

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.16 of 1991**

Arising Out of PS. Case No.-3 Year-1982 Thana- GOH District- Aurangabad

1. Ganesh Dutta Mishra @ Ganesh Mishra (ABATED) S/o- Late Tazanath Mishra Village- Bhag Ps- Goh Dist- Aurangabad
2. Bidashi Das S/o- Bholan Das Village- Bhag Ps- Goh Dist- Aurangabad

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 66 of 1991

Arising Out of PS. Case No.-3 Year-1982 Thana- GOH District- Aurangabad

SURESH BHAGAT S/o- Chattar Bhagat Village- Phag Ps- Goh Dist- Aurangabad

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 67 of 1991

Arising Out of PS. Case No.-3 Year-1982 Thana- GOH District- Aurangabad

1. Ramashray Mistry S/o- Damari Mistry Village- Phag Ps- Goh Dist- Aurangabad
2. Kamlesh Mahto S/o- Sheojatan Mahato Village- Phag Ps- Goh Dist- Aurangabad
3. Harihar Chaudhary @ Harihar Pasi S/o- Nandkeshwar Pasi Village- Phag Ps- Goh Dist- Aurangabad

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 16 of 1991)

For the Appellants : Mr. Krishna Prasad Singh, Senior Advocate
Mrs. Meena Singh, Advocate



For the State : Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 66 of 1991)
For the Appellant : Mr. Krishna Prasad Singh, Senior Advocate
Mrs. Meena Singh, Advocate
For the State : Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 67 of 1991)
For the Appellants : Mr. Krishna Prasad Singh, Senior Advocate
Mrs. Meena Singh, Advocate
For the State : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 30-04-2025

These appeals, filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), are directed against the judgment of conviction dated 03.01.1991 and order of sentence dated 07.01.1991, passed by learned 4th Additional Sessions Judge, Aurangabad in Sessions Trial No.159/84/33/87, arising out of Goh P.S. Case No.3(1)82, G.R. No.115/82, Trial No.1780/83, whereby appellants, namely, Ganesh Dutta Mishra @ Ganesh Mishra and Bidashi Das have been convicted for the offences punishable under Sections 302/149 of the Indian Penal Code and have been sentenced to undergo imprisonment for life under the said Sections. Accused Bidashi Das has further been convicted for the offence punishable under Section 148 of the Indian Penal Code but no separate sentence is awarded to him



under the said Section. Further, appellants, namely, Suresh Bhagat, Ramashray Mistry, Kamlesh Mahto and Harihar Chaudhary @ Harihar Pasi have been convicted for the offences punishable under Sections 302 and 148 of the Indian Penal Code and have been sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code. No separate sentence is awarded to them under Section 148 of the Indian Penal Code.

2. The prosecution case, in brief, is that on 19.01.82 at 09:15 a.m., *fardbeyan* of the informant, namely, Sidheshwar Singh was recorded at the police station wherein it is alleged that on 19.01.82 at about 07:00 a.m. he was going along with his cousin Ramchandra Sharma (deceased) and Baliram Sharma near Tara *Ahar* situated east of his village and as soon as they reached eastern end of Tara *Ahar* where Budha *Ahar* starts, they saw that 20-25 persons armed with different weapons were coming from the southern and eastern corner out of whom he identified Ganesh Mishra, Bideshi Das having a bag in his hand, Premchand Ram, Suresh Bhagat, Rajeshwar Thathera @ Rukhi Thathera, Ramashray Mistry and Harihar Pasi having *fasuli* in their hands, Deodutt Sao with a big single barrel gun in his hand, Bhagirath Thakur and Sharma Mahto



with *Bhala*, Etwar Chamar with a small country made pistol, Rajbali Dusadh, Ramjiwan Dusadh and Mahendra Dusadh with *Garasa* in their hands, Devraji Dusadh and Shaligram Chamar with pistols in their hands, Bhikhari Baitha with a *lathi* in his hand, Ramavtar Mahto with a *Katar* in his hand, Shiv Shankar Sao with a knife in his hand accompanied by five unknown persons. Out of the above named accused persons, Ganesh Mishra, Bideshi Das, Premchand Ram, Suresh Bhagat, Kamlesh Mahto, Rajeshwar Thathera, Ramashray Mistry and Harihar Pasi chased Ramchandra Sharma (deceased). Then Ramchandra Sharma started fleeing towards village Chamalpura. It is further alleged that Ganesh Mishra instigated others to catch Ramchandra Sharma and chop off his head, whereupon Bideshi Das took out a bomb from his bag and hurled the same on Ramchandra Sharma but the bomb did not hit him. Thereafter Premchand Ram, after chasing to some distance, attacked Ramchandra Sharma by throwing *fasuli* which caused injury in his leg due to which Ramchandra Sharma fell down. Thereafter, Suresh Bhagat climbed on his and started cutting his neck by means of *fasuli*, Premchand Ram started assaulting him with *fasuli* on his head, Rajeshwar Thathera started cutting his right hand with *fasuli*, Ramashray



Mistry started cutting his left hand and Kamlesh Mahto and Harihar Pasi also started cutting different parts of his body by means of *fasuli*. Out of fear the informant fled away from there and hid himself behind palm trees and saw the occurrence from there. When Ramchandra Sharma became unconscious, all accused persons went towards village Paharpura. The occurrence is said to have been seen by the informant and his cousin Baliram Sharma and, on alarm, co-villagers Birendra Sharma, Ramesh Sharma, Rajeshwar Singh, Naresh Singh etc. came there and saw the occurrence. When the accused persons fled away, they went near Ramchandra Sharma and found him dead. They found the neck of the deceased partly cut and several cut injuries on his head and face. Both hands and knee joint (*filli*) were also found cut. The reason for the occurrence is that a case was going on between the deceased and the accused persons and due to this reason, in collusion with the naxalites, the accused persons killed the deceased. The accused persons were also members of a naxalite group.

2.1. After registration of the FIR, the Investigating Officer started investigation and during course of investigation, the Investigating Officer had recorded the statement of the witnesses and also collected other materials. After investigation



was concluded, he filed charge-sheet against the appellants-accused before the concerned Magistrate Court. As the case was exclusively triable by Court of Sessions, the concerned Magistrate committed the same to the Sessions Court under Section 209 of the Code where the same was registered as Sessions Trial No.159/84/33/87.

2.2. During course of trial, the prosecution has examined 9 witnesses, namely, PW-1, Ram Naresh Singh, PW-2, Ramesh Sharma, PW-3, Balram Singh, PW-4, Rajeshwar Singh, PW-5, Ram Binay Sharma, PW-6, Sidheshwar Singh, PW-7, Lalan Prasad Singh, PW-8, Birendra Sharma and PW-9, Ganesh Pandey. Two Court Witnesses have also been examined, namely, CW-1, Ramashish Dusadh and CW-2, Mujibur Rahman. The defence has also examined 6 witnesses, namely, DW-1, Sudama Singh, DW-2, Nageshwar Singh, DW-3, Munarik Ram, DW-4, Basu Ram, DW-5, Ramashis Ram and DW-6, Madan Mohan Prasad.

3. Heard Mr. Krishna Prasad Singh, learned Senior Advocate assisted by Mrs. Meena Singh for the appellants and Mr. Sujit Kumar Singh, learned APP for the State.

4. At the outset, learned Senior Advocate for the appellants informs this Court that Appellant No.1 of Criminal



Appeal (DB) No.16 of 1991, namely, Ganesh Dutta Mishra @ Ganesh Mishra and Appellant No.1 of Criminal Appeal (DB) No.67 of 1991, namely, Ramashray Mistry have died during the pendency of the appeals.

4.1. In view of the aforesaid, Criminal Appeal (DB) No.16 of 1991 is abated *qua* Appellant No.1, namely, Ganesh Dutta Mishra @ Ganesh Mishra and Criminal Appeal (DB) No.67 of 1991 is abated *qua* Appellant No.1, namely, Ramashray Mistry.

5. Learned Senior Advocate appearing on behalf of the appellants would mainly contend that though the prosecution has projected the informant (PW-6) and Balram Singh (PW-3) as eye witnesses, from the deposition given by the prosecution-witnesses as well as the Court Witnesses, it can be said that the aforesaid two persons are not the eye-witnesses. Learned Senior Advocate for the appellants referred the deposition given by the prosecution witnesses, the Court Witnesses and defence witnesses. He has also referred the documentary evidence produced by the prosecution before the Trial Court. Thereafter, it has been contended that PW-1 and PW-4 have not supported the case of the prosecution and they have turned hostile. Learned Senior Advocate, at this stage,



contended that PW-9, who is the first Investigating Officer of the case, has specifically deposed before the court that when he inspected the route from which the accused persons were stated to have fled away, which is Bodha Ahar, which was wet, foot prints of 3-4 persons were found on the Ahar, as stated by the prosecution witnesses. It is further submitted that, as per the version given by the so called eye-witnesses, 20-25 persons came at the place of occurrence and thereafter one of the accused instigated the other accused to catch Ramchandra Sharma (deceased) and chop off his head and thereafter accused Bideshi Das took out a bomb from his bag and threw upon Ramchandra Sharma but the bomb did not hit him. Thereafter Premchand Ram, after chasing for some distance, attacked Ramchandra Sharma by throwing *fasuli* which caused injury in his leg due to which Ramchandra Sharma fell down and thereafter all the accused persons started giving blows with different weapons which they were carrying. It is the further case of the informant that when Ramchandra Sharma became silent, all accused persons went towards village Paharpura. Learned Senior Advocate, therefore, urged that, as per the case of the eye-witnesses, approximately 20 accused persons were present at the place of occurrence. However, from the



deposition given by PW-9, the Investigating Officer, the theory projected by the so called eye-witness is ruled out.

5.1. At this stage, learned Senior Advocate referred the deposition given by CW-1. It is submitted that CW-1, who is an independent witness, has also deposed that when he heard the sound of bomb explosion, he proceeded ahead and saw one person fleeing away, chased by three others. The person who was fleeing fell down and the accused persons assaulted him and fled away, however, he could not identify the offenders. Learned Senior Advocate, therefore, urged that from the deposition given by CW-1, it can be said that there were total four persons at the place of occurrence, one deceased and three accused.

5.2. It is also contended that PW-9, the Investigating Officer, has admitted that he had recorded the statement of Chowkidar Ramashish Dusadh (CW-1). The said witness had told PW-9 that he went to the southern side of the village on hearing explosion of bomb and saw that a resident of Chamalpura village was coming running and three others were chasing him. They caught hold of him and killed him by means of *fasuli* and fled towards Paharpura village through Bodha Ahar. Learned Senior Advocate, therefore, urged that when the



Investigating Officer has admitted about recording of the statement of CW-1 on the very same day of the incident in the police station, it can be said that the prosecution has suppressed the real version and the manner of occurrence. Thus, the so called eye-witnesses, who are the near relatives of the deceased, have falsely implicated the appellants herein.

5.3. Learned Senior Advocate further submits that the doctor, who had conducted the *post mortem* on the dead body of the deceased, has not been examined by the prosecution and only *post mortem* report has been produced before the Court. Thus, the defence has lost the opportunity to cross-examine the said witness. Learned Senior Advocate, therefore, urged that the prosecution has failed to prove the case against the appellants-accused beyond reasonable doubt, despite which they have been convicted by the Trial Court. Thus, the Trial Court has committed grave error while passing the impugned judgment and order and, therefore, the impugned judgment of conviction and order of sentence is required to be interfered with.

6. On the other hand, learned APP for the Respondent-State opposed the present appeals. The learned APP would mainly contend that there are two eye-witnesses to



the occurrence in question and merely because they are interested or related witnesses, their version cannot be discarded. It is further submitted that even medical evidence supports the version given by the eye-witnesses. Thus, the prosecution has proved the case against the appellants-convicts beyond reasonable doubt. Therefore, the Trial Court has not committed any error while passing the impugned judgment of conviction and order of sentence. Learned APP, therefore, urged that the present appeals be dismissed.

7. We have considered the submissions canvassed by learned Advocates appearing for the parties. We have also perused the evidence led by the prosecution before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined nine witnesses. Two Court Witnesses have also been examined in the present case. The defence has also examined six witnesses. At this stage, we would like to appreciate the entire relevant extract of the depositions of the witnesses.

8. The evidence of PW-1, Ram Naresh Singh need not be discussed in detail as he has not supported the prosecution case and has been declared hostile.



9. PW-2, Ramesh Sharma has deposed in his examination-in-chief that the occurrence took place 6 ½ years ago at 06:30 a.m. He went to the field to sprinkle fertilizer. Baliram Singh and Sidheshwar Singh raised alarm that Ramchandra Sharma is being assaulted. He went there and saw the accused persons there. Bideshi Das was carrying a bag. Ramashray Mistry, Kamlesh Mahto, Suresh Bhagat, Premchand Dusadh, Harihar Pasi and Rajeshwar Thathera were carrying *fasulis* in their hands. Deodutt Mishra was carrying a single barrel gun in his hand. Devraj Dusadh, Etwar Chamar and Shaligram were carrying pistols in their hands. Rambali Dusadh, Mahendra Dusadh and Ramjivan Dusadh were carrying *Garasas* in their hands. *Bhalas* were being carried by Sharma Mahto and Bhagirath. Shivshankar Mishra was armed with a knife. Ramlakhan Mahto was armed with a *Katar* and Bhikhari Dhobi was armed with a *lathi*. It is further deposed by this witness in his examination-in-chief that when he went to the place, he saw that Ganesh Mishra was instigating others to kill and behead upon which Bideshi Das took out a bomb from his bag and threw upon Ramchandra Sharma but the bomb did not hit him. Ramchandra Sharma started to flee away. Premchand Dusadh assaulted Sharma by means of *fasuli* in his



stomach due to which he fell down. Suresh Bhagat started to cut the neck of Ramchandra Sharma. Ramashray Mistry and Rajeshwar Thathera stated to cut his hands. Harihar Pasi, Kamlesh Mahto and Premchand Dusadh assaulted him on his face and head. Ramchandra Sharma died at the place of occurrence and the accused persons fled away. Many people came at the place of occurrence on alarm. Virendra Singh, Rajeshwar Singh, Naresh Singh and Din Singh came at the place of occurrence. Darogaji went there and saw the dead body and prepared inquest report. It is further deposed by this witness that Rajeshwar Singh was with him. He and Rajeshwar Singh had put their signatures on the inquest report (Ext.1/2 and Ext.1/3). The said witness identifies the accused persons.

9.1. The said witness has stated in his cross-examination that the police had recorded his statement. He stayed at the place of occurrence for ten minutes. Thereafter he went to the police station. The report was prepared in his presence. It is further stated that he was sprinkling fertilizer in the field at 06:00-06:30 a.m. He saw Ramchandra firstly at end of Tara *Ahar* where Budha *Ahar* starts. Ramchandra, Sidheshwar and Baliram were going together towards east. He saw the accused persons when they were coming from the



southern corner of Tara Ahar. Ganesh Mishra started instigating and Ramchandra started fleeing away towards Chamalpura. He went there on alarm. The deceased was also raising alarm. None came from his village or Chamalpura village on alarm. Sidheshwar and Baliram did not go to the village raising alarm. After the death of the deceased, the accused persons fled away. The said witness has denied to have stated before the police that he had seen the occurrence from the place where he was sprinkling fertilizer. He has denied that he has not seen the occurrence. He has denied the suggestion that he has given a palpably false evidence and has falsely implicated the accused persons due to previous enmity with them. He has also denied the suggestion that Ramchandra was not killed at the relevant time.

10. PW-3, Balram Singh has stated in his examination-in-chief that the occurrence took place 6 ½ years ago at 07:00 a.m. on Tuesday. He had gone to see his wheat crop along with his full brother Ramchandra Sharma and cousin Sidheshwar Sharma. When they reached Bodha Ahar, they saw 20-25 accused persons coming from southern and western corner. They were armed with weapons. When this witness with two others proceeded ahead of Bodha Ahar, they



saw that Ganesh Mishra instigated others to behead the deceased. They all fled away from the place. Accused Bideshi took out a bomb from the gunny bag and hurled upon Ramchandra Sharma which did not hit him. Thereafter, Premchand Rai hurled a fasuli towards Ramchandra Sharma which hit him in his stomach due to which he fell down. Suresh Bhagat climbed on the body of Sharma and started cutting his neck by means of fasuli. Rajeshwar Thathera started cutting his right hand and Ramashray Mistry started cutting his left hand. Kamlesh Mahto and Harihar Pasi assaulted the deceased on his face and waist. This witness has further stated in his examination-in-chief that he, Sidheshwar and Bimlesh were seeing the occurrence. After the death of Ramchandra Sharma, the accused persons fled away. On alarm, Naresh Singh, Birendra Singh, Rajeshwar Singh and Vinay Singh came. The deceased was murdered due to land dispute. He identifies the accused persons and claims to identify others.

10.1. The said witness has stated in his cross-examination that five more persons accompanied the accused persons whom he did not recognize. He could not tell what they brought. They too fled away with the accused persons. He has stated in his statement that five others, whom he did not



recognize, fled away with the accused persons. The said witness has further stated in his cross-examination that Ganesh Mishra was aged about 70-75 years and was not a patient of heart disease and blood pressure. Darogaji stayed till 3 O'clock. He did not tell anyone regarding the occurrence besides Darogaji. Ganesh Mishra did not lodge any case against him or his family members in which he was convicted. His brother Ramchandra was a teacher. Accused Bidesh was also a teacher. The said witness has denied the suggestion that he has deposed falsely. He has also denied the suggestion that due to eviction from the land, false case was instituted against the accused persons.

11. The evidence of PW-4, Rajeshwar Singh also need not be discussed in detail as he has not supported the prosecution case and has been declared hostile.

12. PW-5, Ram Binay Sharma has deposed in his examination-in-chief that the occurrence took place 6 ½ years ago. Ramchandra Sharma was killed. Darogaji of Goh P.S. went to the place of occurrence. Blood stained soil was seized by Darogaji and he prepared the seizure list in his presence on which the witness had put his signature. Darogaji had also seized the soil from which smell of sodium was coming.



12.1. The said witness has stated in his cross-examination that the informant is his uncle. Darogaji did not call him. After arrival of Darogaji, he went to the place on alarm. It is further stated by this witness that it is not true that paper was not prepared at the place of occurrence.

13. PW-6, Sidheshwar Singh is the informant of the case and has deposed in his examination-in-chief that 6 years 12 months and 2 days have passed. It was a Tuesday and time was 07:00 a.m. He along with Ramchandra Sharma and Baliram Sharma were going to see the wheat crop. When they reached at the eastern corner of Bodha Ahar, he saw 20-25 persons coming from the western and southern corner armed with weapons. He identified Ganesh Mishra, Bideshi Das, Premchand Ram, Suresh Bhagat, Kamlesh Mahto, Rajeshwar Thathera @ Sakhi, Harihar Pasi, Suresh Bhagat, Sharma Mahto, Ramavtar Mahto, Mahendra Dusadh, Ramjivan Dusadh, Rajbali Dusadh, Bhagirath Thakur, Deodutt Mishra, Shaligram Das, Etwar Das, Bhikhari Baitha and Sheoshankar Mishra. Suresh Bhagat, Premchand Ram, Kamlesh Mahto, Rajeshwar Thathera, Harihar Pasi and Ramashray Mistry were carrying *fasulis*. Bideshi Das was carrying a bag in his hand. Deodutt Mishra was carrying a single barrel gun in his hand.



Shaligram Ram, Etwar Das and Devraji were carrying pistols in their hands. Sharma Mahto and Bhagirath Thakur were carrying *Bhalas* in their hands. Mahendra Dusadh, Ramjivan Dusadh and Rajbali were carrying *Garasas* in their hands. Shivshankar was carrying a knife in his hand. Ramavtar Mahto was carrying a Katar in his hand and Bhikhari was carrying a lathi in his hand. The said witness has further deposed about the attack made by individual accused persons. It is deposed that he, Baliram Singh, Ramesh Singh, Birendra Singh and Naresh Singh were seeing the occurrence hiding themselves behind the palm trees. They raised alarm. On alarm, the accused persons fled away towards village Paharpura. When they reached at the place of occurrence, they saw Ramchandra Sharma dead. The neck was slightly attached to the torso. Cases were going on between Ramchandra Sharma and the accused persons in the court and due to this reason, the accused persons killed Ramchandra Sharma. It is further deposed by this witness that from the place of occurrence, he went to the Chowkidar of Chamanpura along with Baliram Singh and Ramesh Singh. From there, they went to the police station along with Chowkidar. He gave his statement to Darogaji and after writing the same, Darogaji read it over to him and after



finding it true, he put his signature on it (Ext.2). The said witness identifies the accused persons and claims to identify others on their presence.

13.1. The said witness has stated in his cross-examination that Ramchandra Sharma was his cousin brother. Ramchandra Sharma was a teacher. It is stated that he did not go to his house to give such information. He sent Birendra Singh to the house for giving information. It is not true that he was not going with Ramchandra Sharma and did not see anything. He does not have any knowledge regarding the cases lodged between his family and the accused persons before this incident. It is further stated by this witness in his cross-examination that he fled away through the field of Brahamdeo and hid himself behind the palm trees. He along with Baliram Sharma hid themselves behind the palm trees but the accused persons were seeing them. The said witness further stated that he hid for 15 minutes. The accused persons had gone after assaulting Ramchandra Sharma. He went to the place of occurrence. On his alarm, the people of village Phag also came. This witness has denied the suggestion that he did not go with Ramchandra Sharma towards the field. He has also denied the suggestion that he was not present in the village on that day and



he was present in village Goh last night and that he received information regarding the murder of Ramchandra there and reached to the place of occurrence quickly. The said witness has also denied the suggestion that after conspiring, he implicated his rivals. This witness has denied the suggestion that he met Balram Sharma and Yogeshwar Sharma in Goh. He has also denied the suggestion that he does not know as to who killed Ramchandra and when.

14. PW-7, Lalan Prasad Singh, who is the second Investigating Officer of the case, has deposed in his examination-in-chief that on 06.03.82, he was posted as S.H.O. in Gaya police station and on the same day, he received charge of investigation from Assistant Sub-Inspector Ganesh Pandey. He recorded the re-statement of Sidheshwar Singh. Sidheshwar Singh has supported his earlier statement. He sent the blood stained soil to Forensic Science Laboratory, Patna for analysis. After investigation, he has submitted charge-sheet against the accused persons. It is further deposed that *post mortem* report is in the handwriting of Dr. L.P. Jaiswal, which he identifies (Ext.5).

14.1. The said witness has stated in his cross-examination that *post mortem* report was not written in his



presence. He did not receive report from Forensic Science Laboratory, Patna. It is also stated that statement of the informant was also recorded earlier. He too had made inquiry. He did not record his complete statement but the informant supported the case.

15. PW-8, Birendra Sharma has deposed in his examination-in-chief that the occurrence is of 19.01.82 at about 06:00 a.m. On that day, he was sprinkling fertilizer in his wheat field. He has briefly supported the sequence of events as stated by PW-2. He has also stated that accused persons assaulted Ramchandra Sharma to death and fled towards south. He claims to identify the accused persons.

15.1. In his cross-examination, the said witness has stated that he had not gone to the police station with Sidheshwar Singh rather he had gone to the house of Ramchandra to verify the incident. He has further stated that when police arrived, he had gone to the place of occurrence. He returned to his house when heard that police has come. He had not disclosed before the police that at the time of incident, he was sprinkling fertilizer in his field. He did not show to the police the field where he was sprinkling fertilizer. He has further stated that he had not met anyone else except



Ramchandra and his two brothers. He has admitted that on alarm being raised, he reached at the place and saw the incident. The said witness has further stated that Darogaji had recorded his statement at the house of deceased Ramchandra. He has further stated that Darogaji had sent the dead body for *post mortem* on a tractor. The said witness has denied the suggestion that neither he was getting fertilizer sprinkled nor he had seen any incident. He has also denied that he and others of his community have formed a group for giving false evidence. He has denied the suggestion that he has deposed falsely being a *Gotiya* of prosecution side.

16. PW-9, Ganesh Pandey is the first Investigating Officer of the case who has deposed in his examination-in-chief that on 19.01.82, he was posted as Assistant Sub-Inspector in Goh police station in the district of Aurangabad. On that day, he received the FIR of Goh P.S. Case No.3/82, dated 19.1.82 from S.H.O. Md. Zubair Khan. After institution of the FIR, the S.H.O. handed over the charge of investigation to him. The FIR is in his pen which bears signature of Md. Zubair Khan which he identifies (Ext.6). He started the investigation. He recorded the re-statement of the informant Sidheshwar Sharma. He recorded the statements of Baliram Sharma, Ramesh Sharma



and Chowkidar Ramashish Dusadh in the police station. He reached at the place of occurrence at 13:30 hours and inspected the same. The place of occurrence is the field of Ganga Beldar situated 300 yards away in the southern side of village Chamalpura from where the dead body was found. The crop in the field where the dead body was lying was found trampled and blood in great quantity was also found there. He inspected the route from which the accused persons were stated to have fled away which is Bodha Ahar which was wet and foot prints of 3-4 persons were found on the Ahar, as stated by the prosecution witnesses. He has further stated that he prepared the inquest report of the dead body at the place of occurrence through carbon process. The original inquest report was prepared in presence of two independent witnesses Rajeshwar Singh and Ramesh Sharma. Both of whom put their signatures on the same. He collected the remnants of exploded bomb and prepared a seizure list of the same in presence of witnesses Ram Naresh Singh and Ram Vinay Sharma. The seizure list is in his pen and signature and bears the signatures of those two (Ext.8). He had seized the blood stained soil from the place of occurrence in presence of Ram Naresh Singh and Ram Vinay Sharma. He prepared the seizure list of the same in presence of



witnesses Ram Naresh Singh and Ram Vinay Sharma. The seizure list is in his pen and signature and bears the signatures of those two (Ext.9).

16.1. The said witness has stated in his cross-examination that Goh is situated 4 miles away from Phag. He went to the place of occurrence straightaway from Goh and left the place of occurrence at 15:30 hours and returned to Phag. In course of investigation he had also visited Chamalpura on 20.01.82 for investigation. He had recorded the statement of Chowkidar Ramashish Dusadh. Ramashish Dusadh had told him that he went to the southern side of the village on hearing explosion of bomb. He saw that a resident of Chamalpura village was coming running and three others were chasing him. They caught hold of him and killed him by means of *fasuli* and fled towards Paharpura village through Bodha Ahar. He went near the dead body and found it to be of Ramchandra Sharma. He had also told him that when he went to Goh P.S. to inform about the incident, he had met Sidheshwar Sharma. He has further stated that he had recorded the statement of Birendra Sharma. Before recording his statement, he had already prepared the inquest report of the dead body. After the statement of Birendra Sharma, he recorded the statements of



Rajeshwar Singh, Sheo Narayan Sah and Nanhu Pasi. He had also searched the accused persons but had not found any incriminating article from their possession. He had not sent the blood stained soil for analysis. He had not sent either the seized items for necessary analysis. He had recorded the statements of Ramratan Noniya, Sahdeo Noniya, Haricharan Noniya, Brahmdeo Rawani, Ramvarat Yadav, Punarik Noniya and Dwarik Noniya from village Chamalpura. He had gone to the house of the deceased Ramchandra Sharma but he had not recorded the statements of female members of his house. He has denied the suggestion that he has never conducted investigation in any other murder case while placed at Goh. He has also denied the suggestion that the charge of investigation was taken from him as he was in connivance with the accused persons. In the initial stage, he was given charge of investigation of this case. It is further stated by this witness in his cross-examination that he did not send the FIR to the court. He did not record the statement of Yugesh Sharma as he was not a witness and only the FIR was instituted in his presence. He and the informant did not reveal themselves as witnesses to the incident. The FIR was registered in his presence based on the statement of Sidheshwar Singh. He has denied that the FIR



was registered on the basis of first information given by Ramashish Dusadh. He has denied the suggestion that after the entry of Sidheshwar Singh, the statement of Ramashish Dusadh was suppressed and substituted by the statement of Sidheshwar Singh. Ramesh Sharma had not stated in his statement that he had gone to the place of occurrence rather he had stated that on alarm raised, he ran away towards the east. At the place of occurrence he found the crop of *Masoor* trampled and blood spilled over the plants and the soil. He has further stated that he had not seized the blood stained plants. He had not sealed the exhibited seized articles and he did not send those articles for chemical analysis. He is not aware whether any report regarding the same was received or not.

17. The court has examined Ramashish Dusadh as CW-1. He has deposed that on Tuesday at 06:00 a.m., he was going towards the field via Chamanpura Ahar. When he reached near the house of Ram Prasad Beldar, he heard the sound of bomb explosion. Nageshwar Rawani, Sudama Rawani and 2-4 other villagers were ahead of him. He was following them. When inquired, Brahmdeo Rawani said that the sound came from southern side. When he proceeded ahead, he saw one person fleeing away, chased by three others. The person



who was fleeing fell down and the accused persons assaulted him and fled away. He could not identify the offenders. He approached the dead body, called his father and asking him to sit there, he himself went to the police station. He gave the information to the S.H.O. and returned.

17.1. The said Court Witness has stated in his cross-examination that he is the Chowkidar of Phag. The S.H.O. recorded the information given by him upon which he put his thumb impression. He met informant Sidheshwar Singh at Goh market after he had given the information in the police station. He also informed Sidheshwar Singh about the incident. Jamadar arranged a tractor and proceeded from the police station at 12:00-01:00 hours. He and another sepoy brought the dead body for *post mortem*. He had informed the police at 08:00 a.m. before Jamadar Saheb, namely, Ganesh Pandey. In para-5 he has stated that he is acquainted with Ganesh Mishra. He was not present on the date of occurrence. In para-7, he has stated that he had identified Ramchandra Sharma while he was being chased. He raised alarm upon which 20-25 villagers gathered.

18. CW-2, Mujibur Rahman is an attesting witness of Ext.1-1, which is a report of Civil Surgeon-cum-Chief



Medical Officer, Rohtas.

19. The defence has also examined 6 witnesses, namely, DW-1, Sudama Singh, DW-2, Nageshwar Singh, DW-3, Munarik Ram, DW-4, Basu Ram, DW-5, Ramashis Ram and DW-6, Madan Mohan Prasad.

20. We have re-appreciated the entire relevant evidence led by the prosecution before the Trial Court. We have also considered the submissions canvassed by learned counsel appearing for the parties and perused the trial court records and exhibits. From the evidence led by the prosecution, it transpires that *fardebayan* of Sidheshwar Singh (PW-6) came to be recorded on 19.01.82 at 09:15 a.m. As per the case of the informant, at about 07:00 a.m. he was going along with his cousin Ramchandra Sharma (deceased) and Baliram Sharma near Tara *Ahar* situated east of his village and as soon as they reached eastern end of Tara *Ahar* where Budha *Ahar* starts, they saw that 20-25 persons armed with different weapons were coming from the southern and eastern corner. The informant identified the said persons. The informant gave the names of all the 19 accused in the FIR and the weapons which they were carrying. Thus, it appears that the informant have given details in the FIR and the role played by each of the accused in the



said incident. Even the informant (PW-6) while giving deposition before the court had also given the names of the accused persons and the weapons which they were carrying in detail. It is also surprising that though the accused persons were carrying different weapons, they only assaulted the deceased. The accused persons did not assault the informant or PW-3. It is relevant to note that PW-6 in para-7 has admitted that from the place of occurrence, he went to the Chowkidar of Chamanpura along with Baliram Singh and Ramesh Singh. From there, they went to the police station along with Chowkidar. PW-6 has admitted that he is cousin of the deceased. He has also admitted that he along with Balram Singh (PW-3) hid themselves behind the palm trees but the accused persons were seeing them. He further admitted that he hid for 15 minutes and the accused persons had gone after assaulting Ramchandra Sharma. PW-6 has also stated that they raised alarm upon which the accused persons fled away towards village Paharpura and when they reached at the place of occurrence, they saw Ramchandra Sharma dead.

21. PW-3, Balram Singh is also projected as an eye-witness to the occurrence by the prosecution. The said witness is full brother of Ramchandra Sharma (deceased) and



cousin of the informant. The said witness also has given details with regard to the accused persons and the weapons which they were carrying. He has also given the details about the role played by each of the accused persons in commission of the crime. It is his case that on alarm, Naresh Singh, Birendra Singh, Rajeshwar Singh and Vinay Singh came. He has further stated that the deceased was murdered due to land dispute.

22. At this stage, it is pertinent to note that PW-1, Ram Naresh Singh and PW-4, Rajeshwar Singh did not support the case of the prosecution and they have been declared hostile.

23. PW-2, Ramesh Sharma is also projected as an eye-witness. As per the case of the prosecution, he was present in his agricultural field. However, in para-21 of his cross-examination, he has admitted that he does not have any land in the locality where Ramchandra Sharma has been killed. The said witness has also stated that when Sidheshwar and Baliram raised alarm, none of the persons of the locality went to the said place. The said witness had signed the inquest report.

24. PW-5, Ram Binay Sharma is the seizure list witness. As per his case, Darogaji seized the blood stained soil and seizure list was prepared which he had signed.



25. At this stage, it is also relevant to note that PW-8, Birendra Sharma is a close relative of the informant. As per his case, he was sprinkling fertilizer in his wheat field. The said witness has stated that accused persons assaulted Ramchandra Sharma and thereafter fled towards south. He claims to identify the accused persons. However, during cross-examination, he has admitted that he had not gone to the police station with the informant. He has further stated that he had not disclosed before the police that at the time of incident, he was sprinkling fertilizer in his field. He did not show the police the field where he was sprinkling fertilizer. He has further stated that he had not met anyone else except Ramchandra and his two brothers.

26. Now, the deposition given by PW-9, who is the first Investigating Officer, is required to be examined closely. In his examination-in-chief, he has stated that when he reached at the place of occurrence at the 13:30 hours and inspected the place, he found the crop trampled in the field where the dead body was lying. He inspected the route from which the accused persons were stated to have fled away, which is Bodha Ahar which was wet, and foot prints of 3-4 persons were found on the Ahar, as stated by the prosecution witnesses. Thus, it is



clear that when the said witness examined the place of occurrence, he found foot prints of 3-4 persons.

26.1. Keeping in view the aforesaid deposition given by PW-9, if the deposition given by CW-1, Ramashish Dusadh is carefully examined, it is revealed that the said witness is an independent witness and was Chowkidar. As per his case, when he reached near the house of Ram Prasad Beldar, he heard the sound of bomb explosion. When he proceeded ahead, he saw one person fleeing away, chased by three others. The person who was fleeing fell down and the accused persons assaulted him and fled away. However, he could not identify the offenders. He approached the dead body, called his father and asking him to sit there, he himself went to the police station. The said witness during cross-examination has admitted that the S.H.O. recorded the information given by him upon which he put his thumb impression. He met informant Sidheshwar Singh at Goh market. He also informed Sidheshwar Singh about the incident. Thus, from the deposition given by CW-1, it appears that there were only three accused and one deceased and, therefore, PW-9, the Investigating Officer, found foot prints of 3-4 persons at the place of occurrence. From the deposition of CW-1, it is also clear that



when he reached near the dead body, except him none else was present and, in fact, he gave information to the police and his statement was recorded upon which he put his thumb impression. Thus, it appears that the prosecution has suppressed the version given by the said witness.

27. At this stage, once again, if the cross-examination of PW-9 is carefully examined, it transpires that the Investigating Officer has admitted during cross-examination that he had recorded the statement of Chowkidar Ramashish Dusadh. PW-9 further admitted that Chowkidar Ramashish Dusadh had told him that he went to the southern side of the village on hearing explosion of bomb. He saw that a resident of Chamalpura village was coming running and three others were chasing him. They caught hold of him and killed him by means of *fasuli* and fled towards Paharpura village through Bodha Ahar. He had also told him that when he went to Goh P.S. to inform about the incident, he had met Sidheshwar Sharma (informant). Thus, from the deposition given by PW-9, the Investigating Officer, it is clear that CW-1 has narrated the same thing on the date of occurrence to the police officer (PW-9). Thus, it appears that the prosecution has dropped the said witness. However, the Trial Court examined the said



Chowkidar as CW-1.

28. Thus, from the deposition by CW-1 as well as PW-9, it is clear that PW-2, PW-3, PW-6 and PW-8, who were projected as eye-witnesses by the prosecution, are, in fact, not the eye-witnesses and their presence at the place of occurrence is doubtful. The aforesaid witnesses are near relatives of the deceased and, therefore, version given by the interested/related witnesses is required to be examined closely. Looking to the version given by CW-1 and PW-9, we are of the view that the version given by the so called eye-witnesses is not correct and, even otherwise, PW-3 and PW-6, who are near relatives of the deceased, have given the names of 20 accused persons with the weapons which they were carrying. We are of the view that the details given by the said witnesses with regard to 20 accused persons also creates doubt with regard to their presence at the place of occurrence. It is difficult for any person to remember the names of 20 accused persons and the different weapons which they were carrying and that too when 20 persons came running from different sides and assaulted the deceased. The conduct on the part of the aforesaid two witnesses that they hid themselves for 15 minutes and saw the incident is also doubtful. Thus, we are of the view that the deposition given by



the aforesaid prosecution witnesses is required to be discarded. Even otherwise, there are two versions with regard to the manner of occurrence and the presence of accused persons at the place of occurrence and, therefore, benefit of doubt is also required to be given to the accused in such a situation.

29. At this stage, it is also required to be observed that the doctor, who had conducted the *post mortem* on the dead body of the deceased, has not been examined and only *post mortem* report has been produced before the Court. Thus, the defence has lost the opportunity to cross-examine the said witness.

30. Looking to the aforesaid evidence led by the prosecution, we are of the view that the prosecution has failed to prove the case against the accused persons beyond reasonable doubt, despite which the Trial Court has recorded the judgment of conviction and order of sentence against them. Hence, the Trial Court has committed serious error while passing the impugned judgment of conviction and order of sentence.

31. Accordingly, all the appeals stand allowed. The judgment of conviction dated 03.01.1991 and order of



sentence dated 07.01.1991, passed by learned 4th Additional Sessions Judge, Aurangabad in Sessions Trial No.159/84/33/87, arising out of Goh P.S. Case No.3(1)82, G.R. No.115/82, Trial No.1780/83 are hereby quashed and set aside. All the appellants of all the appeals are on bail. They are discharged from the liabilities of their respective bail bonds.

(Vipul M. Pancholi, J.)

(Sunil Dutta Mishra, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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