higher centre. However, Sadhna Devi succumbed to the gun shot injury and ultimately post-mortem



examination on her dead body came to be conducted by P.W.11 Dr. Ashish Kumar Goswami of the S.S.P.G. Hospital, Varansi on 17.06.1992.

(c). In the meanwhile, on 15.06.1992 itself at about 10.15 P.M. at Itahri Government Hospital, P.W.7 Birendra Giri lodged the F.I.R. in respect of the incident which came to be recorded by P.W.14 Shankar Dayal Pandey of Itahri Police Station. That is how, the subject crime came to be registered.

(d). During the course of investigation, the Investigating Officer P.W.12 Ramchandra Ram visited the spot of the incident and seized the soil stained with blood. He completed the routine investigation by recording the statement of witnesses and thereafter the charge-sheet came to be filed against the accused persons.

(e). The learned trial court, on committal of the case, framed the charge for the offence punishable under Section 302 read with 34 of the Indian Penal Code as well as under Section 302 of the Indian Penal Code against the accused and as they abjured the guilt, they were put to the trial.

3. In support of its case, the prosecution has examined 14 witnesses. Out of those witnesses, the prosecution claimed that P.W.1 Shardha Devi, P.W.2 Kausalia Devi, P.W.3 Lilavati Devi, P.W.4 Kumari Devi and P.W.8 Chandravati Devi are eye witnesses to the incident in question. P.W.6 Lallan Prasad is a formal witness who proved the printed F.I.R. Ext.1. P.W.5 Rajendra Giri and P.W.10



Kashinath Yadav were tendered by the prosecution for cross-examination. P.W.7, Birendra Giri is the first informant and P.W.9 Ramdayal Kamkar is a co-villager. They both claimed to have heard the oral dying declaration of Sadhna Devi. P.W.11 Dr. Ashish Kumar Goswami had conducted post-mortem examination on dead body of Sadhna Devi. P.W.13 Sanjay Das had examined the victim Sadhna Devi at the Primary Health Centre. The learned trial court had summoned Vijay Narain Rai, a court witness, to prove the F.I.R. as well as the printed F.I.R., Ext.7 and Ext.8 respectively.

4. The defence of the accused is that of total denial. From cross-examination of the prosecution witnesses, it was tried to bring on record that deceased Sadhna Devi in past had eloped with accused Radhey Shyan Singh with whom there was having a love affair. She was then brought back. Subsequently, she was married to another person just 40 days prior to the incident and therefore the accused persons are falsely implicated in the subject crime.

5. Upon hearing the parties, by the impugned Judgment and Order, the learned trial court was pleased to hold that evidence adduced by the prosecution is sufficient to prove the charge levelled against the accused persons and, accordingly, they came to be convicted and sentenced as indicated in the opening paragraph of the Judgment.

6. We heard Ms. Surya Nilambari, learned appointed Advocate at sufficient length of time. She argued that P.W.7



Birendra Giri is not an eye witness to the subject crime. By placing reliance on the Judgment of the Division Bench of this Court in **State of Bihar vs. Bachesh Kumar Singh, 2021(3) PLJR 297**, she argued that the prosecution witnesses are not corroborating the version of first informant P.W.7 Birendra by stating that they had disclosed the facts of the incident to the first informant. Therefore, version of the first informant is unbelievable. By taking us through the evidence of alleged eye witnesses examined by the prosecution, it is argued that the incident took place at least after one and half hours of the sunset, in the dark night and there is no evidence regarding source of light at the place of the incident. Evidence regarding previous acquaintance cannot be believed as accused persons are not co-villagers of the prosecution witnesses who are ladies doing household works. It is further argued that P.W.1 Shardha Devi and P.W.4 Kumari Devi are married sisters of P.W.7 Birendra Giri. These witnesses were not residing at village-Pithan Purwa where the incident took place. It is also pointed out that P.W.3 Lilavati Devi and P.W.8 Chandravati Devi are the ladies who were doing household works and as such they were not in a position to identify accused persons. By pointing out the evidence of Investigating Officer, it is argued that prior to the registration of the F.I.R. there was Sanha Entry regarding incident wherein nobody was accused and that Sanha is not forthcoming. By placing the reliance on a Judgment in the matter of **Ashoksinh Jayendrasinh Vs. State of Gujarat, (2019)6 Supreme Court Cases**



535, it is argued on behalf of the appellant that the appellants are entitled for acquittal as there is no evidence regarding availability of sufficient light for identification of the accused persons.

7. The learned A.P.P. supported the impugned Judgment and Order.

8. We have carefully considered the submissions so advanced and also perused the records and proceedings.

9. Considering the nature of charge, at the outset, the prosecution will have to establish that Sadhna Devi died homicidal death in the incident in question. In order to prove the factum of death of Sadhna Devi, the prosecution is relying on the evidence of the eye witnesses and the first informant who are her close relatives so also on medical evidence. The factum of death of Sadhna Devi is not disputed by the defence. P.W.1 Shardha Devi, P.W.2 Kausalia Giri, P.W.3 Lilavati Devi, P.W.4 Kumari Devi, P.W.7 Birendra Giri and P.W.8 Chandravati Devi have deposed that because of gunshot injury, Sadhna Devi died. After the incident of sustaining wound at the field on 15.06.1992, Sadhna Devi was taken to the Primary Health Centre where P.W.13 Dr. Sanjay Das had examined her on 15.06.1992 itself. His report is at Ext.6. As per version of this witness, Sadhna Devi was having cut injury on the left side of her abdomen of size 1½” x 1/2” and belly deep. This witness further deposed that there were multiple small charred wound on left and right palm, hand and front portion of abdomen of Sadhna Devi.



P.W.13 Dr. Sanjay Das stated that he reserved opinion in respect of injury no.(i) i.e. cut wound but other injuries were simple in nature. The cut injury, as per version of this witness, was caused by the firearm. This Medical Officer of the Primary Health Centre had referred the victim Sadhna Devi to the Sub Divisional Hospital, Buxar. However, Sadhna Devi succumbed to the injury suffered by her. On 17.06.1992, P.W.11 Dr. Ashish Kumar Goswami of S.S.P.G. Hospital, Varansi, conducted autopsy on dead body of Sadhna Devi. This Autopsy Surgeon found antimortem firearm injuries on left side of abdomen of the dead body. A conical shaped bullet came to be recovered from that injury. P.W.11 then issued Death Certificate at Ext.4 and Post-mortem examination report at Ext.3. As per version of this Medical Officer, death was due to shock and hemorrhage caused by the bullet injury. This evidence adduced by the prosecution is not shattered at all and as such it needs to be put on record that the prosecution has established that Sadhna Devi died homicidal death.

10. Now let us examine whether the prosecution has proved that in furtherance of their common intention, the accused persons had committed murder of Sadhna Devi by firing a bullet at her. The defence itself had attempted to elicit from the prosecution witnesses that because of love relations Sadhna Devi had eloped with accused Radhey Shyam Singh and couple was subsequently brought back. Sadhna Devi was then married to some another person just 40



days before the date of the occurrence. At that time, Sadhna Devi had returned from her matrimonial house and was staying with her parental relatives. Evidence on record shows that first informant Birendra Giri was her uncle. P.W.1 Shardha Devi and P.W.4 Kumari Devi were her aunts who had come for her marriage and stayed at their parental house till the date of the incident. P.W.2 Kausalia Giri is their mother. P.W.3 Lilavati Devi and P.W.8 Chandravati Devi are sisters-in-law of P.Ws. Shardha Devi, Kumari Devi and Birendra Giri. Similarly, it is brought on record by none else than the defence that all these prosecution witnesses are resident of village Pithan Purwa whereas accused persons are resident of village-Barahana which are falling within the jurisdiction of Itahri Police Station. From cross-examination of P.W.3 Lilavati Devi, the defence has brought on record that the said village Barahana is at a distance of just 1 and 1/4 Bigha away from the village-Pithan Purwa and more particularly from the place of the incident. These facts which are surfacing on record will have to kept in mind while appreciating the evidence of the prosecution witnesses.

11. One may argue that deceased Sadhna Devi was niece of P.Ws. Shardha Devi, Kumari Devi and Birendra Giri and all eye witnesses are her close relatives and therefore interested evidence of the prosecution cannot be accepted. By taking note of the fact that all eye witnesses are near and dear ones of the deceased, this Court feels it appropriate to note the law laid down by the Hon'ble Apex



Court in the matter of appreciation of evidence of relatives as well as interested witnesses. The incident took place in a portion of the field adjacent to the house of the prosecuting party which was used by the women of the house for the purpose of easing themselves. According to the prosecution case, all woman from Giri family including deceased Sadhna went for easing at about 07.30 P.M. of 15.06.1992 in that field which was adjacent to their house and temple. At that place, according to the prosecution case, accused Radhey Shyam Singh fired a bullet at Sadhna on instigation of other accused persons. If these facts are kept in mind then all related witnesses examined by the prosecution in the instant case become natural witnesses to the subject crime. If evidence of such eye witnesses is found to be clear, cogent and trustworthy, then the conviction can be based by relying their evidence. In **Dalip Singh v. State of Punjab, AIR 1953 SC 364**, it is held thus in paragraph-26 by the Supreme Court:

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



mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

12. Prosecution witnesses P.W.1 Shardha Devi, P.W.2 Kausalia Devi, P.W.3 Lilavati Devi, P.W.4 Kumari Devi and P.W.8 Chandravati Devi who are closely related to each other and were residing in the same house at village-Pithan Purwa have deposed in unison that along with Sadhna Devi they all together had gone for easing at about 07.30 P.M. of the day of the incident in the adjacent field where the brick-kiln was situated. The defence has brought on record from the cross-examination of P.W.3 Lilavati Devi that there was no crop in the field in which they had gone for relieving themselves. This makes it clear that there was no obstruction to the view in the said field where the incident took place.

13. On this backdrop, we deem it convenient to consider evidence of P.W.4 Kumari Devi, an aunt of the deceased Sadhna Devi so far as the actual incident is concerned. As per her version, when they all were sitting for easing, from the eastern direction, accused persons came and they all were holding guns. P.W.4 Kumari Devi candidly stated that she identified all of them and after accused



Radhey Shyam Singh fired a bullet, Sadhna Devi fell down after trading some distance. P.W.4 Kumari Devi states that then they all shouted and that is how, P.W.7 Birendra Giri and others came on the spot. Cross-examination of this witness shows that since childhood she was knowing all accused persons and to test the veracity of her version, the defence has made a deep probe which unfortunately for the defence has caused surfacing such material on record which makes testimony of this witness as that of sterling quality. As per her version in the cross-examination, she was at her parental house because of marriage of deceased Sadhna Devi and she was knowing the villagers of her neighboring village since childhood. P.W.4 Kumari Devi has stated that, in fact, the place where they used to relieve themselves forms the land from Barahana village, i.e. the village where the accused persons reside. P.W.4 Kumari Devi in her cross-examination was asked to state the names of other persons from village-Barahana. She stated names of several persons from village-Barahana and has added that as they are villagers from the adjacent village-Barahana, she knows them also by their names. From her cross-examination, reason for her knowledge about the accused persons is also brought on record. She stated that she is knowing them since childhood and as she used to see them from her childhood and she was also knowing their names. It is thus clear that P.W.4 Kumari Devi who was born and brought up at village-Pithan Purwa was knowing the accused persons who were residents of



adjoining village-Barahana which according to the versions of P.W.3 Lilavati Devi coming on record from cross-examination, is just 1 and 1/4 Bigha away from village-Pithan Purwa. Evidence of P.W.4 Kumari Devi in respect of identification of the accused persons is very normal, natural and trustworthy. She was also questioned in respect of the incident in her cross-examination and from her cross-examination it is brought on record that accused Radhey Shyam Singh had fired a bullet at Sadhna Devi from a distance of 4 cubits. Her cross-examination further reveals that Sadhna Devi was sitting on her eastern side for easing. This makes it clear that P.W.4 Kumari Devi was having all opportunity to see what was happening at the time of the incident in that open field and she witnessed the incident from a very close distance of about 4 cubits. Therefore, it needs to be put on record that evidence of P.W.4 Kumari Devi which withstood the test of cross-examination, is trustworthy, cogent and reliable. Identification of all accused persons is established from her evidence as those were the persons of previous acquaintance to her and she had seen them holding guns from a very close range at the time of the incident. She has stated that the incident took place after about 1 and 1/2 hours of the sunset but there is absolutely no cross-examination of this witness or rather any witnesses in respect of non availability of source of light or inadequacy of the light at the time of the incident. I see no reasons to disbelieve version of P.W.4 Kumari Devi about the incident particularly when she had an occasion to see



accused persons since childhood and as she had seen the incident from a very close proximity.

14. P.W.1 Shardha Devi is sister of P.W.4 Kumari Devi. So far as the incident is concerned, this witness has stated that she along with other prosecution witnesses and deceased Sadhna were sitting in the field for relieving themselves at about 07.30 P.M. of the date of the incident. Accused Harihar, Rameshwar and Radhey Shyam came from the eastern side with guns in their hands. Upon seeing them, as per version of P.W.1 Shardha Devi, they all stood up because of feeling of embarrassment or shame. Then accused Harihar Singh exhorted to kill and immediately without wasting anytime, accused Radhey Shyam Singh fired a bullet at Sadhna Devi. Sadhna Devi fell down. Then they made hue and cry and P.W.7 Birendra Giri and others came. Cross-examination of this witness makes it clear that the marriage of Sadhna Devi was performed on 05.05.1992 and incident in question took place on 15.06.1992. From cross-examination of this witness it is seen that P.W.7 Birendra Giri is priest of the family temple which is just adjacent to their house itself. P.W.1 Shardha Devi in her cross-examination made it clear that the place for easing where the incident took place is near that temple in her house. In respect of the incident, there is searching cross-examination of P.W.1 Shardha Devi. It is surfacing from her cross-examination that she as well as other prosecution witnesses were sitting very near to each other for relieving themselves. She



herself had seen the accused persons from a distance of about 1 Bigha. It is elicited from her, through her cross-examination that upon hearing command of accused Harihar, Radheshyam fired a bullet at Sadhna Devi without wasting any time. Thus cross-examination of P.W.1 Sharda Devi is cementing her version about the incident. She had duly identified accused persons and her evidence regarding identification is not shattered in her cross-examination. We see no reason as to why P.W.1 Sharda Devi should be disbelieved when her cross-examination itself shows that she had witnessed the incident of firing from a close corner.

15. Lilavati Devi is aunt of the deceased Sadhna Devi. As per her version, she and other prosecution witnesses as well as deceased Sadhna were sitting in the field to answer the nature's call. She stated that Sadhna Devi told her that some persons are coming from the eastern side and therefore they all stood up. She stated that she saw accused Harihar, Radhey Shyam and Rameshwar came holding guns in their hands. Then accused Rameshwar and Harihar gave command and accused Radhey Shyam fired a bullet at Sadhna Devi. Sadhna Devi then fell down and upon hearing their shouts, P.W.7 Birendra Singh and others came. From her cross-examination, it is brought on record, deceased Sadhna Devi was sitting just 2 and 1/2 cubits away from her and accused persons came from eastern direction. When she was probed about the incident in cross-examination, P.W.3 Lilavati Devi has stated that all accused persons



are from Barahana village which is just at a distance of 1 and 1/4 Bigha from her village. There is nothing in her cross-examination to infer that this witness was not knowing accused persons or that she was not in a position to identify them. She had made it clear in her cross-examination that the place where they were relieving themselves was not having any crop thereby giving a clear view enabling all of them to see what was happening. Thus, this witness has also seen the incident from the close proximity with clear view and as such her version about the incident cannot be doubted.

16. It takes us to the testimony of P.W.8 Chandravati Devi, another aunt of Sadhna Devi. Her evidence is congruous to the evidence of other eye witnesses. She has also stated that when she along with other prosecution witnesses and deceased Sadhna were sitting to answer the nature's call, all accused persons to whom she was knowing well, came from the eastern side holding guns. Thereafter at the instigation of accused Harihar and Rameshwar, accused Radhey Shyam fired a bullet at Sadhna. That bullet hit at the abdomen of Sadhna. She fell down and after hearing the shouts, P.W.7 Birendra Giri and others came on the spot of the incident. In cross-examination, P.W.8 Chandravati Devi has stated that she as well as other prosecution witnesses and Sadhna Devi were sitting closely in the area having 10 cubits circumference and that was the regular place used by them for relieving themselves. This material makes it clear that P.W.8 Chandravati Devi had also seen the incident



from the close proximity.

17. P.W.2 Kausalia Giri has a weak eye sight and she admitted in the cross-examination that in the evening she can see less than the normal. However, her evidence shows that she was present on the scene of the occurrence with other prosecution witnesses and they were relieving themselves in a field where the brick-kiln was located. Her evidence makes it clear that they all were sitting in an area with circumference of 10 to 12 cubits. Because of weak eye sight of P.W.2 Kausalia Giri, we can ignore her evidence so far as the actual incident is concerned, though she has stated that at the instigation of accused Harihar, accused Radhey Shyam fired a bullet at Sadhna Devi.

18. If we see evidence of these eye witnesses, then it is clear that a gunshot was fired at the deceased from a very close range. Evidence of these witnesses is gaining corroboration from the evidence of P.W.13 Dr. Sanjay Das who had examined Sadhna Devi in an injured condition soon after the incident. This Medical Officer has stated that Sadhna Devi was having multiple small charred wounds on her hands, palms as well as abdomen. Thus finding of charred on front side of the body of deceased Sadhna makes it clear that she was shot from a close range and this evidence fully corroborates the version of eye witnesses which we have discussed in foregoing paragraphs.

19. Now, the question which falls for consideration is



whether there was sufficient light on the scene of the occurrence in order to enable the eye witnesses to fix the identity of the accused persons as the perpetrators of the subject crime. The incident, according to their version took place at about 07.30 P.M. From cross-examination of P.W.4 Kumari Devi, it is brought on record that the incident took place after 1 and 1/2 hours of the sunset whereas from cross-examination of P.W.3 Lilavati Devi, it is brought on record that the incident took place after one hour from the sunset. There is not a single question to any of the eye witnesses regarding inadequacy of light at the scene of the occurrence thereby preventing them from identifying the accused persons. Rather from cross-examination of P.W.3 Lilavati Devi and P.W.4 Kumari Devi, it is brought on record that Pithan Purwa and Barahana where the accused persons and prosecuting party reside are twin villages which are located in the close proximity, thereby enabling the villagers from both the villages to know each other. Evidence of P.W.4 Kumari Devi makes it clear that the accused persons were known to them since prior to the incident. The defence had cross-examined the prosecution witnesses and particularly P.W.5 Rajendra Giri to bring on record the fact that there was love affair between Radhey Shyam and deceased Sadhna and the couple eloped and she was subsequently brought back and thereafter Sadhna was married to some another person of the village. This line of evidence makes it clear that there was an ample opportunity to the eye witnesses who



are related to the deceased to know the accused persons apart from substantive evidence of P.W.4 Kumari Devi as well as P.W.3 Lilavati Devi regarding proximity of both the villages and frequenting of villagers.

20. Section 57 of the Evidence Act deals with facts of which the Court must take judicial notice. This Section of the Evidence Act is not exhaustive. The Court can take judicial notice of public history as well as science.

21. The incident is proved to have taken place on 15.06.1992. It was on that day, P.W.13 Dr. Sanjay Das had examined Sadhna Devi in an injured condition at about 10.00 P.M. She was having a bleeding wound at her abdomen. Going by the history, the night of 15.06.1992 was a full moon night and the time of sunset at Buxar district of Bihar was 06.46 P.M. Being a full moon night, it needs to be held that in absence of any contra evidence, that there was sufficient light in that open field enabling all the prosecution eye witnesses mentioned in the foregoing paragraphs, an opportunity to identify the accused persons. It is a matter of common knowledge that person of previous acquaintance can be identified even by his gait and postures. As there are no suggestions to the contrary, we are of the opinion that eye witnesses examined by the prosecution were having opportunity to witness the assailants in the moon light as the assailants were at very close to them at the time of the incident. Therefore, ruling in the matter of **Ashoksinh Jayendrasinh** (supra)



has no application to the facts of the prosecution case. In that matter, the incident had taken place at about 09.00 P.M. in the agricultural field and Panchnama of scene of occurrence was not showing any indication of electric light or electric bulb in the vicinity. On that backdrop, it was observed therein that evidence regarding identification of the accused becomes doubtful.

22. P.W.7 Birendra Giri reached on the spot of the incident on hearing the shouts as well as the sound of gunshot. Thereafter, P.W.9 Ramdayal Kamkar, co-villager, had reached the spot of the incident. Both these witnesses have stated that Sadhna Devi was lying on the spot of the incident with bleeding injury. As per version of these two witnesses, Sadhna Devi told them about the incident of firing bullet by accused Radhey Shyam Singh who was accompanied by other accused persons. Considering the fact that Sadhna Devi had suffered a bullet wound at vital part of her body we may not place explicit reliance on this oral dying declaration but at the same time we have noted that evidence of eye witnesses are trustworthy and inspiring confidence. We see no merit in the argument advanced by the learned Advocate that as eye witness have not confirmed the disclosure of the incident to P.W.7 Birendra Giri, evidence of first informant P.W.7 Birendra Giri is not reliable. On the contrary, evidence of eye witnesses who happen to be near relatives of P.W.7 makes it clear that they were making hue and cry when P.W.7 Birendra Giri reached at the spot of the incident.



Naturally that hue and cry must be in respect of the incident of firing a bullet at deceased Sadhna. As such, there is no omission in that regard and as such ruling in the matter of Bachesh Kumar Singh is of no application to the facts in the instant case.

23. In the result, we see no merit in the instant appeals. The appeals are accordingly dismissed.

24. We record our appreciation for strenuous efforts taken by Ms. Surya Nilambari, the learned Advocate appointed to represent the appellants at the cost of the State, in assisting us for arriving at the correct conclusion in the matter. We quantify the fees payable to her at Rs.5000/- and direct the High Court Legal Services Authority to pay the said amount to Ms. Surya Nilambari, the learned appointed Advocate.

(A. M. Badar, J)

(Sunil Kumar Panwar, J)

P.S./-

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