IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 298 of 2020

Arising Out of PS. Case No.-17 Year-2015 Thana- BIHPUR District- Bhagalpur

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Rinku Kunwar @ Rohit Kunwar Son of Shyam Kunwar @ Shyam Chandra Kunwar, resident of Village- Sonewarsa, P.S.- Bihpur, District- Bhagalpur.

... ... Appellant/s

Versus

The State of Bihar ... ... Respondent/s

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Appearance :

For the Appellant	:	Mr. Rajendra Narain, Sr. Advocate Mr. Sanjeev Kumar, Advocate Mr. Ritesh Kumar Narain Singh, Advocate Ms. Anju Narain, Advocate Mr. Ananth Kumar Sinha, Advocate Ms. Annapurna Sinha, Advocate Mr. Kanya Kumar, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date :20-08-2026

The present appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C.") has been preferred by the sole appellant against the judgment of conviction and the order of sentence dated 28.01.2020, passed by the learned Court of Additional District & Sessions Judge-III, Naugachia, in Sessions Trial No. 297 of 2015 (arising out of Bihpur P.S. Case No. 17 of 2015) whereby and whereunder, the appellant has been convicted under Section

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302 of the Indian Penal Code (hereinafter referred to as the "IPC") and he has been sentenced to undergo life imprisonment for the rest of his life with a fine of Rs.50,000/- and in default of payment of fine, the appellant has been further sentenced to undergo rigorous imprisonment for six months.

2. The short facts of the case are that on 23.01.2015 at 14:30 p.m., the *fardbeyan* of the informant, namely Shrawan Kumar (PW-6) was recorded by the Sub-Inspector of Jhandapur O.P., namely Jawahar Lal Singh (PW-15) at Naugachia Hospital. The informant has stated in his *fardbeyan* that on 23.01.2015, after finishing work at Naugachia Court, in connection with Bihpur P.S. Case No. 753/98, four persons including the informant, riding on two motorcycles were returning back to their home and the motorcycle bearing Registration No.BR34B-2311 was in the front on which his uncle Kaushal Kumar Kunwar (herein after referred to as "Kaushal Kumar") along with one Bambam Chaudhary were travelling, while from behind he along with one other person was coming on another motorcycle. As soon as they reached 1 km. to the west of village Bagri, near Tata Brick Kiln on N.H.-31 at about 12:45 p.m., one white colored Bolero vehicle bearing Registration No. JH10AD-4001, on which the accused persons were sitting, hit the motorcycle of the uncle of

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the informant, namely Kaushal Kumar from the back, whereafter from the said Bolero vehicle 5-6 persons got down, who were armed with weapons and then one Lali Kunwar shot the uncle of the informant near the right ear from the weapon he was carrying due to which he started squirming. Thereafter, Rinku Kunwar (Appellant) and Rupesh Kunwar fired gunshot on the head of Bambam Chaudhary @ Amit Chaudhary with their weapon, whereafter Rahul Kunwar fired gunshot on the body of Bambam Chaudhary with weapon being carried in his right hand and then Vidyapati Chaudhary had fired gunshot on his uncle. The accused persons had then turned towards the informant and started firing on him, whereafter he started fleeing on his motorcycle on account of fear, whereupon the accused tried to chase the informant by the said Bolero vehicle but while turning the said Bolero vehicle, it fell into a ditch situated towards the south side of the road. The accused persons then got out of the vehicle and while firing fled away through the Banana field situated towards the south. After sometime, the police came and took both the injured persons for treatment to Sub-divisional Hospital, Naugachia, where his uncle Kaushal Kumar was found dead while the other injured Bambam Chaudhary was referred to Bhagalpur Hospital for better treatment.

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3. The aforesaid *fardbeyan* was read by and read over to the informant, which he had heard and understood and upon finding the same to be correctly written, he had put his signature upon the same in presence of a witness, namely Rajesh Chaudhary (PW-4), who was riding with him on a motorcycle. On the basis of the aforesaid *fardbeyan* of the informant, Bihpur P.S. Case No. 17 of 2015 was registered on 23.01.2015 at 07:30 p.m. under Sections 326, 307, 427, 302/34 of the IPC, and Section 27 of the Arms Act, 1959 against the appellant, Lali Kumar, Rupesh Kumar, Rahul Kumar, Vidyapati Chaudhary and one unknown person. After investigation and finding the case to be true qua the appellant and one Rahul Kumar, charge-sheet was submitted by the police on 29.04.2015 under Sections 307/302/341/427/ 120B of the IPC and Section 27 of the Arms Act, 1959. The learned Trial Court, upon consideration of the materials on record and the charge-sheet filed by the police had then taken cognizance vide order dt. 26.05.2015 qua the appellant and one Rahul Kumar under Sections 307/302/341/427/120B of the IPC and Section 27 of the Arms Act, 1959. Thereafter, the case was committed to the Court of Sessions, vide order dated 26.05.2015 and was numbered as Sessions Trial No. 297 of 2015.

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4. The learned Trial Court had then framed charges under Section 326, 307, 302, 427, 341, 120B of the IPC and Section 27(1) of the Arms Act on 20.02.2017 against the appellant to which he pleaded not guilty and claimed to be tried. It may be pertinent to mention here that the charge framed under Section 302 of IPC was with respect to committing murder of Kaushal Kumar, but after transfer of the case to the Ld. Trial Court for trial, the prosecution had filed a petition for alteration of charge as the other victim, namely Bambam Chaudhary had also died during the interregnum period, leading to the Ld. Trial Court passing an order dt. 25.07.2019 to alter the charges, whereafter the charge was altered on 30.07.2019 and then the appellant had stood charged under Sections 326, 307, 302, 427, 341, 120B of the IPC and Section 27(1) of the Arms Act for committing murder of both Kaushal Kumar and Bambam Chaudhary. The said altered charges were again read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

5. During the course of trial, 15 witnesses were examined on behalf of the prosecution. While, PW-1 Chandan Kumar, PW-4 Rajesh Chaudhary and PW-6 Shrawan Kunwar @ Shrawan Kumar (informant) are said to be eye witnesses to the said occurrence, PW-10 Kishore Chaudhary is witness to the inquest report of Bambam

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Chaudhary and PW-11 Ranjeet Kumar is witness to the inquest report of Kaushal Kumar, apart from being a witness to the seizure list. PW-12 Bablu Kumar, PW-13 Dinesh Yadav and PW-14 Subodh Kumar Yadav are witnesses to the seizure list. PW-15 Jawahar Lal Singh had recorded the *fardbeyan* of the informant, while PW-7 Dr. B.P. Singh and PW-8 Dr. Arun Kumar Sinha are the doctors, who had conducted postmortem examination of the deceased Bambam Chaudhary and Kaushal Kumar respectively. PW-3 Nikky Devi is the wife of the deceased-Kaushal Kumar, PW-5 Laxmi Devi is the aunt of the Informant and PW-2 Murari Kumar is the brother of Bambam Chaudhary, all of whom are stated to be hearsay witnesses. PW-9 Kaushal Kumar is the Investigating Officer of the present case.

6. The prosecution, by way of documentary evidence, had proved the following documents, which were marked as exhibits during the course of the trial:-

LIST OF EXHIBITS	**DESCRIPTION**
Exhibit No. 01	Signature of informant.
Exhibit No. 02	P.M Report of Amit Kumar Chaudhary @ Bambam Chaudhary
Exhibit No. 02/1	P.M Report of Kaushal Kumar Kunwar.
Exhibit No. X to X3	Carbon copies of three Seizure List.
Exhibit No. Y to Y/1	Carbon Copies of the Inquest Report.

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Exhibit No. Y/2	Inquest report of Bambam Chaudhary and other witnesses.
Exhibit No. X to X/3	Seizure List and signatures of witnesses on Seizure List.
Exhibit No. X/4 to X/5	Signature of witnesses on Seizure List.
Exhibit No. X/5 to X/7	Signature of witnesses on Seizure List.
Exhibit No. Y/6 to Y/8	Signature of witnesses on Inquest Report.

7. The learned Senior Counsel for the appellant, Mr. Rajendra Narain has submitted that the *fardbeyan* recorded by PW-15 Jawahar Lal Singh is manipulated and the same contains false and fabricated story. It is submitted that the minute details which have been mentioned in the *fardbeyan*/FIR are belied from the depositions of PW-1 Chandan Kumar, PW-4 Rajesh Choudhary and PW-6 Sharwan Kumar. As far as PW-1 Chandan Kumar is concerned, he is not an eye witness but a hearsay witness as has also been substantiated by the evidence of PW-9 Kaushal Kumar. As regards PW-2 Murari Kumar, PW-3 Nikky Devi and PW-5 Laxmi Devi, it is submitted that they are hearsay witnesses, hence their evidence cannot be relied upon. PW-7 Dr. B. P. Singh and PW-8 Dr. Arun Kumar Sinha are the doctors and they had conducted the postmortem examination of Amit Kumar Choudhary @ Bambam Choudhary and Kaushal Kumar

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Kunwar, respectively whereas PW-10, PW-11, PW-12, PW-13 and PW-14, namely Kishore Chaudhary, Ranjeet Kumar, Bablu Kumar, Dinesh Yadav and Subodh Kumar Yadav are witnesses to the inquest reports and seizure lists. PW-9 Kaushal Kumar and PW-15 Jawahar Lal Singh are the Investigating Officers of the connected criminal case. Thus, it is submitted that one is left only with the testimony of PW-4 and PW-6.

8. The learned Senior Counsel for the appellant has submitted that as far as PW-4 Rajesh Choudhary is concerned, he has made contradictory statements and has stated that Rinku had shot Kaushal. In fact, in his cross-examination, PW-4 Rajesh Choudhary has stated that Rinku had shot on the head of Kaushal, which is contrary to the version of the informant as recorded in his *fardbeyan*. As far as PW-6 Sharwan Kumar is concerned, it has been submitted that he has stated in his examination-in-chief that Rinku Kunwar had shot Kaushal Kunwar whereas Rahul had shot Bambam, which is also contradictory to the version as has been recorded in the *fardbeyan*. The Ld. Senior Counsel for the appellant has further submitted that the investigation is perfunctory and farce and the same does not lead to any conclusion. In fact, the Investigating Officer has admitted while deposing as PW-9 that he had not

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recorded the statement of any independent witness rather the statement of only family members of the deceased had been recorded. Lastly, it is submitted that the statement of the appellant recorded under Section 313 of the Cr.P.C. would bear it out that the circumstances which were not put to the appellant in his examination under Section 313 of the Cr.P.C., which have transpired during the course of evidence, have to be completely excluded from consideration. In this regard, the learned Senior Counsel for the appellant has relied upon a judgment rendered by the Hon'ble Apex Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra*****,** reported in ***(1984) 4 SCC 116.***

9. The learned APP for the State, Mr. Sujit Kumar Singh has submitted that all the witnesses examined by the prosecution are consistent and there is no contradiction in their evidence. PW-1 Chandan Kumar, PW-4 Rajesh Choudhary and PW-6 Sharwan Kumar are eye witnesses to the alleged occurrence and they have categorically stated that the appellant had fired gunshot on the head of Bambam Chaudhary, however the defence has not been able to elicit any contradictions while cross-examining the said witnesses. It is further submitted that there is no infirmity in the impugned judgment of conviction and the order of sentence passed by the learned Trial Judge, hence this Court is not

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required to interfere with the same.

10. Besides hearing the learned counsel for the parties, we have minutely perused both the evidence, i.e. oral and documentary. Before proceeding further, it is necessary to cursorily discuss the evidence brought on record.

11. PW-1 Chandan Kumar has stated in his deposition that the occurrence took place on 23.01.2011 at 12:20 hours when he was going to his home on a motorcycle. PW-1 has further stated that when he reached near Baghri Bridge, his motorcycle was hit by Bolero vehicle, whereafter people had alighted from the Bolero vehicle and fired gunshots on Kaushal Kumar and Bambam Kumar. The police had taken Bambam for treatment to Siliguri but he died on the way. In paragraph no. 4 of his cross – examination, PW-1 has stated that he had given his statement before the Police regarding the occurrence. PW-1 has also stated that on 23.01.2015 at 04:00 pm in the evening, he had given his statement before the Police, which was recorded at his home and he had given statement even at the place of occurrence. In paragraph no. 5 of his cross-examination, PW-1 has stated that he cannot tell about the registration number of motorcycle, since he is uneducated. In paragraph No. 6 of his cross-examination, PW-1 has stated that he has given statement twice before this

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occurrence, once he had deposed against Tinku and Rahul and on the other occasion, he had testified in favour of Rupesh in Rupesh's case, resulting in release of Rupesh. In para no. 7 of his cross-examination, PW-1 has stated that he was present at the place of occurrence till 2 O' clock, where the police was also present and there three persons known to him, namely Chandan Kunwar , Shravan Kunwar (PW-6) and Rajesh Chaudhary (PW-4) were present. Amongst those who came later were Kaushal's wife, Kaushal's sister-in-law Lakshmi Devi, however no body known to him came, thereafter. Kaushal's wife and sister-in-law came at one o' clock. From there Kaushal's wife, sister-in-law and PW-1 went home together at 2 O' clock and at that time there were four-five persons known to him, i.e. Murari Chaudhary (PW-2), Lakshmi Devi (PW-5), Rajesh Chaudhary (PW-4), Shrawan Kunwar (PW-6), and Chandan Kunwar but apart from them no one known to him was present there.

12. In paragraph no.8 of his cross-examination, PW-1 has stated that in Sessions Case No. 80/17, he has deposed that the occurrence took place on 23.01.2015 at one o' clock when he was around Bagripur. In paragraph no. 9 of his cross-examination, PW-1 has stated that Rinku and Rahul were on four-wheeler. In paragraph no. 10 of his cross-examination, PW-

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1 has stated that it is not a fact that he has not said in Sessions Case No. 80/17 that motorcycle got hit by Bolero. In paragraph no. 11 of his cross-examination, PW-1 has stated that it is not a fact that he was going from Naugachia to Bagripur on a motorcycle with a person in Sessions Case No. 80/17. In paragraph no. 12 to 14 of his cross-examination, PW-1 has stated that it is not a fact that he did not give his statement to the police at 2 o' clock on the day of the occurrence i.e., 23.01.2015 and he doesn't know the meaning of FIR. PW-1 has further stated that it is not a fact that he told the police that he has hearsay information about the occurrence. In paragraph no.15 of his cross-examination, PW-1 has stated that four persons namely Kaushal Kumar (Deceased), Bambam Chaudhary (Deceased), Sarwan Kunwar (PW-6) and Rajesh Chaudhary (PW-4) as also Chandan Kunwar (PW-1) had come to Naugachia court for date on two motorcycles. Two persons were sitting on one and three persons were sitting on the other motorcycle. They had come at the court at 10 o'clock in the morning. He doesn't remember in which court the date was fixed. He doesn't even remember in which case he had come for date. In the case in which they had come for date, the accused were Kaushal Kumar, Bambam Kunwar, Rajesh Chaudhary and Sharwan Kunwar. PW-1 has

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stated that there is no case against him. The number of both motorcycles is not known to him.

13. In paragraph no. 17 of his cross-examination, PW-1 has stated that it is not a fact that he had given statement to the police on the basis of hearsay information that all these five persons, namely Lali Kunwar, Rinku Kunwar, Rupesh Kunwar, Rahul Kunwar and Vidyapati Chaudhary had shot both the deceased separately but only two persons had shot. In paragraph no.18 of his cross-examination, PW-1 has stated that they had left Naugachia court at 12 o'clock. In paragraph no. 20 of his cross-examination, PW-1 has stated that he was towards the east of place of occurrence. In para no. 21 of his cross-examination, PW-1 has stated that Bolero was coming from the west and he was going towards west and the Bolero vehicle had hit the motorcycle from the front. PW-1 has also stated that on his motorcycle, he along with Rajesh Choudhary (PW-4) and Sharwan Kunwar (PW-6) were riding while Bambam Choudhary and Kaushal Kumar were riding on the motorcycle behind him. PW-1 had rang and called the police and when the police came, he had filed the case. In para no. 22 of his cross-examination, PW-1 has stated that after filing the case, he came to Naugachia for postmortem of Kaushal Kumar. He did not

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meet anyone from the family at the place of the occurrence. There was no one from the family at the place of the occurrence. PW-1 has next stated that he understands the meaning of home and he, Sharwan Kunwar (PW-6) and Rajesh Chaudhary are family. In para no. 23 of his cross-examination, PW-1 has stated that it is not that he was not present at the place and time of the occurrence and that he did not witness the occurrence. PW-1 has denied the suggestion that since Sharwan Kunwar and Rajesh Chaudhary are his family members, he has deposed falsely. In para no. 26 of his cross-examination, PW-1 has denied the suggestion that there is enmity in-between Rinku Kunwar and his family, hence he has falsely deposed against the accused.

14. PW-2 Murari Kumar has stated in his evidence that he knows about the occurrence, which occurred between 12:00 and 1:00 pm on 23.01.2015, however he did not see anything. When he got a call from Bagripur, he came to Bagripur from his home in Sonvarsha and there he came to know that his brother has been shot dead. The people present there told him that Rinku Kunwar and Rahul Kunwar had shot. He did not see anything there. PW-2 has further stated that they came to Naugachia Sadar Hospital from Bagripur. His brother Amit Kumar @ Bambam Chaudhary was soaked in blood on account of being shot. Kaushal Kumar was also with his

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brother, who was also shot (with objection). Kaushal Kumar had died and they had taken Bambam Chaudhary to Bhagalpur, from where he was referred to Siliguri, however his brother died at Siliguri. PW-2 has next stated that Rinku Kunwar is present in court today. PW-2 was discharged, since the Ld. defence counsel refused to cross-examine him.

15. PW-3 Nikky Devi has stated in her evidence that the occurrence took place four and a half years ago on 23.01.2015 between 12:30 to 12:45 hours. She was at home at that time. Sharwan Kunwar (PW-6) called her and told her that Kaushal Kumar has been murdered and upon hearing this, she went there and saw that Kaushal Kumar had been murdered and Bambam's breath was running. It is not known whether Bambam Chaudhary was referred from Naugachia to Bhagalpur or somewhere else. PW-3 Nikky Devi has also stated that she was returning home after a court date, when she came to know about the occurrence. The occurrence happened near Bagripur. She came to know something more over the phone (with objection), to the effect that Rahul and Rinku had committed the murder. Rinku Kunwar is present in the court today. She has stated that she can recognize even those who have not come, upon seeing them. PW-3 had gone to Bagripur at 1:30 hours and had seen

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Chandan (PW-1), Rajesh (PW-4) and Sharwan (PW-6) there but apart from them, there was dead body of Kaushal Kumar and the police was also present there. PW-3 has stated that she fainted after seeing her husband's dead body at 1:30 hours. PW-3 says that she cannot say as to when she became conscious but she regained consciousness at home. PW-3 has further stated that the number on which the call was received is 9934805040, but she can't tell from which number the call came. Rupesh is from my village. She also knows Vidyanand Chaudhary and Lali Singh. All of them are from her village. The call came between 12:30 and 1 o'clock. Rinku is from her village so she recognizes him. PW-3 has stated that there were 6 persons on the four-wheeler but did not take their names. PW-3 has also stated that she did not see the incident happening with her own eyes. PW-3 has stated that she does not know whether a case is already going on against her elder brother-in-law Sudhir Kunwar. PW-3 has stated that there was no quarrel with her husband and there was no problem with her either. Lastly, PW-3 has stated that it is not that she is giving false testimony.

16. PW-4 Rajesh Chaudhary has stated in his evidence that occurrence took place on 23.01.2015 at around 12:00 to 1:00 p.m. He was at the place of occurrence at that time and they

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were on two motorcycles but Bambam and Kaushal were going ahead, while he and Sharwan were behind. A Bolero vehicle whose number was 4001 had come from behind and hit the motorcycle which was ahead, which fell on ground, whereafter five to six people came out of the Bolero vehicle. Bambam got shot by Rinku and Kaushal got shot by Rahul. They also fired towards us and while turning the car, their car fell in the ditch, whereupon they started firing on us and then they went away firing, towards the south. PW-4 has also stated that thereafter, they went to the place of occurrence and saw that Kaushal Kumar was dead and Bambam Chaudhary was conscious. The Police had then come and had taken Bambam and Kaushal to Naugachia Sub-Divisional Hospital where Kaushal was declared dead and Bambam was referred to Bhagalpur. In paragraph no. 4 and 5 of his cross-examination, PW-4 has stated that Rinku is from his village so he recognises him and Rinku's house is half a kilometre from his house. In paragraph no. 6 of his cross-examination, PW-4 has stated that he has also deposed in Sessions Trial No. 80/17 relating to the said occurrence, in connection with which he has presently deposed. It is true that in Sessions Trial No. 80/17 he had deposed that while the accused were trying to turn the vehicle, it fell in the ditch and

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they ran away after entering into the banana field.

17. In para no. 7 of his cross-examination, PW-4 has stated that he was at the place of occurrence from 12.30 to 12.45, two o' clock, whereafter the police had come. He stayed at the sub-divisional hospital till 3 o' clock in the day and then he went home. PW-4 has stated that his statement was recorded by the police with regard to the occurrence. The statement of PW-4 was recorded at the subdivision on 23.01.2015 between 2:00 to 2.30 pm, whereafter his statement has not been recorded by the police. In paragraph no. 8 of his cross-examination, PW-4 has stated that he was already present at the place of occurrence when the firing took place. He had reached the place of incident at 12:30 hours and while he was there, the police had come in-between 1:00 to 1:30 hours. He has stated that when he had arrived there, firing had commenced and he was 50 to 100 yards away from place of occurrence, towards the east and those who had died were towards his western side. In para no. 9 of his cross-examination, PW-4 has stated that Rinku shot first, however he cannot say as to who shot after Rinku. Before Rinku, Rahul had shot Gautam and after Rinku, everyone opened fire but PW-4 could not see everyone. Rinku had shot on the head and Rahul had shot Kaushal on his temple *(kanpatti)*

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but PW-4 does not recognize as to who else had fired. PW-4 has also stated that Rinku had shot on the head but he did not see as to from where he had shot. Rahul had shot on the right side of temple and he had shot after the deceased had fallen down. Rinku had also shot on the head in a lying down state.

18. In para no. 10 of his cross-examination, PW-4 has stated that the Bolero vehicle had hit the motorcycle from the southern side. Both men fell from the motorcycle towards the south. Bolero had turned towards the south. PW-4 had seen both the face and back of those who had come out from the Bolero. He saw face and back of six persons. Everyone alighted from Bolero from the southern side. Firstly, Rinku had got down but PW-4 says that he can't say as to who had got down last. PW-4 then says that first Rinku got down, then Rahul got down and then the rest got down. After the Bolero had hit the motorcycle, the motorcycle was at a distance of five-seven feet ahead of Bolero, which was on road. Motorcycle fell in the mud on the southern side. Both the men had fallen in the mud beyond the road. In paragraph no. 11 of his cross-examination, PW-4 has stated that the case pertaining to this occurrence was registered before him at 2:30 hours and his statement was recorded immediately after the case was registered. He had heard Sharwan's statement. In paragraph no. 12 of his cross-examination, PW-4 has

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stated that he was riding the motorcycle of his villager namely Suman Chaudhary and he had borrowed the motorcycle in the morning of the said occurrence at about 8:00. In para no. 13 of his cross-examination, PW-4 has stated that it is not a fact that he had told the police that 6 men, armed with weapons had hit the motorcycle by a Bolero vehicle, on which two deceased persons were riding and that Sharwan Kunwar had moved ahead for some distance and that he saw that Lali Kunwar was holding weapon in his hand and with the same he had shot on the right ear of Kaushal Kumar. He fell there and started writhing. PW-4 has stated that Lali Kunwar is from his village.

19. In paragraph no. 14 of his cross-examination, PW-4 has stated that in the case filed by Sharwan, the names of all the 5 accused have been mentioned, i.e Lali, Rinku, Rahul, Vidyanand and Rupesh. PW-4 has stated that he had heard Sharwan's statement but he does not recognize the 5 men named by Sharwan. The Mukhiya of his village is Lali Kunwar and he used to live in the village. In para no.15 of his cross-examination, PW-4 has stated that he had seen the occurrence from the pucca road. The accused were firing from the northern direction. All the accused were firing gun shots one by one and had not surrounded the victims. He has again said that each of

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them were firing gunshots together. In paragraph no. 16 of his cross-examination, PW-4 has stated that no case was pending against him on the day of occurrence and it is true that he had given statement in Sessions Trial no. 80/17 to the effect that after attending the court, he was going to his home at Sonvarsa. In para No. 17 of his cross-examination, PW-4 has stated that only 2-4 persons had arrived at the place of occurrence till he was present there and in-between 1:00 to 1:30 p.m. only two, four–five persons arrived there. Gautam, Chandan and deceased's wife along with Bino Kunwar and Amresh Kunwar had arrived there. PW-4 has stated that he did not stay there for more than 10-15 minutes when these people had arrived. In paragraph No. 18 to 20 of his cross-examination, PW-4 has stated that in Sessions Trial No. 80/17 he has deposed that accused persons came out of Bolero and Rinku shot at Bambam and Rahul shot at Kaushal. He has further stated that Abhinandan Chaudhary was Mukhiya as well as 'Pramukh' and Vidyanand Chaudhary is his son. In para no. 21 of his cross-examination, PW-4 has stated that no documents regarding this case was prepared in his presence till the time he was present at the place of occurrence. PW-4 has stated that on the day of the occurrence he was not having a mobile phone but Bambam,

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Kaushal and Sharwan were having mobile phones and they had not taken out the mobile phone of Bambam and Kaushal. PW-4 has also stated that there was no enmity between Kaushal, Bambam and the accused from before this occurrence. There was no enmity with the family of Kaushal and Bambam but again PW-4 has said on his own that there was enmity with the family of Kaushal. The wife of Sudhir was Sarpanch and since then there was a dispute. The dispute was prevailing since a year or 1½ year before this occurrence.

20. In paragraph no. 23 of his cross-examination, PW-4 has stated that apart from Rahul and Rinku, he does not know who else had fired gunshots. PW-4 has stated that when Kaushal Kunwar's body was touched, it was neither cold nor hot. Bambam was quivering. Kaushal's body and hands had become still so it was understood that he had died. In paragraph no. 24 of his cross-examination, PW-4 has stated that when they had fired at them, they had ran 100 to 150 feet towards the east of the road. The vehicles were passing by at the time of escape. After running for ten minutes, they had reached the plot. In paragraph no. 25 of his cross-examination, PW-4 has stated that the registration number of the motorcycle is BR-10D 8470. In paragraph no. 26 of his cross-examination, PW-4 has stated that

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Bambam Choudhary was quivering after being shot and his face was towards the west. In paragraph no. 27 of his cross-examination, PW-4 has stated that it is true that in Sessions Trial No. 80/17 it has been stated that the incident is of 23.01.2015 at 12:45 hours, when he was going to his home at Sonbarsa, after attending the court date and when he had reached near Bagri Chowk, he saw a white coloured Bolero vehicle coming from behind whose registration number was that of Jharkhand. Then the motorcycle going ahead, being ridden by Kaushal Kumar and Bambam Choudhary was hit. All five, six accused came out of Bolero, whereafter Rinku Kunwar shot Bambam Choudhary and Rahul shot Kaushal Kumar. They also fired at us. In para no. 28 and 29 of his cross-examination, PW-4 has stated that Chimney Kiln was towards the south from where he was watching the occurrence. PW-4 has also stated that blood was spread all over where the bullet had hit. NH is at a distance of five to seven feet from there. In paragraph no. 30 and 31 of his cross-examination, PW-4 has stated that he came to home around six to seven o'clock on the day of the occurrence and cannot tell the time when the postmortem took place, although he went for the postmortem. The postmortem was completed in-between five to six o’clock. After postmortem, there was a shirt

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on the body of the deceased and nothing else and took them to Naugachia on a vehicle. PW-4 has stated that he doesn't know as to by which vehicle both the injured were brought to Naugachia but again he has stated that both the injured were brought in a pickup vehicle. PW-4 has further stated that he came to Naugachia in a police vehicle on the day of the occurrence. It was the police who brought the bodies of Kaushal Kumar and Bambam Choudhary to Naugachia.

21. In paragraph no. 32 of his cross-examination, PW-4 has stated that he cannot not say as to whether Sharwan was sitting on the police car or the pickup vehicle and he had met Sharwan again in the sub-division. In para no. 33 of his cross-examination, PW-4 has stated that he was in court from 10 to 11:30 hours and in his presence, the police had not seized any articles from the place of occurrence. In paragraph no. 34 of his cross-examination, PW-4 has stated that he did not show the police the motorcycle on which they had gone. In paragraph no. 35 of his cross-examination, PW-4 has stated that the bullet was shot at point blank range. PW-4 has stated that by the time both the injured Bambam Choudhary and Kaushal Kumar were brought to the hospital, they were bleeding. He can't say whether there was blood on the pickup van or not and whether

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there was blood on the road or not. PW-4 has also stated that there is no population one kilometre ahead and two kilometres behind of the place from where he was watching the incident and even there is no paan shop there. In para no. 36 of his cross-examination, PW-4 has stated that it is not a fact that when he was going after attending the court date, he saw that Rinku Kunwar had shot Bambam Choudhary. In paragraph no. 37 of his cross-examination, PW-4 has stated that it is not a fact that he was following Bambam Choudhary and Kaushal Kumar on motorcycle. In para no. 41 of his cross-examination, PW-4 has stated that it is not a fact that he has given false testimony against Rinku Kunwar and that he does not know anything about the said occurrence.

22. PW-5 Laxmi Devi has stated in her evidence that the occurrence took place 4½ years ago at 12 O'clock. She was at home at that time. She got information about the occurrence when Sharwan called her and told over phone that Kaushal and Bambam have been shot. Kaushal died and Bambam was alive and he was brought to Naugachia. Sharwan told on phone that Rahul and Rinku had killed (with objection under Section 141 of the Indian Evidence Act). PW-5 has also deposed before this in Rupesh's case number 80/17 which was going on in the

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second Court. Further, PW-5 has stated that in Rupesh's case, nothing was told to the police about the occurrence. PW-5 has next stated that her statement was made before the police. PW-5 has also deposed that when the dead body was brought, then she met Sharwan. It was dark at that time. On the day of occurrence, she had met Sharwan once at 10 am in the morning. PW-5 had no conversation with Sharwan at the time of his departure. PW-5 had met Sharwan again in the evening. PW-5 has stated that she cannot tell the number from which Sharwan had called. Sharwan had called on her mobile phone. PW-5 has stated that she can't tell her mobile number, as she doesn't remember. PW-5 has next stated that since she was the only one at home so Sharwan had called on her mobile phone. PW-5 has also deposed that she has not seen the shooting or the occurrence taking place, with her own eyes. PW-5 has stated that it is not a fact that Sharwan had called and informed her that Rahul and Rinku have shot and killed Kaushal and Bambam. Lastly, PW-5 has stated that it is not a fact that she has no knowledge about the occurrence and she is deposing falsely.

23. PW-6 Sharwan Kunwar has stated in his evidence that he is the informant of this case. The occurrence took place on 23.01.2015 at 12.45 pm, while he was going to Naugachia

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market with his uncle. A white Bolero vehicle with number 4001 came there by which they were hit. Kaushal Kumar and Bambam Chaudhary were hit. Thereafter, Rinku Kunwar got down and shot Kaushal Kumar, whereupon Rahul shot Bambam Chaudhary. Kaushal Kumar died after being shot and Bambam Choudhary was quivering after being shot three times. While trying to turn the car, it got stuck in the mud. Everyone had got down from a white Bolero vehicle and had started firing. The people who were with Rinku Kunwar and Rahul Kunwar, ran away into the banana field. At home he informed Lakshmi Devi (PW5) and Nikki Devi (PW3) who are his aunts. The police came after half an hour. After arrival of the police, the police had loaded them on a pickup vehicle and had taken them to Naugachia Hospital. PW-6 had then gone to Naugachia hospital and given his statement in front of the Sub-Inspector. The fardbeyan of PW-6, which had been recorded by the Sub-Inspector and which was signed by him, has been recognized by PW-6 and the same has been marked as Exhibit 1. He has recognised Rinku Kunwar present in the court.

24. In paragraph no. 6 of his cross-examination, PW- 6 has stated that as soon as the Sub-Inspector came, he asked everyone’s name. The Sub-Inspector took the statement in the

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hospital itself. Again it is stated that the Sub-Inspector met PW-6 near the dead body but the Sub-Inspector did not take his statement in front of the dead body. PW-6 has next stated that when Sub-Inspector arrived, they had loaded Bambam Choudhary and Kaushal Kumar on a pick-up vehicle and brought them to the hospital. PW-6 had also come to the hospital on a motorcycle with the Sub-Inspector. Both of them had reached the hospital almost at the same time. Kaushal Kumar was dead and Bambam Chaudhary was quivering. Kaushal Kumar died on the spot. In paragraph no. 7 of his cross-examination, PW- 6 has stated that he did not inform the Sub-Inspector, as he didn't have his number. Sub-Inspector came simultaneously. Bambam Choudhary and Kaushal Kumar did not have mobile phones. In paragraph no. 8 of his cross-examination, PW- 6 has stated that he has also deposed regarding this occurrence in the adjacent court in Sessions Trial No. 80/17. In paragraph no. 9 and 10 of his cross-examination, PW- 6 has stated that he has read the fardbeyan. PW-6 has also stated that he does not remember that he has stated in his statement made before the Court in Sessions Trial No. 80/17 that Rahul Kunwar had shot Kaushal Kumar. He has stated that he does not remember that Bambam Chaudhary was shot by

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Rinku Kunwar as also he doesn't remember that when they reached there, they were quivering. In paragraph no. 11 of his cross-examination, PW- 6 has stated that when they reached, they saw that they had fallen after being shot. Both men were lying on their sides and facing west. The foot was towards the east. The bodies of both were East and West. There was a distance of two to three feet between both persons. In paragraph no. 12 of his cross-examination, PW- 6 has stated that the name of Mukhiya Ji of his village is Lali Kunwar who used to live in the village as well as outside. He has not met Mukhiya ji since childhood. In paragraph no. 13 of his cross-examination, PW- 6 has stated that Mukhiyaji's house is half a kilometre away from his house towards south. Rupesh's house is in the same locality.

25. In paragraph no. 16 of his cross-examination, PW- 6 has stated that it is not a fact that he has stated in his Fardbeyan that Lali Kunwar S/o Chalo Kunwar shot his uncle Kaushal Kumar on his right ear with the weapon in his hand. He has stated that Rinku Kunwar, with his weapon had shot Bambam Chaudhary @ Amit Chaudhary and Rupesh Kunwar, with the weapon in his hand, had shot on the body of Bambam Chaudhary's. In para no. 17 of his cross-examination, PW- 6 has stated that it is true that he has stated in his fardbeyan that Rahul Kunwar S/o Shyam

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Kunwar, with the weapon he was holding in his right hand, had shot Bambam Chaudhary's on his body. In paragraph no. 18 of his cross-examination, PW- 6 has stated that it is not a fact that he has stated in his Fardbeyan that Vidyanand Chaudhary S/o Abhinandan Chaudhary had shot his uncle with the weapon in his hand. In para no. 19 of his cross-examination, PW- 6 has stated that Naugachia market is at a distance of 12 to 13 kilometres from Tata Chimni Bhatta and Naugachia market is towards the east of Tata Chimney Bhatta. In para no. 20 of his cross-examination, PW- 6 has stated that he does not remember as to whether he has stated in Sessions Trial No. 80/17 that Bambam Chaudhary was shot thrice and he was quivering. In paragraph no. 21 to 24 of his cross-examination, PW- 6 has stated that on the day of the occurrence, he had reached his home at four in the evening. He has stated that he did not go to the police station and he was in the hospital from 1 o'clock to 3 o'clock. After 3 o'clock he went home. The police had met PW-6 in the hospital at 1 o'clock. He has stated that neither he nor his family has any previous enmity with Rinku. PW-6 has also stated that apart from him, there were people from his family in the hospital, namely Nikki Devi, Lakshmi Devi and his Uncle Rajesh Chaudhary (PW-4) and Vinod Kunwar. In para no. 25 of

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his cross-examination, PW- 6 has stated that it is not a fact that he has again said in his statement to the police that such an occurrence was carried out due to old enmity. In paragraph no. 26 of his cross-examination, PW- 6 has stated that there is no previous criminal case against him and no civil case is pending since the day of the incident.

26. In para no. 27 of his cross-examination, PW- 6 has stated that the occurrence took place for about ten minutes. In paragraph no. 29 of his cross-examination, PW- 6 has stated that Tata Chimni Bhatta is at a distance of ½ kilometre from Bagadi village and it is on the south side of Bagadi village. In para no. 32 of his cross-examination, PW- 6 has stated that it is not a fact that he has not seen the incident happening with his own eyes. In paragraph no. 33 of his cross-examination, PW- 6 has stated that it is not a fact that Rinku Kunwar has not shot his uncle Kaushal Kumar. In para no. 34 of his cross-examination, PW- 6 has stated that it is not a fact that he has falsely implicated Rinku Kunwar in this occurrence due to old enmity. In para no. 35 of his cross-examination, PW- 6 has stated that it is not a fact that he has falsely deposed in this trial.

27. PW-7 Dr. B.P. Singh has stated in his evidence that on 26.01.2015, he was posted as Medical Officer at Sub-divisional

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Hospital, Naugachia and on that day at 08:30 a.m., he had conducted the postmortem examination of the dead body of Amit Kumar Chaudhary @ Bambam Choudhary (male), aged about 35 years, S/o Late Ganesh Chaudhary and had found the following antemortem injuries:-

Injury No. (1) Lacerated wound ½"x ½" communicating over, Frontal bone scalp, Margin inverted – Tattooing mark with blackening around the wound. The wound of entry.

(2) Lacerated wound – ¾" x ½" x communicating in front of right ear – margins inverted – wound of exit.

(3) Lacerated wound – 1" x ½" x bone deep over frontal bone scalp, margin inverted tattooing and blackening around the wound.

(4) Lacerated wound – 1" x ½" x skin deep over right forearm.

(5) Lacerated wound – 1" x ½" x through and through over left hand between thumb and index finger over dorsum aspect.

(6) Lacerated wound – 1" x ½" x through & through over palmer aspect of left hand between thumb and index finger.

On Dissection of above noted injuries cranial cavity found full of dark blood. Clotted blood found underneath the tissues. Fracture of frontal bone of skull detected, fracture of Zygomatic bone (Rt.) found

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fractured.

Brain matter – found lacerated.

Cause of Death – In my opinion death occurred due to haemorrhage and shock as a result of above noted injuries caused by firearm.

Distance of fire – Within 4 feet.

Time elapsed since death – Within 24 hours of P.M. Examination.

28. PW-7 has identified the postmortem report, which has been prepared in his pen and signature and the same has been marked as Exhibit-2. In cross-examination, PW-7 has stated that he is still in service and working as a medical officer and has jurisdiction to conduct postmortem as a medical officer. He has stated in paragraph no.15 and 16 of his cross-examination that direction of injury has not been mentioned in his postmortem report, moreover the time elapsed since death within 24 hours means that the death occurred in between 25.01.2015 from 08:30 a.m to 26.01.2015 at 08:30 a.m. In paragraph no.17, he has stated that on the direction of Dy. Superintendent of S.D.H Naugachia, he had conducted postmortem examination. In paragraph no.21 of the cross-examination, he has been questioned as to in which part of the body rigor mortis was found and in reply to the same he has answered that it was

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found in the whole body and not in any particular part. In paragraph no. 24 and 25 of his cross–examination, PW-7 has stated that the Injury No.2 which is wound of exit, may be exit of Injury No.1 and 3 both, moreover he has further stated that this explanation has not been mentioned by him in the P.M report. In paragraph no. 27 and 28 of his cross–examination, PW-7 has stated that the postmortem report was prepared and filed after conducting the postmortem examination, as all relevant observations are initially recorded in a register prior to the preparation of the report and then based on that findings are mentioned on the report. In paragraph no. 29 and 30 of his cross–examination, PW-7 has stated that he does not remember whether he has deposed in Sessions Trial No. 80/17 in the adjacent court, however after seeing the documents, he has stated that he has also deposed in Sessions Trial No. 80/17. In para no. 31 of his cross–examination, PW-7 has stated that he had found four injuries on the body of the deceased and has again stated that Injury No. 1 to 6, are all of firearms. PW-7 has further opined that the time of death is between zero to 24 hours. In paragraph no. 33 to 36 of his cross–examination, PW-7 has stated that there is possibility that exit wound of Injury No. 3 and 2 is same and that the exit wound of Injury No. 1 and

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Injury No. 3 is the exit wound no. 2. PW-7 has next deposed that there is no wound on right or left knee as also there is no tattooing or blackening of Injury nos. 4, 5 and 6. In paragraph no. 37 of his cross – examination, PW-7 has stated that though it is true that he has deposed in Sessions Trial No. 80/17 but he doesn't remember whether he has stated in para no. 2 that he was known to the deceased from before.

29. PW-7, in paragraph no. 38 and 39 of his cross-examination has stated that Injury No. 1 and 3 are injuries of gunshot and rest other injuries may be from hard and blunt substance and that is why he did not find any mark of tattooing and blackening except on injury No. 1 and 2. PW-7 has next submitted that he was posted on deputation at Naugachia Sub-Divisional Hospital at the time he had prepared this P.M report. In para no. 41 to 43 of his cross–examination, PW-7 has stated that he did not find any metallic substance in the dead body during postmortem and he did not see any mark on the dead body to suggest that his treatment had taken place elsewhere. Lastly, PW-7 has stated that it is not a fact that postmortem report is false and he has done only table work.

30. PW-8 Dr. Arun Kumar Sinha has stated in his evidence that that on 23.01.2015, he was posted as Medical Officer at

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Sub-divisional Hospital, Naugachia and on that day at 04:20 pm, he had conducted the postmortem examination of dead body of Kaushal Kumar Kunwar S/o Late Chinti Kunwar and found the following antemortem injuries:-

(1) about half inch oval lacerated wound just in front of right pinna with charring around adjacent area.

(2) Wound of Exit – Irregular oval lacerated wound 1" x ½" on left side of forehead, Rt. Eye ball protruded.

(3) Injury no. (1) and (2) was communicating to each other. There was fracture of frontal bone on both sides.

(4) On dissection – Cranial cavity was filed with blood and clots with laceration of brain matter particularly of frontal lobe. All viscera were pale.

(5) Cause of death – Intracranial haemorrhage and shock due to gunshot injury within range of 6 feet. Direction – right to left.

(7) Time elapsed since death – within 6 hours of P.M. examination.

31. PW-8 has identified the postmortem report, which has been prepared in his pen and signature and the same has been marked as Exhibit-2/1. In cross-examination, PW-8 has stated

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that he has written his designation in postmortem report as MBBS, DO. DO means diploma in ophthalmology. He has written his designation as civil assistant surgeon. In para no. 11 to 13 of his cross – examination, PW- 8 has stated that he had conducted the postmortem of the dead body on the request of Naugachia police officer, and he has even deposed in Sessions Trial No. 80/17, before the Ld. court of ADJ-II. In para no. 14 of his cross–examination, PW- 8 has stated that he cannot ascertain as to what kind of food was present in the dead body. In paragraph no.15 and 16 of his cross–examination, PW- 8 has stated that he had filled up column no.1 and page no.1 of postmortem report first and then he had filled up the columns at page no. 2. In para no. 17 of his cross – examination, PW- 8 has stated that no rigor mortis had begun. In paragraph no. 18 and 19 of his cross – examination, PW- 8 has stated that with respect to column no. 7, 9 and 10, he has not mentioned as to in which column he has mentioned details, as all details are available in column no. 33. In paragraph nos. 20 to 23 of his cross-examination, PW- 8 has stated that entry in column no. 5 was made before the start of postmortem, then he says that he had conducted the postmortem first. During the postmortem necessary details are written in separate paper from which help

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is taken to prepare a final postmortem report. In paragraph no. 25 of his cross-examination, PW- 8 has stated that it is not possible for him to give an opinion whether the deceased was shot while standing, sitting or in a sleeping posture.

32. In paragraph no. 26 of his cross–examination, PW- 8 has stated that he has not mentioned about the exact location of the exit wound on the head. In para no. 27, PW-8 has stated that he has not mentioned the nature of injury on the scalp by words as through and through and instead he has used the term communicating injury. In paragraph no. 28 to 31 of his cross – examination, PW- 8 was questioned about meaning of "within six hours of postmortem examination" and in reply thereof he has stated that rigor mortis begins within four to six hours from the time of death but it depends upon the prevailing season, as he has conducted the postmortem during winter season. Rigor mortis will depend upon the location of body, i.e. whether it was kept in open field or within closed door. During the winter season if the body is kept in an open field, then the rigor mortis may take more time to set in. In paragraph no. 32 and 33, PW-8 has next submitted that he has not used the term firearm in the description of injury, rather he has used the term gunshot injury and gun means "Gun". Lastly PW-8 has stated that it is not a

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fact that he has prepared a false postmortem report and it is also not a fact that that he has prepared a table report.

33. PW-9 Kaushal Kumar has stated in his evidence that on 23.01.2015 he was posted as S.H.O. Jhandapur and on that day he had assumed charge of investigation of Bihpur (Jhandapur) P.S. Case No. 17/15. He had received fardbeyan written by S.I. Jawahar Lal Singh, thereafter he had received the inquest report from S.I. Jawahar Lal Singh. He had then prepared the seizure list, whereupon more seizure lists were prepared. Three seizure lists and one memo cum seizure list were prepared by him. (With objection, for identification of exhibits) PW-9 has stated that there are three seizure lists and one memo cum seizure list in carbon copy, which bears his signature and are in his handwriting. The same have been marked for identification as X, X/l, X/2, X/3. PW-9 had then gone to the place of occurrence and started investigation as also had recorded the description of the place of Occurrence and its boundaries. PW-9 had then recorded the statement of the informant, whereafter a seizure list was prepared again. The statement of witness Nikky Devi (PW-3) was then recorded and written in the case diary, whereafter the statement of Chandan Kunwar (PW-1) and Lakshmi Devi (PW-5) was recorded. PW-9 has stated that thereafter, (with

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objection, regarding identification of the exhibit) the carbon copy of the inquest report of the deceased Amit Kumar @ Bambam Choudhary, which is available on record, was inscribed in the diary. PW-9 has also stated that the carbon copy of the second inquest report of Kaushal Kumar is available on record which is in his handwriting and bears signature of Jawahar Lala S.I., which he has identified. Both inquest reports were marked as “Y” and “Y/l” respectively for identification. PW-9 had then recorded the statement of Rajesh Chaudhary (PW-4). Thereafter, postmortem report of Kaushal Kumar was obtained and recorded in the case diary and then postmortem report of Amit Kumar @ Bambam Chaudhari was received and mentioned in the case diary. PW-9 had then recorded the statement of Murari Chaudhary (PW-2). Then PW-9 had arrested the accused and charge sheet bearing no. 19/15 was submitted against Rinku Kunwar and Rahul Kunwar U/s. 341, 307, 302, 427, 120-B of IPC and Section 27 Arms Act. PW-9 has recognized Rinku Kunwar, who is present in the court.

34. In paragraph no.11 of his cross-examination, PW-9 has stated that investigation of this case started on 23.01.2015 at 17:30 hours, after receipt of the fardbeyan. The fardbeyan was received at Jhandapur police station from S.I. Jawahar Lal Singh

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(PW-15). At that time Jawahar Lal Singh was in-charge of the police station. Jawahar Lal Singh had brought fardbeyan to the police station. The page number was inscribed on the fardbeyan by Jawahar Lal Singh at Naugachia Hospital and he had forwarded the Fardbeyan to Bihpur Police Station under Jhandapur Police Station. In paragraph no. 1 of the case diary, PW-9 has written the date and time of assuming the charge of investigation as 23.01.2015 at 17:30 hours. In paragraph no. 14 of his cross-examination, PW-9 has stated that it is clear from what has been mentioned in paragraph 9 of the case dairy that he had gone to the place of occurrence upon information received on mobile and had taken the injured to the sub-divisional hospital for treatment but he did not get to know the names of the injured and the accused person. In paragraph no. 15 of his cross-examination, PW-9 has stated that in para no. 9 of the case diary, he has not mentioned either about the time of going to the hospital or the time of going to the place of occurrence or the time of taking the injured from the place of occurrence to the hospital. Moreover, there is no mention of number and date/time of registering Sanha. It has also not been mentioned as to how many people were injured in the occurrence.

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35. PW-9 has further stated that Jawahar Lal Singh (PW-15) was authorised in writing to record the fardbeyan, whereafter three seizure lists and memo cum seizure list were prepared by him in his handwriting and the same bears his signature. In paragraph no. 18 of his cross – examination, PW9 has stated that FIR regarding this occurrence was registered at 17:30 hours but he does not remember when the case was registered at Bihpur police station. Possibly, the case was registered at Bihpur police station at 17:30 hours. In paragraph No. 19, PW9 has stated that during the investigation, he had recorded the statement of Murari Chaudhary (PW2), who is a witness to the memo cum seizure list but had not recorded the statement of any other witness to the seizure lists. In para no. 20, PW9 has stated that the statement of Murari Chaudhary was recorded, who is a witness to the inquest report of Amit Kunwar @ Bambam Chaudhary. In paragraph no. 21 of his cross-examination, PW-9 has stated that he had not recorded the statement of S.I. Jawahar Lal Singh who had written the Fardbeyan. In para no. 22 of his cross-examination, PW-9 has stated that Murari Chaudhary has not stated in his statement about making any inquest report and seizure list. In para no. 23, PW9 has stated that he had himself obtained the postmortem report at the police station, as is

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mentioned in para nos.46 and 47 but the name of such special messenger who had brought both postmortem reports as also the time is not mentioned in para no. 46 & 47. These 2 reports were of both the deceased persons, however he did not go to Naugachia Hospital for verification. PW9 has stated that he does not remember as to when Bihpur P.S. Case no. 17/15 was registered. In para no. 1 of case diary at page no. 1, Jhandapur P.S. case no. 17/15 has been mentioned by PW9 and he had written the diary at 17:30 hours but till then he was not aware about Jhandapur P.S. case number 17/15.

36. In paragraph no. 26 and 27, of his cross-examination, PW-9 has stated that he had met Bambam Choudhary @ Amit Kumar Choudhary after the incident but the same has not been mentioned in the CD and after the death of Bambam Chaudhary, during the course of investigation he did not collect any papers regarding the place where Bambam Chaudhary was treated and as to who had treated him. In paragraph no. 27, PW9 has stated that on 23.01.2015, both the injured persons were brought to Naugachia Hospital for treatment in police jeep. In para no. 30 of his cross-examination, PW-9 has stated that while writing Para 9, he had met the families of the injured but in Para 9 he has not written the name of the injured persons, however he has

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mentioned their name in Para 1. In paragraph no. 31 of his cross-examination, PW-9 has stated that he had inspected the place of occurrence at 18:45 hours on 23.01.2015. In paragraph no. 32 to 34 of his cross-examination, PW-9 has stated that while investigating the case, he had read the fardbeyan of this case. PW-9 has stated that it is true that he has deposed in Sessions Trial No. 80/17 and it is also true that he has stated in para no. 1 of his deposition in Session trial no. 80/17 that on 23.01.2015, he was posted as SHO Jhandapur. He does not remember saying in para no. 1 that he had recorded fardbeyan of Shravan Kunwar that day. He even does not remember whether he has deposed in para no. 2 to the effect that an inquest report and a seizure list were recorded by him.

37. In paragraph no. 35 of his cross-examination, PW9 has stated that he has not inquired about owner or driver of the Bolero vehicle bearing registration number JH10AD4001, which was used in the occurrence. In paragraph no. 36, PW9 has stated that only after completing the entire process, fardbeyan was forwarded to the police station and everything was sent with the fardbeyan. PW-9 has also stated that after completion of all the processes like preparation of seizure list, dead body challan, copy of Mufassil command, inquest report along with

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fardbeyan, FIR was registered formally and subsequently, the same was forwarded to the Bihpur police station for registration of FIR. In paragraph no. 38, PW-9 has stated that it is not a fact that he did not receive any fardbeyan at Naugachia Hospital and instead the same was prepared at Jhandapur OP after deliberations, whereafter the same was sent to Bihpur PS for registration of a case as also for this reason the fardbeyan was sent for being forwarded from Naugachia Hospital. In paragraph no. 39, PW-9 has stated that no injury report of both the injured persons, namely Kaushal Kumar Kunwar and Bambam Choudhary was prepared and sent to the doctor. In paragraph no. 40 of his cross- examination, PW-9 has stated that both the injured persons were treated at Naugachia Hospital and he did not take any paper related to this from the hospital. The register of both the injured was maintained in the hospital but the papers relating to it were not received. PW-9 has stated that he does not remember at what time Kaushal Kumar was declared dead and at what time Bambam Choudhary was referred to Bhagalpur. PW-9 has also stated that he does not remember as to which doctor had referred Bambam Chaudhary to Bhagalpur for treatment. PW-9 has next stated that due to lack of time, statement of Rajesh Chaudhary was recorded at the Hospital.

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PW-9 has also stated that it is not a fact that no fardbeyan was recorded at the hospital and instead everyone was called at the police station and their statement was recorded there.

38. In paragraph no. 43 of his cross-examination, PW-9 has stated that the inquest report was prepared at the sub-divisional hospital on 26.01.2015 and at that time, he was the I.O. of this case. In para no. 44 of his cross-examination, PW9 has stated that he had given a formal order to prepare the inquest report as he was not aware of giving any written orders and he has read the inquest report of Bambam Chaudhary. PW9 has next submitted that no item relating to this case is present in the court as exhibit today. In paragraph no. 49 of his cross-examination, PW9 has stated that he was not aware that if the case has been registered then the PS case number will be mentioned in column no. 1 of the inquest report, otherwise the written application or fardbeyan of the informant of' the case, the name of the informant, date and time will be filled. In paragraph no. 50, PW9 has stated that it is not a fact that no statement of Shravan Kumar was recorded till the time the inquest report of Kaushal Kumar was prepared, hence for this reason column no. 1 of the inquest report was kept blank. PW9 has further stated that Naugachia Sub-Divisional Hospital is not under his jurisdiction

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and he had neither taken help of Naugachia police station nor informed them. In paragraph no. 52 and 53 of his cross examination PW9 has stated that it takes 20 to 25 minutes to reach Naugachia Sub-Divisional Hospital by vehicle from the place of occurrence. In paragraph no. 54 of his cross-examination, PW9 has stated that he does not remember from what time till what time he was at the place of occurrence. On 23.01.2015 he went to the place of occurrence thrice. He doesn't remember when he went for the first time but he went at 15:45 hours for the second time and at 18:45 hours for the third time.

39. PW-9 has further stated that both the seizure lists were prepared at the place of occurrence and there was no information about P.S. case no. 17/15 till both the seizure lists were prepared at the place of occurrence. In paragraph no.55 he has stated that, it is not a fact that the seizure list was prepared after the case was registered. PW-9 has next stated that he does not remember whether the object which was seized by him at the time of preparing the second seizure list at 15:45 hours on 23.01.2015 was present at the place of occurrence at the time of making the first seizure list at 13:30 hours. To a question as to why he did not inspect the place of occurrence when he had prepared the first seizure list, PW-9 has stated that the articles

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which were found during the course of preliminary inspection were confiscated and the injured persons were taken to the sub-divisional hospital for treatment. In para no.58 and 59 of his cross–examination, PW-9 has deposed that he had not prepared the sketch map of the place of occurrence and after conducting inspection of the place of occurrence, he did not mention in his inspection report/investigation report, details such as where the two injured persons were found, where was bolero vehicle, where was motorcycle, the names of the injured persons whose blood stains were found on the soil as also in which state the deceased was found at the place of occurrence. In paragraph no. 60 of his cross-examination, PW-9 has stated that the incident took place on the paved road of NH-31.

40. In paragraph no. 61, PW-9 has stated that he had not obtained any information regarding the Motorcycle used by the informant on the day of occurrence. In paragraph no.63 and 64, PW-9 has stated that the blood mentioned in the third seizure list, which he had prepared on 24.01.2015, is the blood stains of both the injured, which he could not mention in the earlier seizure list. In paragraph no. 65 of his cross-examination, PW-9 has stated that in para 7 he has mentioned about inspection of the place of occurrence but he has not mentioned about the

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blood stained earth in the seizure list. He had sealed the blood stained earth but it was not mentioned in the diary. He does not remember as to how many people had accompanied him with the injured person from the place of occurrence to the hospital in the government jeep but officer Jawahar Lal Singh was present, however he cannot say as to who all were present there when the injured were being taken to the government hospital in a government jeep. After receiving information about the occurrence, he does not remember as to at what time he had reached the place of occurrence and for how long he had stayed at the place of occurrence. In paragraph no. 66, PW-9 has stated that he does not remember when he met Rajesh Chaudhary for the first time on the day of the occurrence. In paragraph no. 69 to 71 of his cross examination, PW-9 has stated that he was already acquainted with Shravan Kunwar and due to team work, he did not take the statement of Shravan Kunwar but when he met Shravan Kunwar at the hospital, he was in position to give his statement. PW-9 has next stated that he did not consider it appropriate to take the re-statement of the informant before inspecting the place of occurrence. In paragraph no.73 of his cross-examination, PW-9 has stated that he has not written in para-9 regarding the mobile on which he received the

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information and from which mobile the information was received and at what time. In paragraph no.74 of his cross-examination, PW-9 has stated that he had made inquiries from the owner of Bolero vehicle as to whether his car was stolen or someone had taken it but it was not mentioned in the diary. PW-9 has stated that he did not go on his own to interrogate the vehicle owner, rather he had inquired from an informer. In para no.75 of his cross-examination, PW-9 has stated that M.V.I of motorcycle was conducted but Bolero's M.V.I. was not done, hence on account of inspection report of motor vehicle being not available, the same has not been mentioned in the diary.

41. In paragraph no. 76 of his cross-examination, PW-9 has stated that he has not recorded the statement of Jawahar Lal Singh (PW-15), who had recorded the Fardbeyan. In paragraph no. 77 and 78 of his cross-examination, PW-9 has stated that he was not in Jhandapur OP when he received information about the occurrence on Mobile, since he was in court and he had informed Bihpur police station about the occurrence through mobile from the court itself. PW9 has stated that the date and time of receipt of information at the police station, which has

been mentioned in Column 3 (ख) of the formal FIR as 14:05

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hours, has been mentioned on his information leading to registration of the FIR, however he has not mentioned the same in para no. 9 of the diary. In para no. 80 of his cross-examination, PW9 has stated that he did not take photographs of Bolero vehicle and Motorcycle. In para no. 82 to 85 of his cross-examination, PW-9 has stated that he does not remember the time when the re-statement of the informant was recorded and when the statements of witnesses Lakshmi Devi, Nikky Devi and Chandan Kunwar were recorded. PW-9 has also stated that he did not record the statement of any independent witness rather he had recorded the statement of only family members of the deceased.

42. In paragraph No. 87 of his cross-examination, PW-9 has stated that the statement of witness Chandan Kunwar (PW1) was not recorded on 23.01.2015. Chandan Kunwar had given a statement which is hearsay, since he is not an eyewitness to the occurrence and he has stated in his hearsay statement that Lali Kunwar, Vidyapati Chaudhary, Rinku Kunwar, Rahul Kunwar and Rupesh Kumar had fired shots one by one. In paragraph no. 88 of his cross-examination PW-9 has stated that in Para no. 41, Rajesh Chaudhary (PW4) has given statement in his presence to the effect that six persons were armed with weapons and by

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Bolero vehicle they had hit motorcycle, which was being ridden by both the deceased persons, however he and Sharvan had moved ahead for some distance and then they saw that Lali Kunwar, with the weapon in his hand had shot Kaushal Kumar Kunwar on his right leg, leading to him having fallen down there and he started quivering, whereafter Rinku Kunwar had fired gunshot on the head of Bambam Chaudhary, Rahul Kunwar had fired gunshot on the body of Bambam Chaudhary and Rupesh Kunwar had also fired gunshot on the body of Bambam Chaudhary as also Vidyapati Choudhary had shot Kaushal Kumar Kunwar with the weapon being held by him in his hand. In paragraph no. 89 of his cross-examination, PW-9 has stated that re-statement of Sharwan Kunwar (PW-6) has been recorded in which Sarwan Kunwar has stated that the occurrence in question has been given effect to on account of old enmity. In paragraph no. 90 to 92 of his cross-examination, PW9 has stated that he did not verify as to whether it is true that Sarwan Kunwar is an accused in Bihpur police station case number 753/98 or not. PW-9 has stated that he cannot say as to in what context Sarwan Kunwar has mentioned about Bihpur PS Case No. 753/98. PW-9 has denied the suggestion that Rohit Kunwar @ Rinku Kunwar is not involved in the occurrence and

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that he has not conducted proper investigation, rather during the course of investigation, at the instance of the informant, he has given the name of Rinku Kunwar in this case. Lastly, PW-9 has denied the suggestion that he has falsely deposed.

43. PW-10 Kishor Chaudhary has stated in his evidence that the inquest report is of Bambam Chaudhary, which is made in carbon copy and bears his signature and it has been marked as Exhibit Y/1 with objection. It has already been marked in the past as Y for identification. Apart from his signature, it also bears the signature of Murari Kumar, whom he recognizes and the same has been marked as Exhibit Y/2 with objection. In paragraph no. 2 of his cross-examination PW-10 has stated that he understands the meaning of preparation by carbon copy method. It was made by putting carbon sheet below. PW-10 has stated that the document was signed by him at the behest of the police station in-charge. It has signature of two persons and he had signed at only one place. PW-10 has stated that this is not the paper on which he had signed. After the postmortem, the Sub-Inspector had made him sign this paper. PW-10 has identified the signature of Murari Kumar but he states that he cannot say as to whether he signed it first or Murari Kumar had signed it first. PW-10 has further stated that he doesn't know as

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to whether the signature of Murari Kumar, which he has identified is original or not. In para no. 3 of his cross-examination, PW-10 has stated that this is not the paper on which he and Murari Kumar had signed and it does not bear his or Murari Kumar's signature. Lastly PW-10 has stated that it is not a fact that he has falsely deposed.

44. PW-11 Ranjeet Kumar has stated in his evidence that the seizure list prepared using carbon method bears his signature which he has recognized (with objection) and the same also bears the signature of Gautam Chaudhary, which he has recognized. (with objection), which has already been marked for identification as X/1, along with signature of Ranjit Kumar as X/2 and signature of Gautam Choudhary as X/3 for being marked as exhibits. PW-11 has recognized the inquest report of Kaushal Kumar which has been prepared by carbon process and the same bears his signature and the signature of Sudhir Kunwar. This inquest report has already been marked as Y/5 for being exhibited. The signature of Ranjit Kumar is marked as Y/6 and that of Sudhir as Y/7 for identification with objection. In Cross-examination, PW-11 has stated that he is witness to the seizure list. He doesn't remember the time of signing the seizure list and even doesn't remember the date on which it was signed.

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In paragraph no. 4 of his cross-examination, PW-11 has stated that earlier he had signed the paper containing the seizure list. After this he had signed the inquest report. PW-11 has signed one paper at the hospital and the other paper was signed in front of the police. In paragraph no. 5, PW-11 has stated that he understands the meaning of carbon process, i.e. whatever is written on the carbon paper is the carbon process. In Paragraph no. 6, PW-11 has stated that Sudhir Kunwar had signed in front of him. Sudhir Kunwar had signed first and the time when Sudhir had signed, it was written on the paper. He had signed only once on the paper signed by Sudhir Kunwar and on the second paper also he had put his signature once and he had put his signature in the day time.

45. PW-11 has next stated that this is the same paper on which he put his signature at the beginning of the day and the same bears his original signature. In paragraph no. 7, PW-11 has stated that the signature he had put with Gautam Chaudhary is not his original signature as Gautam had signed first. In Paragraph no. 8 of his cross-examination, PW-11 has stated that the paper he and Gautam had signed is called the seizure list and the paper which he and Sudhir had signed is called the inquest report. Inquest report was signed after the postmortem was

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conducted. It was the inquest report of Kaushal Kumar. He came to the hospital when he came to know about Kaushal Kumar's death and then he stayed back at the hospital. In para no. 9, PW-11 has stated that it is not a fact that Gautam and Sudhir have not signed the seizure list and inquest report with him. In paragraph no. 10 of his cross-examination, PW-11 has stated that it is not a fact that no paper was prepared in front of him and he signed it at the request of the police and this is not the paper about which he has said.

46. PW-12 Bablu Kumar has stated in his evidence that search cum seizure list which was prepared through carbon process bears his signature, which he has recognized. Apart from him, it was signed by one Ayush Kumar. A bullet was recovered in his presence in the glass container and its seizure list was prepared. With objection, for identification Exhibit X/3 has been marked from before and now for identification with objection, Bablu Kumar's signature is marked as Exhibit X/4 and Ayush Kumar's signature is marked as exhibit X/5. In paragraph no. 4 of his Cross-examination, PW-12 has stated that he had signed voluntarily. When the sub-inspector showed the items, he put his signature then. This is not his original signature but he again says that it is carbon copy. In para no.5 of his Cross-

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examination, PW-12 has stated that the bullet was shown to him first. He knows when Ayush was shown the bullet as he was shown the bullet later. Ayush was shown the bullet after two minutes. The sub-inspector has kept the bullet in a glass container nearby. He signed on 26.01.2015. He does not know since when sub-inspector was in possession of the bullet kept in a glass container. In paragraph no. 6, PW-12 has stated that in the seizure list, the subject was written as bullet in glass container and the name of the deceased was written as Amit Kumar. He had read it by himself. He had signed at Sub-Divisional Hospital Naugachia. In para no. 7, PW-12 has stated that it is not a fact that nothing was recovered in front of him and he had signed it at the behest of the sub-Inspector. Further, he has stated that it is not a fact that he has falsely deposed.

47. PW-13 Dinesh Yadav has stated in his evidence that he had not made thumb impression on any seizure list. This witness has been declared hostile by the prosecution.

48. PW-14 Subodh Kumar Yadav has stated in his evidence that he recognizes his signature which is present on the seizure list made by carbon process. Exhibit has been marked as X/2 from before (With objection for identification). The same is now marked as X/3 for identification. PW-14 has stated that nothing

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was recovered in front of him. In Cross-examination, PW-14 has stated that this is not his signature which is on the original paper and it is true that this is not the paper on which he had put his signature.

49. PW-15 Jawahar Lal Singh has stated in his evidence that the fardbeyan is in his handwriting and bears his signature. Rajesh Chaudhary (PW-4) had signed it in front of him and Shravan Kunwar (PW-6) has also signed on it. This has already been marked as exhibit. Jawahar Lal Singh's signature and entire fardbeyan have been marked as Exhibit-1/2 and signature of Rajesh Chaudhary has been marked as Exhibit-1/3. Shravan Kunwar (PW-6) has also signed in front of him, which he recognizes and the same has already been marked as Exhibit-1. PW-15 has stated that the Inquest report is in his handwriting and bears his signature as also the signatures of Murari Kunwar (PW-2) and Kishore Chaudhary (PW-10) and the same has already been marked as Y/l and Y/2 and Jawahar Lal Singh's signature and complete inquest report in carbon copy (with objection) are marked as Ex. Y/3. PW-15 has stated that he has prepared the inquest report of Kaushal Kumar (with objection for identification). The same bears the signature of Sudhir Kunwar and Ranjit Kunwar (PW-11) and it has already been

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marked Ex. Y/7 and Y/6. The entire inquest report and signature of Jawahar Lal Singh have been marked as Exhibit Y/8.

50. In paragraph no. 4 of his cross-examination, PW-15 has stated that the fardbeyan which he had taken at Naugachia Hospital was not within his jurisdiction but S.H.O, Kaushal Kumar (PW-9) had authorized him for recording fardbeyan, however he did not give any written paper. In paragraph no. 5 of his cross-examination, PW-15 has stated that the dead body of the deceased was brought to Naugachia hospital for postmortem. He and Kaushal Kumar (PW-9) had come together from the place of occurrence and before that they were at Jhandapur OP. Both of them had come together from Jhandapur OP on a police jeep. The inquest report of the deceased was not made on the spot because life of another injured person was to be saved. The deceased had a private vehicle and there was a pick up van too. When PW-15 and other police personnel had reached the place of occurrence, they had brought the deceased and another injured person to the hospital in a pickup van. No paperwork was done in his presence. PW-15 states that he does not remember as to who all came with the jeep from the place of occurrence to Naugachia Hospital. He doesn't remember as to who all came with the deceased and the injured in the pickup

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van. In paragraph no. 6 of his cross-examination, PW-15 has stated that in the afternoon, information was received by SHO Kaushal Kumar at Jhandapur OP. He does not remember as to at what time Kaushal Kumar had received such information at Jhandapur OP. PW-15 has stated that they got information in afternoon that shots have been fired.

51. In paragraph no.7 of his cross-examination, PW-15 has stated that his statement regarding this case was taken by SHO Kaushal Kishore on 23.01.2015 but he doesn't remember the time as his statement was taken at Jhandapur OP. In paragraph no. 8 and 9 of his cross-examination, PW-15 has stated that the inquest report was prepared after recording of *fardbeyan* and he had no prior acquaintance with the person whose *fardbeyan* was recorded by him and he had seen the said person on the day of the incident at 01:30 hours as also the information regarding his name was given at 14:30 hours on 23.01.2015. The informant's name and address were not verified before or after his statement. The names and addresses of witnesses to the fardbeyan were not verified as also the names and addresses of the two witnesses to the inquest report were not verified. In paragraph no. 10 of his cross-examination, PW-15 has stated that two papers were made at the hospital, one on 23rd and the

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other on 26th and the same were made at Naugachia Sub-Divisional Hospital. Both the papers are called inquest report. PW-15 has stated that the second inquest report was made on 26.1.2015 but at that time he was not the Investigating Officer of this case. PW-15 has also stated that he was at the Sub-Divisional hospital Naugachia from 14:00 to 16:00 hours on 23.01.2015. There was a Chowkidar with him, whose name he doesn't remember as also one police officer, namely Barmeshwar Singh was there who is an ASI. At the time of preparation of inquest report on 26.01.2015, he, Chowkidar and Police force were there, i.e. at Naugachia Hospital from 6 a.m. to 10 a.m. PW-15 has stated that he had prepared the inquest report as per the verbal orders of the police station in-charge, although he was not the I.O. of this case. On 26.01.2015 at 5:30 a.m., on the verbal orders of the police station in-charge the inquest report was prepared at Jhandapur OP and at that time, he was aware that the I.O. of this case is Jhandapur O.P. police station in-charge, Kaushal Kumar.

52. In paragraph no. 11 of his cross-examination, PW-15 has stated that custody of the body of the deceased has not been taken after the postmortem was done. The custody of the dead body of the person whose inquest report was made on

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26.01.2015 was also not taken. On 23.1.2015 & 26.01.2015, he had left Naugachia Hospital after postmortem of both the deceased had been conducted and he had come to know from the doctor that postmortem of both the deceased had been completed. PW-15 has stated that he was informed by the doctor at 16:30 hours upon completion of postmortem of the deceased on 23.01.2015 and on 26.01.2015, he was informed by the doctor at 9:00 hours about completion of postmortem of the other deceased. In paragraph no. 12 his cross-examination, PW-15 has stated that he doesn't know as to whom the pick-up vehicle belong to, by which the deceased and the injured were brought, however he has stated that when the deceased was loaded on the pickup vehicle, his body was bleeding and the injured person was also bleeding and blood might have fallen on the pickup vehicle as well but the same was not marked as exhibit. The injured person was admitted at Naugachia hospital at around 14 o'clock on 23.01.2015. The injured was referred on the same day, i.e. on 23.01.2015. The injured person was kept for about ten to fifteen minutes at the Naugachia hospital. In paragraph no. 13 and 14 of his cross-examination, PW-15 has stated that on 23.01.2015, he had admitted the injured at Naugachia Hospital but he had not issued his injury report. PW-

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15 has stated that he had signed on the originals of both the inquest reports. In paragraph no. 15, PW-15 has stated about the boundaries of the place of occurrence. PW-15 has stated that Tata Chimney was at a distance of half a kilometre south from the place of occurrence.

53. In para no. 18 of his cross-examination, PW-15 has stated that when he reached the place of occurrence, he does not remember which way the head, legs and hands of the deceased and the injured were situated, however both were bleeding. He does not remember at what time he reached the place of occurrence after the occurrence. The deceased and the injured were loaded on a pickup vehicle between 1 to 1:30 hours. In paragraph no. 19, PW-15 has stated that when he touched the heartbeat of deceased Kaushal Kumar, he found him to be dead. In para no. 20, PW-15 has stated that after the occurrence on 23.01.2015, when he reached the spot, there was no traffic on the road. PW-15 has also stated that he was not previously acquainted with the people whose signatures were taken on the paper. In paragraph no. 24 to 28, PW-15 has deposed that it is not a fact that informants' statement was not taken at Sub-Divisional Hospital Naugachia at 14:30 hours. PW-15 has also stated that it is not a fact that he had not taken the signature of

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any witness on the papers. PW-15 has further stated that it is not a fact that no action was taken by him and the members of his police station at the sub-divisional hospital. PW-15 has stated that it is not a fact that he is deposing falsely.

54. After closing the prosecution evidence, the learned Trial Court recorded the statement of the appellant on 21.09.2019 under Section 313 of the Cr.P.C. for enabling him to personally explain the circumstances appearing in the evidence against him, however he claimed himself to be innocent and denied the same.

55. We have perused the impugned judgement of the learned Trial Court, the entire materials on record, as also the evidence adduced at the trial and have given our thoughtful consideration to the rival submissions made by the learned counsel for the appellant as well as the learned APP for the State.

56. The foremost aspect which is required to be adjudged is as to whether any ocular evidence is available on record to prove the guilt of the aforesaid appellant for the offence with which he has been charged and as to whether the date, time, mode and manner of occurrence have stood proved on the basis of ocular evidence led by the prosecution or not. Now coming to the ocular evidence, we find that PW-1 Chandan Kumar, PW-4

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Rajesh Choudhary and PW-6 Sharwan Kumar are stated to be eye witnesses to the occurrence while PW-2 Murari Kumar, PW-3 Nikky Devi and PW-5 Laxmi Devi are family members of the deceased, nonetheless they have categorically stated that they have not seen the alleged occurrence, hence we do not propose to rely on the testimony of the said witnesses. PW-7 Dr. B. P. Singh and PW-8 Dr. Arun Kumar Sinha are the doctors who have conducted the postmortem examination of Bambam Chaudhary and Kaushal Kumar on 26.01.2015 at 8:30 a.m. and on 23.01.2015 at 4:20 p.m. respectively. As far as PW-10, PW-11, PW-12, PW-13 and PW-14, namely Kishore Chaudhary, Ranjeet Kumar, Bablu Kumar, Dinesh Yadav and Subodh Kumar Yadav are concerned, they are witnesses to the inquest reports and seizure lists prepared during the course of investigation. PW-9 Kaushal Kumar and PW-15 Jawahar Lal Singh are the Investigating Officers of the connected criminal case.

57. In view of the fact that PW-1 Chandan Kumar, PW-4 Rajesh Choudhary and PW-6 Sharwan Kumar are stated to be eye witnesses to the occurrence, we will now deal with their evidence. PW-1 Chandan Kumar has stated in his testimony that the occurrence dates back to 23.01.2011 at 12:20 p.m. when he was going home on a motorcycle along with PW-4 and PW-6,

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who were riding on his motorcycle while Bambam Chaudhry and Kaushal Kumar were coming on another motorcycle. PW-1 has further stated in his deposition that when he had reached near Baghri Bridge, his motorcycle was hit by Bolero vehicle, whereafter the accused persons had alighted from Bolero vehicle and fired gunshots on Kaushal Kumar and Bambam Chaudhry. On the contrary we find that PW-4 and PW-6 have not stated about PW-1 Chandan Kumar accompanying them on their motorcycle apart from the fact that the statement of PW-1 to the effect that his motorcycle was hit by Bolero vehicle is not supported by the ocular evidence on record. In fact, all the prosecution witnesses have stated in their evidence that Bolero vehicle had hit the motorcycle which was being driven by the deceased persons, namely Bambam Chaudhry and Kaushal Kumar. We also find from the deposition of PW-9 (I.O.) that he has stated in paragraph no.87 of his cross-examination that he had not recorded the statement of PW-1 on 23.01.2015 and he had given a statement based on hearsay as also he is not an eye-witness to the occurrence. Thus, as far as PW-1 is concerned we find from the evidence on record that firstly, he is not an eye-witness to the alleged occurrence and secondly, his testimony is full of contradictions, hence his testimony cannot be relied upon

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for the purposes of upholding the conviction of the appellant.

58. The other eye witness to the occurrence is stated to be PW-4 Rajesh Choudhary, hence we now proceed to examine his testimony. PW-4 has stated in his evidence that the occurrence dates back to 23.01.2015 at around 12:00 hours while he was at the place of occurrence. At that time, they were travelling on two motorcycles, however Bambam (deceased) and Kaushal (deceased) were going ahead on one motorcycle while he and Sarwan Kumar (PW-6, i.e. the informant) were following from behind but in the meanwhile one Bolero vehicle had arrived there and hit the motorcycle which was ahead, leading to the said motorcycle falling on the ground and then 5-6 people came out of the said Bolero vehicle. Thereafter, the appellant i.e. Rinku Kunwar had shot Bambam Chaudhary and Rahul had shot Kaushal Kumar. PW-4 has stated that he was present at the place of occurrence when the firing had taken place. PW-4 has further stated that the appellant had shot on the head of Bambam Chaudhary (deceased). In fact, PW-4 has also stated that he has deposed in Session Trial No.80 of 2017 to the effect that the accused persons had alighted from Bolero vehicle, whereafter Rinku had shot Bambam and Rahul had shot Kaushal. In paragraph no.21 of his cross-examination, PW-4 has stated that

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a dispute was existing from 1-1½ years prior to the incident. In paragraph no.23 of his cross-examination, PW-4 has stated that apart from one shot having been fired by Rahul and one shot by Rinku, he does not know as to who else had fired gunshots. In paragraph no.29 of his cross-examination, PW-4 has stated that blood was spilled all over the spot where gunshots were fired on the deceased. In paragraph no.35 of his cross-examination, PW-4 has stated that the bullet was shot at point blank range.

59. At this juncture itself, it would be relevant to point out that Kaushal Kumar (PW-9, i.e. the Investigating Officer) has stated in his evidence, in paragraph no.88 thereof that PW-4 has made a statement before him, as has been recorded in paragraph No. 21 of the case diary, to the effect that six persons armed with weapons had hit the motorcycle which was being ridden by both the deceased persons by Bolero vehicle, while he and PW-6 had moved ahead a bit but they saw that Lali Kunwar had shot Kaushal Kumar Kunwar on his right leg with the weapon he was holding in his hand, leading to him falling down on the ground, whereafter Rinku Kunwar (appellant) had fired gunshot on the head of Bambam Chaudhary and then Rahul Kunwar as also Rupesh Kunwar had fired gunshot on the body of Bambam Chaudhary whereupon, Vidhapati Chaudhary had shot Kaushal

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Kumar Kunwar with the weapon being held by him in his hand. Thus, we find that the evidence of PW-4 also stands corroborated by the testimony of Investigating Officer, i.e. PW-9 and moreover, there is no contradiction much less variance in the evidence of PW-4 and his statement made before the police under section 161 of the Cr. P. C.

60. Now coming to the evidence of PW-6 Sharwan Kunwar, who is the informant of this case, we find that he has stated in his evidence that the occurrence took place on 23.01.2015 at 12:45 p.m., when the Bolero vehicle came and hit the motorcycle on which Kaushal Kumar and Bambam Chaudhary were travelling, whereafter Rinku Kunwar (appellant) and Rahul had got down from the Bolero vehicle and had fired gunshot resulting in both the deceased persons sustaining firearm injury and while Kaushal Kumar died on the spot but Bambam was quivering after being shot three times. The *fardbeyan* of PW-6 was recorded by the Sub-Inspector, Jawahar Lal Singh (PW-15) at Naugachia Hospital. In paragraph no.16 of his cross-examination, PW-6 has stated that Rinku Kumar (appellant) with the weapon which he was holding in his hand had shot Bambam Chaudhary (deceased) and Rupesh Kunwar, with the weapon in his hand, had fired gunshot on the body of Bambam

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Chaudhary. In paragraph no.32 of his cross-examination, PW-6 has stated that it is not a fact that he has not seen the incident happening with his own eyes.

61. At this juncture itself, it would be relevant to point out that Kaushal Kumar (PW-9, i.e. the Investigating Officer) has stated in his evidence, in his examination-in-chief that he had recorded the statement of the informant, whereafter seizure lists and inquest reports were prepared and then the statements of other witnesses were recorded by him. PW-9 has also deposed that he had also recorded the restatement of PW-6. Thus, we find that PW-9 has not disputed either the *fardbeyan* or the restatement of PW-6 in his testimony.

62. Having considered the entire prosecution evidence and upon its careful analysis, we find that the evidence of prosecution witnesses, especially PW-4 and PW-6 apart from the evidence of Investigating Officers i.e. PW-9 and PW-15 as also the doctors i.e. PW-7 and PW-8 are cogent, convincing, creditworthy and reliable. We find that the date, time, mode and manner of occurrence have stood proved from the testimony of PW-4 and PW-6, inasmuch as there is no dearth of ocular evidence so as to make the same a basis for proving the guilt of the appellant beyond all reasonable doubt apart from the fact

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that the ocular evidence also stands fully corroborated from the medical evidence adduced by PW-7 and PW-8, the evidence of PW-7 being relevant in the present case in as much as the appellant had shot Bambam Chaudhary. PW-7 upon having conducted the postmortem examination of the dead body of Bambam Chaudhary @ Amit Kumar Chaudhary, has found several ante-mortem injuries, including firearm injury and he has opined that the death has occurred due to hemorrhage and shock as a result of the noted injuries caused by firearm which goes to substantiate the mode and manner of occurrence depicted by the eye-witnesses, i.e. PW-4 and PW-6 in their evidence adduced before the learned Trial Court.

63. We also find that no contradictions have been elicited much less drawn by the defence while cross-examining the aforesaid witnesses. Thus, there is no reason to doubt the genuineness of the testimony of the aforesaid witnesses on the basis of which the learned Trial Court has convicted the appellant. We further find that the ocular testimony of witnesses stands corroborated by the medical evidence and the evidence led in the present case would show that the medical evidence in fact supports the injuries which have been caused upon the deceased in the manner alleged, hence the ocular evidence

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cannot be thrown away. In this regard, reference be had to a judgment rendered by the Hon'ble Apex Court report in the case of ***Solanki Chimanbhai Ukabhai v. State of Gujarat*****,** reported in ***(1983) 2 SCC 174*****.**

64. Considering the facts and circumstances of the present case and the evidence which have been brought on record to prove the allegations levelled against the appellant beyond pale of any reasonable doubt as well as considering the credibility and trustworthiness of the evidence of the prosecution which has not been discredited during the course of cross-examination coupled with the postmortem report and for the foregoing reasons, we find that there is nothing to create any doubt in our minds. We have examined the materials available on record and do not find any apparent error in the impugned judgment of conviction and the order of sentence, hence the same does not require any interference.

65. We may now advert to the submission of the learned Senior Counsel for the appellant to the effect that all the circumstances which have emerged during the course of recording the evidence of prosecution witnesses were not put to the appellant while recording his statement under Section 313 of the Cr.P.C., hence the same cannot be used against the appellant.

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We are of the view that a bare perusal of the statement of the appellant dated 21.09.2019, recorded by the learned Trial Court under Section 313 of the Cr.P.C. would show that all the circumstances which can be culled out from the evidence of prosecution witnesses have been put to the appellant, hence we do not find any merit in the said argument advanced by the learned Senior Counsel for the appellant.

66. Accordingly, the present criminal appeal, i.e. Criminal Appeal (DB) No. 298 of 2020 stands dismissed. The appellant Rinku Kunwar @ Rohit Kunwar, who is already in custody, is directed to serve out the remaining sentence.

(Mohit Kumar Shah, J)

I agree.

Arun Kumar Jha, J:-

(Arun Kumar Jha, J)

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CAV DATE	02.04.2026
Uploading Date	20.08.2026
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