

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.496 of 2017**

Arising Out of PS. Case No.-55 Year-2004 Thana- ATRI District- Gaya

Ravindra Prasad @ Panchu Singh @ Ravindra Singh Son of Late Ganesh Singh, Resident of village- Police Station- Atri in the District of Gaya.
... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 341 of 2017

Arising Out of PS. Case No.-55 Year-2004 Thana- ATRI District- Gaya

Ashok Singh Son of Late Jagdeo Singh, resident of village - Pondey Bigha, Police Station - Atri in the district of Gaya

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 496 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Sunil Kumar, Advocate

For the State : Mr. Sujit Kumar Singh, APP

For the Informant : Mr. Binod Bihari Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 341 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Sunil Kumar, Advocate

For the State : Mr. Sujit Kumar Singh, APP

For the Informant : Mr. Binod Bihari Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and**

HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 17-05-2024

These two appeals have been preferred for setting aside the judgment of conviction and order of sentence dated 18.02.2017 and 27.02.2017 respectively passed by the learned Additional District and Sessions Judge-I, Gaya (hereinafter referred to as the



‘trial court’) in Sessions Trial No. 522 of 2008/44 of 2016 arising out of Atri P.S. Case No. 55 of 2004 registered under Sections 147, 148, 149, 323, 324, 307, 302 of the Indian Penal Code (in short ‘IPC’) and Section 27 of the Arms Act.

2. By the judgment under appeal (hereinafter referred to as the ‘impugned judgment’), the learned trial court has convicted the appellants for the offences under Sections 302/34 IPC and Section 27 of the Arms Act and Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) has also been held guilty under Section 325/34 IPC. They have been sentenced to undergo rigorous imprisonment for life with fine of Rs. 10,000/- each under Section 302/34 IPC and in default of payment of fine, they shall further undergo rigorous imprisonment for one year. Further they have been sentenced to undergo rigorous imprisonment for five years with fine of Rs. 5,000/- each under Section 27 of the Arms Act and in default of payment of fine, they shall undergo rigorous imprisonment for six months. Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) has also been sentenced to undergo rigorous imprisonment for five years with fine 5,000/- and in default of payment of fine, he shall further undergo rigorous imprisonment for six months under Section 325/34 IPC. All the sentences are to run concurrently.



Prosecution Story

3. As per the prosecution story, the *fardebayan* (Exhibit-6) of Janak Kishore Singh (PW-1) was recorded by A.S.I. J.K. Yadav of Magadh Medical Police Station, Gaya (in short 'MMPS') on 04.09.2004 at 8:30 am in Anugrah Narayan Magadh Medical College and Hospital (in short 'ANMMCH'), Gaya in which the informant stated that on 03.09.2004, the Block Development Officer (in short 'B.D.O.') of Mohra Block had visited the village of informant for inquiry in respect of Indira Awas. The informant, his son and some people of his village had deposed against Ravindra @ Panchu Singh, the Mukhiya of Sevatar Gram Panchayat and after inquiry when the B.D.O. went from 'Riula' then on the same day at about 14:00 hours (i) Ravindra @ Panchu Singh; (ii) Deo Nandan Singh; (iii) Prabhanjan Singh; (iv) Tanik Singh; (v) Babloo Singh; (vi) Ashok Singh; and (vii) Umesh Singh armed with weapons with common intention to kill encircled the informant and others in the paddy field situated to the west of Devi Asthan and said that you people deposed against me and therefore, now they should go to heaven to give evidence. After saying this, shouting at the prosecution party with an intention to kill, Ravindra @ Panchu Singh fired from the rifle in his hand upon Manohar Singh, the son of the informant. The shot first hit his left hand and after piercing the same, it went into the chest. When



the informant and his son Mukesh went to save Manohar, then Deo Nandan Singh, Babloo and Prabhanjan Singh assaulted them by the butt of rifle and gun causing injury on head. The informant was assaulted by Tanik Singh, Ashok Singh and Umesh Singh on his left hand by butt of gun. The informant had become unconscious whereafter he was brought to ANMMCH on the same day and during treatment, Manohar Singh died.

4. The *fardebayan* of the informant resulted in registration of formal FIR *vide* Atri P.S. Case No. 55 of 2004 dated 04.09.2004 under Sections 147, 148, 149, 323, 324, 307 and 302 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act. After investigation, Police submitted chargesheet being charge-sheet no. 63 of 2005 dated 31.12.2005 against (i) Ravindra Singh @ Panchu Singh @ Ravindra Prasad (the appellant in Cr. Appeal (DB) No. 496 of 2017), (ii) Deo Nandan Singh, (iii) Prabhanjan Singh, (iv) Tanik Singh @ Mrityunjay, (v) Babloo Singh, (vi) Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) and (vii) Umesh Singh. The learned Chief Judicial Magistrate, Gaya took cognizance on 18.01.2006.

5. It appears that initially Ravindra Singh @ Panchu Singh @ Ravindra Prasad (the appellant in Cr. Appeal (DB) No. 496 of 2017) was absconding, process under Section 82 of the Code of Criminal Procedure (in short 'CrPC') was issued against



him. So far as the other six accused persons were concerned, they had appeared. On 18.01.2006, learned Magistrate took cognizance of the offences under the aforementioned sections and issued summons to all the accused persons. Since the offences punishable under Sections 302 and 307 IPC were triable by the court of sessions, the learned Magistrate committed the records to the court of sessions *vide* order dated 13.04.2006 and Sessions Trial No. 251 of 2006 was registered in the court of learned Sessions Judge, Gaya. On 19.01.2008, Ravindra Singh @ Panchu Singh (appellant in Cr. Appeal (DB) No. 496 of 2017) was arrested and produced before the learned Chief Judicial Magistrate. On 13.02.2008, his records were committed to the court of sessions for trial. It was registered as Sessions Trial No. 106 of 2008. In the meantime, Sessions Trial No. 251 of 2006 was transferred to the court of learned FTC-IV, Gaya where it was registered as Sessions Trial No. 133 of 2006. One of the accused namely Ashok Singh, who was being tried in Sessions Trial No. 133 of 2006, absconded, therefore, his records were separated by the learned trial court. Later on, Ashok Singh was arrested and in his respect, Sessions Trial No. 139 of 2008 was registered. Sessions Trial No. 106 of 2008 which was registered in the case of Ravindra Singh @ Panchu Singh was transferred to the court of FTC-IV, Gaya and in



the FTC-IV it was registered as Sessions Trial No. 23 of 2008. On 08.09.2008, charges were framed against Ravindra Singh @ Panchu Singh under Sections 302 & 307 IPC and Section 27 of the Arms Act. It appears that by an order passed in Sessions Trial No. 139 of 2008, both the Sessions Trial i.e. 23 of 2008 and 139 of 2008 were amalgated. In this manner, Ravindra Singh @ Panchu Singh and Ashok Singh both have been tried together. The records were transferred from one court to another where different sessions trial number were recorded. Lastly on 18.02.2016, the trial was transferred to the court of learned 1st ADJ, Gaya where it was registered as Sessions Trial No. 44 of 2016.

6. In course of trial, the prosecution examined seven witnesses and the defence brought two witnesses. On behalf of the prosecution, as many as 11 exhibits were marked. The name of the witnesses who deposed for the prosecution and the defence as also the list of exhibits are being shown hereunder for a ready reference:-

List of Prosecution witnesses.

PW-1	Janak Kishore Singh
PW-2	Yugal Kishore Singh
PW-3	Mukesh Kumar Singh
PW-4	Rakesh Raman
PW-5	Dr. Ajay Kumar Jha
PW-6	Dr. Asim Mishra
PW-7	Kapildeo Singh



List of Exhibits on behalf of the Prosecution.

Exhibit '1'	Signature of the Informant on <i>Fardbeyan</i>
Exhibit '1/1'	Formal FIR
Exhibit '2'	Patrank 329
Exhibit '3'	Patrank 165
Exhibit '4'	Application given to DDC
Exhibit '5'	Photocopy of letter no. 402
Exhibit '6'	Photocopy of <i>Fardbeyan</i>
Exhibit '7'	Post-mortem report
*Exhibit '7'	Injury report of deceased Manohar Singh
Exhibit '7/1' and '7/2'	Injury reports of Janak Kishore Singh and Mukesh Kumar Singh
Exhibit '7/3'	Supplementary Injury Report of the Informant by PW-5
Exhibit '8' and '9'	Signatures on two protest petitions of the informant
Exhibit '10'	Writing of D.K. Yadav on <i>Fardbeyan</i>
Exhibit '11'	Signature of I.O. on formal FIR.

Findings of the Trial Court

7. The learned trial court held that the accused persons namely Ravindra Prasad @ Panchu Singh, Ashok Singh, Umesh Singh, Tanik Singh, Babloo Singh, Deo Nandan Singh and Prabhanjan Singh armed with deadly weapons had surrounded with intention to kill the deceased Manohar Singh. It has been recorded by the learned trial court that accused Ravindra Singh @

* Exhibit 7 seems to have been marked twice on two different documents.



Panchu Singh fired the shot with rifle as a result whereof the resultant bullet hit the chest of the deceased Manohar Singh after breaking his right hand.

8. The learned trial court further held that Janak Kishore Singh father of the deceased, Mukesh Singh brother of the deceased and Yugal Kishore Singh, uncle of the deceased went to rescue the deceased Manohar Singh, then accused persons, namely, Ashok Singh, Tanik Singh and Umesh Singh assaulted Janak Kishore Singh with *kunda* of gun, accused Deo Nandan Singh, Prabhanjan Singh and Babloo Singh had also assaulted with *kunda* of rifle and gun to Mukesh Singh.

9. The learned trial court held that the accused Ravindra Prasad @ Panchu Singh (appellant in Cr. Appeal (DB) No. 496 of 2017) and Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) are guilty of the charge of murder punishable under Sections 302/34 IPC and Section 27 of the Arms Act. The learned trial court, however, held that the prosecution has not been able to establish the charge under Section 307 IPC against both the accused because both the accused were armed with rifle but they had not fired any shot to any other person like informant Janak Kishore Singh, his son Mukesh Singh and his brother Yugal Kishore Singh. The trial court, however, found that Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) is guilty of the charge of the offence punishable under Sections 325/34 IPC as he



had caused grievous injury to Janak Kishore Singh according to Exhibit-7/1. Both the accused (the appellants) were, thus, found guilty of the charges under Sections 302/34 IPC and 27 of the Arms Act. Ashok Singh has been, in addition found guilty of the offence under Section 325 IPC and accordingly both have been convicted.

Submissions on behalf of the Appellants

10. Mr. Ajay Kumar Thakur, learned counsel for the appellants, has made the following submissions:-

(i) There is a delay in recording of the *fardebayan*, lodging of the FIR and sending the same to the court of learned jurisdictional Magistrate. It is submitted that the date of occurrence is 03.09.2004 at 2:00 pm, as per prosecution story, both the injured as well as the deceased were alive when they reached ANMMCH, Gaya at around 4-4:30 pm. The MMPS is within the campus of the hospital but no information was given to MMPS and after about 16 hours of reaching the hospital and 19 hours from the incident, the *fardebayan* of PW-1 Janak Kishore Singh was recorded. It is further submitted that the delay in recording of the *fardebayan* and lodging of the FIR is also significant inasmuch as it would appear that though the *fardebayan* was recorded on 04.09.2004 at 8:30 am, the formal FIR was lodged only at 4:45 pm and the FIR was received in the court of learned jurisdictional Magistrate on 06.09.2004. It is, thus, submitted that there is a substantive delay on all these



aspects for which no plausible explanation has been provided by the prosecution.

(ii) Learned counsel further submits that in this case, the prosecution has not been able to establish the genesis of the occurrence. It is the consistent case of the prosecution witnesses that some complaints of financial embezzlement in the implementation of Indira Awas Yojana were made against Ravindra Singh (Mukhiya) (appellant in Cr. Appeal (DB) No. 496 of 2017), for which two government officials and several villagers had assembled at the Samudaik Bhawan on the date of occurrence. However, the prosecution has not brought on record copy of any written complaint/representation, if any, made against Ravindra Singh (appellant in Cr. Appeal (DB) No. 496 of 2017). No government official or a co-villager attending the inquiry has been examined. No beneficiary of the Indira Awas Yojana has been examined as a witness and according to him, there is no iota of evidence to conclusively prove that there was any gathering with regard to the alleged complaint against accused Ravindra Singh for the alleged misappropriation/embezzlement of money under the Indira Awas scheme.

(iii) Learned counsel submits that Janak Kishore Singh (PW-1) has stated in his deposition in paragraph '7' that he had no prior



enmity with Panchu Singh but his attention was drawn towards his earlier deposition in the connected trial in which he has stated about the cases earlier contested between the parties. In paragraph '5' of his deposition, PW-3 has clearly stated about prior enmity.

(iv) It is submitted that Yugal Kishore Singh (PW-2) claims himself to be an eyewitness and he has given graphic details of the entire occurrence. He happens to be the uncle of the deceased but he does not claim to have gone to the hospital along with the deceased, therefore, he could have very well informed the Police Station about the incident but he did not take any steps for reasons best known to him.

(v) Learned counsel submits that in this case, out of the alleged eyewitnesses, the three witnesses namely Janak Kishore Singh (PW-1), Yugal Kishore Singh (PW-2) and Mukesh Singh (PW-3) are immediate family members of the deceased being father, uncle and brother respectively. It is submitted that according to the prosecution witnesses, several villagers had gathered at the place of occurrence. PW-1 has stated that there were about 60 to 70 persons present at the Samudaik Bhawan and subsequently, 10-20 more persons assembled. PW-3 Mukesh Kumar Singh has specifically taken names of Lakhan Singh, Umesh Singh and Bajrangi Singh who had lifted the deceased



from paddy field but none of these witnesses have either been examined in this case or they took any step to inform the Police about the alleged incident. It is submitted that non-examination of independent witnesses, though available, would prove fatal to the prosecution case.

(vi) Learned counsel further submits that material witnesses have been withheld by the prosecution causing prejudice to the defence. A.S.I. J.K. Yadav of MMPS, who recorded the *fardbeyan* and prepared the inquest report, has not been examined. It is he who could have narrated the actual state of affairs at the hospital and the defence could have confronted him as to exactly at what time he received the information about the occurrence/death of the deceased and as to what were the reasons for delayed *fardbeyan* of the informant.

(vii) It is submitted that two witnesses, namely, Ravindra Kumar and Sri Ram Kumar, who are signatories to the inquest report have not been examined and this has again caused serious prejudice to the defence case as the defence could not confront them with regard to the contents of the inquest report *viz.* time of inquest, the kind of injury which was apparently seen and what led them to give an opinion of the same being caused by fire arm.



11. Learned counsel has given much emphasis on his submission that in this case the place of occurrence has not been duly proved by the prosecution. According to him, different witnesses have made different statements regarding the place of occurrence. According to him, PW-1 has stated that the place of occurrence is at 'Devi Asthan'. There is no mention that the occurrence took place in the paddy field. This is to be taken as a contradiction to the statements made in the *fardebayan*. Yugal Kishore Singh (PW-2) has also stated that place of occurrence is near 'Devi Asthan', however Mukesh Singh (PW-3) has stated the place to be the paddy field of Shyam Jha. The I.O. (PW-4) has stated that at the place of occurrence he did not find any pellet. PW-4 had not mentioned in the case diary as to whether the paddy crop in the field which was the place of occurrence was found trampled or not. He had not found any empty cartridge at the place of occurrence. Learned counsel submits that the I.O. had not found any blood mark near Devi Asthan and he had not sent any blood-like sample from the place of occurrence for any examination.

12. It is submitted that it is a case of false implication of the appellants on account of past enmity. It is submitted that Janak Kishore Singh (PW-1) as well as Mukesh Kumar Singh (PW-3) both have stated about prior litigation between the parties



and sour relationship. Learned counsel submits that the medical evidence is irresistibly in conflict with oral evidences. It is his submission that although Dr. Ajay Kumar Jha (PW-5) claims that there were two charring wounds on the person of the deceased but the case of the prosecution right from the FIR and in the deposition of the witnesses is that there was a single shot fired by the Ravindra Singh @ Panchu Singh (appellant in Cr. Appeal (DB) No. 496 of 2017), thus, the submission is that possibility of two charring wounds is completely against any logical reasoning as the second wound is allegedly a re-entry wound. It is submitted that there can be charring if a shot is fired from close range but once the bullet enters the body and piercing through some bone re-enters a different body part, it can never have charring or blackening marks as the gun powder is already accumulated at the site of the first wound.

13. Learned counsel submits that when a bullet re-enters a body part piercing through bones, it loses its velocity and hence, the size of the second wound would always be wider than the first wound. According to him, in the present case, both the conditions are not met as there is a clear finding of a charring injury on both entry and re-entry wounds and the size of the re-entry wound is smaller than the first entry wound. This, according



to learned counsel, is suggestive of two different gun shots which falsifies the manner of occurrence as suggested by the prosecution and this would lead to an inference that the true picture of the occurrence has not been brought by the prosecution. It is his further submission that as per the prosecution witnesses, the deceased was standing at a level which was two feet lower than the Panchu Singh (appellant in Cr. Appeal (DB) No. 496 of 2017), therefore the kind of injury received in which his two injuries (entry and re-entry wound) are parallel to each other, would not be possible.

14. By way of an alternative argument, it is submitted that assuming the prosecution case to have some remote credibility and taking the same in its entirety, it may be held that the prosecution case is that the Ravindra Singh (appellant in Cr. Appeal (DB) No. 496 of 2017) has shot deceased only once. Further, there was no intention to cause death as the single gun shot was on forearm which is a non-vital part of the body. As per prosecution case, the deceased was alive when he was being treated and he had died only thereafter. Further, there was no intervening circumstance suggested due to which the accused persons had to flee away and if the intention would have been to



cause death of the deceased, nothing prevented the appellant to resort to more rounds of firing.

15. It has been argued that there was no common intention to cause death of the deceased, therefore the act of the another appellant cannot be primarily connected with the act of co-convict Ravindra Singh and hence they cannot be held guilty under Section 300 or even Section 299 IPC on the ground that they shared common intention in terms of Section 34 IPC. It is also submitted that conviction of the another appellant under Section 27 of the Arms Act is not legally justifiable as there is no allegation whatsoever that the another appellant resorted to any firing. No firearm has been recovered/seized from the place of occurrence or from the possession of the appellants. It is submitted with regard to the injuries of the informant Janak Kishore Singh allegedly caused by Ashok Singh, Umesh Singh and Tanik Singh, it is stated that two injuries have been caused as against the allegation of assault by three persons out of which one injury has been found to be grievous which is near the wrist of the left arm which is a non-vital part of the body. This opinion has been formed by the Doctor (PW-5) on the basis of an X-ray report of Dr. R. K. Sharma, Radiologist in ANMCH, Gaya but the said X-ray report has not been proved nor the Radiologist had been examined. The informant himself in



his *fardbeyan* does not state that his hand was broken on account of the assault made upon him and the fact is that he has signed the *fardbeyan* thus the conviction of the Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) under Section 325/34 IPC is liable to be set aside.

16. Learned counsel has relied upon the judgments of the Hon'ble Supreme Court in the case of **Meharaj Singh Vs. State of U.P.** reported In (1994) 5 SCC 188; **Nandlal Singh & Others Vs. State of Chattisgarh (2023) 10 SCC 470** on the point of delay in lodging of FIR and inconsistency between oral and medical evidence and the effect of examination of only interested witnesses.

Submissions on behalf of the Informant and the State

17. Mr. Binod Bihari Singh, learned counsel for the informant and Mr. Sujit Kumar Singh, learned Addl.PP for the State have contested these appeals. Their submissions are as under:-

(i) It is submitted that the prosecution witnesses are quite consistent with regard to the place of occurrence. The informant Janak Kishore Singh has stated that the place of occurrence is the paddy crop field situated adjacent west to the Devi Asthan. Mukesh Kumar Singh (PW-3) has stated that the accused persons



surrounded them in the field of Shyam Jha, which is adjacent to the Devi Asthan. The I.O. (PW-4) has fully corroborated the place of occurrence. It is thus submitted that there is no doubt about the place of occurrence. The I.O. has stated that there was blood like red mark at the place of occurrence but because of the rain, the same had been washed off. He had also prepared a *nazri* map of the place of occurrence.

(ii) Learned counsel submits that in this case there are two alive injured witnesses. They are Janak Kishore Singh (the informant) and his son Mukesh Kumar Singh (PW-3). Their presence as eyewitnesses cannot be doubted. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Balu Sudam Khalde and Another Versus State of Maharashtra (Cr. Appeal No. 1910 of 2010 decided on 29.03.2023)** to submit that presence of an injured eyewitness at the time and place of occurrence cannot be doubted unless there are material contradictions in his deposition and unless it is otherwise established by the evidence, it must be believed that the injured witness would not allow the real culprits to escape and falsely implicate the accused.

(iii) Learned counsel submits that the genesis and manner of occurrence have been proved by the prosecution. Samudaik



Bhawan is 10-15 steps South-West from Devi Asthan (paragraph '4' of PW-1). Learned counsel submits that the genesis of the case is clear, because the informant and the deceased filed complaint about corruption committed by Mukhiya Ravindra Singh and the Investigating Officer visited for inquiry, Ravindra Singh along with other accused surrounded the deceased with common intention to kill, he fired upon the deceased and the others injured informant and his son.

(iv) Learned counsel submits that the nature of weapons used in the crime and the injury caused upon the deceased have been duly proved by the prosecution witnesses and the Doctor who were examined in this case. Dr. Asim Mishra (PW-6), who conducted the postmortem examination of Manohar Singh, found one lacerated wound and one grazing abrasion, has deposed in paragraph '2' that weapon used for injury no. 1 cannot be said because of surgical intervention. It is submitted that all the independent official witnesses have not contradicted each other as regards the weapon of firearms.

(v) Learned counsel submits that the deceased was standing facing north, Ravindra Singh was standing towards east on road when he shot him from a distance of about four feet. When any person will be in standing position, his arm will be touching his



chest. In this scenario bullet would first hit the arm and broke the right humerus bone and enter the chest. The bullet continuously broke the arm bone and entered the chest and reached the T6 vertebra. Learned counsel has submitted that charring margin were present on both injuries. The bullet was fired from a distance of four feet, first it broke the right humerus bone. Charring margin was present there. Traveling further bullet will not lose its entire charring capacity because of close range and almost zero distance between arm and chest but its velocity, momentum and charring capacity will be reduced, hence charring of injury no. 2 is small. Learned counsel submits that from the prosecution evidence it would be crystal clear that all the seven accused had a common intention to kill Manohar Singh. In this regard, the evidence of PW-3 in paragraph '8' and paragraph 1 of PW-4 have been referred to.

18. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Suresh and Another vs. State of U.P.** reported in **(2001) 3 SCC 673** to submit that law recognises the principle of vicarious liability in criminal jurisprudence. In **Krishnan and Anr. vs. State of Kerala** reported in **(1996) 10 SCC 508** it has been observed that an overt act is not a requirement of law for Section 34 IPC to operate but prosecution



must establish that the person concerned share the common intention. Learned counsel has further relied on the judgment of the Hon'ble Supreme Court in the case of **Surendra Chauhan vs. State of Madhya Pradesh** reported in **(2000) 4 SCC 110** which talks of the application of Section 34 IPC.

19. On the point of the delay in lodging of the FIR learned counsel submits that the informant Janak Kishore Singh, who was about 77 years at the relevant time, had been grievously injured by the accused persons and he became unconscious. Brother of the deceased was also injured and unconscious. Deceased had sustained firearm injuries. The only member along with them was Ram Ratan Singh, who was cousin of the deceased. The prime motive of the person attending the injured was to save the life of the deceased and treat seriously injured victims. Manohar Singh died during treatment in night of 03/04.09.2004 and when Janak Kishore Singh regained consciousness, his *fardebayan* was recorded in Emergency Ward of ANMMCH in the morning on 04.09.2004 at 8:30 am. It is submitted that the date, time and sequence of events would go to show that there is no substantive delay in lodging of the FIR by the informant. It is submitted that the prosecution has been able to prove the guilt of the accused persons beyond all reasonable doubts and the learned



trial court has not committed any error in convicting the accused and punish them.

Consideration

20. We have heard learned counsel for the parties and perused the trial court records. We will first examine the submissions of learned counsel for the appellants as to the delay in lodging of the FIR. The materials available on the record would show that so far as the date and time of occurrence is concerned, the prosecution witnesses have consistently stated that the occurrence took place on 03.09.2004 at 2:00 pm. In his *fardebayan* (Exhibit '6'), Janak Kishore Singh (PW-1) has stated that he had become unconscious after receiving assault by butt of the rifle and gun, but in his examination-in-chief, in course of trial, he has not made any such statement. PW-3 has stated in paragraph '8' of his deposition that after accused persons left, Lakhan Singh (not examined), Umesh Singh, Bajrangi Singh (not examined) and 'हमलोग' brought out Manohar Singh from the paddy crop. The word 'हमलोग' necessarily means PW-1 and PW-3. In his examination-in-chief, he has stated that the accused persons fled away whereafter, he came to Gaya hospital where Manohar Singh died in course of treatment. PW-1 has not whispered as to why his *fardebayan* was recorded in the hospital on 04.09.2004 at 8:30 am.



Yugal Kishore Singh (PW 2) has claimed in his examination-in-chief that when he asked the accused persons to stop from causing assault, Ashok Singh had given him one fist blow on his back, he had not gone to hospital, he was not receiving any treatment, still there is no explanation as to why he did not inform police with regard to the occurrence. Mukesh Kumar Singh (PW-3) has stated that the vehicle owner carrying Manohar Singh, PW-1 and PW-3 had agreed only for dropping them at Wazirganj. According to him, his father and daughter were with him in the vehicle but he did not remember the number of the vehicle or the name of the owner or driver. He also did not remember that as to which place the vehicle belongs to. PW-3 has stated that prior to leaving the place of occurrence, he had given a telephonic call to his brother Ram Ratan Singh to keep one vehicle ready at Wazirganj. They reached ANMMCH, Gaya in 2 ½-3 hours and tentatively they reached there at 4-4:30 pm. The treatment started at 5:00 pm. Prior to the treatment to PW-1 and PW-3, the treatment of Manohar Singh was started in emergency ward. From the evidence of PW-3, it is crystal clear that PW-1, PW-3, the brother of PW-3, namely, Ram Ratan Singh together with the injured Manohar Singh who was seriously injured had reached hospital between 4-4:30 pm. It is not their case in course of trial that PW-1 and PW-3 were in



unconscious condition, therefore, to that extent, the statement of PW-1 in his *fardbeyan* is not believable. Both PW-1 and PW-3 were fully conscious throughout the occurrence and even thereafter.

21. This Court finds that the MMPS is situated within the premises of the ANMMCH, Gaya but there is nothing on the record to show that any information was given to the police station. Under what circumstances, no information was given to police station has not been explained by the prosecution. The *fardbeyan* was recorded four and half hours after the death of Manohar Singh but in the *fardbeyan*, PW-1 did not disclose the name of a single eye-witness. In explaining the delay, he seems to have come out with a concocted statement that he and his son (हमलोग) had become unconscious. PW-3 has stated in paragraph '10' of his cross-examination that he, his father and his daughter Soni boarded the vehicle. This Court has no iota of doubt that PW-1 was fully aware that there was some delay in giving *fardbeyan* to police, therefore, he introduced one line in his *fardbeyan* that he had become unconscious. Fact is that neither PW-1 nor PW-3 became unconscious at any point of time of occurrence. No one from village had accompanied them but there is no explanation as to why neither the statement of his grand



daughter nor that of his nephew Ram Ratan Singh could be recorded.

22. We find that the *fardebayan* was forwarded to the Officer-Incharge Atri Police Station for information on the same day where the formal FIR was recorded on 04.09.2004 at 16:45 hours but the prosecution has not brought any evidence to show that when was it dispatched to the court of learned CJM, Gaya. The formal FIR reached to the court of CJM Gaya on 06.09.2004 and was seen by the learned CJM on the same day.

23. On perusal of the postmortem report of the deceased, it would appear that the same does not mention any sanha entry number or police station case number. As regards the delay in lodging the First Information Report, the Hon'ble Supreme Court, in the case of **Mehraj** (supra) held in paragraph '12' as under:-

“**12.** FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version



or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.”

24. In the case of **Nandlal** (supra), the Hon’ble Supreme Court found that there was a delay of around four to five hours in



lodging of the FIR which was not explained. The Hon'ble Supreme Court observed in paragraph '24' as under:-

“24. Believing the contents of the FIR that the incident has taken place at around 8.30 p.m. and that the injured persons had reached Baloda Bazar at around 10-11 p.m. where they were informed that they could not be treated unless a report was lodged, a further delay of around four to five hours in lodging the FIR has not been explained. The distance between Baloda Bazar and Suhela Police Station is approximately 15 km. It has come on record that there is an all-weather road connecting the two places. As such, at the most, it would take around 30-40 minutes to reach Suhela Police Station from Baloda Bazar. This delay of four hours in lodging the FIR is not at all explained.”

Further, in paragraphs '29', '30' and '31', the Hon'ble Supreme Court has observed as under:-

“29. That leaves us with the appeal of the other 3 accused, namely, Accused 8 Nandlal, Accused 9 Bhagwat and Accused 10 Ramdular. For considering their case we will have to take into consideration the delay in lodging the FIR. No doubt that in each and every case, delay in lodging the FIR would not be fatal to the prosecution case. It will depend upon facts and circumstances of each case. In the present case, as already discussed hereinabove, assuming that the incident had taken place at 8.30 p.m. and the injured persons were at Baloda Bazar between 10-11 p.m., and taking into consideration that the distance between Baloda Bazar to Suhela Police Station is 15 km, a delay of four hours in lodging the FIR would cast a serious doubt on the genuineness of the prosecution case. It becomes more glaring since Accused 11 Naresh Kumar had, in any case, informed the police about the incident prior to 11.45 p.m. The suppression of the FIR lodged by



him with respect to the attack on him by Atmaram (PW 1), so also the suppression of the FIR lodged by Atmaram (PW 1) against Accused 11 Naresh Kumar, adds to the doubt.

30. We may gainfully refer to the following observations of this Court in Ramesh Baburao Devaskar v. State of Maharashtra⁹: (SCC p. 509, para 19)

“19. In a case of this nature, enmity between two groups is accepted. In a situation of this nature, whether the first information report was ante-timed or not also requires serious consideration. First information report, in a case of this nature, provides for a valuable piece of evidence although it may not be a substantial evidence. The reason for insisting on lodging of first information report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eyewitnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a first information report is always considered to be vital.”

31. As held by this Court in Ramesh Baburao⁹, the FIR is a valuable piece of evidence, although it may not be substantial evidence. The immediate lodging of an FIR removes suspicion with regard to over implication of number of persons, particularly when the case involved a fight between two groups. When the parties are at loggerheads, the immediate lodging of the FIR provides credence to the prosecution case.”

25. From the discussions made hereinabove, we are of the considered opinion that in this case, there is a substantive delay

9. (2007) 13 SCC 501 : (2009) 1 SCC (Cri) 212



in giving the *fardbeyan* by PW-1 and sending the FIR to the learned Jurisdictional Magistrate, the prosecution has failed to explain the same, however, that alone cannot be a ground to throw away the whole prosecution case. We will examine the evidence of prosecution witnesses and determine the evidentiary value of the prosecution evidences in the context of charges framed against these appellants.

26. The next submission of learned counsel for the appellants that the prosecution has not been able to establish the genesis of the occurrence would not impress upon this Court. The prosecution witnesses have consistently stated that the Block Development Officer and other officers had come in the village to inquire into the allegations of misappropriation of fund by Mukhiya in Indira Awas Scheme. In his examination-in-chief, PW-1 has stated that when B.D.O. and another officer were conducting inquiry into the scam, Panchu Singh and other members of his group started quarreling as a result whereof both the officers returned without conducting inquiry. In this regard, in course of cross-examination also he had stated that before PW-1 reached at the Community Hall (Samudaik Bhawan), 60-70 persons had already assembled there and after his arrival about 15-20 persons had come. From the pattern of cross-examination of PW-1, it would appear that the defence has not disputed and questioned the assertion of PW-1 that the Block Development Officer and another officer had come that day for conducting inquiry into the scam. The defence has not taken any



contradiction on this point from PW-1, therefore the submission of learned counsel for the appellants that because the prosecution has not proved the copy of the complaint petition said to have been filed by PW-1 with regard to the malpractices in the Indira Awas Scheme, the prosecution case regarding genesis of occurrence seems doubtful, is liable to be rejected. This Court finds that Yugal Kishore Singh (PW-2) has stated in his cross-examination that Inquiry Officer stayed at the Community Hall for about half an hour to quarter to one hour. He has also stated that at the Community Hall 60-70 persons were present. Mukesh Kumar Singh (PW-3) was cross-examined by the defence as regards the genesis of occurrence. He has stated in paragraph '4' that his father had sat on *dharna*, his deceased brother also sat on *dharna* and his father and brother had given application to the Collector, they had also given their statement during the inquiry, thus there is nothing to disbelieve in prosecution story that the genesis of the occurrence is the complaint made by the informant in the matter of financial embezzlement in the implementation of Indira Awas Scheme.

27. As regards the submission of learned counsel for the appellants that the place of occurrence has not been duly proved in this case, we find from the evidences available on the record that the prosecution witnesses are consistent about the place where Manohar Singh was shot at. It is the paddy crop field situated adjacent to the Devi Asthan. PW-1 has stated in his *fardebayan* (Exhibit '6') that the seven named accused persons had surrounded the informant and his sons



(हमलोगों को) in the paddy crop field adjacent west to the Devi Asthan. In course of trial, he has stated that his *fardebayan* was recorded by Police in the hospital, he identified his signature thereon which was marked as Exhibit-1. In his examination-in-chief, he has stated that accused persons surrounded Manohar Singh. He states that he and other persons were standing at Devi Asthan. In paragraph '4' of his cross-examination, he has stated that Devi Mandir is situated at a distance of 10-15 steps south-west to the Community Centre (Samudaik Bhawan). PW-2 has stated that the accused persons started quarreling with Janak Kishore Singh and Manohar Singh at community centre where inquiry was being held, the Inquiry Officer left the said place whereafter the accused persons surrounded, Janak Kishore Singh, Manohar Singh and Mukesh Kumar Singh with guns and rifles. Panchu Singh fired at Manohar Singh. Regarding the place of occurrence, this Court finds that the community centre/Samudaik Bhawan, Devi Asthan and the paddy crop field all are situated in close vicinity which is hardly any distance, therefore, the witnesses are talking about these places where occurrence started leading to killing of Manohar Singh. PW-3 has stated that his brother Manohar Singh had been killed in the field of Shyam Jha near Devi Asthan on 03.09.2004 at 2:00 pm. The I.O. (PW-4) has given the description of the place of occurrence in paragraph '2'. He had conducted inspection of the place of occurrence and had noticed red blood like mark at the place of occurrence which was washed off in the rain. He has stated that at a distance of ten yard from Devi Asthan



Temple is the Community Hall. This Court finds that even though the I.O. (PW-4) has not collected the blood soaked soil from the place of occurrence and had not mentioned in the case diary as to whether the paddy crops found in the field were in trampled condition or not, that alone cannot be a ground to discard the consistent evidence of the prosecution witnesses including the I.O. with regard to the place where Manohar Singh was shot at. The occurrence of quarrel started from Samudaik Bhawan which lead to firing by Panchu Singh on Manohar Singh when Manohar Singh jumped into the paddy crops field.

28. This Court, therefore, concludes that the prosecution has been able to prove the place of occurrence.

29. In this case though it is stated that about 60-70 persons were present at the community hall/Samudaik Bhawan when PW-1 reached there. Further, 15-20 persons came there, therefore, it may be safely held that the quarrel started in presence of large number of persons, within few minutes of the start of quarrel the inquiry officers left the Samudaik Bhawan and immediately thereafter the occurrence of firing took place, therefore, this Court has sufficient materials to believe that the entire occurrence took place in presence of large number of persons including co-villagers but when PW-1 gave his *fardebayan*, he did not disclose the name of a single eye-witness. PW-1, PW-2 and PW-3 have always tried avoiding disclosure of the names of eye-witnesses in this case. Because of the admitted enmity between the parties, PW-1, PW-2 and PW-3 stand in the category of inimical, related and interested



witnesses. PW-1 & PW-3 are said to be injured witnesses too. In such circumstance, the evidence of PW-1 & PW-2 are to be weighed with full circumspection and care. Their evidences cannot be completely discarded but this Court would believe only that much of their oral evidences which would find support/corroboration from some independent material particulars. Before this Court takes a view on this, it would be necessary to have a glance over the evidences of these prosecution witnesses as regards the manner of occurrence.

30. From the *fardbeyan* of PW-1 it would appear that he has named 7 accused persons who had come at the place of occurrence i.e. the paddy crop field at about 2.00 PM armed with weapons and encircled them but he has not specifically attributed as to who was holding which kind of weapon. PW-1 has stated in his *fardbeyan* that 7 named accused persons surrounded him & others (हमलोगो को) in the paddy crop field and told them that they were giving statement against him, now they should go up and give their evidence. At this stage, PW-1 states that Ravindra @ Panchu Singh challenged the prosecution party and with an intention to kill fired from his rifle which hit Manohar Singh the son of PW-1, the bullet pierced into his chest after fracturing his right hand. It is further stated that when PW-1 and his son Mukesh Singh went to save Manohar Singh then Deonandan Singh, Babloo Singh and Parbhanjan Singh assaulted his son causing him head injury. PW-1 was also assaulted by Tanik Singh, Umesh Singh and Ashok Singh by butt of the gun causing injuries on his left hand.



31. In course of trial, PW-1 has stated that he along with others were standing at Devi Asthan. In course of inquiry, Panchu Singh and his men started quarreling. Both the officers left the place and after the officers had gone, immediately thereafter the named accused persons surrounded his son Manohar Singh with rifle and gun and told him that now he should get the inquiry done after going up. From the statements made in examination-in-chief of PW-1, it appears that he materially differs with his statement in the *fardbeyan*. In his examination-in-chief, he has stated that his son Manohar was surrounded by the accused persons. He is not saying that he and others were surrounded by the seven accused persons and Ravindra @ Panchu Singh challenged them. On this point, PW-3 contradicts himself as well as PW-1. In paragraph '7' of his deposition, he states that no one had surrounded him and his father and it was Manohar Singh who was surrounded by the named accused persons. Accused persons had not assaulted them in course of surrounding. Another contradiction apparent in the evidence of PW-1 and PW-3 is that while PW-1 has stated in his examination-in-chief that after causing the occurrence of firing and assault, the accused persons fled away but PW-3 states in paragraph '8' of his deposition that Panchu Singh did not repeat the firing and fled away, other accused persons remained at the place of occurrence and continued watching Manohar Singh (deceased) in pain for 10-15 minutes. When they left, then Manohar Singh was taken out from the paddy field. PW-1 has stated about the assault given to him and his son



Mukesh (PW-3) when they tried to save Manohar Singh. From the evidence of PW-1, therefore, it does not appear that Ravindra Singh @ Panchu Singh and his men had surrounded the informant and his two sons, namely, Manohar Singh (deceased) and Mukesh Singh (PW-3) at Devi Asthan. Manohar Singh jumped in the paddy field adjacent to Devi Asthan where he was shot at. It is also evident that the quarrel started in course of inquiry itself at community centre which is at 10 yards only from Devi Asthan.

32. Yugal Kishore Singh (PW-2) is an eye witness to the occurrence. He was at Devi Asthan at the time of occurrence. He has stated that the named accused persons had surrounded PW-1, Manohar Singh (deceased) and Mukesh Singh (PW-3) and Ravindra @ Panchu Singh fired at Manohar Singh. PW-2 has supported PW-1 in saying that when PW-1 and PW-3 went to save Manohar Singh then Tanik Singh, Ashok Singh and Umesh Singh assaulted PW-3 by the butt of gun, Babloo Singh, Prabhanjan Singh and Deo Nandan Singh assaulted Mukesh Singh (PW-3) by butt of the gun. PW-2 claims that when he stopped them, then Ashok Singh gave him a fist blow on his back.

33. In paragraph '5' of his cross-examination, this witness has stated that before firing took place, there was heated arguments (बकझक) in course of which firing took place. Janak Kishore Singh (PW-1) and Panchu Singh (appellant in Cr. Appeal (DB) No. 496 of 2017) were candidates for the Mukhiya post and they had contested the election two years prior to the occurrence. PW-2, who is brother of PW-



1, claimed that there was no enmity with the accused persons prior to this occurrence but this Court finds from the evidence of Mukesh Kumar Singh (PW-3) that in paragraph '5' of his cross-examination, he has stated that the prosecution party had enmity with Panchu Singh's (appellant in Cr. Appeal (DB) No. 496 of 2017) family and they had differences. PW-3 has stated in his examination-in-chief that the accused persons had surrounded the deceased and Panchu Singh fired at him. When he and his father went to save Manohar Singh then Babloo Singh assaulted him on his head causing injury. He has stated that Babloo Singh, Prabhanjan Singh and Deo Nandan Singh assaulted him on his back by butt of the rifle and Tanik Singh, Umesh Singh and Ashok Singh assaulted his father by butt of rifle. In paragraph '7' of his cross-examination, PW-3 has categorically stated that no one had surrounded him and his father and it was Manohar Singh who was surrounded by the accused persons. In paragraph '8' of his cross-examination, he has stated that nobody had surrounded Manohar Singh from east side and it was Panchu Singh who had surrounded Manohar Singh from east side. Manohar Singh was standing with his face towards north and it is this time, Panchu Singh fired at him. PW-3 has stated that in the field situated South to Manohar Singh (deceased), accused Babloo, Deo Nandan, Prabhanjan and Umesh were standing. Manohar was not surrounded from East side. It was Panchu Singh in east side at up position. At this point of time, PW-3 is not saying about the standing positions of other named accused. From this statement of



PW-3, it appears that he is not naming Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) standing either side of the place of occurrence. He was neither in the east side nor in the field situated South to the field in which Manohar Singh was shot at. Thus, from a reading of paragraph '8' of the cross-examination of PW-3, it appears that Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) was not standing at the place of occurrence. There is an apparent contradiction in the statement of PW-3 in paragraphs '7' and '8' of his cross-examination. In paragraph '11', he has stated that his statement was recorded by the I.O. after 10-15 days even though after occurrence, the I.O. had come to the village several times.

34. PW-5 is Dr. Ajay Kumar Jha had examined the injured and deceased when he was alive, the informant (PW-1) and Mukesh Kumar Singh @ Tullu (PW-3) in ANMMCH. We will take the evidence of Dr. Ajay Kumar Jha (PW-5) and Dr. Asim Mishra (PW-6) together. It is PW-6 who had conducted autopsy on the dead body of the deceased Manohar Singh. On perusal of the evidence of PW-5, it is found that he had found the following injuries on the body of Manohar Singh:-

- “1. 18cm × 10cm × bone deep lacerated wound on medial aspect of right arm. Right humerus bone is broken. Charring of skin margin present.
2. 6cm × 2cm × muscle deep lacerated wound on lateral aspect of right half of the chest charring of skin margin present.

This witness had examined Janak Kishore Singh (PW-1) aged about 77 years and had found the following injuries:-



“1. 4cm × 3cm bruise over left forearm near wrist.
2. 2cm × 1cm bruise over posterior aspect of lower part of neck. Mark of identification, mole near inner canthus of right eye. Time of injury within six hours. Nature of weapon, some hard and blunt substance. Nature of wound-opinion reserved till X-ray report is made available.”

35. Regarding injury no. 1, PW-5 submitted a supplementary injury report on the basis of X-ray report of Dr. R.K. Sharma, Radiologist and opined that the X-ray report of left wrist joint AP and lateral view shows fracture through lower end of radius. This injury has been found grievous in nature. The injury no. 2 sustained by PW-1 has been found simple. In course of his cross-examination, PW-5 has stated that injury no. 2 of PW-1 was superficial in nature. As regards injury no. 1 of PW-1, he had expressed his opinion on the basis of the report of the Radiologist. However, in course of trial, the report of the Radiologist has not been proved.

PW-5 had also examined Mukesh Kumar Singh (PW-3). He found one injury on his body i.e. 4cm×3/10 cm× muscle deep lacerated wound on vault of skull. The nature of wound was simple and the nature of the weapon is said to be some hard and blunt substance.

PW-5 has opined that the nature of injury caused to Manohar Singh was grievous and the nature of weapon was some firearm. The injury reports of the deceased, the informant (PW-1) and Mukesh Kumar Singh (PW-3) have been marked Exhibits ‘7’, ‘7/1’ and ‘7/2’ respectively.



36. PW-6 has proved the postmortem report of the deceased which has also been marked Exhibit '7'. The postmortem report shows the following antemortem injuries:-

“1. Lacerated wound 6”×5”×bone deep present at anteromedial side of right arm with fracture of underlying portion of bone. Laceration of intervening muscles and blood vessels were present. The lower two inches were stitched by sutures, the corresponding surface of the right lateral chest wall has a stitched lacerated wound measuring 4”×2”× bone deep extending posteriorly up to posterior axillary line at the level of T6 vertebra. The underlying bones of chest were normal.
2. Grazing abrasion ranging from 1/2”×1/2”× to 1”×3/4” present involving right side of forehead, lateral aspect of right eye or above eyebrow, right side of face of mandibular area. No foreign element was recovered from the above mentioned injuries.”

37. The post-mortem report does not corroborate the injuries found on Manohar Singh (deceased) in course of his treatment by Dr. Ajay Kumar Jha (PW-5). In paragraph '4' of his cross-examination, PW-6 has stated that “it is a fact that some anti-social elements and relatives of the deceased had put pressure upon him to note down the postmortem report on a blank paper and he did so. He made complaint about it to his Principal and the authorities including the C.J.M., Gaya. The postmortem is counter-signed by Dr. Arvind Prasad.” From the evidence of PW-6, it appears that he had noted two injuries on the body of the deceased. The injury no. 2 is said to have been caused by hard and blunt substance which is not the case of the prosecution. But the statements made by him in paragraph '4' of his depositions casts serious doubt over the authenticity of the postmortem



report showing two injuries on the body of the deceased which is completely contrary to the prosecution case.

38. On a careful perusal of the injury reports and the evidence of PW-5 and PW-6, this Court finds that so far as the death of Manohar Singh is concerned, the injury report (Exhibit '7') clearly shows that there was a 18cm × 10 cm × bone deep lacerated wound on medial aspect of right arm. Right humerus bone was broken and the doctor found charring of skin margin present. PW-5 had also noted lacerated wound of 6cm × 2cm × muscle deep on lateral aspect of right half of the chest, charring of skin margin present. The injury report (Exhibit '7') as regards the deceased Manohar Singh corroborates the ocular evidence of the prosecution witnesses that Manohar Singh was killed by firing which took place in the occurrence. Single shot was fired by Panchu Singh (appellant in Cr. Appeal (DB) No. 496 of 2017).

39. So far as the injuries caused to PW-1 and PW-3 are concerned, PW-5 has found that those have been caused by hard and blunt substance but there is no medical evidence on the record that the injuries suffered by PW-1 and PW-3 were caused by the butt of the rifles. Here, it is important to note that PW-1 and PW-3 both have stated that at the Samudaik Bhawan, large number of villagers had assembled, the Block Development Officer and another officer had come to inquire into the complaint made against the embezzlement of money in Indira Awas Scheme. PW-1 has stated in paragraph '1' that the inquiry officers reached the Samudaik Bhawan from where they left because



quarrel/scuffle had started. Thus, this Court finds that the scuffle between the parties started at the Samudaik Bhawan itself where according to PW-1, at least 60-70 persons from the village had assembled. Further, 15-20 persons had come. PW-1 has stated that after quarrel started the inquiry officers left, immediately thereafter the accused persons had surrounded him and his sons. This Court has noticed the changing version of PW-1, PW-2 and PW-3 as regards the act of surrounding by the accused persons. The conduct of PW-1 in not disclosing the name of eye witnesses in the *fardebayan* would create huge doubt in the mind of this Court. PW-1 is trying to suppress the manner in which the quarrel/scuffle started at Samudaik Bhawan which led to the firing upon Manohar Singh in the field adjacent west to Devi Asthan.

40. To this Court, it appears that in the said scuffle which took place at Samudaik Bhawan, the supporters from both the sides indulged in physical assault. PW-1 is 77 years old and it is possible that in order to save himself, he might have suffered a blow by hard and blunt substance from someone in the crowd which had assembled in Samudaik Bhawan. Similarly, Mukesh Kumar Singh @ Tullu (PW-3) who was also present in the Samudaik Bhawan when the scuffle took place seems to have suffered the simple injury.

41. This Court finds that according to the prosecution, 3 persons assaulted PW- 1 by butt of rifle, neither the injury noticed by PW-5 corresponds to size of the butt of the rifle



or gun nor the IO (PW-4) has made any investigation on this point and no independent witness at all has been examined in this case. PW-1 and PW-3 are inimical witnesses, though are said to be injured witnesses also.

42. On a careful scrutiny of the evidences available on the record, this Court is of the considered opinion that the prosecution witnesses i.e. PW-1, PW-2 and PW-3 being inimical, related and interested witnesses, their testimonies are required to be considered with all circumspection and care. In this case, these prosecution witnesses are not consistent in their evidence as to the fact that all the accused persons had surrounded the prosecution party. They have changed their statements which have been noticed hereinabove. The prosecution has proved that Manohar Singh was shot at in the paddy crop field adjacent west to Devi Asthan. So far as the evidence against Ravindra Singh @ Panchu Singh (appellant in Cr. Appeal (DB) No. 496 of 2017) is concerned, this Court would have no hesitation in believing that it was Ravindra Singh @ Panchu Singh (appellant in Cr. Appeal (DB) No. 496 of 2017) who had fired the fatal shot at deceased Manohar Singh. But so far as the presence of Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) on the spot and his sharing of intention with the appellant in Cr. Appeal (DB) No. 496 of 2017 to kill Manohar Singh (the deceased) is concerned, the same



remains 'not proved' by the prosecution through wholly reliable witnesses. This Court is of the view that even as PW- 1 and PW-2 are injured witnesses, they are highly inimical to the family of Panchu Singh, therefore, in absence of any corroboration through independent witness, it would not be safe to sustain the conviction of Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) of the charge of murder with aid of Section 34 IPC. The learned trial court has already held that the charge under Section 149 IPC could not be proved beyond all reasonable doubt. Similarly, charge under Section 27 of the Arms Act has not been proved against Ashok Singh by reliable evidences. This Court, therefore, while holding that Ravindra Singh @ Panchu (appellant in Cr. Appeal (DB) No. 496 of 2017) is liable to be convicted under Section 302 IPC and 27 of the Arms Act, takes a view that the another appellant namely Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) is acquitted of the charge under Section 302/34 IPC and Section 27 of the Arms Act.

43. Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) has also been convicted for the offence punishable under Sections 325/34 of IPC. This Court has reason to doubt the presence of the PW-2 at the place of occurrence. It has been noticed that as regards the injuries caused to PW-1, the witnesses have made general statements that Tanik Singh, Umesh Singh and Ashok Singh assaulted him by butt of the gun. PW-1 did not claim



so in his *fardebayan*. According to the Doctor (PW-5), PW-1 has suffered a 4cm × 3cm bruise over left forearm near wrist, he opined on the basis of the X-ray report of Dr. R.K. Sharma, Radiologist, ANMMCH that it shows joint AP and lateral fracture lower end of radius. He opined that it was grievous in nature but in his cross-examination, PW-5 has admitted that the report of Radiologist is not attached with the injury report. The X-ray has also not been proved in course of trial and the very basis of the supplementary injury report of PW-5 (Exhibit '7/3') is not available on the record. Considering again the fact that the prosecution witnesses i.e. PW-1, 2 and 3 are falling in the category of inimical, related and interested witnesses, this Court would play safe by not attaching much evidentiary value to Exhibit '7/3'. There is one more reason for the same which would be evident from the evidence of Dr. Asim Mishra (PW-6) who has stated in course of his evidence, in cross-examination that some unsocial elements and relatives of the deceased had put pressure upon him to note down postmortem report on a blank paper and he did so but he made a complaint about it to his Principal and authority including the C.J.M., Gaya. This Court would, therefore, acquit Ashok Singh (appellant in Cr. Appeal (DB) No. 341 of 2017) from the charge under Sections 325/34 IPC.



44. In result, the conviction of appellant in Cr. Appeal (DB) No. 496 of 2017, namely, Ravindra Prasad @ Panchu Singh @ Ravindra Singh stands altered from Sections 302/34 IPC to one under Section 302 IPC and Section 27 of the Arms Act. With this, Cr. Appeal (DB) No. 496 of 2017 is dismissed.

45. So far as the appellant in Cr. Appeal (DB) No. 341 of 2017, namely, Ashok Singh is concerned, he is acquitted of the charges under Section 302/34 IPC, 325/34 IPC and Section 27 of the Arms Act. This appeal is allowed. Appellant Ashok Singh is on bail, he is discharged from the liability of his bail bonds.

46. Let the trial court records be sent back to the concerned court.

(Rajeev Ranjan Prasad, J)

(Jitendra Kumar, J)

Rishik/Arvind-

AFR/NAFR	
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