

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL APPEAL (DB) No. 598 of 1994**

Manindra Tiwary @ Munna Tiwary Son of Chandradeo Tiwary R/V-  
Nagadahan, P.S.- Malahi, District- East Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (DB) No. 1 of 1995**

Arising Out of PS. Case No.- Year-0 Thana- District- East Champaran

1. Satyendra Mani Tripathi Son of Birendar Mani Tripathi R/V- Nagdaha, P.S.-  
Malahi, District- East Champaran
2. Manoj Tiwari Son of Gajendra Tiwari R/V- Ejra, P.S.- Sangrampur, District-  
East Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance:**

(In CRIMINAL APPEAL (DB) No. 598 of 1994)

For the Appellant/s : Mr. Uma Shankar Verma, Advocate  
Mr. Binod Kumar Mishra, Advocate  
For the State : Mr. Manish Kumar No.2, APP  
Ms. Surabhi Nirmal, Advocate  
For the Informant : Mr. Rajesh Ranjan, Advocate  
Ms. Maria Nazir, Advocate  
Mr. Saurabh Kumar, Advocate

(In CRIMINAL APPEAL (DB) No. 1 of 1995)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate  
Mr. Mukesh Kumar No.1, Advocate  
For the State : Mr. Manish Kumar No.2, APP  
Ms. Surabhi Nirmal, Advocate  
For the Informant : Mr. Rajesh Ranjan, Advocate  
Ms. Maria Nazir, Advocate  
Mr. Saurabh Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**and**

**HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY**



**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)**

**Date: 24-11-2025**

1. The aforesaid appeals have been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') against the same judgment of conviction and order of sentence dated 29.11.1994 and 30.11.1994 respectively, passed in Sessions Trial No. 618 of 1992 / 37 of 1994 (arising out of Govindganj (Malahi) Police Station Case No. 18 of 1992) by the learned Court of 1<sup>st</sup> Additional Sessions Judge, Motihari (hereinafter referred to as the 'Trial Judge'), hence the same are being disposed off by the present common judgment and order. By the said judgment dated 29.11.1994, the appellants of the aforesaid two appeals have been convicted under Sections 302/34 of the Indian Penal Code and as far as the appellants of the second case are concerned, they have also been convicted under Section 27 of the Arms Act. By the order of sentence dated 30.11.1994, the appellants of the aforesaid two appeals have been sentenced to undergo imprisonment for life under Sections 302/34 of the IPC and as far as the appellants of the second case are concerned, they have been further sentenced to undergo rigorous imprisonment for two years under Section 27 of the Arms Act. All the sentences have been directed to run



concurrently.

2. The short facts of the case as per the *fardbeyan* of the informant Jaikant Mani Tripathi (PW-12), recorded by the Sub-Inspector of Police, namely M. S. Khan (PW-13), Officer-in-Charge, Malahi Police Station on 04.02.1992 at 00:30 a.m. at the *bathan* of Ambika Sah of village Nagdaha is that in the night at about 09:00 p.m. he along with his deceased brother Deo Saran Mani Tripathi were going for irrigating their field towards the eastern-southern side of their house and when they reached south of Harijan Toli, situated near Primary School, Nagdaha some people had surrounded them, whereupon his deceased brother, in the light of the torch, which he was holding in his hand, had recognized the co-villagers, namely Satyendra Mani Tripathi, Kamendra Mani Tripathi and Manoj Tiwary, who were holding rifle and double barrel gun respectively in their hands, whereupon the deceased brother of the informant asked them as to why they have surrounded them, upon which Satyendra Mani Tripathi (appellant no.1 of the second case) said that he is the person who had accumulated co-villagers, got their signatures and had got them to depose against them, hence they would kill him. Thereafter, both the brothers had ran towards the northern side near Nagdaha Giri tola but the said accused persons had fired



from their rifle/gun indiscriminately resulting in the brother of the informant falling on the road on the southern side of Nagdaha Giri tola on account of being hit by gun shots, whereafter the informant while raising *hulla* had ran towards Giri tola and on hearing his *hulla* (alarm) as also upon hearing the sound of gunshot firing, Bhibhikhan Giri (P.W. 3), Ram Dekhan Giri (P.W. 5), Vijay Kant Giri (P.W. 7) and Ramraj Giri (P.W. 4) as also many other persons had arrived there, who had seen the accused persons running away, whereupon they had chased them but they managed to flee away towards the village. The informant had then gone near his brother Deo Saran Mani Tripathi, who had fallen on the ground and had found him to be dead as also he was smeared with blood. He had been hit by gun shots on his head, back, neck and chest. The informant has further stated that the reason for the said occurrence is that Satyendra Mani Tripathi (appellant no.1 of the second case) is Chairman of Nagdaha Cooperative Society and he has withdrawn Rs. 4-5 lacs belonging to him and other villagers, which was being opposed to by his brother, who had also got a representation filed on behalf of the villagers as also had got the villagers to depose against him. The *fardbeyan* of the informant was signed by Bachandeo Giri and Bipin Giri (P.W. 10) as witnesses to the same.



3. On the basis of the said *fardebayan* of the informant, a formal FIR bearing Govindganj (Malahi) P.S. Case No. 18 of 1992 was registered on 04.02.1992 at 07:00 a.m. under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act against the appellants of the second case and one Kamendra Mani Tripathi. The police had then conducted investigation and finding the case to be true had filed charge sheet on 16.05.1992 against the appellants under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. Thereafter, the learned Trial Judge, upon considering the materials on record and the charge sheet filed by the police had taken cognizance vide order dated 27.05.1992, qua the appellants of the aforesaid two cases and one Kamendra Mani Tripathi. The said case was committed to the Court of Sessions vide order dated 31.07.1992 showing Kamendra Mani Tripathi to be an absconder. The learned Trial Judge had then framed charges against the aforesaid appellants of both the appeals vide order dated 02.02.1993 under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

4. During the course of trial, the prosecution had examined 14 witnesses. P.W. 1, Balmukund Paswan and P.W. 2, Imteyaz Ahmad have proved the formal FIR and *fardebayan*, respectively, while P.W. 3, Bhibhikhan Giri, P.W. 4, Ramraj Giri, P.W. 5,



Ramdekhan Giri and P.W. 7, Vijay Kant Giri are stated to be eye witnesses according to the prosecution. P.W.6 is Ram Bahadur Giri. P.W. 8, Vijay Kant Tripathi and P.W. 9, Ramashish Tiwari are witnesses to the inquest report, while P.W.10, Bipin Giri is signatory to the seizure list. P.W. 14, Bindeshwari Tiwari is a formal witness, while P.W. 12, Jaikant Mani Tripathi is the informant. P.W. 11, Dr. Vishwanath Tiwari is the doctor who had conducted the post mortem examination, while P.W. 13, Md. Sarfuddin Khan is the Investigating Officer of the present case.

5. The learned counsel for the appellants Shri Ajay Kumar Thakur, assisted by Shri Mukesh Kumar No.1 has submitted that the fact is that none of the witnesses have seen the occurrence and the *fardebayan* is anti-dated. It is submitted that dispute was going on from before which has led to the occurrence in question. He has next stated that while the Investigating Officer i.e. P.W. 13 and Jaikant Mani Tripathi (P.W. 12) have stated in their evidence that *fardebayan* was recorded in presence of Bipin Giri (P.W. 10) and one another witness, however P.W. 10 has stated in his evidence that though he had heard the sound of gunshot but he had not gone to the place of occurrence and for the first time he had gone to the place of occurrence at 7:00 a.m. in the morning, whereas the fact is that the *fardebayan* was recorded at 00:30



hours in the midnight of 03/04.02.1992. Thus, it is submitted that the *fardebayan* is apparently anti-dated and the first version has been suppressed. It is also stated that there is interpolation in the time mentioned in the inquest report, as is apparent from a bare perusal of the same. It is next submitted that Ram Bahadur Giri (P.W. 6) is stated to have met the police officer in the morning, had given his torch to him and after his statement was recorded, he had returned back to his house, whereas Bhibhikhan Giri (P.W. 3) has stated that after his statement was recorded by the police, he had given the torch, however Ramraj Giri (P.W. 4) has not stated when the Investigating Officer came or when his statement was recorded but has merely stated that the Officer-in-charge prepared the seizure list of the torch and then his statement was recorded. It is thus clear from the evidence of the said witnesses that Bhibhikhan Giri (P.W. 3), Ramraj Giri (P.W. 4) and Ram Bahadur Giri (P.W. 6) had given the torch to the police in the morning as also Exhibit-7 (seizure list) mentions that the same was prepared at 7:30 a.m. in the morning, thus apparently the aforesaid witnesses had met the Officer-in-charge only in the morning of 04.02.1992.

6. It is next submitted by the learned counsel for the appellants that a bare perusal of the evidence of Investigating



Officer would show that he had recorded the statement of the witnesses under Section 161 Cr.P.C after recording of the *fardbeyan* and before preparation of the inquest report, however the same is contrary to the evidence of the prosecution witnesses. It is also submitted that the prosecution has withheld the evidence of independent witnesses who are stated to have arrived at the place of occurrence, which has caused grave prejudice to the defence/appellants. It is submitted that the statement of the informant is stated to have been recorded three times, twice by the Officer-in-charge, i.e first in the night and second time in the morning as also thirdly by the Deputy Superintendent of Police (hereinafter referred to as the “DSP”), however apparently two of them have been withheld, which in fact would have depicted the actual mode and manner of occurrence, which had taken place. The learned counsel for the appellants has next submitted that a bare perusal of the *fardbeyan* would show that the informant has stated therein that both the brothers had ran towards the northern side towards Nagdaha Giri tola, whereupon the accused started firing indiscriminately, leading to the brother of the informant falling on the road towards south of Nagdaha Giri tola, whereafter people from Giri tola came running towards the said place of occurrence and then the informant along with



Bhibhikhan Giri (P.W. 3), Ramdekhan Giri (P.W. 5) and Vijay Kant Giri (P.W. 7) are stated to have chased the appellants, however a bare perusal of the evidence of Bhibhikhan Giri (P.W. 3) would show that he was attending call of nature towards the southern side of the canal which is far away, while Ramdekhan Giri (P.W. 5) was at Malahi Toli, which is further south of the place of occurrence & as far as Ramraj Giri (P.W. 4) is concerned, he was also far away from the place of occurrence, hence it is improbable that the aforesaid witnesses would have been present at the place of occurrence and would have chased the appellants.

7. It is next contended by the learned counsel for the appellants that witnesses to the inquest report are stated to be Vijay Kant Tripathi (P.W. 8) and Ramashish Tiwari (P.W. 9) and though the inquest report was prepared at 1:30 a.m. but it is intriguing that the informant, Bhibhikhan Giri (P.W. 3), Ramdekhan Giri (P.W. 5) and Vijay Kant Giri (P.W. 7) are not witnesses to the inquest report or the seizure list, thus the actual mode and manner of occurrence appears to have been suppressed by the prosecution. It has been submitted that as far as Vijay Kant Tripathi (P.W. 8) is concerned, he has not disclosed anything about the occurrence in his examination-in-chief, however in



paragraph nos. 2, 3, and 4 of his cross examination, he has stated that the place of occurrence is at a distance of 5 bighas from his house and the Officer-in-charge had not inquired about the incident from anyone who was present at the place of occurrence. Attention has also been drawn towards the evidence of Ramashish Tiwari (P.W. 9) to submit that he has also not stated anything about the place of occurrence in his examination-in-chief, however in paragraph no.5, he has stated that his house is situated at a distance of one kilometer from the place of occurrence and in paragraph no.8, he has stated that he is working at the Civil Court, Motihari. Thus, it is submitted that under what circumstances Vijay Kant Tripathi (P.W. 8) and Ramashish Tiwari (P.W. 9) became witnesses to the inquest report is also baffling. It is next submitted that the informant has stated in his *fardebayan* that he had disclosed about the incident to all the witnesses who had arrived at the place of occurrence, meaning thereby that none of the witnesses are eye witnesses to the alleged occurrence. It is further submitted that there are grave variances and contradictions in the deposition of the witnesses and the statement made by them U/s. 161 Cr.P.C. It is next submitted that the mode and manner of occurrence has been changed inasmuch as while in the *fardebayan* there is no mention



of knife or dagger being used for assaulting the deceased but subsequently the same have been introduced in order to explain the injuries sustained by the deceased, as have been found during the course of post mortem examination.

8. The learned counsel for the appellants has submitted that the witnesses to the alleged occurrence who are stated to have arrived at the place of occurrence from Malahi Toli and Harijan Toli have neither been examined nor their statements have been recorded and moreover, even the witnesses who had arrived from Giri tola have not been examined by the police nor their statements have been recorded. It is next submitted that as per the *fardbeyan*, the informant and the deceased are stated to be going towards the south and after seeing the appellants, they had started fleeing towards Giri tola (northern side), whereupon the accused/appellants are stated to have fired from the back and the night was pitch dark as also no torch was lighted/flushed at the time when the firing was resorted to, hence it is impossible for the informant to have identified the accused persons who had actually engaged in firing, leading to the deceased being inflicted with gunshot injuries, resulting in his death. As regards the post mortem report of Dr. Vishwanath Tiwari (P.W. 11), prepared at 01:00 p.m. on 04.02.1992, it is submitted that the same shows



that the wound of entry and exit are on the front part of the body and while the wound of entry is on the left part of the body, it has exited from the right of the chest. The post mortem report also shows that firing was made from close range i.e. less than three feet. At this juncture, it is submitted that such type of gunshot injury, as has been depicted in the post mortem report could not have been inflicted from the back, while the deceased was fleeing away.

9. The learned counsel for the appellants has also submitted that the informant had not sustained any injury which makes his presence doubtful at the place of occurrence and the fact is that on the next day morning, the father of the informant had come, who is an advocate at Civil Court, Motihari and then the *fardebayan* was fabricated in connivance with the informant. Thus, it is submitted that a bare perusal of the evidence on record would falsify the fact that the *fardebayan* was recorded at 00:30 hours in the midnight of 03/04.02.1992. In fact, the statement of Bipin Giri (P.W. 10), who has made his signature on the *fardebayan* and others would show that the police had arrived in the morning thus, there is/was no question of the *fardebayan* having been recorded in the midnight. It is also apparent from the statement of the informant that his statement was recorded in the morning of



the next day of the day of incident. It is contended that the *fardbeyan* mentions about arrival of Bhibhikhan Giri (P.W. 3), Ramdekhan Giri (P.W. 5) and Vijay Kant Giri (P.W. 7) at the place of occurrence, however none have whispered about the accused persons/ appellants being armed with knife/dagger and it has only been alleged that the appellants had engaged in indiscriminate firing, thus all the witnesses have improvised on the version as narrated in the *fardbeyan*, in their deposition in order to explain the injuries which have been found by the Doctor during the course of post mortem examination, hence the prosecution witnesses are untrustworthy and no conviction can be recorded on the basis of their evidence.

10. The learned counsel for the appellants has submitted that adverse inference should be drawn from the fact that the independent witnesses who had arrived at the place of occurrence from three tolas in question have not been examined either by the Investigating Officer or during the course of trial and all the witnesses produced by the prosecution are interested and partisan witnesses related to the deceased/ informant, thus it is submitted that the impugned judgment/order of conviction and sentence is perverse and liable to be set aside. The learned counsel for the appellants has also submitted that neither the *chowkidar* nor the



*dafadar* of the village have been examined, which has caused prejudice to the defence, apart from the fact that the person who had gone to inform the police has also not been examined.

11. Per contra, the learned counsel for the informant has submitted that the date and time of occurrence is 03.02.1992 at 09:00 p.m. and the *fardbeyan* has been recorded at 00:30 hours on the same night, thus there is no discrepancy in recording of the *fardbeyan*. The presence of witnesses has stood explained in the *fardbeyan* as also their presence at the place of occurrence is natural and there is no contradiction/variance in the date, time, mode and manner of occurrence as mentioned in the *fardbeyan* and as narrated by the witnesses in their evidence. It is submitted that while Ramraj Giri (P.W. 4) was sitting at the door of the house of Ram Bahadur Giri (P.W. 6) and was warming himself besides a bonfire, Bhibhikhan Giri (P.W. 3) and Vijay Kant Giri (P.W. 7) were attending call of nature and Ramdekhan Giri (P.W. 5) was arranging labour for the next day work. Thus, the presence of the said witnesses at the place of occurrence is not unnatural. It is also submitted that the statements of all the prosecution witnesses are consistent and the same do not suffer from any contradictions so as to create any doubt about the veracity of their evidence. In fact, all the witnesses, who have been mentioned in



the *fardebayan* and who had arrived at the place of occurrence are stated to have identified the accused persons in the light of torch. The learned counsel for the informant has further submitted that minor contradictions in the evidence of the prosecution witnesses cannot come in the way of disregarding their testimony as a whole. In this connection, reference has been made to a judgment rendered by the Hon'ble Apex Court in the case of ***Goverdhan & Anr. v. State of Chhattisgarh***, reported in ***(2025) 3 SCC 378***. As regards Vijay Kant Tripathi (P.W. 8) and Ramashish Tiwari (P.W. 9), it is submitted that the inquest report was prepared at 1:30 a.m. in presence of the police, hence there is nothing unusual about the veracity of the inquest report. On merits, it is submitted that the Investigating Officer, in his evidence has stated in paragraph no.34 that informant was present along with the deceased and about the same he had made investigation. As far as withholding of material witnesses by the prosecution are concerned, it is submitted that the appellants have failed to demonstrate that any prejudice has been caused to them on account of the same, thus the said submission does not hold any force.

12. It is also submitted by the learned counsel for the informant that all the prosecution witnesses are consistent on the



point of assault and presence of the appellants at the place of occurrence. As far as Dr. Vishwanath Tiwari (P.W. 11) is concerned, who has conducted the post mortem examination of the deceased, he has categorically stated that fire arm injury was enough to cause spontaneous death of the deceased. Thus, it is submitted that the medical evidence also corroborates the ocular evidence. As far as the issue of the deceased being assaulted by knife is concerned, it is submitted that Ramraj Giri (P.W. 4), Ram Bahadur Giri (P.W. 6) and Jaikant Mani Tripathi (P.W. 12) have substantiated the said part of the occurrence in their evidence. As regards the argument advanced by the learned counsel for the appellants to the effect that three statements of the informant had been recorded by the police at various stages, however two have been suppressed, it is submitted that no such objection was taken by the appellants at any point of time much less during the course of the trial, hence such objection does not merit consideration, thus is fit to be rejected. Consequently, it is submitted that the evidence led by the prosecution definitely proves the guilt of the appellants beyond all reasonable doubt, hence there is no need to interfere with the impugned judgment/order of conviction and sentence passed by the Ld. Trial Court, thus the present appeal is fit to be dismissed.



13. The Ld. APP for the State Shri Manish Kumar No.2, has adopted the arguments advanced by the Ld. Counsel for the informant and has submitted that there is no reason to doubt the legality of the impugned judgment/order of conviction and sentence, hence the same is fit to be upheld.

14. 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 led by the prosecution.

15. P.W. 1 Balmukund Pandey is a formal witness, who has proved the formal FIR, which is stated to be in the writing of Officer-in-Charge, Govindganj P.S. namely Vir Bahadur Singh and the same has been marked as Exhibit-1.

16. P.W. 2 Imteyaz Ahmad is also a formal witness, who has identified the signature and writing of the Officer-in-Charge Md. Sarfuddin Khan (P.W. 13), in whose writing the *fardebayan* was scribed and the same has been marked as Exhibit-2.

17. P.W. 3 Bhibhikhan Giri has stated in his evidence that the occurrence dates back to 03.02.1992 at about 9:00 p.m. in the night when he had gone for easing himself towards the south of canal and at that time he heard sound of gunshot firing towards the eastern side as also had heard some people shouting,



whereafter he had moved towards the said way and saw that Satyendra Mani Tripathi (appellant no.1 of the second case) armed with rifle, Kaminder Mani Tripathi armed with gun, Manoj Tiwari (appellant no.2 of the second case) armed with gun and knife and Munna Tiwari (sole appellant of the first case) armed with knife were going towards the southern side. P.W. 3 has also stated that in the light of torch, he had seen the aforesaid accused persons and then the appellant no.1 of the second case had told him to shut off the torch. Thereafter, P.W 3 had gone to the place of occurrence and had seen that Deo Saran Mani Tripathi (deceased) was lying dead, there was hole injury on his body, his body was smeared with blood and injuries caused by gunshot firing and sharp weapon were present all over his body. P.W. 3 has stated that when he reached at the place of occurrence, he saw the informant to be present there. P.W. 3 has also stated that Satyendra Mani Tripathi (appellant no.1 of the second case) has misappropriated money of several persons from the co-operative in question and the deceased had filed complaint against him, which had resulted in animosity amongst the deceased and the accused persons leading to killing of the deceased. P.W. 3 has also stated that he had identified the accused persons in the light of torch which was seized by the police in presence of witnesses



i.e. Bipin Giri (P.W. 10) and Dayanand Giri (not examined). P.W. 3 had identified the torch in the Court, which was marked as material Exhibit-1 with objection.

18. In paragraph no.2 of his cross examination, P.W. 3 has given the topography and boundaries of his house. P.W. 3 has further stated that from the place where the dead body was lying, the nearest house is that of Ambika Sah, which is at a distance of 600-700 yards. P.W. 3 has also stated that the house of Sah people is situated at a distance of 50 yards from the place where the dead body was lying and at a distance of 600-700 yards, the Harijan tola is situated as also the house of Kariman is situated at a distance of 600 yards from there. P.W. 3 has stated in his cross examination that the Harijan tola starts from the house of Kariman and goes upto 50 yards towards south. The Harijan tola is situated towards the western side of the Sakua-Belti road and on the eastern side of the said tola as also on the eastern side of the said road, primary school is situated and there is a big campus in the said school as also on the southern side of the said campus and towards the eastern side of Sakua-Belti road, one road goes towards the Misarbaliya tola. P.W. 3 has further stated that the house of Nagina Nutt is situated at a considerable distance towards the eastern side of the school. He has also stated that



Misarbaliya is situated at a distance of ½ km from the school. He has stated that right from the time, the occurrence had taken place, Nagina Nutt does not stay in his house and he used to work by roaming around at different places. P.W. 3 has also stated that he used to go to ease himself in the night at around 9-10 p.m. and sometimes he used to go towards the pond and sometimes towards the canal. He has stated that the canal is situated towards the northern-eastern-western side of the house of Kariman Ram, situated at Harijan tola. P.W. 3 has further stated that when he was at a distance of 50-60 yards towards the western side of the house of Kariman, then he heard the sound and at that time he had already eased himself. He has also stated that he had gone to ease himself alone and he had not met any person either on the way or at the canal.

19. P.W. 3 has next stated that upon hearing the sound of gunshot firing, nobody had arrived from Harijan tola. He has also stated that after 6-7 minutes, the sound of gunshot firing had subsided. P.W. 3 has stated that at the time he heard the sound of gunshot firing, he was towards the western side of the house of Kariman and he had kept quite upon hearing the sound of gunshot firing, however *hulla* (alarm) was taking place towards the eastern- northern side, which was being raised by the people



of the village and when he reached the place of occurrence, there were 30-40 people present there, belonging to Giri tola, namely Ramraj Giri (P.W. 4), Rajdeo Giri (D.W. 2), Ram Bahadur Giri (P.W. 6), Vijay Kant Giri (P.W. 7), Shyamakant Giri, Suryanarayan, Sitaram, Shivmangal, Daroga, Ambika Sah, Lalbabu Giri, Prabhunath Giri, Bhibhikhan Giri (P.W. 3), Rajesh Giri, etc, whom he had recognized. P.W. 3 has next stated that he does not remember as to whether he had told the police that along with the sound of gunshot firing, he had also heard *hulla* (alarm) being raised. P.W. 3 has stated that the accused persons were not amongst the 30-40 persons present there. P.W. 3 has next stated that he did not have any conversation about the occurrence with Jaikant Mani Tripathi (P.W.12), however he had seen P.W.12 at the place of occurrence. P.W.3 has stated that he had disclosed about the names of the accused persons and the weapons being held by them in their hands. P.W.3 has also stated that whatever was seen by Ramdekhan Giri (P.W.5), Vijay Kant Giri (P.W.7) and Ramraj Giri (P.W.4) was narrated to him. P.W.3 has stated that he had stayed at the place of occurrence for half an hour, however he has next stated that he had stayed there for about one hour.

20. P.W. 3 has also stated that he had met the accused persons



at a place situated 50-60 yards towards the western side of the house of Kariman and then he had shut his torch because the accused persons had started abusing him. P.W. 3 has further stated that for the first time when he saw the face of the accused persons, they were facing towards the western-southern side. He has also stated that he had seen four persons who were one behind the other and Munna Tiwari (sole appellant of the first case) was at the end. P.W. 3 has stated that he did not see as to whether the accused persons were holding torch or not, however the night was dark and he had not asked anything from the accused persons but they had abused him and had also threatened to assault him. In paragraph no.5 of his cross examination, P.W. 3 has stated that when he had made his statement before the police for the first time, he had handed over the torch to the police and then seizure list of the torch was prepared. He has stated that P.W. 4 is his own brother. He has also stated that some cases are going on in between P.W. 4 and accused Satyendra Mani Tripathi. He has next stated that he does not know as to whether Ramraj Giri (P.W. 4) has deposed against the accused persons or not. P.W. 3 has stated that apart from his torch, six other torches were seized by the Officer-in-Charge. P.W. 3 has stated that one of the accused was holding knife while the other was holding gun. P.W.



3 has stated that he had not seen any blood on the way through which the accused persons had gone and he had not shown the police the way through which the accused persons had fled away. P.W. 3 has also stated that he was not holding any water pot in his hand.

21. P.W. 4 Ramraj Giri has stated in his evidence that the occurrence dates back to 03.02.1992 at about 9:00 p.m. in the night while he was warming himself by means of bonfire at the door of Ram Bahadur Giri (P.W. 6) along with P.W. 6 and Rajdeo Giri (D.W. 2), when they heard 4-5 sound of firing and at that time P.W. 12 came running there and told them that Satyendra Mani Tripathi, Kamendra Mani Tripathi and Manoj Tiwari are killing his brother Deo Saran Mani Tripathi, hence they should go there and save him, whereafter all the said three persons along with the informant had gone to the place of occurrence and in the light of torch, they saw Satyendra Mani Tripathi and Kamendra Mani Tripathi standing there while Munna Tiwari and Manoj Tiwari were assaulting Deo Saran Mani Tripathi indiscriminately by knife and dagger. P.W. 4 has further stated that when he lit the torch light, Satyendra Mani Tripathi told him to shut it otherwise he would shoot him dead, whereafter they had shut the torch, whereupon people from village had assembled there and then



they had again lit the torch and had seen the accused persons going towards the southern side but then they had turned and had gone back to their home. P.W. 4 has next stated that when he had gone to the place of occurrence, he saw that Deo Saran Mani Tripathi had died, he had fallen on the eastern side of the road, his entire body was smeared with blood and he saw one hole near the neck towards the left cheek of the deceased as also one hole on the center of the head of the deceased, apart from seeing 6-7 injuries on the back of the deceased.

22. P.W. 4 has next stated that Jaikant Tiwari (P.W. 12) told him that they were going for irrigating the wheat field and when they had reached near the Harijan tola, the accused person had surrounded them, whereupon they started fleeing towards the northern side and then the accused persons had started firing gun shots, resulting in his brother falling down. P.W. 4 has next stated that the reason for the occurrence is that Satyendra Mani Tripathi, who is the Chairman of Nagdaha Sakua-Belti Co-operative Society has misappropriated a sum of Rs. 5 lacs of the people belonging to the village in question and in connection thereof, the deceased Deo Saran Mani Tripathi had written a complaint on behalf of the said people. He has also stated that Satyendra Mani Tripathi had taken a sum of Rs.1,151/- from the brother of the



deceased, namely Jaikant Mani Tripathi, whereafter investigation was made and this is why the accused persons have killed the deceased. P.W. 4 has next stated that the torch with which he had seen the occurrence was seized by the police and torch of six other people were also seized. P.W. 4 has identified the torch which has been marked as material Exhibit no. I/1 (with objection). P.W. 4 has recognized all the accused persons standing in the dock. In paragraph no.3 of his cross examination, P.W. 4 has stated that he is brother of P.W. 3 and father of Bipin Giri (P.W. 10). He has also stated that he has neither taken any loan from the co-operative department nor taken part in the election of the same. P.W. 4 has stated that at a distance of two laggi (stick) length from his house bonfire was burning, and he was warming himself besides the bonfire for about 10 to 15 minutes and three persons were sitting there, who were having torch in their hands.

23. P.W. 4 has next stated that during the course of investigation, he had not shown the place where he was warming himself besides the said bonfire. In para no.5 of his cross examination, P.W. 4 has stated that the sound of gunshot firing was coming from the southern side and after 2-4 minutes of stopping of the same, P.W. 12 had come at their place and had



taken the name of three assailants but he had not told them about the incident at that time. Thereafter, four persons had gone to the place of occurrence and had reached there within 2-4 minutes, where the accused persons were present as also other persons had arrived, totaling 30-40 in all. P.W. 4 has stated that while the accused persons were present there, Ambika Sah, Shyamakant Giri, Suryanarayan Giri, Bachandeo Giri, Prabhunath Giri, Vikrama Giri, Lalbahadur Giri, etc. had arrived there, however they were not carrying any arms. P.W. 4 has next stated that when he had first seen the accused persons, none of them had fired from their guns. P.W. 4 has stated that when he saw the deceased, he found his body smeared with blood and also found knife and gun injuries. In paragraph no.6 of his cross examination, P.W. 4 has stated that the injuries had been inflicted by knife, however he cannot say as to how many injuries had been inflicted but gunshot injury was also present and injuries were present at 6-7 places on the back of the deceased as also at one place on the neck, apart from one injury at the center of the head. P.W. 4 has next stated that he had not seen either the *khokha* (used cartridge) of the gun or its paper on the ground as also he had not seen any pellet/bullet on the ground. He has also stated that when he went near the deceased along with co-villagers, he saw that he had



died. He has next stated that he cannot say as to which accused person had hit at which part of the body of the deceased and at the time when the deceased was being assaulted by knife, all the accused persons were standing at a distance of 1-2 hands.

24. P.W. 4 has stated that Jaikant Mani Tripathi (P.W.12) had taken the name of three accused persons and was raising *hulla* (alarm) as also he had reached the place of occurrence along with him, however they had not stopped Munna and Manoj from assaulting. P.W. 4 has next stated that while the accused persons were present there, 35-40 people from the village had arrived at the place of occurrence and they were holding torch in their hand. P.W. 4 has stated that *dafadar* and *chowkidar* had reached there after two hours of the incident, whereafter they had told them about the occurrence and then the informant had sent his labour to the police station. P.W. 4 has stated that his statement was recorded at the place of occurrence and he had given his torch to the police at that time, when the seizure list was also prepared immediately.

25. P.W. 5 Ramdekhan Giri has stated in his evidence that the occurrence dates back to 03.02.1992 at about 9:00 p.m. in the night when he was arranging for labour from Malahi toli and was returning back, thereafter. He has stated that when he had reached



at some distance ahead of Malahi toli, he heard sound of 4-5 gunshot firing from the northern side as also heard *hulla* (alarm), whereafter he had moved ahead briskly and then he saw four people running from the northern side, whereupon he had lit the torch and saw that Satyendra Mani Tripathi carrying rifle in his hand, Kamindra Tripathi holding double barrel gun, Manoj Tiwari holding knife and gun in his hand and Munna Tiwari holding knife in his hand were coming, whereupon Satyendra Mani Tripathi told him to shut off the torch failing which he would fire gun shot on him and then they had fled away to their home. P.W. 5 had then gone to the place of occurrence where he saw that Deo Saran Mani Tripathi was lying on the side of the road and his body was smeared with blood as also his body was bearing gunshot injury as also injuries inflicted with sharp cutting weapon. Jaikant Mani Tripathi was present there and he told P.W.5 that he along with his brother were going to irrigate wheat field and when they had reached near Harijan Toli, the accused persons had surrounded them and told them that they had filed complaint with regard to taking of loan from the said society and had got investigation conducted, hence they would not leave them, whereafter Satyendra Mani Tripathi had started firing indiscriminately, resulting in the same hitting Deo Saran Mani



Tripathi and then Manoj had also fired gunshot, resulting in him falling down. After the deceased had fallen down, Manoj Tiwari and Munna Tiwari had assaulted him by knife, whereafter many people had assembled there. P.W. 5 has recognized the accused persons standing in the dock.

26. In paragraph no.2 of his cross examination, P.W. 5 has stated that he is an accused in Govindganj P.S. Case No.135 of 1984 and along with him, Rambashisht and Ram Bahadur Giri (P.W. 6) are also accused. He has stated that the real brother of Satyendra Mani Tripathi is Deo Saran Mani Tripathi and Dharmendra Mani. In paragraph no.3 of his cross examination, P.W. 5 has stated that Rambashist Giri and Jitendra Giri are his own brother. P.W. 5 has further stated that the house of Tiwari people is situated towards the extreme south of Sakwa-Sirni Road and they have only 3-4 houses and towards the northern side of the same Malahi tola is situated, whereafter Harijan tola is situated and then Giri tola is situated where houses of Kanu people are located. The houses of the Kanu people are situated at a distance of 700 yards from Harijan tola. Kariman Ram's house is situated at Harijan Tola, at a distance of 700 yards from the house of Shivratan Sah. The place of occurrence is situated at a distance of 100 yards towards the southern side of the house of



Shivratan Sah and at a distance of 600 yards towards the Northern side of the house of Kariman Ram and the house of Kariman Ram is situated towards the extreme north of the Harijan tola. The house of Anant Rawat is situated towards the extreme southern side and in between the houses of Kariman Ram and Anant Rawat, there are 20-25 houses as also there is a distance of 100 yards between both of them. Towards the southern side of the house of Anant Rawat and towards the eastern side, Malahi toli is situated. In paragraph no.4 of his cross examination, P.W. 5 has stated that Malahi toli is situated on both sides of Sakua-Sirni Road. P.W. 5 has further stated that he was on the southern side of the road which goes to Misarbaliya and he was at a distance of 10 steps towards the south of the road when he heard the sound of gunshot firing for the first time. P.W. 5 has next stated that towards the southern side, he did not see anyone, however on the northern side, after lighting the torch he saw the accused persons at a distance of 10-15 steps. The said accused persons were coming through the Sakua-Belti road from northern side towards the southern side and when the accused persons had gone towards the northern side of the house of Kariman Ram, he had seen them. The dead body was lying at a distance of about 100-150 yards towards the northern side of the place where he



had seen the accused persons.

27. P.W. 5 has further stated that when he reached near the dead body, he saw 4-5 persons present there including Jaikant Mani Tripathi (P.W. 12), Ramraj Giri (P.W. 4), Ram Bahadur Giri (P.W. 6) and Rajdeo Giri (D.W. 2). P.W. 5 has further stated that he had seen the accused persons fleeing away. He has stated that he had talked with the accused persons for half a minute and all the accused persons were armed with weapons. Manoj Tiwari was holding gun in one hand and knife in another. P.W. 5 has also stated that when he reached at the place of occurrence, he saw sign of injuries on the dead body but did not count as to how many injuries were present on the dead body, however upon having seen the injuries he could ascertain that the injuries were inflicted by knife and gun. P.W. 5 has also stated that Jaikant Mani Tripathi (P.W. 12) had told him about the incident, the names of the accused persons and the weapons they were holding in their hands. P.W. 5 has next stated that after five minutes, they had left the place of occurrence and during the said period 20-25 persons had arrived there. P.W. 5 has stated that he had seen Ambika Sah at the place of occurrence. He had not talked with the said 20-25 persons who had assembled at the place of occurrence. P.W. 5 has also stated that on the next day, he had



told the police about the incident. In para no.5 of his cross examination, P.W. 5 has stated that he had told the police that when he had moved ahead of Malahi toli for some distance then he heard sound of gunshot firing from the southern side and that he had heard sound of 4-5 gunshots being fired. He has stated that he had told the police that four persons were fleeing from north to southern side. P.W. 5 has next stated that he had told the police that Munna Tiwari was holding knife in his hand and he had given torch to the police on the next day of incident at about 7:00 a.m. in the morning, when his statement was being recorded by the police. The seizure list was signed by two persons and after 5-7 days, torch was returned back to him.

28. P.W. 6 Ram Bahadur Giri has stated in his evidence that the occurrence dates back to 15 months at about 9:00 p.m. in the night when he was sitting at his door along with him Ramraj Giri (P.W. 4) and Rajdeo Giri (D.W. 2) and then they heard sound of gunshot firing from the southern side and at that time Jaikant Mani Tripathi (P.W. 12) came shouting and told them that his brother is being assaulted, hence they should come quickly, whereafter he along with Jaikant Mani Tripathi (P.W. 12), Ramraj Giri (P.W. 4) and Rajdeo Giri (D.W. 2) went to the place of occurrence near Giri tola and saw that Deo Saran Mani Tiwari



had fallen on the ground, Satyendra Mani Tripathi was holding a rifle, Kaminder Mani Tripathi was holding a gun in his hand, Manoj Tiwari was holding a single barrel gun and knife in his hand and Munna Tiwari was holding knife in his hand. P.W. 6 has further stated that he saw Manoj Tiwari and Munna Tiwari assaulting Deo Saran by knife and dagger in the light of torch, however when he had lit the torch, Satyendra Mani Tripathi had told to shut off the torch, failing which he would fire gunshot on him. Upon alarm being raised, other people had assembled there and then the accused persons had fled away via southern side towards the western side and had gone to their house. P.W. 6 has stated that he saw gunshot injury on the left side of the neck of Deo Saran Mani Tripathi as also at the center of the head and he had died on the spot.

29. In paragraph no.2 of his cross examination, P.W. 6 has stated that he was warming himself besides bonfire prior to 45 minutes of the incident and after 15-20 minutes, Devraj and Rajdeo had arrived there. P.W. 6 has further stated that at the time when he heard *hulla* (alarm), the bonfire was lit. In paragraph no.3 of his cross examination, P.W. 6 has stated that Belti-Sakua road is situated towards the eastern side of his house at a distance of 15-20 yards. P.W. 6 has further stated that the blood of the



deceased was spread all around the dead body upto 1-1½ hand length. He has also stated that while the accused persons were present at the place of occurrence, the people from the village had not reached there and the people from village had arrived only after the accused persons had gone 25-30 yards south of the place of occurrence. P.W. 6 had gone near the deceased after the accused persons had left. He has also stated that he along with Rajdeo Giri (D.W. 2), Jaikant Mani Tripathi (P.W. 12) and Ramraj Giri (P.W. 4) were watching the incident from a distance of 3-4 yards. After the people from the village came there, Jaikant Mani Tripathi had disclosed about the incident and had also revealed the names of all the 4 accused persons as also the weapons which they were holding in their hands.

30. P.W. 6 has further stated that after 2-3 minutes of him having heard the sound of gunshot firing, P.W. 12 had come to his house. He has stated that prior to reaching the place of occurrence, except his associates he had not seen anyone else and when he reached the place of occurrence, knife blow was being inflicted upon the deceased from before. He has also stated that when he first saw the deceased, he did not see any sign of injury. He cannot say as to how many knife blows were inflicted and as to on which part of the body the same were inflicted. At the time



when knife blow was being inflicted, the deceased was lying on his right side and he was not saying anything. In paragraph no.4 of his cross-examination, P.W. 6 has stated that all the four persons were having torch in their hands and they had lit the torch together as also had shut the same at the same time, however none of the accused persons were holding torch in their hands. P.W. 6 has further stated that after the incident he had met the Officer-in-Charge at the place of occurrence and at that time, he had given the torch to the Officer-in-Charge, whereafter the seizure list of the said torch was prepared, however copy thereof was not given to him and after his statement was recorded, he had gone home.

31. P.W. 7 Vijay Kant Giri has stated in his examination-in-chief that the occurrence dates back to 15-16 months at about 9:00 p.m. in the night when he was sitting to ease himself near the canal situated south of his house when he heard 4-5 sounds of gunshot firing and after having eased himself, he got up and ran towards the direction from where the sound of gunshot had come, whereupon he saw that Satyendra Mani Tripathi armed with rifle in his hand, Kamendra Mani Tripathi armed with gun in his hand, Manoj Tiwari armed with dagger and knife and Munna Tiwari armed with knife were coming running, whom he had recognized



in the light of his torch. Satyendra Mani Tripathi had then told him to shut his torch and then they had moved towards the south and gone towards the western side. Thereafter, P.W. 7 had gone to the place of occurrence where he found Deo Sharan Mani Tripathi lying dead and his body was smeared with blood. The dead body was lying towards the eastern side of the road and there were signs of injury on the dead body, where brother of the deceased (P.W. 12) was present as also many other persons had arrived. P.W.7 has stated that Satyendra Mani Tripathi had misappropriated a sum of Rs. 4-5 lacs of the co-operative regarding which complaint had been made by Deo Saran Mani Tripathi and on account of the same animosity had arisen and the same has led to the said occurrence. P.W.7 has also stated that he had handed over the torch which he was holding in his hand to the Officer-in-Charge which he has identified in the Court and the same has been marked as material Exhibit No.-I/4.

32. In paragraph no.5 of his cross examination, P.W. 7 has stated that at the time when he had heard the sound of gunshot firing, he had already eased himself and the place of occurrence is situated at a distance of 100-150 yards south of the place where he was easing himself, whereafter he had gone running to the place of occurrence. The place where he had first met the accused



persons is situated at a distance of 100-150 yards from the place of occurrence. He has also stated that he had gone from the place where he was easing himself to the place where he had met the accused persons with his torch lit and had focused the same on the accused persons from a distance of 7-8 yards, light whereof had fallen on Satyendra Mani Tripathi, whereupon he had abused him and told him to shut off the torch, whereafter he had not lit the torch again. Thereafter, P.W. 7 had gone to the place of occurrence while raising *hulla* (alarm) but people present at the place of occurrence were raising alarm from before and when he reached at the place of occurrence, 30-35 people were saying that the deceased Deo Sharan Mani Tripathi has died. Jaikant Mani Tripathi (P.W. 12) had then told him about the incident and the other persons present there were also talking about the incident. They also told P.W. 7 about the name of all the 4 accused persons and the weapons they were holding in their hands. In para no.6 of his cross examination, P.W. 7 has stated that his statement was not recorded by the DSP and he had not told him that he had recognized Munna and Manoj holding knife in their hand. In paragraph no.7 of his cross examination, P.W. 7 has stated that in the present case, witnesses are resident of only one tola and at the place of occurrence he had not seen any person either from the



Harijan tola or Kanu tola. All the 30-35 persons present there were from Giri tola.

33. P.W. 8 Vijay Kant Tripathi has stated in his evidence that the inquest report of the deceased Deo Sharan Mani Tripathi was prepared on 04.02.1992 at 1:30 a.m. in the night by the Officer-in-charge of Malahi Police Station, namely Md. Sarfuddin Khan. The inquest report was prepared in carbon copies and he had signed it in presence of Ramashish Tiwari (P.W. 9). He along with Ramashish Tiwari had made signature over the inquest report and he has recognized his signature as also that of Ramashish Tiwari made over the inquest report which has been marked as Exhibit-3. In cross examination, P.W. 8 has stated that his house is situated at a distance of 5 bigha from the place of occurrence. He has stated that after hearing *hulla* (alarm) he had gone to the place of occurrence by lighting torch at about 1:00 a.m. in the night and at the place of occurrence about 100 people were present along with Officer-in-Charge and the police force. He has also stated that at the place of occurrence he had seen Jaikant Mani Tripathi (P.W. 12), Durga Sharan Tripathi, Vijay Kant Giri (P.W. 7), Ramdekhan Giri (P.W. 5) and Ramraj Giri (P.W. 4). He has further stated that the officer-in-charge had not made any inquiry from the aforesaid persons in his presence.



34. P.W. 9 Ramashish Tiwari has stated in his evidence that the inquest report of the deceased Deo Sharan Mani Tripathi was prepared on 04.02.1992 at 1:30 a.m. in the night by the Officer-in-Charge of Malahi P.S., namely Md. Sarfuddin Khan on which he had made his signature, which he has identified and the same has been marked as Exhibit-4. He has also stated that Vijay Kant Tripathi (P.W. 8) had also made his signature on the inquest report, which has already been marked as Exhibit-3. He has next stated that the dead body of the deceased was lying at a distance of 70 yards towards the southern side of Giri tola on the road. P.W. 9 has also stated that his house is situated at a distance of one kilometer from the house of the informant and is at a same distance from the place of occurrence. In cross examination, P.W. 9 has stated that his village and the village of the informant is situated adjacent to each other and it is not a fact that he was staying at the house of Deo Sharan Mani Tripathi. In para no.11 of his cross examination, P.W. 9 has stated that he did not talk with the Officer-in-charge regarding the injuries, however dead body challan was prepared in his presence & his statement was recorded after preparation of inquest report.

35. P.W. 10 Bipin Giri has stated in his evidence that on 04.02.1992 at about 7:00 a.m. in the morning, the Officer-in-



Charge of Malahi P.S. had prepared the seizure list of blood-soaked mud and one pair of slippers at village Nagdaha, near Giri tola, recovered from near the dead body, on which he had put his signature along with Bachandeo Giri, which he has identified and he has stated that the said seizure list was prepared by Md. Sarfuddin Khan, Officer-in-Charge. The said seizure list has been marked as Exhibit No.-5. P.W. 10 has also identified the plastic slipper produced in the Court which has been marked as material Exhibit-II. P.W. 10 has next identified the blood-soaked mud which has been produced in the Court and the same has been marked as material Exhibit-III. P.W. 10 has further stated that on the same day at about 7:15 a.m. in the morning, the Officer-in-Charge, namely Md. Sarfuddin Khan had seized one live cartridge and he has identified the same, which has been produced in the Court and the same has been marked as material Exhibit-IV. P.W. 10 has stated that apart from the above, three 2.15 bore rifle bullets were seized out of which, one had been fired, one had misfired and the third is live, which have been produced in the Court, have been identified by P.W. 10 and the same have been marked as material exhibit-V, V/1 and V/2 respectively. P.W. 10 has also stated that at the time of seizing the aforesaid articles, seizure list was prepared by the Officer-in-



Charge Sarfuddin Khan, on which he had put his signature and the same was also signed by Bachandeo Giri. Further, P.W. 10 has identified the writing and signature of Sarfuddin Khan on the seizure list, which has been marked as Exhibit No.5/1.

36. In paragraph no.7 of his cross examination, P.W. 10 has stated that his father Ramraj Giri (P.W. 4) is also a witness in the present case. He has stated that he had heard the sound of gunshot firing but he had not gone to the place of occurrence and he had gone to the place of occurrence for the first time in the morning at 7:00 a.m., when 5-6 people were present there and out of them, he had recognized only Bachandeo Giri. He has also stated that he had gone to the place of occurrence voluntarily and had come back at 07:30 a.m. In paragraph no.8 of his cross examination, P.W. 10 has stated that when he had gone to the place of occurrence, he found cartridges on the road at a distance of 15-20 yards south of the place of occurrence, which were scattered all over. One rifle bullet was lying at a distance of 100 yards from the place of occurrence, however he had not seen the paper pertaining to firing of gun shot. In paragraph no.9, P.W. 10 has stated that he had not seen sign of embedding of bullets near the place of occurrence in the ground. In para no.10 of his cross examination, P.W. 10 has stated that while he was present there,



P.W. 9 had not arrived there and it is not a fact that no article was seized in his presence.

37. P.W. 11 Dr. Vishwanath Tiwari is the Doctor who had conducted post mortem examination of the dead body of the deceased. He has stated in his evidence that he was posted as Civil Assistant Surgeon at Sadar Hospital, Motihari on 04.02.1992 and on the very same day at 01.00 p.m., he had conducted the post mortem examination of the dead body of the deceased Deo Saran Mani Tripathi at Sadar Hospital, Motihari. P.W. 11 had found the following anti mortem injuries on the dead body:-

- (i) Sharp cutting wound on left side of neck 1½” x ½” x muscle deep.
- (ii) Sharp cutting wound on left side of root of neck 1½” x 1” x muscle deep.
- (iii) One circular wound on left side of chest with charred margin and lacerated inverted margin of about one inch diameter on upper part - wound of entry with cavity deep.
- (iv) One sharp cutting wound on left lower portion of chest 1½” x 1” x cavity deep.
- (v) One sharp cutting wound on left side of chest in middle 2” x 1” x cavity deep.
- (vi) One sharp cutting wound on left forearm 2” x ½” x



muscle deep.

(vii) One circular wound on right side lower part of the chest with everted margin measuring about 3" in diameter and cavity deep.

(viii) Two sharp cutting wounds on right side of chest 1" x ½" x skin deep and 1½" x ½" x muscle deep.

(ix) One sharp cutting wound on vertex of skull 2" x ½" x scalp layered deep.

(x) Two sharp cutting wounds on right side back of chest ½" x ½" and 1" x ½".

(xi) Two sharp cutting wounds on right lower part of the chest 1" x ½" and ½" x ¼".

(xii) Multiple small circular pellet sized wound with charred margin on right thigh.

On dissection, P.W. 11 had found the following:-

Head-NAD, Neck-cutting of neck muscles trachea and blood vessels of neck.

Chest-Pleural cavity was full of blood and there was fracture on left upper ribs and right lower ribs. Laceration of lung. Injury (wound) no. 3 communicating with injury no. 7.

Heart both sides empty.

Abdomen-stomach-contained about one ounce of digested food material.

Liver and spleen-NAD.

Urinary bladder-empty.



Right thigh-on dissection of right thigh five pellets was recovered which was kept in a glass bottle, covered by leucoplast and duly signed and labelled with full address of person and handed over to the above-named constable.

P.W. 11 has identified the sealed bottle containing five pellets, which has been mark as material Exhibit-VI.

38. P.W. 11 has opined that the cause of death is on account of hemorrhage, leading to shock due to the above-mentioned injuries specially injury nos. (iii) and (vii). He has also stated that the weapon used is fire arm and sharp cutting pointed weapon, such as may be rifle and gun and dagger and knife. He has opined that the time elapsed since death is 24 hours. P.W. 11 has further stated that the post mortem examination report is in his writing and bears his signature, which he has identified and the same has been marked as Exhibit-6. He has also stated that after post mortem examination of the dead body, sealed bottle containing pellets and clothes of the deceased along with post mortem report were handed over to the police constable. In paragraph no.8 of his cross examination, P.W. 11 has stated that he has not mentioned in his report (Exhibit-6) whether the injuries were anti mortem or post mortem. In paragraph no.9 of his cross examination, P.W. 11 has stated that after being inflicted with



injury nos. 3 and 7, there is every chance of instantaneous death. In para no.10 of his cross examination, P.W. 11 has stated that upto a distance of one yard, the whole charged fire from the gun enters the body in mass. The charring injuries is possible when it is from a close range. The wound of entry caused by fire arm is on front side. The injury nos. 3 and 7 are not possible by revolver rather they have been inflicted by rifle or gun. In para no.11 of his cross examination, P.W. 11 has stated that necessarily the injuries will cause profuse bleeding, however he has not mentioned about any color of injury no. 3. In para no.13 of his cross examination, P.W. 11 has stated that he did not find any foreign material in or around the wound and he has not mentioned any perforation or cutting on the cloth of the deceased.

39. P.W.12 Jaikant Mani Tripathi has stated in his examination in chief that the occurrence dates back to 03.02.1992 at about 9:00 p.m. in the night, when he along with his deceased brother Deo Sharan Mani Tripathi were going to their agricultural land situated east of their house for irrigating the wheat field and when they had reached at some distance ahead towards the southern side of the primary school at Harijan tola, some people had surrounded them, whom he and his brother had recognized in the light of the torch being held by them in their hand as their co-



villagers, namely Satyendra Mani Tripathi armed with rifle, Kamindra Mani Tripathi armed with double barrel gun and Manoj Tiwari, armed with double barrel gun. Upon being surrounded, deceased brother of P.W. 12 asked the accused persons that they had also gathered people of the village and got evidence recorded against him with their signature. The deceased brother of P.W.12 had then asked the accused persons as to why they had surrounded them, whereupon Satyendra Mani Tripathi repeated the said facts and told him that he had got a complaint filed by the villagers, hence they would kill him, whereafter both the brothers started running towards Giri tola but in the meantime, the accused persons started firing upon them by rifle and gun, leading to the brother of P.W. 12 falling down at some distance from Giri tola on the road on account of being hit by gun shots. P.W. 12 had then while raising *hulla* (alarm) gone running towards Giri tola shouting that Satyendra Mani Tripathi, Kaminder Mani Tripathi and Manoj Tiwari are killing his brother, hence they should save him, whereupon he saw Rajdeo Giri (D.W. 2), Ramraj Giri (P.W. 4) and Ram Bahadur Giri (P.W. 6) warming themselves besides bonfire, who had then accompanied P.W. 12 and had gone to his deceased brother. In the light of the torch of P.W. 12 as also in the light of the torch of witnesses, they



saw that while Satyendra Mani Tripathi and Kaminder Mani Tripathi were holding rifle and gun, respectively in their hand, Manoj Tiwari and Munna Tiwari were holding dagger and knife, respectively in their hand as also they were inflicting blows on the brother of P.W.12 repeatedly. Thereafter, P.W.12 and the aforesaid witnesses as also co-villagers had raised *hulla* (alarm), whereupon Satyendra Mani Tripathi told them to run away otherwise they would fire gun shots on them as well, however on account of hordes of people having accumulated there, all four accused persons fled towards southern side and then went towards western side. Thereafter P.W. 12 had gone towards the dead body of his brother and saw that his body was smeared with blood and he had been inflicted with gunshot injuries on forehead, back, neck and chest as also he had received injuries on his body, inflicted by sharp cutting weapon.

40. P.W. 12 has stated that the reason for this occurrence is that Satyendra Mani Tripathi is Chairman of Nagdaha Co-operative Society and in the name of the villagers he has misappropriated Rs.4-5 lacs leading to the deceased brother of P.W. 12 having accumulated villagers and having got a complaint signed by them, which was filed against Satyendra Mani Tripathi. P.W. 12 has further stated that at about 12:00 in the mid-night, the police



from Malahi P.S had arrived at the place of occurrence voluntarily, whereupon P.W. 12 had given his statement in connection with the occurrence which was written by the police officer as also the same was read over to him and upon finding the same to be correct, P.W. 12 had put his signature over the same. P.W. 12 has stated that his statement was recorded in presence of Bachandeo Giri and Bipin Giri (P.W.10). P.W. 12 has recognized his signature and has stated that the said two witnesses had also put their signature on the *fardebayan*, which is in the writing of Md. Sarfuddin Khan, the then Officer-in-Charge, which he has also identified and further he has recognized the signature of Md. Sarfuddin Khan present on the *fardebayan*. The *fardebayan* has been marked as Exhibit-2. P.W. 12 has also identified the torch produced in the Court in the light of which he had recognized the accused persons and the same has been marked as material Exhibit-I/5 (with objection). P.W. 12 has further stated that the Officer-in-Charge Md. Sarfuddin Khan had prepared a seizure list and put his signature upon the same apart from the same being signed by witnesses and the same has been marked as Exhibit-6. P.W. 12 has recognized the accused persons standing in the dock. In paragraph no.15 of his cross examination, P.W. 12 has stated that before reaching the place of



occurrence, nobody else had met them and they had not gone to the primary school through the canal route, although the said way to the place of occurrence is shorter.

41. In paragraph no.17 of his cross examination, P.W. 12 has stated that when they had first seen the accused persons, they were at a distance of 1-1½ yards, whereafter they had come and surrounded them, however they had not seen as to whether the accused persons were holding torch in their hand or not but they were holding gun and rifle in their hand. After the accused persons had surrounded them, talks had taken place for 1-2 minutes and during that period, they did not try to assault them. P.W. 12 has further stated that they were not assaulted at the time talk was being held in between them, however they were assaulted when they were fleeing away. In para no.18 of his cross examination, P.W. 12 has stated that he had seen the accused persons firing gun shots and they were firing together, however he cannot say as to who had shot at whom since they were running and the accused persons were also running and firing at them. The accused persons were at a distance of 20-24 hand length while they were firing. P.W. 12 has further stated that since they were running, the first gunshot did not hit them, however the second gunshot had hit, which was fired from 20-24 hand length.



The body part of his brother where the second shot was inflicted was not seen by him since they were running, however he had seen his brother falling down and then he had seen his brother being hit by third gunshot and at that time also, the accused persons were at a distance of 20-24 hand length. In paragraph no.19 of his cross examination, P.W. 12 has stated that when he had fled from Giri tola and reached his village, he heard two sounds of gunshot firing. In para no.20 of his cross examination, P.W. 12 has stated that when both brothers were running from primary school and were shouting, nobody from the village had arrived there, however torch was in his hand but torch was not in the hand of his brother. He has also stated that while they were running, he had not seen dagger in the hand of the accused persons, however when he had returned, he had seen it.

42. In paragraph no.21 of his cross examination, P.W. 12 has stated that in Giri tola, house of Ambika Sah is situated at the beginning. P.W. 12 has further stated that he had gone 70-80 yards towards the northern side of the place where the dead body of his brother was lying and from there the road goes towards the western side and then he had gone ahead for 10-15 steps where three people were warming themselves beside the bonfire and there he had shouted that his brother has been assaulted/killed



(Maar Diya), hence they should save him. There, he had heard two sounds of gunshot firing. All the three persons who were warming themselves besides the bonfire were carrying torch. In para no.22 of his cross examination, P.W. 12 has stated that apart from the said three persons, nobody from the said tola had accompanied him. After he had returned back to the place where the dead body was lying, he had lit the torch and at that time, three accused persons were holding gun and rifle while the gun of Manoj Tiwari had been kept on the ground. P.W. 12 has also stated that when he had lit the torch, he had seen the accused persons inflicting knife blows in his presence. P.W. 12 has stated that when he had gone to the place of occurrence on the second occasion, he had also seen Munna Tiwari present there. In paragraph no.23 of his cross examination, P.W. 12 has stated that Munna and Manoj both were standing towards eastern-western side of his brother. He has also stated that he did not count as to how many times Munna and Manoj had inflicted knife blows on his brother and as to on which body part the same had been inflicted, however blood was oozing out from the body of his brother. In paragraph no. 24 of his cross examination, P.W. 12 has stated that when he had returned from Giri tola, he had seen the incident from a distance of 4-5 yards and the incident of inflicting



knife blows had continued for 2-3 minutes. P.W. 12 has also stated that when he and others had lit their torch, the accused persons had reprimanded them but they had not tried to kill them. At the time of infliction of knife blows, P.W. 12 and three persons, who were warming themselves beside the bonfire were present and at the time when knife blows were being inflicted upon the brother of P.W. 12, he was stable as also was not quivering and after infliction of knife blows, gun shots were not fired. In paragraph no.26 of his cross examination, P.W. 12 has stated that on account of fear, they had not chased the accused persons and the accused persons had fled away towards the village.

43. In paragraph no.27 of his cross examination, P.W. 12 has stated that after the accused persons had fled away, 30-40 people from the village had arrived there, including people of Kanu community but people of Harijan community had not arrived there, however other people had also arrived there apart from people of Giri tola. In paragraph no.28 of his cross examination, P.W. 12 has stated that after the accused persons had gone, he had seen the injuries inflicted on the body of his brother in the light of torch and he had found that 10-11 injuries had been inflicted of both types. In paragraph no.29 of his cross examination, P.W. 12



has stated that till the arrival of police, he had stayed in and around the place of occurrence. In paragraph no.30 of his cross examination, P.W. 12 has stated that before recording of his *fardbeyan*, he had not sent information at Motihari. He has also stated that his father was also present there in the village on the day of incident and he had arrived at the place of occurrence after the incident and he was crying. He has also stated that before recording of *fardbeyan*, he did not have any conversation either with his father or the witnesses. In paragraph no.31 of his cross examination, P.W. 12 has stated that he does not remember as to whether he had stated that at the time his brother was being assaulted and gunshots were being fired, Bhibhikhan Giri (P.W. 3), Ramdekhan Giri (P.W. 5), Vijay Kant Giri (P.W. 7) and Ramraj Giri (P.W. 4) had come and chased the accused persons. P.W. 12 has also stated that he does not remember as to whether he had mentioned in the FIR or not that when he had gone running to his deceased brother, then he and the witnesses in the light of torch had seen Satyendra Mani Tripathi armed with rifle, Kaminder Mani Tripathi armed with gun, Manoj Tiwari armed with dagger and Munna Tiwari armed with knife, assaulting his brother indiscriminately. In paragraph no.32 of his cross examination, P.W. 12 has stated that he had seen gunshot injuries



on the left cheek near the neck, chest and on the right leg of his brother. He has also stated that in the FIR, he had mentioned that he had seen injuries inflicted by sharp cutting weapon on the body of his brother.

44. In paragraph no.33 of his cross examination, P.W. 12 has stated that DSP had made inquiries from him, however he does not remember as to whether he had told him or not that when they had reached near the place of occurrence they had recognized the accused persons in the light of torch being held by them as also he does not remember that upon *hulla* (alarm) being raised and upon sound of gunshot firing, Bhibhikhan Giri, Vijay Giri, Ramratan Giri, Devan Giri and others had arrived there, who had seen the accused persons fleeing away and had also chased them. P.W. 12 has also stated that he does not remember as to whether he had disclosed about the factum of gunshot injury being inflicted on the forehead, near the neck and on the chest. He has also stated that he does not remember as to whether he had taken the name of Munna Tiwari before the DSP or not. In paragraph no.36 of his cross examination, P.W. 12 has stated that prior to the said incident, he used to go to his field in the day time and he had not gone to his field in the night since past 4-6 months but they were going to their field in the night only on the date of



occurrence, however they had not eaten food but had eaten snacks at about 6:00-7:00 p.m. in the evening. In paragraph no.38 of his cross examination, P.W. 12 has stated that he knows the difference between rifle and gun. Satyendra Mani Tripathi was holding rifle in his hand, which is a licensed rifle. He cannot say as to whether Kaminder Mani Tripathi and Manoj Tiwari were holding country made gun in their hand or not. In paragraph no.39 of his cross examination, P.W. 12 has stated that he did not see bullet falling from the rifle and gun and he cannot also say about the size of the dagger, however he has stated that the knife was 1-1½ *bitta* (palm length) by which vegetable is cut. In paragraph no.40 of his cross examination, P.W. 12 has stated that one month prior to the said incident, he came to know that Satyendra Mani Tripathi (appellant no.1 of the second case) had issued a receipt in his name for a sum of Rs.1,191/- and has misappropriated the said amount, however he had not misappropriated any amount of his brother and that time he had not made any complaint, however his brother had made a complaint. He has also stated that Satyendra Mani Tripathi has misappropriated money of 100-150 villagers. In paragraph no.42 of his cross examination, P.W. 12 has stated that at the place of occurrence, the Officer-in-Charge along with constable had



arrived and upon their arrival, he had arranged for petromax, however he does not remember as to whose name he had disclosed first before the Officer-in-Charge but the Officer-in-Charge had firstly recorded his statement. P.W. 12 has stated that the inquest report was not prepared before him and the police had come at 12:00 in the midnight from the town and had returned at 9:00-10:00 a.m. in the day time. P.W. 12 has also stated that he had not handed over the torch to the Officer-in-Charge immediately after recording of his *fardbeyan* but had handed over the torch in the morning and one by one torches of the witnesses were seized.

45. P.W. 13 Md. Sarfuddin Khan is the Investigating Officer of the present case and he has stated in his evidence that on 04.02.1992, he was posted as Officer-in-Charge of Malahi P.S. On 03.02.1992 at 11:00 p.m. in the night, a rumor information was received that somebody has been killed in village Nagdaha, which he had recorded in the P.S. Diary, vide entry No.47 dated 03.02.1992, whereafter, he had left for the place of occurrence along with the police force on 04.02.1992 at about 00:30 hours and upon reaching Nagdaha village, he had recorded the *fardbeyan* of the informant, Jaikant Mani Tripathi (P.W. 12) in presence of witnesses, namely Bachandeo Giri and Bipin Giri



(P.W. 10) at the *bathan* of Ambika Sah of village Nagdaha (Giri tola). P.W. 13 has identified the *fardbeyan* which is in the writing of Sub-Inspector of Police, Shri B.N. Singh and bears his signature. He has stated that both the witnesses namely Bachandeo Giri and Bipin Giri (P.W. 10) had made their respective signatures in his presence on the *fardbeyan* and then he had read it over to the informant and upon finding the same to be correct, the informant had made his signature. In this connection, reference has been made to Exhibit-2. After registration of the *fardbeyan*, P.W. 13 had prepared the inquest report of the dead body of the deceased in presence of independent witnesses i.e. Vijay Kant Tripathi (P.W. 8) and Ramashish Tiwari (P.W. 9), which was read by the said witnesses, whereafter they had put their respective signatures over the same. P.W. 13 has referred to Exhibit-3 and has said that the inquest report is in his writing and bears his signature.

46. P.W. 13 has further stated that subsequently, he had recorded the re-statement of the informant and then immediately, he had recorded the statement of the witnesses, whereafter he had recorded the statement of Bhibhikhan Giri (P.W. 3), Vijay Kant Giri (P.W. 7), Ramdekhan Giri (P.W. 5), Ramraj Giri (P.W. 4), Ram Bahadur Giri (P.W. 6) and Rajdeo Giri (D.W. 2). Thereafter,



the *fardebayan* of the informant was sent to the Officer-in-Charge, Govindganj P.S. for registration of FIR. P.W. 13 had then inspected the place of occurrence at 5:00 a.m. in the morning. He has stated that the place of occurrence of the present case is at village Nagdaha at a distance of about 17 yards from Giri tola on the road going from Harijan village, Belahi to Sakua ghat. The dead body was lying on the eastern side of the road. He has also described the direction of the dead body and the injuries found on the dead body in his evidence. P.W. 13 had also seized a pair of slippers, live cartridge, three 3.15 bore bullets of rifle, out of which one had been fired, one had misfired and one was a live cartridge. P.W. 13 has further stated that the houses of the accused persons are at a distance of 500-600 yards towards the western side of the place of occurrence and the house of the informant and the deceased is adjacent to the same towards the western side. On the eastern side of the place of occurrence, the wheat field of Jaganath Tiwari is situated and on the northern and southern side, road is situated. P.W. 13 has further stated that dead body of the deceased Deo Sharan Mani Tripathi was sent for post mortem examination along with all the requisite documents to Motihari. Thereafter, the statements of Shyamakant Giri, Vikramaditya Giri, Prabhunath Giri and Ambika Sah were



recorded. The blood-soaked mud and pair of plastic slipper were seized in presence of witnesses, namely Bachandeo Giri and Bipin Giri (P.W. 10) and then the seizure list was prepared which was signed by the said two witnesses. P.W. 13 has further stated that he had recovered one cartridge of double barrel gun and three bullets of 3.15 bore, in presence of independent witnesses, namely Bachandeo Giri and Bipin Giri (P.W. 10), from the road situated in between Nagdaha Giri tola and Chamar Toli going towards Sakua, i.e. from a place situated at a distance of about 20 yards from the dead body.

47. P.W. 13 has also stated that witness Bipin Giri (P.W. 10) had produced a torch which was also seized and seizure list was prepared in presence of two independent witnesses. Thereafter, he had recorded the statement of Durga Sharan Tiwari and seized the torch. P.W. 13 has also received the post mortem report, the clothes found on the body of the deceased and one sealed bottle containing pellets, which he has identified and the same has been marked as material exhibit nos.7-7/2. P.W. 13 has further stated that on 12.05.1995, during the course of investigation, he had recorded the statement of Bindeshwari Tiwari, Branch Manager of Arare Branch Co-operative Bank, had seen the documents pertaining to his office and seized the register etc. as also



prepared the seizure list in presence of two witnesses and one copy of the seizure list was handed over to Bindeshwari Tiwari (P.W. 14), who had also put his signature over the same, which has been marked as Exhibit-9. P.W. 13 had upon investigation submitted the chargesheet against the accused persons. In paragraph no.20 of his cross examination, P.W. 13 has stated that Sanah No.47 is not present before him in the Court. In paragraph no.21 of his cross examination, P.W. 13 has stated that he cannot disclose the name of the informant from whom he had received information on 03.02.1992 at 11:00 p.m. in the night, since the said information was a rumor. In paragraph no.23 of his cross examination, P.W. 13 has stated that after he had gone to the place of occurrence, he had recorded the *fardbeyan* of the informant and before that he did not talk with anyone at that place. He has also stated that it took him one hour to record the *fardbeyan*. He has next stated that before preparation of the inquest report, he had recorded statement of the witnesses. In paragraph no.25 of his cross examination, P.W. 13 has stated that he had sent the *fardbeyan* at 5:00 a.m. in the morning for registration of FIR and only one copy was written. In paragraph no.27 of his cross examination, P.W. 13 has stated that he had inspected the place where the dead body was lying. In paragraph



no.28, P.W. 13 has stated that he had not conducted Test Identification Parade of the slipper which was recovered from the place of occurrence and he had not seen the said slipper having been worn by anyone.

48. In paragraph no.31 of his cross examination, P.W. 13 has stated that right from the night of day of occurrence, till 5:00 a.m. in the morning of 04.02.1992, he had recorded the statement of witnesses and then he had sent the *fardbeyan* for registration of FIR, whereafter he had seized the torch. In paragraph no.32 of his cross examination, P.W. 13 has stated that on 04.02.1992 at 7:30 a.m. in the morning, the witnesses were present there and were carrying torch in their hand about which he has not mentioned in the case diary. The said witnesses had disclosed that they had recognized the accused persons in the light of the torch. In paragraph no.35 of his cross examination, P.W. 13 has stated that he had not prepared the map of the place of occurrence. In paragraph no.37 of his cross examination, P.W. 13 has stated that on 05.02.1992, the SP had supervised the said case and had taken the statement of the witnesses in his presence and the DSP had himself written the statement of the witnesses, however the said documents are not annexed to the file. In paragraph no.39 of his cross examination, P.W. 13 has stated that on 04.02.1992 at about



6:00 p.m. in the evening, he had received the post mortem report. He has not mentioned in the diary as to whether any primary school is present near the place of occurrence or not. In paragraph no.41 of his cross examination, P.W. 13 has stated that the eye witnesses of the present case are resident of Giri tola. In paragraph no.42 of his cross examination, P.W. 13 has stated that no witness has come forward from Sahu tola and Chamar toli. In paragraph no.43 of his cross examination, P.W. 13 has stated that he had not noted in the case diary as to whether he had gone to see the place where Ram Bahadur Giri was warming himself besides the bonfire or not. P.W.13 has also stated that he had not noted in the case diary as to the place from where the witnesses had watched the incident and the place from where they had seen the accused persons fleeing away. In paragraph no.48 of his cross examination, P.W. 13 has stated that Bhibhikhan Giri (P.W. 3) has stated before him that he had heard the sound of gunshot firing but he had not told him that he had also heard *hulla* (alarm) along with the sound of gunshot firing.

49. In paragraph no.49 of his cross examination, P.W. 13 has stated that the witness Ramdekhan Giri (P.W. 5) had not told him that when he had proceeded ahead of Malahi toli then he heard sound of gunshot firing and *hulla* (alarm) on the northern side. In



paragraph no.50 of his cross examination, P.W. 13 has stated that the informant Jaikant Mani Tripathi (P.W. 12) has not stated that he had gone running to Giri tola while saying that Satyendra Mani Tripathi, Kamendra Mani Tripathi and Manoj Tiwary are assaulting his brother and then he had met Rajdeo Giri, Ramraj Giri and Ram Bahadur Giri, who were warming themselves besides the bonfire and along with them he had gone back to the place where his deceased brother was lying and that upon alarm being raised, Bhibhikhan Giri (P.W. 3), Ramraj Giri (P.W. 4) and Ramdekhan Giri (P.W. 5) had arrived there and chased the accused while they were fleeing away.

50. P.W. 14 Bindeshwari Tiwari is a formal witness, who is stated to be posted at the Arareh Branch of the Central Co-operative Bank on 12.05.1992 and had produced the loan register and other documents before the Officer-in-Charge, namely Md. Sarfuddin Khan, which were seized and seizure list was prepared. In paragraph no.5 of his cross examination, P.W. 14 has stated that the complaint was made regarding bogus payment made by the bank as also pertaining to Nagdaha Pax. In paragraph no.6 of his cross examination, P.W. 14 has stated that his statement was not recorded by the Investigating Officer.

51. After closing the prosecution evidence, the learned Trial



Court recorded the statement of the appellants on 13.04.1994 under Section 313 of the Cr.P.C. for enabling them to personally explain the circumstances appearing in the evidence against them, however, they claimed themselves to be innocent.

52. D.W. 1 Biswanath Mani Tripathi has stated in his evidence that he was Mukhiya of Nagdaha Gram Panchayat from the year, 1952 upto the year 1970 and since past 10 years, he is Sarpanch. He has stated that the occurrence dates back to more than 2 years, the day was Tuesday at about 5:00-6:00 in the morning when he was called by Durga Sharan Tripathi at the door of his house and was told that he was at Motihari along with his family members while his son Deo Sharan Mani Tripathi has been murdered at Sirni-Sakua Road. D.W. 1 has further stated that he told him that nobody could see as to who had killed his son and he further said that Jaikant Mani Tripathi was also at Motihari on the date of occurrence, whereafter they had gone along with Durga Sharan Tripathi to the place of occurrence, where people of Giri tola, Harijan tola and Kanu tola were present amongst whom, Bhibhikhan Giri, Ramraj, Ramdekhan, Ram Bahadur and Bipin Giri etc. were also present and they had also not said anything about the murderer. Subsequently, it transpired that Satyendra Mani Tripathi, Kamendra Mani Tripathi, Munna Tiwari and



Manoj Tiwari have been falsely implicated. He has also stated that the house of Nagina Nutt is situated in the compound of Upper Primary School of his Village where he used to stay with his family and he had one daughter aged in between 17-18 years as also one daughter aged in between 16-17 years. He has stated that the character of the elder daughter of Nagina Nutt was not appropriate and after the murder of the deceased, people of the village had destroyed his house. D.W. 1 has next stated that the whereabouts of the family of Nagina Nutt is not known. In cross examination, D.W. 1 has stated that his statement was not recorded by the police.

53. D.W. 2 Rajdeo Giri has stated in his evidence that he has come to depose upon issuance of summons to him. The occurrence dates back to two years and he came to know about the incident on a day which was Tuesday at about 6:00 a.m. in the morning that Deo Sharan Mani Tripathi was lying dead, whereafter he along with the co-villagers had gone to the school and then he saw Jaikant Mani Tripathi, Durga Tiwari, Ramraj Giri, Ramdekhan Giri, Vijay Giri, etc. present there and upon being asked, nobody disclosed the name of the murderer. He has also stated that he could not know as to who had killed the deceased and he had remained there for half an hour. He has



stated that he had not seen any bonfire at the house of Ram Bahadur Giri, being used for warming. D.W. 2 has stated in his cross examination that while he was at the place of occurrence, the police had not arrived there and his statement was not recorded by the police.

54. D.W. 3 Anirudh Tiwari is a formal witness who has identified the original voter list which has been marked as Exhibit-B, in which names of Nagina Nutt and his family members are present. He has also stated that after the murder of Deo Sharan, the villagers & Durga Sharan had destroyed the house of Nagina Nutt.

55. The learned Trial Court, upon appreciation, analyzing and scrutiny of the evidence adduced at the trial has found the aforesaid appellants guilty of the offence and has sentenced them to imprisonment and fine as stated above, by the impugned judgment and order.

56. We have perused the impugned judgment of the Ld. Trial Court, the entire materials on record and have given thoughtful consideration to the rival submissions made by the Ld. Counsel for the appellants, the Ld. Counsel for the informant and the Ld. APP for the State.

57. The first and 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 appellants for the offence with which they have been charged. The prosecution has led the evidence of Bhibhikhan Giri (P.W. 3), Ramraj Giri (P.W. 4), Ram Dekhan Giri (P.W. 5), Ram Bahadur Giri (P.W. 6), Vijay Kant Giri (P.W. 7) and Jaikant Mani Tripathi (P.W. 12, i.e. the informant), apart from that of Dr. Vishwanath Tiwari (P.W. 11, i.e. the doctor who had conducted the post mortem examination) and Md. Sarfuddin Khan (P.W. 13, i.e. the Investigating Officer) to prove the guilt of the accused and based on the same, the Ld. Trial Judge has convicted the appellants, whereas the appellants have primarily taken the defence that the said witnesses are not eye witnesses and they have not witnessed the commission of the alleged occurrence, the first version has been suppressed by the prosecution, the prosecution has withheld the evidence of independent witnesses, the *fardebayan* is anti-dated and the prosecution witnesses have improvised upon the story as narrated in the *fardebayan*.

58. We find upon having examined the evidence led by the prosecution that as far as P.W. 1, Balmukund Paswan, P.W. 2, Imteyaz Ahmad, P.W. 8, Vijay Kant Tripathi, P.W. 9, Ramashish Tiwari, P.W.10, Bipin Giri and P.W. 14, Bindeshwari Tiwari are



concerned, they are formal witnesses and have not testified to anything substantive which would go to prove the guilt of the appellants. P.W. 11, Dr. Vishwanath Tiwari is the doctor, who has conducted the post mortem examination of the dead body of the deceased while P.W. 13, Md. Sarfuddin Khan is the Investigating Officer of the present case. Thus, we are left with P.W.3 to P.W.7 and P.W. 12. As far as P.W. 3, Bhibhikhan Giri is concerned, he has stated in his evidence that he had gone to ease himself towards the southern side of the canal and there he heard sound of gunshot firing towards the eastern side as also heard noise of some people shouting, whereafter he had moved towards the said way and saw that Satyendra Mani Tripathi (appellant no.1 of the second case) armed with rifle, Kaminder Mani Tripathi armed with gun, Manoj Tiwari (appellant no.2 of the second case) armed with gun and knife and Munna Tiwari (sole appellant of the first case) armed with knife were going towards the southern side. P.W 3 had then gone to the place of occurrence, where he saw that Deo Saran Mani Tripathi was lying dead and at that place the informant was present. He has also stated that at the time he heard the sound of gunshot firing, he was towards the western side of the house of Kariman, he had kept quite upon hearing the sound of gunshot firing, however *hulla* (alarm) was taking place



towards the eastern/ northern side and when he reached at the place of occurrence, 30-40 people were present there including those belonging to Giri tola, namely Ramraj Giri (P.W. 4), Rajdeo Giri (D.W. 2), Ram Bahadur Giri (P.W. 6), Vijay Kant Giri (P.W. 7), Shyamakant Giri, Suryanarayan, Sitaram, Shivmangal, Daroga, Ambika Sah, Lalbabu Giri, Prabhunath Giri, Bhibhikhan Giri (P.W. 3), Rajesh Giri, etc, whom he had recognized. Hence, we find that admittedly P.W. 3 is not an eye witness and he had not seen the appellants assaulting the deceased.

59. Now, coming to Ramraj Giri (P.W. 4), we find from his evidence that in the night of the occurrence which dates back to 03.02.1992 at about 9:00 p.m., he was warming himself besides a bonfire at the door of Ram Bahadur Giri (P.W. 6) along with Rajdeo Giri (D.W. 2) when they heard 4-5 sound of gunshot firing and at that time P.W. 12, Jaikant Mani Tripathi had come running there and told them that the appellants and one Kaminder Mani Tripathi were killing his brother Deo Sharan Mani Tripathi, hence they should come along with him and save his brother, whereafter all the said three persons along with the informant had gone running to the place of occurrence and in the light of torch they saw the appellants and Kamendra Mani Tripathi and while Satyendra Mani Tripathi (appellant no.1 of the second case) &



Kamendra Mani Tripathi were standing, Munna Tiwari (sole appellant of the first case) and Manoj Tiwari (appellant no.2 of the second case) were assaulting Deo Sharan Mani Tripathi by knife and dagger. Nonetheless, P.W. 4 has stated in his evidence that P.W. 12 had then narrated the entire incident to him, thus apparently P.W. 4 is also not an eye witness to the alleged occurrence.

60. As far as P.W. 5, Ramdekhan Giri is concerned, he has stated in his evidence that in the night of 03.02.1992 at about 9:00 p.m. he was arranging for labour from Malahi Toli and while he was returning back and had reached at some distance ahead of Malahi Toli, he heard sound of 4-5 gunshot firing towards the northern side as also heard *hulla* (alarm), whereafter he had moved ahead briskly and then he saw four people running from the northern side, whereupon he lit the torch and had recognized the appellant and one Kamendra Mani Tripathi, who were holding weapons in their hands. P.W. 5 had then gone to the place of occurrence, where he saw Deo Sharan Mani Tripathi lying dead on the side of the road and his body was smeared with blood as also his body was bearing gunshot injury, apart from him being inflicted with injury by sharp cutting weapon. He has further stated that P.W. 12 had then narrated the incident to him. He has



stated that when he reached the place of occurrence, he saw Jaikant Mani Tripathi (P.W. 12), Ramraj Giri (P.W. 4), Ram Bahadur Giri (P.W. 6) and Rajdeo Giri (D.W. 2) present there. Thus, even Ram Dekhan Giri (P.W. 5) is not an eye witness to the alleged occurrence.

61. As regards Ram Bahadur Giri (P.W. 6), we find from his evidence that he was sitting at his house in the night on the date of occurrence at his door along with Ramraj Giri (P.W. 4) and Rajdeo Giri (D.W. 2), when they heard the sound of gunshot firing from the southern side and at that time P.W. 12, Jaikant Mani Tripathi came shouting and told them that his brother is being assaulted, hence they should come along with him immediately, whereafter Ram Bahadur Giri (P.W. 6), Jaikant Mani Tripathi (P.W. 12), Ramraj Giri (P.W. 4) and Rajdeo Giri (D.W. 2) had gone to the place of occurrence near Giri tola, where they saw that Deo Sharan Mani Tripathi had fallen on the ground and while Satyendra Mani Tripathi and Kaminder Mani Tripathi were holding a rifle and a gun respectively, in their hand, Manoj Tiwari was holding a single barrel gun and a knife in his hand whereas Munna Tiwari was holding a knife in his hand. P.W. 6 has further stated that he had seen Manoj Tiwari and Munna Tiwari assaulting Deo Sharan Mani Tripathi by knife and



dagger. P.W. 6 has next stated that after the people from the village came there, Jaikant Mani Tripathi had disclosed about the incident and had also revealed the names of all the four accused persons as also the weapons which they were holding in their hands. Thus, we find that P.W. 6 cannot also be stated to be an eye witness.

62. Now coming to the evidence of Vijay Kant Giri (P.W. 7), we find that in the night of the date of occurrence, he was sitting near the canal situated south of his house for easing himself when he heard 4-5 sound of gunshot firing, whereafter upon having eased himself he got up and ran towards the direction from where the sound of gunshot firing had come and then he saw the appellants and one Kaminder Mani Tripathi variously armed. Thereafter, Vijay Kant Giri (P.W. 7) had gone to the place of occurrence where he found Deo Sharan Mani Tripathi lying dead and then P.W. 12 had narrated about the incident. Thus, we find that even P.W. 7 is not an eye witness to the alleged occurrence.

63. We find from the evidence of P.W. 12, Jaikant Mani Tripathi that in the night of 03.02.1992 at about 9:00 p.m., he along with his deceased brother Deo Sharan Mani Tripathi were going to their agricultural land situated east of their house for irrigating the wheat field and when they had reached at some



distance ahead towards the southern side of the primary school at Harijan tola, their co-villagers, namely Satyendra Mani Tripathi armed with rifle, Kamendra Mani Tripathi and Manoj Tiwary, both armed with double barrel gun had surrounded them, whereafter Satyendra Mani Tripathi had told the deceased brother of P.W. 12 that since he had got a complaint filed against him through the villagers they would kill him, whereupon both the brothers started running towards Giri tola but in the meantime the accused persons started firing upon them by rifle and gun, leading to the brother of P.W. 12 falling down at some distance from Giri tola on the road on account of being hit by gun shots. P.W. 12 had then gone running towards Giri tola shouting for help, whereupon he saw Ramraj Giri (P.W. 4), Ram Bahadur Giri (P.W. 6) and Rajdeo Giri (D.W. 2) warming themselves beside a bonfire and then the said 3 persons had accompanied P.W. 12 and gone to the place of occurrence where they saw that while Satyendra Mani Tripathi and Kamindra Tripathi were holding rifle and double barrel gun respectively, in their hand, Manoj Tiwari and Munna Tiwari were holding dagger and knife in their hands and were inflicting blows on the brother of P.W. 12 repeatedly. P.W. 12 and the said three persons had then raised hulla whereupon several persons had gathered there leading to



the accused persons fleeing away and then P.W. 12 had gone near his brother and found him lying dead. At this juncture itself, it would be relevant to point out that Md. Sarfuddin Khan (P.W. 13, i.e. the Investigating Officer) has stated in his evidence that the informant Jaikant Mani Tripathi (P.W. 12) has not stated that he had gone running to Giri tola while saying that Satyendra Mani Tripathi, Kamendra Mani Tripathi & Manoj Tiwary are assaulting his brother and then he had met Rajdeo Giri, Ramratan Giri & Ram Bahadur Giri, who were warming themselves besides the bonfire and along with them he had gone back to the place where his deceased brother was lying & upon alarm being raised, Bhibhikhan Giri (P.W. 3), Ramraj Giri (P.W. 4) and Ramdekhan Giri (P.W. 5) had come and chased the accused while they were fleeing away.

64. A bare perusal of the evidence of the informant Jaikant Mani Tripathi (P.W. 12) would show that though he claims to be an eye witness, however two circumstance belie his claim of being an eye witness inasmuch as firstly, in his *fardebayan* he has not mentioned the presence of Manindra Tiwary @ Munna Tiwary (appellant of the first case) at the place of occurrence much less attributed any role of overt act qua him and secondly, P.W. 13 i.e. the Investigating Officer of the connected case has



contradicted the statement made by P.W. 12 before the police inasmuch as he has stated that P.W. 12 has not stated that he had gone running to Giri tola while saying that Satyendra Mani Tripathi, Kamendra Mani Tripathi and Manoj Tiwary are assaulting his brother and then he had met Rajdeo Giri, Ramraj Giri and Ram Bahadur Giri, who were warming themselves besides the bonfire and along with them he had gone back to the place where his deceased brother was lying and upon alarm being raised, Bhibhikhan Giri (P.W. 3), Ramraj Giri (P.W. 4) and Ramdekhan Giri (P.W. 5) had come and chased the accused while they were fleeing away. Thus, apparently, P.W. 12 i.e. the informant does not appear to be a trustworthy witness, hence his testimony cannot be relied upon to prove the guilt of the appellants beyond all reasonable doubt.

65. Having considered the entire prosecution evidence and upon its careful analysis, we find that as far as Bhibhikhan Giri (P.W. 3), Ramdekhan Giri (P.W. 5) and Vijay Kant Giri (P.W. 7) are concerned, they are admittedly not eye witnesses to the alleged occurrence. As regards Ramraj Giri (P.W. 4) and Ram Bahadur Giri (P.W. 6), though they claim to have seen Munna Tiwari and Manoj Tiwari assaulting the deceased by knife and dagger, however their claim stands belied by the testimony of



Rajdeo Giri (D.W. 2), who is also stated to have gone along with the said two persons to the place of occurrence, inasmuch as he has categorically stated in his evidence that after he came to know about the murder of Deo Sharan Mani Tripathi in the morning at about 6:00 a.m., he along with co-villagers had gone to the place of occurrence where he saw Jaikant Mani Tripathi (P.W. 12), Durga Tiwari, Ramraj Giri (P.W. 4) Ramdekhan Giri (P.W. 5), Vijay Kant Giri (P.W. 7) etc., present there and upon being asked, nobody had disclosed the name of the murderer. D.W. 2 has also denied any bonfire being lit at the place of Ram Bahadur Giri (P.W. 6) for the purposes of warming themselves. As far as P.W. 12 is concerned, we have already discussed his evidence in the preceding paragraphs and find him to be untrustworthy. Thus, there is dearth of ocular evidence so as to make the same a basis for proving the guilt of the appellants beyond all reasonable doubt.

66. The evidence on record would bear it out that while the Investigating Officer, i.e. P.W. 13 and the informant, namely Jaikant Mani Tripathi (P.W. 12) have stated in their deposition that *fardbeyan* was recorded in presence of Bipin Giri (P.W. 10) & one another witness, however P.W. 10 has stated in his evidence that though he had heard the sound of gunshot firing but



he had not gone to the place of occurrence and for the first time he had gone to the place of occurrence at 7:00 a.m. in the morning, whereas on the contrary the *fardebayan* is stated to have been recorded at 00:30 hours in the midnight of 3/4.02.1992. Thus, the *fardebayan* appears to be anti dated and the first version has been suppressed. The time mentioned in the inquest report also appears to be have been interpolated, as is apparent from a bare perusal of the same.

67. Significantly, the prosecution has withheld the evidence of independent witnesses although admittedly, even as per P.W. 12 and others, several co-villagers had arrived at the place of occurrence, which creates a doubt about the actual mode and manner of occurrence. Moreover, a bare perusal of the *fardebayan* would show that the informant has stated therein that both the brothers had ran towards the northern side towards Nagdaha Toli, whereafter the accused started firing indiscriminately, leading to the brother of the informant falling on the road towards the south of Nagdaha Giri tola, whereupon the people of Giri tola came running towards the said place of occurrence and then the informant along with Bhibhikhan Giri (P.W. 3), Ramdekhan Giri (P.W. 5) & Vijay Kant Giri (P.W. 7) are stated to have chased the appellants, however a bare perusal of the evidence of Bhibhikhan



Giri (P.W. 3) would show that he was easing himself towards the southern side of the canal which is far away, while Ramdekhan Giri (P.W. 5) was in Malahi Toli, which is further south of the place of occurrence and as far as Ramraj Giri (P.W.4) is concerned, he was also away from the place of occurrence, hence it is improbable that the aforesaid witnesses were present at the place of occurrence and had chased the appellants.

68. Now coming to the inquest report, stated to have been prepared at 1:30 a.m., the same shows that Vijay Kant Tripathi (P.W. 8) and Ramashish Tiwari (P.W. 9) are witnesses thereto. As far as Vijay Kant Tripathi (P.W. 8) is concerned, he has though not disclosed anything about the occurrence in his examination-in-chief, however in paragraph nos. 2, 3, and 4 of his cross examination, he has stated that the place of occurrence is at a distance of five bighas from his house and the Officer-in-charge had not inquired about the incident from anyone who were present at the place of occurrence, while Ramashish Tiwari (P.W. 9) has though also not stated anything about the place of occurrence in his examination-in-chief, however in paragraph no.5, he has stated that his house is at a distance of one kilometer from the place of occurrence and in paragraph no.8, he has stated that he is working at the Civil Court, Motihari. Therefore, it is



intriguing as to under what circumstances Vijay Kant Tripathi (P.W. 8) and Ramashish Tiwari (P.W. 9) had become witnesses to the inquest report instead of the informant (who was present at the place of occurrence), Bhibhikhan Giri (P.W. 3), Ramdekhan Giri (P.W. 5) and Vijay Kant Giri (P.W. 7), who had also immediately reached the place of occurrence, thus the actual mode and manner of occurrence appears to have been suppressed by the prosecution.

69. The records of this case would bear it out that the informant has not sustained any injury which makes his presence doubtful at the place of occurrence and the evidence on record falsifies the fact that the *fardbeyan* was recorded at 00:30 hours in the midnight of 3/4.02.1992, inasmuch as a bare perusal of the testimony of Bipin Giri (P.W. 10), who had made his signature on the *fardbeyan* would show that the police had arrived in the morning. In fact, though P.W. 12 has testified that *chowkidar* and *dafadar* of the village had arrived at the place of occurrence, however they have also been withheld by the prosecution.

70. The *fardbeyan* depicts that the informant along with his deceased brother Deo Saran Mani Tripathi were going for irrigating their field towards the eastern-southern side of their house and when they had reached south of Harijan Toli near



Primary School, Nagdaha, the accused persons including the appellants had surrounded them and then Satyendra Mani Tripathi had threatened to kill them, whereafter both the brothers had ran towards the northern side near Nagdaha Giri tola but the said accused/appellants had fired from their rifle/gun indiscriminately from the back, however the night was pitch dark as also no torch was lighted/flushed at the time when the firing was resorted to, hence we find that it was impossible for the informant to have identified the accused persons who had actually engaged in firing, leading to the deceased being inflicted with gunshot injuries, resulting in his death.

71. Now coming to the post mortem report, prepared by Dr. Vishwanath Tiwari (P.W. 11) at 01:00 p.m. on 04.02.1992, we find that the same shows that the wound of entry and exit are on the front part of the body and while the wound of entry is on the left side of chest, the wound of exit is on the right-side lower part of the chest. The post mortem report also shows that firing was made from close range i.e. less than three feet. However, the *fardebayan* and deposition of the informant, i.e. P.W. 12, Jaikant Mani Tripathi demonstrates that the accused/appellants had fired from their rifle/gun indiscriminately from the back while the informant and his deceased brother were fleeing away, leading to



the deceased being inflicted with gunshot injuries, resulting in his death but on the contrary the post mortem report shows that gunshot wound of entry and exit are on the front part of the body of the deceased, thus we find grave conflict in-between the oral evidence and the medical evidence. In any view of the matter, evidence of Dr. Vishwanath Tiwari (P.W. 11) shows that the death of the deceased had taken place on account of hemorrhage, leading to shock due to the injuries mentioned in the post mortem report especially injuries nos. (iii) and (vii), which are reproduced herein below: -

*“(iii) One circular wound on left side of chest with charred margin and lacerated inverted margin of about one inch diameter on upper part - wound of entry with cavity deep.*

*(vii) One circular wound on right side lower part of the chest with everted margin measuring about 3” in diameter and cavity deep.”*

A bare perusal of the aforesaid injuries, which are fire arm injuries would show that injury no. (iii) is wound of entry which is on the left side of the chest while injury no. (vii), i.e wound of exit is on the right side lower part of the chest, which depicts that the fire arm injuries were inflicted on the front portion of the body of the deceased, however a bare perusal of the evidence of



P.W. 12 would show that the gun shots were fired on his deceased brother from back. Thus, we find that medical evidence is irreconcilably in conflict with the oral evidence and the medical evidence completely rules out all possibility of the injuries taking place in the manner alleged, hence the same would warrant discarding the testimony of the eye witnesses as also the case of the prosecution. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of *Bhagchandra vs. the State of Madhya Pradesh*, reported in *(2021) 18 SCC 274*. In the case of *Solanki Chimanbhai Ukabhai vs. State of Gujarat*, reported in *AIR 1983 SC 484*, the Hon'ble Apex Court has held that unless the medical evidence completely rules out all possibilities of injuries taking place in the manner alleged, the testimony of the eye witnesses cannot be thrown out. As far as the present case is concerned, we find that there is irreconcilable conflict between the oral and the medical evidence and the medical evidence completely rules out all possibility of the injuries taking place in the manner alleged, hence the same would warrant discarding not only the testimony of the eye witnesses but also the case of the prosecution.

72. Thus, taking into account an overall perspective of the entire case, emerging out of the totality of the facts and



circumstance, as indicated hereinabove and considering the evidence which has been brought on record to prove the allegations levelled against the appellants as also for the forgoing reasons, we find that the prosecution has failed to prove beyond all reasonable doubts the commission of offence by the appellants. Therefore, we find that the Ld. Trial Judge has committed a gross error in holding that the evidence adduced by the prosecution, both oral and documentary as well as materials available on record definitely go to prove the offence under Section 302/34, qua the aforesaid appellants of both the aforesaid Appeals as also under Section 27 of the Arms Act qua the appellants of the second case. Thus, in the facts and circumstances as discussed hereinabove and for the foregoing reasons, we are of the view that there are compelling reasons in the present case which necessitates that the appellants of the aforesaid appeals be given the benefit of doubt.

73. Accordingly, we find that the finding of conviction recorded by the Ld. Trial Judge, in our opinion is not sustainable and requires interference. Therefore, the judgment of conviction and order of sentence dated 29.11.1994 and 30.11.1994 respectively, passed by the Ld. Court of 1<sup>st</sup> Additional Sessions Judge, Motihari in Sessions Trial No. 618 of 1992/37 of 1994



(arising out of Govindganj (Malahi) Police Station Case No. 18 of 1992) are set aside. The appellants of the aforesaid appeal are acquitted of the charges levelled against them.

74. The appellants of both the aforesaid appeals are on bail, hence they are discharged from the liability of their bail bonds.

75. Consequently, the aforesaid appeals i.e. Criminal Appeal (DB) No. 598 of 1994 and Criminal Appeal (DB) No. 1 of 1995 stand allowed.

**(Mohit Kumar Shah, J)**

I agree.  
**Ashok Kumar Pandey, J:-**

**(Ashok Kumar Pandey, J)**

Kanchan-Sonal

AFR/NAFR	AFR
CAV DATE	12.08.2025
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