

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.76 of 2011

Arising Out of PS.Case No. 29 Year- 2001 Thana -null District- EASTCHAMPARAN(MOTIHARI)

1. Pappu Singh @ Rajiv Ranjan Singh @ Sanjay Singh S/O Devendra Singh,
Resident Of Village- Arara, P.S.- Adapur, District- East Champaran
..... Appellant/s
Versus
1. The State Of Bihar
..... Respondent/s
with

Criminal Appeal (DB) No. 1349 of 2010

Arising Out of PS.Case No. 29 Year- 2001 Thana -null District- EASTCHAMPARAN(MOTIHARI)

Dhrub Singh son of late Anirudh Singh, R/o vill. Arara, P.S. Adapur, District East
Champaran
..... Appellant/s
Versus
The State of Bihar
..... Respondent/s
with

Criminal Appeal (DB) No. 1352 of 2010

Arising Out of PS.Case No. 29 Year- 2001 Thana -null District- EASTCHAMPARAN(MOTIHARI)

Chunnu Singh @ Subhash Chandra Singh @ Subhash Chander Singh son of
Sachchita Nand Singh @ Mahanth Singh, R/o vill. Arara, P.S. Adapur, District East
Champaran
..... Appellant/s
Versus
The State of Bihar
..... Respondent/s
with

Criminal Appeal (DB) No. 1361 of 2010

Arising Out of PS.Case No.29 Year- 2001 Thana -null District- EASTCHAMPARAN(MOTIHARI)

1. Brajesh Singh son of Trilok Singh
2. Subhash Singh son of Harendra Singh, both residents of R/o vill. Arara, P.S.
Adapur, District East Champaran
..... Appellant/s
Versus
The State of Bihar
..... Respondent/s
with

Criminal Appeal (DB) No. 1362 of 2010

Arising Out of PS.Case No.29 Year- 2001 Thana -null District- EASTCHAMPARAN(MOTIHARI)

Dharmender Singh @ Tarzan Singh @ Tarzan son of late Droga Singh, R/o vill. Arara, P.S. Adapur, District East Champaran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 1372 of 2010

Arising Out of PS.Case No. 29 Year- 2001 Thana -null District- EASTCHAMPARAN(MOTIHARI)

Dharmendra Singh son of late Madan Mohan Singh, R/o vill. Arara, P.S. Adapur, District East Champaran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 76 of 2011)

For the Appellant/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. V. Kumar, Advocate

For the Respondent/s : Mr. A.K. Sinha, APP

(In CR. APP (DB) No. 1349 of 2010)

For the Appellant/s : Mr. R. Narayan, Sr. Advocate
Mr. V. Kumar, Advocate

For the Respondent/s : Mr. S.N. Prasad, APP

(In CR. APP (DB) No. 1352 of 2010)

For the Appellant/s : Mr. R. Narayan, Sr. Advocate
Mr. V. Kumar, Advocate

For the Respondent/s : Mr. S.C. Mishra, APP

(In CR. APP (DB) No. 1361 of 2010)

For the Appellant/s : Mr. R. Narayan, Sr. Advocate
Mr. V. Kumar, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

(In CR. APP (DB) No. 1362 of 2010)

For the Appellant/s : Mr. R. Narayan, Sr. Advocate
Mr. V. Kumar, Advocate

For the Respondent/s : Mr. Maya Nand Jha, APP

(In CR. APP (DB) No. 1372 of 2010)

For the Appellant/s : Mr. R. Narayan, Sr. Advocate
Mr. V. Kumar, Advocate

For the Respondent/s : Mr. S.B. Verma, APP

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 09-12-2015



Appellant Pappu Singh of Criminal Appeal (DB) No.76 of 2011 has been convicted and sentenced to rigorous imprisonment for life under Section 302 I.P.C., 5 years R.I. under Section 307/149 I.P.C., 2 years R.I. under Section 148 I.P.C. and 3 years under Section 27 of the Arms Act and also fine of Rs.3000/-, in default of which simple imprisonment for one month. Appellant Dhrub Singh of Criminal Appeal (DB) No.1349 of 2010 and Appellant Dharmender Singh @ Tarzan Singh @ Tarzan of Criminal Appeal (DB) No.1362 of 2010 and Appellant Dharmendra Singh of Criminal Appeal (DB) No.1372 of 2010 have been convicted and sentenced to rigorous imprisonment for life under Section 302/149 I.P.C., 5 years R.I. under Section 307 I.P.C., 2 years R.I. under Section 148 I.P.C. and 3 years R.I. under Section 27 of the Arms Act with a fine of Rs.3000/-, in default of which simple imprisonment for one month. Appellant Chunnu Singh @ Subhash Chandra Singh @ Subhash Chander Singh of Criminal Appeal (DB) No.1352 of 2010 and Appellants Brajesh Singh and Subhash Singh of Criminal Appeal (DB) No.1361 of 2010 have been convicted and sentenced to rigorous imprisonment for life under Section 302/149 I.P.C., 3 years R.I. under Section 307/149 I.P.C. and one year R.I. under Section 147 I.P.C. by judgment dated 29.11.2010 passed by the 7th Additional Sessions Judge, East Champaran, Motihari in Sessions Trial No.719 of 2002.

2. The case of the prosecution according to the Informant

Kundan Kumar (P.W.7), son of the deceased, is that on 19.04.2001 at about 2.30 p.m. he left home along with the deceased Braj Bhushan Singh, their Sepoy Chandeshwar Singh, co-villager Bhagirath Thakur and cousin Nilesh Kumar Sharma for their agricultural farm. When they were in the middle of Arara village and Laxmipur School at about 03.30 p.m. suddenly 7-8 persons came, who were identified as Chunnu Singh, Pappu Singh, out of which Chunnu Singh told Pappu Singh to fire at the deceased Braj Bhushan Singh and he did so on taking position from the back, on account of which his father fell down. Just then Appellant Dhrub Singh fired at him but he was somehow saved. They all started running but Brajesh Singh ordered that everyone should be killed else they would go to the police, at which Appellants Dharmendra singh @ Tarzan and Dharmendra Singh started firing but their shots did not hit them. They noticed a patrolling party approaching, at which the accused started fleeing, saying that the deceased had been killed which needed to be reported to Madan Singh that the work had been accomplished. They then took the deceased to Dunkan Hospital, Raxaul but the doctor declared him dead. The dead body of his father was brought home. The motive for the occurrence was that the daughter of Major Harendra Singh had been kidnapped on 29.8.2000 by his co-villager Ramesh Singh. The past Mukhiya Madan Mohan Singh, Dharmendra Singh son of Madan Mohan Singh, Chunnu Singh, Dharmendra Singh @ Tarzan, Subhash Singh, Sanjeet Singh, Manoj Singh, Arvind Singh, Brajesh Singh had



come to his village and proposed to his father that he was a reputed person and he should try to use his influence for recovering the girl. His father had made enquiry but it was found that Ramesh Singh had fled away with the girl, on account of which the girl was not recovered. Madan Mohan Singh had felt insulted on account of the inability of the Appellant and had started instigating others that the deceased had played with the reputation of their villagers. On 12.9.2000 Adapur P.S. case No.83 of 2000 had been instituted in regard to the case aforesaid. His brother Sanju Dubey (P.W.5) was also sought to be implicated in the case but final report was submitted in his regard. Then in another case, namely, Adapur P.S. case No.89 of 2000, once again his name was given but final report was submitted. His cousin brother Satyendra Dubey was a candidate for Mukhiya election and there was every chance of his winning which had caused apprehension in the mind of Madan Mohan Singh, the previous Mukhiya, Arera, who had got the deceased killed. This information was given in the presence of Nilesh Kumar (P.W.2) and Hriday Dubey (P.W.3) at 06.45 p.m. at home.

3. The learned Counsel for the Appellants submits that the manner of occurrence has not been proved by the prosecution on account of various factors, one of which is that important witnesses, such as, patrolling party and the Doctor at Dulkan Hospital have not been examined. P.W.2 and P.W.7 have stated that they did not see anyone while they were walking behind each other during or after the



occurrence and hence their depiction of the manner of occurrence is not proved. Further independent witnesses, even by way of hearsay, have not been examined and only interested witnesses, who are somehow related with the deceased, have been produced by the prosecution. The Investigating Officer has committed various lapses including not establishing the place of occurrence and the inquest report and the map prepared by him are contrary to each other. He also did not find any holes in the clothes which the deceased was wearing nor blood on him. He did not produce the blood stained earth nor did he seize the clothes on the person of the deceased and the witnesses, who are said to have carried the deceased to the patrolling party, nor did he send the same. In fact, neither the Informant nor P.W.1 was present at the place of occurrence as is evident from the evidence of P.W.6. Even though it is a case of direct evidence, since the prosecution has brought forth motive for the occurrence they were duty bound to conclusively prove the same. The prosecution case suffers on this count as well. The Doctor's evidence also further disproves the prosecution case inasmuch as the injuries found on the deceased appear to have been caused while a person would be in a supine position and the time of occurrence in his opinion being about 36 hours before the examination does not match with the prosecution case. The further submission is that the deceased's own agnates had a grudge with the deceased and there is every possibility of him having been killed by them. In the alternative, the argument is also that there

is specific allegation of firing against Appellant Pappu Singh on the orders of Chunnu Singh but no overt act is alleged with regard to the rest of the accused persons and hence they deserve to be acquitted.

4. To appreciate the aforesaid arguments one would like to briefly analyze the evidence brought on record. No doubt very lengthy cross examinations have been conducted by the defence lawyer at the trial stage but we find that the cross examination is completely irrelevant and not germane to the examination-in-chief which should not have been permitted by the Trial Judge. However, without advertng to it we would discuss the relevant portion of evidence.

5. P.W.1 Chandeshwar Singh is an FIR witness, who has stated that on the date of occurrence while he along with his employer Braj Bhushan Dubey, the deceased, was going to see their agricultural farm along with Kundan Dubey (P.W.7), Bhagirath Thakur (not examined), Nilesh Sharma (P.W.2) and reached near Arera temple and Laxmipur School, suddenly 6-7 accused persons, namely, the Appellants came there with arms. They surrounded all of them and then on the orders of Chunnu Singh, Pappu Singh fired at the deceased on the back, on account of which he fell down. They attempted to lift him up but the Appellant Dhrub Singh fired at Kundan Dubey (P.W.7) which did not hit him. On account of this the witnesses started running away but Appellant Brajesh Singh said that all of them should be finished or else they would report to the police.



At this Dharmendra Singh fired. While they were running they saw car of the patrolling Magistrate on which the deceased was loaded. Pappu Singh stated that the work of his uncle Madan Mohan Singh had been accomplished. The deceased was taken to Dunkan Hospital where he was declared dead, so they brought him home. He explains that the reason for the occurrence was that the sister of Appellant Subhash Singh had been kidnapped by Ramesh Singh of their village and it was sought by the accused persons to get the girl released at the intervention of the deceased but the same could not be done. The accused persons then had a grudge that the deceased had not tried enough. The son of the deceased, namely, Satyendra Singh (P.W.5) was to contest the election of Mukhiya and there was every chance of his winning which had created an apprehension in the mind of ex-Mukhiya Madan Mohan Singh. In the cross examination he stated that he was been working with the family of the deceased for last 35 years. A lot of irrelevant cross examination has been done with regard to the road leading east west and also with regard to their caste, affiliation. A suggestion was given to him that the occurrence had been perpetrated by the extremists but he had said that he had no knowledge about it nor did he know of naxalite activities in the area. In cross examination he had asserted that Appellant Pappu Singh had also come to the house of his employer to get the girl released. There is some cross examination with regard to the deceased supporting the past Mukhiya Madan Mohan Singh to which he had said that he had



no knowledge. In paragraph 4 he stated that five persons were walking on the path way of the canal in which the deceased Braj Bhushan Singh was right in front and thereafter the rest were following him. However he did not see any of the accused persons coming out of Arera village nor did he scream as soon as he saw them. He stated that the first shot hit the deceased, at which they attempted to lift him up but three shots were then fired, at which the witnesses started to run. On the patrolling jeep the patrolling Magistrate, the driver and four sepoy were there on which the deceased had been loaded. While walking they were about 1-2 hands behind each other and that no one else was injured in the firing. His attention was drawn to the earlier statement given under Section 161 Cr.P.C. but only to the extent that he had not stated as to exactly where the occurrence had taken place. In paragraph 20 once again he stated that before the first shot was fired he did not hear any noise or sound and they were all panic, stricken and screaming while running helter skelter. He did not remember the names of the persons who had come nor as to when he was examined by the police and that he had not stated that the accused persons had surrounded them. He stated that some blood was scattered where the deceased had fallen. His attention was also drawn to his earlier statement that he had not named Subhash Singh nor that Dhrub Singh was holding a pistol and the rest were armed with Nalkatuas nor about the motive of the occurrence. We find that there is no suggestion that in fact no

kidnapping of the daughter of Captain Harendra Singh had taken place or the deceased had intervened in the matter or there was any kind of grudge on account of his non-intervention. The suggestion is merely general to the extent that such an occurrence had not taken place and the accused persons had been falsely implicated.

6. P.W.2 Nilesh Kumar is another eye witness, whose name is in the First Information Report. He stated that he along with his uncle deceased Braj Bhushan Dubey, P.W.1 Chandeshwar Singh, Bhagirath Thakur (not examined) and P.W.7 Kundan Dubey, the Informant, were going when on the way 6-7 persons, namely, the Appellants came there and then on the orders of Chunnu Singh, Pappu Singh fired at the deceased on back, on account of which he fell down. When he attempted to lift him up Dhrub Singh fired at Kundan Dubey (P.W.) but it did not hit him and Brajesh Singh ordered that they should all be finished or else they would disclose the names to the police, at which Dharmendra Singh @ Tarzan, Dharmendra Singh and Subhash Singh started firing with the fire arms. They then started running and when they reached the road they found a patrolling car approaching on which they took the deceased to Dunkan Hospital, Raxaul, where he was declared dead. They then brought him back. He proves his signature on the fard beyan, which is Exhibit 1. He also proves his signature on the inquest report, which is Exhibit 1/1. He states that the reason for the occurrence is about the girl having been kidnapped by one of the co-villagers and the inability of the deceased



to locate her and also that the son of the deceased was likely to win in the panchayat election, on account of which Madan Mohan Singh, previous Mukhiya had a grudge. In cross examination somehow he stated that he was examined on 19.4.2002 but it seems to be that it is a slip of pen since in the case diary it is noted that he was examined on the same day. Once again a lengthy cross examination has been conducted but without any relevance. The defence had strived to impeach his credibility on the ground of his previous antecedents. His attention was drawn to the earlier statement that he had not stated that the accused persons had declared that it should be reported to Madan Mohan Singh that his work had been accomplished. He stated that there was a Police Station at Bhalubadiya itself. He describes the exact location that the occurrence had taken place to the last detail in the cross examination and also that all of them were walking one after the other and the deceased was right in the front. Before the firing he had not seen anyone so they could not caution or save themselves. The accused had come suddenly and fired and thereafter run away. It was suggested to him that in fact the family members of the deceased had some land dispute with the deceased, on account of which he was murdered and this case has been falsely built up.

7. P.W.3 Hridesh Dubey is a formal witness, a signatory to the fard beyan and he proves his signature as Exhibit 1/2 and on the inquest report as Exhibit 1/3. He stated that he learnt that Appellant Pappu Singh had fired at Kundan Jee which fact was told to him by

P.W.7 and that Dhrub Singh and Chunnu Singh also had fired. He once again repeats the factum of the motive. In cross examination he concedes that he is an agnate of the deceased. He has also been subjected to a lengthy cross examination with regard to the election and credentials of the family members of the deceased. He stated that between Dunkan Hospital was a Sub Division in which a Dy.S.P. was present and his residence is on the road at Raxaul.

8. P.W.4 is Dr. Sachida Nand Choudhary, who conducted the postmortem examination report and found the following injuries :

(i) *Lacerated wound $\frac{3}{4}$ "x $\frac{1}{2}$ "x cavity deep with inverted and blackened margin oval in shape over back of chest on right side $\frac{1}{2}$ " lateral to 6th thoracic vertebra with tatooing around the wound in 3" diameter and there is fracture of 6th & 7th ribs wound of entry communicating to wound no.II.*

(ii) *Lacerated wound $1\frac{1}{4}$ "x $\frac{1}{2}$ " x cavity deep with everted margin over front of chest on left side below middle of collar bone with fracture of 2nd and 3rd ribs wound was communicating with wound No.1 – wound of exit.*

(iii) *Abrasion 2"x $\frac{1}{2}$ " size over forehead on right side.*

(iv) *Abrasion 1"x $\frac{1}{4}$ " size over dorsum of nose.*

(v) Abrasion 1" X ¼" size over face on right side 1" away from right eye.

(vi) Abrasion ½" x ¼" size over right eye brow over lateral aspect.

His opinion was that the death had been caused within 36 hours and in cross examination he stated that when he opined about time of death he meant that it may be from 24 hours to 36 hours also. From this witness the defence elicited that two sons of the deceased were also with him when he was brought to the Hospital. In cross examination he has also explained that when a fire arm is shot from the back while sitting and keeping the barrel towards the back on upper side, the bullet may create oval injury and he had found oval injury on the person of the dead body. In cross examination he also stated that the shot had been fired from the distance of 3-4 feet which was suggested by blackening and tattooing found on the dead body.

9. P.W.5 Sanju Dubey is the other son of the deceased, who stated that on the date of occurrence at about 2.30 p.m. while he was at home he saw his father calling out to the rest to see the agricultural farm at which his younger brother Informant Kundan Kumar, Chandeshwar Singh (P.W.1), Nilesh Kumar (P.W.2) and co-villager Bhagirath Thakur (not examined) left with him. While they had reached near a by lane at about 2-3 p.m. he heard sound of firing. So he went there where he found out that his father had been shot at and was being taken by the car of the patrolling Magistrate. He also



boarded the car along with the rest of the witnesses and took him to Dunkan Hospital, where he was declared dead. His younger brother (P.W.7) told him that his father had been shot at by Pappu Singh on the back and the other accused persons had also fired. He also repeats that the sister of Appellant Subhash Singh had been kidnapped by Ramesh Singh of their village and the inability of the deceased to search her out had irked the family of Madan Singh. He stated that the dead body was brought back home where the Daroga came and recorded the statement of Kundan Singh (P.W.7). In cross examination he has been asked about the details of the girl in question but it is of no avail to either party. He explained that in the patrolling car driver and 4-5 other persons were there but he did not remember their names. He also did not find any *khokha* (wad) etc at the place of occurrence where he had visited with the Investigating Officer. In cross examination he stated that in this period of taking the deceased to the Hospital or bringing him home he did not inform the police even though the telephone facility and mobile was available. He explains that on account of injured condition of his father they were all in shock. In cross examination he once again explained that he had received information from his brother (P.W.7) about the occurrence.

10. P.W.6 Chandrajeet Rai stated that on the date of occurrence while he was coming back after having voted he heard hulla in the village that the deceased had been shot at. So he went to his house and along with Sanju Dubey (P.W.5) he went to Laxmipur



School where he saw the deceased in an injured condition. P.W.7 told P.W.5 that on the orders of Chhunu Singh, Pappu Singh had fired and disclosed the names of rest of the accused persons. In cross examination he stated that he had been examined on the next day of occurrence when the police had come to the house of the deceased. His attention was drawn to the earlier statement that he had not stated that he had overheard P.W.7 disclosing about the occurrence to P.W.5 and the complicity of the present Appellants nor about the motive with regard to the grudge of Madan Singh on account of impending Mukhiya election.

11. P.W.7 Kundan Kumar is the Informant, who repeated the contents of the fard beyan and proved his signature on the same as Exhibit 1/4 and 1/5. He has also been cross examined at great length but most of the questions are so irrelevant that it is a wonder how the Trial Judge had allowed such cross examination. He explained that the patrolling Magistrate car came near the School and the constables had run towards them on sound of firing. His attention was drawn to the earlier statement with regard to the election dispute and about his own political ambition. In paragraph 18 he explained that all the persons were walking behind each other and the deceased was right in front when shot was fired from the back, on account of which the deceased fell down. Immediately thereafter the second shot was fired towards himself at which he ran leaving his father. He stated that no one else had gone from the village to Dunkan Hospital nor could he disclose



the names of patrolling Magistrate. He once again explained that he saw the deceased falling and thereafter second firing and then he realized that it had been fired at him. The person who was firing was at about 2-3 hands and there was no one else between. Only his father had been injured and the rest did not even sustain a scratch. For some reason his attention was drawn to the fact that he had stated to the persons present in Laxmipur booth that one person was running away after firing on the deceased and he be helped in catching them. In fact, the constables of the patrolling Magistrate who were at Laxmipur booth, had attempted to catch the accused but could not do so. He stated that those persons were known and that the Investigating Officer had come to his house.

12. P.W.8 Upendra Dubey stated that Mukhiya election was impending in which the deceased Braj Bhushan Dubey was actively compaigning for his nephew Satendra, on account of which the present occurrence had been got committed. Since no name has been disclosed by him, his evidence appears to be irrelevant.

13. P.W.9 Triyogi Narayan Jha is the Investigating Officer, who proves the fard beyan (Exhibit 2), the First Information Report (Exhibit 3), the inquest report (Exhibit 4). He stated that the place of occurrence was a lane which led from village Madanpur distributory canal leading towards Arara on the east. On the south side a path way was made which was used for people passing. On the south of the distributory canal is the field of Braj Bhushan Dubey and



adjacent to it is the place of occurrence in between Arara and Laxmipur Bhawanpur. Adjacent is the place where the deceased had been shot by the accused, on the north was the field of Braj Bhushan and on the south was that of Tripit and on the east was Braj Bhushan and Ram Ayodhya which were all ploughed. The place of occurrence was in between Arera and Laxmipur. He made a sketch of place of occurrence. He further stated that he had found blood stained earth at the place of occurrence, of which he made seizure list on which P.W.2 and P.W.3 signed. He proves the same as Exhibit 5. After having examined the witnesses he submitted charge sheet. In the case diary at paragraph 41 he had noted that on 24.4.2001 a panchayati had been held in presence of Madan Singh in which the issue of tension on account of kidnapping of daughter of Harendra Singh had arisen. On the one side was Madan, Brajesh Singh and on the other Bhushan and Bhagirath etc. In cross examination he stated that there was a lot of nexalite movement in the area. He conceded that he had not sent the blood stained earth for chemical examination and had prepared the inquest report before the fard beyan as also not seized the clothes of blood clothes of witnesses nor the clothes of the deceased. He did not take note of the area in which the blood was scattered at the place of occurrence. His attention has been drawn to the previous statements of the witnesses but all the statements are so long winding that it is difficult to locate as to what was the exact deviation between the previous statement and the one recorded in the Court. In which

circumstances, we are not inclined to place any reliance on such contradictions.

14. The defence also examined two witnesses on their behalf. D.W.1 Chandramauli Kumar has proved a First Information Report and the charge sheet. D.W.2 Puran Giri has stated about the educational qualification of Pappu Singh and nexalite movement in the area but he was not earlier examined.

15. On looking into the records of the case, we find that soon after the occurrence a protest petition had been filed against the Investigating Officer that he was making a collusive investigation which explains as to why he did not record the statements of independent witnesses nor send the blood stained earth for chemical examination, nor seize the blood stained clothes on the person of the deceased or the witnesses. In such circumstances, the argument that the prosecution has not been able to prove the manner of occurrence or the presence of the witnesses for the aforesaid reason has to be rejected. As for the manner of occurrence, we find that the consistent evidence is that all the witnesses were walking behind each other and suddenly the accused persons sprang upon them and shot at the deceased from the back, on account of which he fell down on his face. From their evidence the fact that they did not hear any accused before the firing or even during the firing is well explained since from the manner narrated it appears that the occurrence had not taken place within minutes. In such circumstances, when Pappu Singh was not



being seen before firing at the deceased from the back and the rest firing at the witnesses to scatter them off or even to kill them is well plausible. Also the fact that scratches were found on the face of the deceased further corroborates the prosecution case that after the firing from the back the deceased had fallen on his face. As for the injuries being oval or circular has no meaning in the present case since it is most natural that a person's hand would shake and not be completely stable while firing is made within a split of second especially when the target is moving. The doctor no doubt stated in his cross examination that when he said that the occurrence had taken place within 36 hours he had meant that it could be within 24 to 36 hours, is not acceptable by the Court. Once he has stated in his examination-in-chief that it was within 36 hours it certainly means that it was within 36 hours and such minute timing of death so precisely could not be given by him especially when he has mentioned that rigor mortis was present.

16. As for alternative argument of considering the case of non-assailants, even while we are inclined to disbelieve the prosecution case in so far as the Appellant Chunnu Singh having ordered Appellant Pappu Singh to fire is concerned, but fact remains that all the accused variously armed had come together and fired which makes out a case of accused having common intention/object to commit murder of the deceased. In such circumstances, we find no merit in such submission.

17. For the aforesaid reasons, we find no merit in these appeals. The same is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Narendra/NAFR

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