

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.208 of 1994

Ashok Singh son of late Ram Nandan Singh, resident of village-Mohanpur,
P.S. Bakhari, District-Begusarai. Appellant/s

Versus

State Of Bihar Respondent/s

with

CRIMINAL APPEAL (DB) No. 277 of 1994

Devendra Singh son of Jhari Singh resident of village-Mohanpur, P.S.
Bakhari, District-Begusarai. Appellant/s

Versus

State Of Bihar Respondent/s

Appearance :

(In Cr. Appeal (DB) No. 208 of 1994 and Cr. Appeal (DB) No. 277 of 1994)

For the Appellant/s : Mr. Ansh Prasad, Adv.
Mr. Shubham Prakash, Adv.
Mr. Rajeev Ranjan, Adv.
For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA)

Date : 21-08-2025

The aforesaid appeals under Section 374 (2) of the Criminal Procedure Code, 1973 (hereinafter referred as 'Cr.P.C.') have been preferred against the common judgment of conviction and order of sentence dated 12.04.1994 passed in Sessions Case No. 65 of 1993 (arising out of Bakhari P.S. Case No. 69 of 1992) by the learned Additional Sessions Judge-6th, Begusarai, whereby and whereunder the learned Trial Judge has convicted the appellants of both the aforesaid appeals for commission of offence under Section 302/34 IPC as also Section



27 of the Arms Act and sentenced them to undergo rigorous imprisonment for life under Section 302/34 IPC and rigorous imprisonment for seven years under Section 27 of the Arms Act. The sentences have been directed to run concurrently.

2. The short facts of the case based on the *fardebayan* of Sanjeev Kumar Singh (P.W.9) recorded on 28.08.1992 at 10:30 PM at Balha Bandh on the street at Mohanpur village is that on 28.08.1992 at around 06:00 PM, while the informant had gone west of his village for inspecting his chilli fields and his father Chandra Shekhar Singh was coming back from his duty at Jaimanglagarh Forest Department on a cycle, he saw Ashok Singh, Devendra Singh, Umesh Singh, Rishidev Singh and two other unknown persons, whom he could identify by face, coming out of the maize fields and surrounding his father, whereafter they resorted to indiscriminate firing by means of pistol on account of which his father got badly injured and fell in the flank besides the road. It is next alleged that the informant started shouting loudly due to which all the accused persons started running towards the southern side and Priyabrat Singh (P.W.1), Raj Kumar Singh (P.W.2), Prem Singh (P.W.8), Hare Krishna Singh (P.W.5), etc. came running to the place of occurrence and witnessed the occurrence. The father of the



informant died on the spot at the place of occurrence itself. The reason for the occurrence has been alleged by the informant to be an old enmity with the accused persons due to which they killed his father by firing gun shots. The said *fardbeyan*, besides being signed by the informant, was also signed by two other witnesses Priyabrat Singh (P.W.1) and Suresh Prasad Singh (not examined).

3. After recording the *fardbeyan*, a formal FIR bearing Bakhari P.S. Case No. 69 of 1992 was registered for offences under Sections 302 r/w Section 34 of the IPC and Section 27 of the Arms Act against four named accused persons including the present appellants and two unknown persons on 29.08.1992 at 01:30 AM. After investigation, the police submitted charge-sheet on 28.11.1992 against the four FIR named persons including the present two appellants for offences under Sections 302/34 of the IPC and Section 27 of the Arms Act. On the basis of the said charge-sheet and the materials available on record, cognizance was taken on 02.12.1992 under the same sections against the appellants and two others. The case was then committed to the Court of Sessions on 02.02.1993 and a perusal of the said order would show that the proceedings against accused Rishi Dev Singh was dropped as he had died. After commitment, the case



was numbered as Sessions Case No. 65 of 1993, whereafter the learned Trial Judge framed charges on 22.03.1993 against the present two appellants and one Umesh Singh, who though was convicted and sentenced by the impugned judgment and had also filed an appeal bearing Criminal Appeal (DB) No. 259 of 1994, however the same has stood abated vide order dated 31.10.2017, in view of his death.

4. During the course of trial, the prosecution in order to substantiate its case, examined eleven witnesses out of whom, P.W.1, Priyabrat Singh (cousin brother of the informant) is a signatory to the FIR P.W.2, Raj Kumar Singh (brother of the informant) and P.W.5, Hare Krishna Singh (*gotiya* of the informant) have both been declared hostile by the prosecution. P.W.3, Balmiki Choudhary, P.W.4 Rabindra Singh and P.W.7 Sudhir Prasad Singh are formal witnesses who have proved the seizure list and the inquest report. P.W.8 Prem Singh is a tendered witness who is also a signatory to the inquest report. P.W.6 Rajeev Kumar Singh (son of the deceased) and P.W.9 Sanjeev Kumar Singh (son of the deceased as also the informant of this case), both claim to be eyewitness. P.W.10 Awadhjee Singh is the Investigating Officer, while P.W.11 Dr. Anand Kumar Sharma is the doctor, who has conducted the postmortem



examination of the dead body of the deceased. Five witnesses have also been examined on behalf of the defence who are Pappu Singh (D.W.1), Pramod Kumar Singh (D.W.2), Manohar Kumar Singh (P.W.3), Dr. Rajeshwar Prasad Mishra (D.W.4) and Nandlal Tati (P.W.5).

5. We have heard the arguments of the learned counsel for the appellants and the learned APP for the State at length.

6. Mr. Ansh Prasad, learned counsel for the appellants, duly assisted by Mr. Shubham Prakash has, at the outset contended that there are several inconsistencies between the first information report and the statements of the witnesses adduced during trial. He has submitted that the place of occurrence itself has not been proved/established as the Investigating Officer has not been able to bring on record any objective evidence to establish the same. As against the allegation of indiscriminate firing by 5 to 6 persons, no empty cartridges were recovered from the place of occurrence, as such the same were neither seized nor produced. It has been further submitted that no blood was found or seized from the place where the deceased allegedly received gun shot and moreover, the blood stained earth seized from the flank where the deceased had fallen, was also not sent for forensic examination. He further submits that the cycle,



which the deceased was riding at the time when the occurrence took place and also allegedly at the time when he received the gun shot was also nowhere to be found at the place of occurrence, hence was not seized. Despite the fact that in oral deposition, it has been stated that blood stains was also found on the cycle, yet the prosecution made no attempt to produce the said cycle which was a very vital piece of evidence.

7. With regard to the credibility of the witnesses, the learned counsel for the appellants has submitted that Rajeev Kr. Singh (P.W. 6) does not appear to be an eye witness to the occurrence which becomes very apparent from the fact that his name does not feature at all in the first information report and the informant (P.W. 9), who is his own brother has also not mentioned his name in his statement made before the police under Section 161 Cr.P.C. He further substantiates his argument of P.W.-6 (Rajeev Kr. Singh) not being an eye witness to the occurrence on the basis of the fact that he was also not available for recording of his statement by the Investigating Officer which was recorded after a substantial delay, only on 30.08.1992 while the occurrence had taken place on 28.08.1992 at 6:00PM itself. It has been argued that there is no plausible explanation given by the said witness P.W. 6 for the delay in recording of his



statement under Section 161 of the Cr.P.C. To buttress his submission, he has relied upon a judgment of the Hon'ble Supreme Court, rendered in the case of **State of U.P. Vs. Satish**, reported in **(2005) 3 SCC 114** and has referred to para-18 and 20 of the said judgment to contend that if the explanation provided by the witness is not plausible, the Court can consider it to be one of the factors to affect the credibility of the witness, hence in the facts of the present case, he has contended that the delayed examination of P.W. 6, further attaches doubtful shade to the testimony of P.W. 6. Learned counsel has also assailed the credibility of this witness on the ground that as per his own deposition, he was hiding in the field, hence with crops standing in the field all around, it was not possible for him to have seen the occurrence. Further, his very conduct of going back home after having known or seen his father being killed, appears to be very unnatural and the same explanation given is that he had gone home to look after the children. In this regard, the learned counsel has relied on a judgment reported in **(2003) 3 SCC 153 (State of Punjab Vs. Sucha Singh and others)**, in para-10 whereof, the conduct of a witness remaining a mute spectator to his son being inflicted several injuries for some period of time has been considered to be an unnatural conduct.



8. The Ld. counsel for the appellants has also assailed the testimony of P.W.9, Sanjeev Kr. Singh, the informant himself, by stating that he is also not an eye witness to the occurrence as there appears to be some inconsistency in his statement with regard to directions and also with regard to the point from where he claims to have witnessed the occurrence. In this regard, it has been pointed that the informant did not show his field to the Investigating Officer and rather pointed out to another place from where he said that he had seen the occurrence. It has also been submitted on behalf of the appellants that the inquest report has been signed by two witnesses, however one of them being Sudhir Singh (P.W.7) has stated that he was probably made to sign on blank papers. With regard to the seizure list, it is submitted that P.W.3, Balmiki Choudhary, was asked to sign on a document, which he did without knowing the contents thereof and so far as the other witness to the seizure list, i.e. Rabindra Singh (P.W.4) is concerned, his signature was taken over the same two days later. Mr. Prasad, learned counsel for the appellants has thus contended that there are several lapses and irregularities committed in the process of investigation and the same are not negligible, hence cannot be ignored. He has relied upon a



decision of the Hon'ble Supreme Court passed in the case of **Sunil Kundu & Another Vs. The State of Jharkhand and other analogous cases**, reported in **(2013) 4 SCC 422** and has referred to paragraph No. 29 thereof, wherein it has been held that lapses or irregularities in the investigation can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality. Thus, if the lapses or irregularities do not go to the root of the matter and if they do not dislodge the substratum of the prosecution case, they can be ignored. Further, in the aforesaid case before their lordships it was held that the lapses were very serious, hence no allowances could be made for such gross lapses.

9. The next submission made on behalf of the appellants is that the prosecution has also miserably failed to prove any motive for the said occurrence as the motive which has been alleged seems to be a very vague and weak one. It has been stated that the only fact of the deceased being a leader of CPM party and the appellants being Zamindars and existence of some animosity between them with regard to labourers, would not be a ground grave enough for committing the murder of the deceased. He has rather submitted that there is no documentary



or any other concrete proof to show that the deceased was actually a leader of the CPM and this fact also stands supported by the deposition of the defence witnesses. So far as the factum of threatening is concerned, it is submitted that barring a bald allegation, there is no substantial evidence with regard to such threatening and no sanha or any other information was ever recorded in this regard. Upon such grounds, he submits that there is no direct or proximate cause for the appellants to cause the death of the deceased. Lastly, the counsel for the appellants has also drawn the attention of this Court to the fact that the deceased himself belongs to a criminal background, inasmuch as, there were several cases pending against him and he was having inimical relations with several persons, thus the possibility of his being done to death by any of such enemies cannot be completely ruled out.

10. We have heard Ms. Shashi Bala Verma, learned APP for the State. She has submitted that the conviction of the appellants in this case is just and proper as the prosecution has been able to prove its case by way of the deposition of the eye witnesses, the other witnesses and also other attending circumstances. She has submitted that out of the two witnesses P.W. 6 and P.W. 9 who claimed to be the eye witness to the



occurrence, even if some doubt is cast on the deposition of P.W. 6 on the ground that he was not mentioned as a witness initially in the FIR and also subsequently in the 161 Cr.P.C. statement of the informant, there is no reason at all to doubt the veracity of testimony of P.W. 9, the informant who has given the detailed account of the occurrence as an eye witness. The informant, P.W. 9 had sufficient reasons to be in the field as he had gone to see his crops, hence his presence at the place of occurrence cannot be said to be doubtful even on that score. Ms. Verma further submits that the act of the informant, P.W.9 not raising cry upon seeing the accused persons surrounding his father was a natural conduct as they were all armed with fire arms. In this regard, she has taken this Court to paragraph 19 of the evidence of P.W. 9 wherein he has stated that he could not shout as he did not get an opportunity to do so due to the sudden advent of the accused persons. It is her further submission that the place of occurrence stands proved as the dead body itself was found in the flank, in the presence of the Investigating Officer and blood stains were also found in the flank. She next submits that the reason and motive for the said occurrence is also established in view of consistent evidence of the witnesses that there was a dispute with regard to the fact that the deceased, being a leader



of CPM, was helping the agricultural labourers with regard to raise in their wages, which was not to the liking of the appellants as they were landlords. It has also been submitted on her behalf that the factum of cycle having not been found at the place of occurrence, stands explained by the informant himself by stating that it was taken away by his younger brother to his house which she also submits to be a natural conduct. On the basis of these contentions, the learned APP for the State has submitted that the prosecution has been able to prove its case beyond all reasonable doubts.

11. We have minutely perused both oral and documentary evidence besides hearing the learned counsels for the parties. It would be necessary first to cursorily discuss the evidence before proceeding further. P.W.1, Priyabrat Singh is a signatory of the fardbeyan of the informant and he has identified his signature as Ext. 1. He has further stated in his examination-in-chief that he was in his garden at a distance of about 5 to 7 rope length when he heard sound of firing/explosion and he came running to the place of occurrence to find the informant, P.W.9 crying and saw his father Chandra Shekhar dead with injuries. He has further stated that he did not see anyone fleeing away and the dead body of Chandra Shekhar was lying in the



flank, north of the road. In the cross examination, this witness has stated that in spite of the fact that he was not willing to sign on the FIR, the Investigating Officer convinced him to put his signature which he did but the document was already written and the same was not read out to him.

12. One Raj Kumar Singh and Hare Krishna Singh have been examined by the prosecution as P.W. 2 and P.W.5. However, both of them have not supported the case of the prosecution and have been declared hostile by the prosecution, hence this Court does not feel it necessary to discuss their evidence as nothing substantial emerges from their evidence.

13. The prosecution has examined Balmiki Choudhary as P.W. 3 who is a signatory to the seizure list and in his examination-in-chief, he has identified his signature as Ext. 1/1. This witness, in his cross examination, has however, stated that he was asked by the Investigating Officer to put his signature on a paper, on which something was written but he does not know the contents thereof as he did not read the same.

14. P.W.4 is one Rabindra Singh who is a witness to the seizure list and he has identified his signature on the said seizure list as Ext. 1/2, as stated in his examination-in-chief. However, in his cross examination, this witness has stated that



his signature was taken by the Investigating Officer at his house after two days of the occurrence. P.W. 7, Sudhir Pd. Singh and P.W. 8, Prem Singh are both witnesses to the inquest report, however, while P.W. 7 is a formal witness, P.W. 8 has been tendered for cross examination. P.W.7, in his examination-in-chief, has stated that he reached the place of occurrence after alarm and he had identified his signature on the inquest report as Ext. 1/3. In his cross examination, however, he has stated that at the time of signing the document, the same was probably blank and has further submitted that he and Prem Singh (P.W.8) are uncle and nephew. The only fact which seems to transpire from the cross examination of P.W.8 is that accused Umesh Singh (now dead) was suffering with paralysis.

15. Rajeev Kr. Singh, son of the deceased has been examined as P.W.6 by the prosecution and he claims to be an eye witness to the occurrence. In his examination-in-chief, he has stated that the occurrence had taken place at around 6:00PM and he had seen his father going on a cycle towards his home from his duty in the Forest Department when 5 to 6 persons came out of the maize field of one Nageshwar Verma and surrounded his father and resorted to indiscriminate firing. He claims to have identified four persons to be these appellants Ashok Singh and



Devendra Singh and two others, namely Umesh Singh and Rishi Dev Singh (both now dead). He has stated that all the four accused persons were armed with pistols while accused Umesh Singh was holding a big pistol. After, sustaining the gun shot, the deceased fell inside the flank on the western side and died, while the assailants fled away towards east brandishing their pistols. This witness went running to the place of occurrence and his brother Sanjeev Kr. Singh, P.W.9 and Priyabrat Singh P.W.1, Raj Kumar Singh, P.W. 2 and Hare Krishna Singh, P.W. 5 also came and saw the occurrence. The deceased, according to him, had received gun shot injuries near the ear, legs, left part of stomach and 3 to 4 other places. While stating that his father was a leader of CPM party, he described the accused persons to be landlords of the village. It has been stated by him that his father used to help the agricultural labourers for raising their wages by conducting strike etc. and it is for this reason that the accused persons carried animosity against him and also used to give threatening to kill. This witness identifies the appellants along with accused Umesh Singh.

16. In his cross examination, P.W.6 has accepted that his statement was taken by the police on 30.08.1992 and he was not present at the place of occurrence when the police came as



he had gone home in order to take care of the children. He does not claim to know as to whether the Investigating Officer came to his village on the following day but has stated that he did not go to the police station to meet the Investigating Officer on the next day of the occurrence. He has also stated that he was not present when the statement of his brother Sanjeev Kr. Singh, P.W.9 was first recorded by the police. His attention towards his statement made before the police under Section 161 of the Cr.P.C. has been drawn and he has admitted to have made statements with regard to the accused persons including the appellants resorting to indiscriminate firing upon the deceased, however, he denies the fact that he had ever stated that Umesh Singh had a rifle in his hand. He also denies the fact of having said that he was at a distance of 5 rope length when he heard 5 to 6 rounds of firing. He admits that he had made a statement that he had hidden himself out of fear and then had proceeded towards the place of occurrence. He has further denied to have made a statement before the police that he reached the place of occurrence after the accused persons had fled away towards east. He however, admits to have stated before the police that his brother Sanjeev Kr. Singh (P.W.9) and other witnesses came to the place of occurrence and had witnessed the occurrence. He



also admits the fact that he had stated before the police that his father was a CPM leader and there was animosity with the accused persons as they were landlords. This witness has further stated that his father had not lodged any Sanha with regard to any threatening to kill him.

17. In paragraph-6 of his deposition, this witness has stated that he had gone to see his field of maize crops around 5:00PM on the date of occurrence. He does not, however, claim to remember meeting any other person during that time or of having heard any scream. On specific question by the court as to whether he heard the sound of firing, this witness has admitted to have both seen and heard the sound of firing and has stated that he was at a distance of 30 to 40 hands from the place of occurrence. It has been further stated by him that his father had received 3 to 4 gun shots while he was on his cycle and the blood had fallen both on the cycle and on the road. He further admits that he had reached the place of occurrence after his father had fallen from the cycle. On specific query of the court as to who all reached after him, he replied that his brother Sanjeev Kumar Singh (P.W.-9) and P.Ws. 1, 2, 5 and 8 had all reached the place of occurrence together with him. He has further denied of having any knowledge as to whether anyone



had gone to inform about the incident to the village Choukidar or Mukhiya. He has also stated that he had no knowledge of his father going to jail and having fled away from the captivity of the police. He has also denied the suggestion of an earlier case filed by one Gopal Singh under Section 307 IPC against his father and others wherein, appellant Devendra Singh was a witness and that he has been falsely implicated on account of such reason. In his further cross-examination, this witness has stated that he stayed at the place of occurrence for about one hour but he had no conversation with his brother or any other witness, including about 50 to 100 people who had assembled at the place of occurrence. It has further been stated that while going to his home from the place of occurrence, he did not meet anyone and did not disclose about the occurrence to anyone on way. He however, states that the news of the death of his father had already reached his home before him. P.W.-6 has further stated that he has no knowledge of any documentary evidence of his father being a CPM leader and while stating that he does not know the name of any labour in specific, he has stated that he used to generally help the agricultural labour for the purposes of increasing their wages as there was a labour problem in the village and a Panchayati was also held in that regard but his



father never disclosed to him about any threatening given to him. It has also been stated by him that he had enough land at the place of occurrence which was given on Batai and he had gone to see the agricultural land of Batayidar, Jabbar Miyan, however, he was not present along with him. This witness, while stating that his father had left for duty while hand pump was installed in his house, has denied the suggestion that he never went on duty on the date of occurrence. He has also denied the suggestion that he was not in the village on the date of occurrence and that he came on 30.08.1992 from Siliguri and hence, his statement was not recorded earlier. P.W. 6 has further stated that there are fields all around the place and on hearing the sound of gun shot, he had hidden himself in the field and from there, he saw the occurrence.

18. The informant Sanjeev Kr. Singh has been examined as P.W. 9 by the prosecution who has stated in his examination-in-chief that on 28.08.1992, while he had gone to see his chilli field, he saw his father coming on a cycle from a distance of about 40 to 50 hands and when he reached Balha Bandh near the field of Nageshwar Verma, 5 to 7 persons came out of the maize field and resorted to indiscriminate firing upon his father by surrounding him, on account of which his father



fell in the flank and the informant had raised alarm. Upon his alarm, the accused persons started fleeing away but the witness could identify the present two appellants and Umesh Singh and Rishideo Singh (now dead). On the alarm raised by him, his younger brother Rajeev Kr. Singh (P.W.6), Priyabrat Singh (P.W.1), Raj Kumar Singh (P.W.2), Hare Krishna Singh (P.W.5) and Prem Singh (P.W.8) also came and thereafter, many persons assembled at the place of occurrence. The father of the informant died on the spot i.e. at the place of occurrence itself. He has also referred to an old enmity between accused persons and his father and this has been stated to be the reason for the present occurrence. It has further been stated that the Investigating Officer came to the place of occurrence in front of whom he made his signature on the fardbeyan (Ext.1/4) and the I.O. had also prepared the inquest report, collected blood stained earth and had also prepared a seizure list thereof.

19. In his cross-examination, P.W.9 has denied to have any knowledge about the criminal cases pending against his father and that he had also gone to jail as also he had released himself from the handcuffs and fled away. This witness has also denied any knowledge with regard to Bakhari P.S. Case No. 831 of 1991, lodged by Gopal Singh, wherein appellant Devendra



Singh was a witness and of some other cases as stated by the defence. It has further been stated by him that he was in his field when he had seen the firing and had heard the sound of the same. It is stated that his father was shot at when he had stopped the cycle and all the four accused persons started firing from the front while two other unknown persons were firing from the back. His father had fallen on becoming injured and blood had fallen on the road. He further states that 4 to 5 persons also arrived at the place of occurrence after him but he denies to have any knowledge as to who gave information to the police with regard to the occurrence. He has further stated that he had disclosed about the presence of his brother Rajeev Kr. Singh (P.W.-6) at the place of occurrence and he had seen the occurrence and such statement has been made by him in his fardbeyan as well as in his further statement. He stated that he does not remember with regard to any litigation pending between the appellant Ashok Singh and their family. It has also been stated by him that he had gone near the place of occurrence in order to check his chilli field. He has also stated that while he was leaving his field, he saw his father coming from a distance of 40-50 hands. It further appears from his evidence that he had shown the place where the cycle had fallen to the investigating



officer. He has further stated that there were blood stains on the towel and the entire body of the deceased. It has also been stated that the flank in which his father has fallen into, did not have water but it was slightly wet due to rain. With regard to the cycle, this witness has stated that the same had been taken by his younger brother Ranjeet Kumar and nobody stopped him from doing so. Upon a query with regard to the cycle by the investigating officer, he had stated that it was taken to his house and he had also informed that there were blood stains on the cycle. The witness has further stated that when he saw the accused persons coming out from the maize field then he did not shout asking his father to save himself from the accused persons as he did not get an opportunity to do the same. He has further stated that upon seeing the accused persons his father had tried to speed up his cycle in order to flee away and the accused persons did not follow him rather he got surrounded from the front side. While stating that no accused persons held the handle of the cycle, he states that they shot from the front of the cycle. The deceased also did not make any attempt to flee away as he did not get an opportunity and he was shot. It has been stated that the four accused persons were standing in front of the cycle in a line next to each other and they made five to six gun shots



firing and there was a distance of 1-1½ hands between the deceased and the assailants. It has been further stated that two unknown accused persons who were standing next to the carrier of the cycle at some distance towards the east, did not fire and were only threatening. Upon hearing the gun shot and seeing the deceased hit by the same, he got afraid, yet he ran towards his father while screaming. He has also stated that when his father had reached in front of the field of Nageshwar Verma, the accused persons came there suddenly. The witness has further stated that he had shown the place to the Investigating Officer where the deceased received gun shot and from there the I.O. had collected the blood-stained soil weighing about ½ kg. This witness has denied the defence suggestion of him not being an eye-witness and that the deceased had many enemies and was also in bad company.

20. The Investigating Officer of this case has been examined as PW-10 and while stating that he was posted as the officer-in-charge of Bakhari Police Station on 28.08.1992, he states that he got an information by way of rumor at 9:30 P.M. on the said date about some person being killed in village-Mohanpur, Balha Bandh. After recording the station diary entry being S.D.E. No.592 dated 28.10.1992, the I.O. proceeded along



with others police personnel towards the place of occurrence and reached there at 10:30 P.M. where he recorded the *fardbeyan* of Sanjeev Kumar Singh, PW-9. He claims to have written the *fardbeyan* as stated by PW-9 and had also read out the same to him upon which the informant made his signature after having heard the same. This witness has proved the *fardbeyan* to be in his writing and signature and the same has been marked as Exhibit-2. The formal F.I.R. was drawn on the basis of the said *fardbeyan* at the Police Station which is in the writing of Munsif Sadanand Mishra (not examined) and the same bears the signature of S.I. Ram Sakal Mishra (not examined). P.W.10 has identified the document which has been marked as Exhibit-3 and the signature of S.I. has been marked as Exhibit-4. This witness has further stated that he had examined the dead body and had prepared the inquest report in presence of Prem Singh (PW-8) and Sudhir Singh (PW-7) and he has proved the said inquest report, which has been marked as Exhibit-5. The inspection of the place of occurrence was done by him in accordance with what was stated by the informant Sanjeev Kumar Singh and he found the place of occurrence to be a flank which is situated on the western side of the village road which is about ½ kilometer from village Mohanpur. While describing the place of



occurrence, he has stated that there are agricultural fields on both sides of the road. He had found the body of the deceased at the place of occurrence and had also found a lot of blood underneath the dead body. He prepared a seizure list of the said blood before two independent witnesses being Balmiki Choudhary (PW-3) and Rabindra Singh (PW-4) and the seizure list has been marked as Exhibit-6. He further claims to have recorded the further statement of the informant and that of other witnesses at the place of occurrence itself. Witness Rajkumar Singh (PW-2) had admitted before him that he had seen the accused persons including the present appellants fleeing away from a distance of two to three rope length after he had proceeded towards the place of occurrence upon hearing gun shot. PW-5, Hare Krishna Singh had also stated that he had seen the accused persons who were armed with firearms fleeing away towards the east. This witness after investigation and supervision by the superior officer had submitted charge-sheet against accused persons.

21. In his cross-examination, he has stated that the owners of the fields at the place of occurrence were not present. To a court question, the witness has replied that in the adjacent field of Ram Vilash Singh, footprints of three to four persons



were found in the direction in which accused persons had fled away. It has been further stated that upon raid conducted in the house of accused Umesh Singh on 28.08.1992 at 2:00 A.M., he was not found in the house, however, no incriminating or objectionable article was recovered from his house. It has also been stated by him that the deceased was a charge-sheeted accused along with others in Bakhari P.S. Case No. 83 of 1991. In the further cross-examination, this witness has stated that the Sanha No.592 dated 28.08.1992 is indicated in the case diary but source of such information has not been indicated. While conducting the inspection of the place of occurrence on 28.08.1992 at 11:15 P.M. in the light of petromax, he did not find any drop of blood on the road where the deceased was shot. He even did not find any marks of cycle tyre at the said place. It has further been stated that the informant did not show his chilli field to him, however the Investigating Officer saw the place from where the informant claims to have seen the occurrence as recorded in paragraph-4 of the case diary. He has also not indicated the distance between the place of occurrence and the place from where the informant witnessed the said occurrence. This witness claims to have sealed the seized blood stained soil in a cloth but no labeling etc. was done on the same by taking



any signatures. He had also recorded the statement of PW-7 and PW-8, the inquest report witnesses, on 29.08.1992 at 12:10 A.M., while the inquest report was prepared on 28.08.1992 at 10:30 P.M.

22. In paragraph-12 of the case diary, P.W. 10 has indicated that he did not find any witness at the place of occurrence and on account of such reason, no statement of witnesses could be recorded. He did not find the cycle during course of his investigation, which the deceased was riding at the time of occurrence. It was disclosed to him that the said cycle had been taken to the house of the informant and he neither asked for the same nor the same was shown to him. He further states that he also conducted search in the house of the four accused persons including the present appellants but did not find any incriminating or objectionable material. The statements of Rajkumar Singh (PW-2) was recorded by the I.O. and the statement of Rajeev Kumar Singh (PW-6) was recorded by him on 30.08.1992 at 6:00 A.M. PW-6 had stated before him that he was at a distance of 5-6 rope length when he heard the sound of 5 to 6 gun shots and had hidden himself out of fear. On 29.08.1992, this witness had gone to the house of the deceased and had stayed for the entire night, in-between 28-29.08.1992



and for the entire day on 29.08.1992 but no one from the family of the informant came forward to give any statement. Rajeev Kumar Singh (PW-6) had not stated before him that when he was proceeding towards Yadav Toli, 3-4 persons came out from the maize field of Nageshwar Verma and fired indiscriminately at his father after surrounding him and out of the said persons, he identified four persons including the present two appellants. PW-6 had rather stated before him that accused Umesh Singh was armed with a rifle while he did not state that his father fell after receiving the gun shot. PW-6 had also stated before this witness that when the accused persons had fled away towards the east, only then he reached the place of occurrence. PW-6 did not mention the fact of other witnesses including the informant to have witnessed the occurrence. With regard to threatening given to the deceased, informant and informant's brother, no sanha has been lodged.

23. In paragraph-24 of the cross-examination, I.O. has negated the fact that the informant (PW-9) had ever made a statement either in the *fardebayan* or in the further statement with regard to the fact that his brother Rajeev Kumar Singh (PW-6) had also reached the place of occurrence and had seen the occurrence. In his further cross-examination, I.O. has stated that



he did not find any blood from the place where the deceased had allegedly fell from the cycle to the place where the dead body was found. The appellant Ashok Singh was arrested by him on 31.08.1992 at 3:25 A.M. from his house and statement of other witnesses was also recorded by him. Further, this witness did not show any documentary proof of the field near the place of occurrence belonging to the informant. He also did not send the blood stained soil for forensic examination.

24. Dr. Anand Kumar Sharma, examined as PW-11, is the Doctor who conducted the *postmortem* examination of the dead body of the deceased while he was posted as Civil Assistant Surgeon at Sadar Hospital, Begusarai on 29.08.1992 at 8:00 A.M. He found the following *antemortem* injuries.

“1. Circular wound above umbilicus 1/4” in diameter with charred margin. This was wound of entry. On further dissection there was subcutaneous haematoma. On further dissection stomach, Jejunum was lacerated. Peritoneal cavity was full of blood. Lacerated wound of 1”x1/2” with the everted margin on the back of left side. 1” lateral to midline at T-11-12.

2. Two circular wound 1/4” in diameter with charred margin on the left side of face at 2” interval. This was wound of entry. There was fracture of left side of mandible and right side of mandible was missing. There was lacerated wound of 4”x2” on the right side of face. This



wound was of exit.

3. Circular wound 1/4” in diameter on left leg on its lateral side. This wound was of entry. Lacerated wound of 1/2”x1/4” on medial side of left leg. This wound was of entry.”

25. The death in the opinion of the doctor was due to shock and hemorrhage caused by firearms due to injury no. 1 and 2 and the said injury being alone or in combinations were sufficient to cause death. This witness has stated that these injuries were caused by firearms but he cannot say about the type of arms. This witness has further identified his signature on the postmortem report which has been marked as Ext. 7. In his cross-examination, this witness has stated that he cannot say that injury no. 1 was caused by firearm, fired from upside. He has stated that the injury no. 2 was caused from the left side by two shots and the injury no. 3 was also caused from the left side. However, he has not been able to give any opinion with regard to the fact that if some one was riding on a cycle and also shot from a close range, the direction of the injury would be upside down. The doctor has not stated the approximate position and direction of the weapons used and has accepted that it is not mentioned in his postmortem report that the dead body was full of mud.

26. After closing the prosecution evidence, the trial



court recorded the statement of the appellants under Section 313 of the Cr.P.C. on 14.12.1993, for enabling them to explain the circumstances appearing in the evidence against them, however they claimed themselves to be innocent in their respective statements. The appellant Ashok Kumar Singh has given a statement in his defence that on the evening of the date of occurrence he was reading news paper at the school situated in his village where Sanjiv Kr. Singh (P.W.9) the informant and others were playing volley ball.

27. The defence has also examined five witnesses on its behalf D.W. 1, Pappu Singh, D.W.2 Pramod Kr. Singh, D.W. 3, Manohar Singh have all been examined on the point that in the evening of the date of occurrence, while appellant Ashok Kumar Singh was reading news paper near the pond, the informant Sanjeev Kumar Singh (P.W.9) was playing Volleyball along with other persons including D.W.2 and 3.

28. D.W.4 is a doctor who has deposed that the accused Umesh Singh used to have difficulty in raising his right hand as he was suffering with ailment. D.W.5 Nandlal Tanti has also supported the said fact of appellant Umesh Singh suffering from an ailment in his right hand.

29. The learned trial judge upon appreciation, analysis



and scrutiny of the evidence adduced at the trial has found the appellants guilty of the offences and has sentenced them to imprisonment by its impugned judgment and order of conviction and sentence.

Analysis and Consideration

30. We have perused the impugned judgment of the learned trial court, the entire material on record and have given a thoughtful consideration to the rival submissions made by the learned counsel for the appellants as well as the learned APP for the State.

31. We have already discussed the contents of the FIR and the same discloses an allegation of indiscriminate firing made by the accused persons including the present appellants on the deceased on account of which the father of the informant died on the spot at the place of occurrence itself. The occurrence is said to have been witnessed by the informant P.W.9 and the other witnesses P.W. 1, 2, 5, 6 and 8 are also said to have ran to the place of occurrence on the sound of gun shot and seen the occurrence. The reason for the occurrence has been alleged to be old enmity with the accused persons. Thus, it would be necessary, at this stage to examine as to whether the ocular evidence adduced on behalf of the prosecution is sufficient to



establish the guilt of the accused persons beyond all reasonable doubt.

32. Out of the 11 witnesses examined on behalf of the prosecution, P.W. 2 and 5 have been declared hostile by the prosecution, while P.W. 1, 3, 4, 7 and 8 are all formal witnesses who have either proved the seizure list or the inquest report. We are thus left with the evidence of P.W.9 Sanjeev Kumar Singh who is the informant himself who claims to be an eye witness of the occurrence besides P.W. 6, Raj Kumar Singh who is also son of the deceased claiming to be an eye witness. The other material witnesses, requiring consideration would be P.W. 10, i.e. the Investigating Officer and P.W. 11, the doctor who has conducted the postmortem examination of the dead body of the deceased.

33. So far as the evidence of P.W. 6 Rajiv Kumar Singh is concerned, it remains a fact that although he claims himself to be an eye witness of the occurrence, his name does not feature in the fardbeyan of the informant as also in his further statement under Section 161 of the Cr.P.C. The very absence of his name in the fardbeyan and the further statement of the informant cannot be taken to be a mistake, rather it is a vital omission as it would not be expected that the informant



while naming other witnesses would miss out to name his own brother as a witness to the occurrence or of having even arrived at the place of occurrence upon alarm raised. Further, the delayed examination of P.W. 6 on 30.08.1998 itself raises a doubt with regard to the fact that whether this witness was present at the place of occurrence at all on the alleged date of occurrence, much less having seen the occurrence. This witness in his own deposition has stated that he was at a distance of 30-40 hands from the actual place of occurrence and upon hearing the gun shot, he claims to have concealed himself and further considering the fact, admitted by him that there were fields with crops all around, it does not seem to be a probable proposition that the witness would have been able to see the occurrence.

34. This witness P.W.6 has also not been able to clearly state the purpose of his going to the place of occurrence and it is his own admission that he neither raised any alarm nor tried to intervene in the matter. He did not even stay back at the place of occurrence nor made any attempt to inform the police or make any disclosure of about the incident to any other person whom he had met on the way. This conduct of the witness of going back home after either witnessing or having knowledge of his father having been killed does not at all appear to be a



natural one. Moreover, this witness has himself admitted in his evidence in paragraph No. 8 that he had arrived at the place of occurrence only after his father had fallen down from the cycle. This evidence read in conjunction with the evidence of the Investigating Officer in paragraph-22 would further make it evident that P.W.6 is not actually an eye witness to the occurrence, inasmuch as he has made a specific statement before the Investigating Officer (P.W. 10) that he had reached the place of occurrence when the accused persons had already fled away towards east. The Investigating Officer has stated that this witness also did not state before him that his father had received gun shot injury and he had fallen down. It would further appear from paragraph No. 24 of the cross-examination of the Investigating Officer (P.W.10) that the informant (P.W.9) neither in his fardbeyan nor in his further statement ever mentioned that his brother, Rajeev Kumar Singh (P.W.6) had also reached the place of occurrence and had witnessed the occurrence. In view of all the above discussed evidence on record, it appears that Rajeev Kumar Singh (P.W.6) is not an eye witness of the occurrence and was not even present at the place of occurrence, considering his delayed examination coupled with the fact that despite the Investigating Officer having gone to his house and



remained throughout the night and day, no family member including P.W.6 gave any statement before the Investigating Officer.

35. The credibility of the informant (P.W.9) as an eye witness is next to be considered in order to establish the guilt of the accused persons. No doubt it is true that the fardbeyan was lodged by the informant (P.W.9) but the same was recorded at 10:30 PM on the date of occurrence whereas the occurrence had taken place at 6:00 PM in the evening and there is no evidence on record to show that the informant had made any effort to inform the police either personally or through any other family member or witness. The police had reached the place of occurrence on an information based on rumour and it would also appear from the evidence of the Investigating Officer that after having received an information at 9:30 PM, he reached the place of occurrence within an hour at 10:30 PM when the fardbeyan of the informant was recorded. It is difficult to comprehend as to what stopped the informant to get the police informed if it could hardly take an hour to reach the police station. Further, it would appear from the examination-in-chief of the informant that he had seen the occurrence from a distance of about 40 to 50 hands and he did not make any attempt to save his father although he



had gone near the place of occurrence as stated by him. It also seems intriguing as to why the accused persons would spare him alive in order to become an eye witness to this case.

36. We further find contradiction in his statement as he has made a departure from the statement initially made in the fardbeyan by stating that the occurrence happened while he was going back from the field after inspecting the same, whereas in his fardbeyan he has clearly stated that the occurrence had happened when he had come to inspect his chilli field. It appears from his evidence recorded in paragraph No. 11 that 4 to 5 other witnesses arrived at the scene of occurrence after him, whereas the evidence of P.W.6 his brother, Rajeev Kumar Singh, would indicate that all the witnesses including the informant P.W.9 had arrived at the place of occurrence together with him. Considering the evidence of P.W.6, it becomes an admitted position that all the witnesses had arrived at the place of occurrence, after the occurrence had already taken place as P.W.6 has stated in paragraph No. 8 of his evidence that he had arrived at the place of occurrence only after his father had fallen from the cycle and the Investigating Officer further gives strength to this fact by saying that this witness had stated before him that he had reached the place of occurrence after the



accused persons had already fled away towards the east. In case the evidence of P.W.9, the informant is read in conjunction with the evidence of P.W.6, who also claims to be an eye witness, the position that would emerge would be that as a matter of fact, there is no eye witness to the occurrence and if at all some witnesses have reached the place of occurrence, it is only after the occurrence had already taken place. In such view of the matter, neither the evidence of the informant (P.W.9) nor the evidence of his brother (P.W.6) seems to be totally cogent and clinching and it cannot be said that their evidence is of an unimpeachable and sterling character.

37. We further find that there is irreconcilable conflict between the ocular account of the occurrence vis-a-vis the medical evidence inasmuch as, against the back drop of the prosecution story of the deceased being surrounded from all sides and the evidence of P.W.9, rather being specific to the point that the accused persons were all standing in front of the deceased in one line when they had resorted to indiscriminate firing, the medical evidence goes to show that all the gun shots have been fired from the left side as all injuries are seen on the left side of the deceased and no injury, whatsoever has been found either on the front or on the back of the deceased. In such



view of the matter, the entire story of the deceased falling into the flank, after being shot, while he was riding on a cycle, especially in absence of any opinion on trajectory of gunshot, would definitely become doubtful. Further, in the absence of opinion on the type of firearm used, it is also difficult to say whether different firearms were used or all gunshots resulted from a single firearm. As such, difference between the ocular and the medical evidence cannot be reconciled, hence the manner of occurrence as stated by the prosecution does not appear to be convincing and one can reach to a safe conclusion that the occurrence has not happened in the manner as alleged by the prosecution.

38. In this regard, we would like to refer to a case reported in **(2020) 12 SCC 605 (State of Uttarakhand Vs. Darshan Singh)**, in paragraph 43 whereof, the Hon'ble Apex Court while making a reference to some other judgments on the subject of conflict between medical evidence and ocular evidence has held that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence, it amounts to a fundamental defect in the prosecution case and unless the same is explained reasonably, it would be sufficient to discredit the entire case on that score. Extract of paragraph 43 of



State of **Uttarakhand Vs. Darshan Singh (supra)** is being quoted hereinbelow:

“43. In *Abdul Sayeed v. State of M.P.*, this Court discussed elaborately the case law on the subject of conflict between medical evidence and ocular evidence: (SCC pp. 272-74, paras 32-39).

“*Medical evidence versus ocular evidence*

39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.”

(emphasis in original)

39. So far as the place of occurrence is concerned, we find that as against an allegation of indiscriminate firing by five to six persons, no empty cartridges were recovered/seized from the place of occurrence rather the evidence of the Investigating



Officer would go to show that the blood was found only underneath the dead body in the flank (ditch) and nowhere else. It may also be taken into consideration that the consistent narration of the prosecution story revolves around the deceased coming on a cycle and the evidence of both the alleged eye witnesses also indicate that blood had also fallen on the cycle but neither the cycle nor any traces of tyre marks of the cycle have been found, rather the evidence of the I.O. would only indicate that some footprints of three to four persons were found in the adjacent field of Rambilash, however, he makes no whisper about any footprints being found at the place of occurrence. So far as the seizure of bloodstained soil from the place of occurrence is concerned, the said seizure also remains of no consequence as it was never sent for forensic examination and the evidence of Investigating Officer would show that it rather remained at the Police Station. The evidence of the seizure list witnesses also indicates that they were made to sign the same by the Investigating Officer without knowing the contents thereof and that too after a delay. Taking such facts into consideration, the entire process of seizure also loses its significance. In the absence of any objective evidence, worth the name, being collected by the I.O., the place of occurrence does



not get established.

40. The prosecution has also failed to come out clearly with a direct, immediate or proximate cause for the killing of the deceased by the appellants. The motive as alleged by the prosecution is a very general and a vague one and in absence of any evidence of earlier threatening or any litigation between the parties, the actions taken by the deceased in favour of the agricultural labourers for increasing their wages being not to the liking of the appellants, who happened to be the landlords, appears to be too distant and remote a motive, for which an offence of murder would be committed and that too in the manner as alleged. It remains a settled position that even in a case of direct evidence, once motive is introduced the conscience of the Court needs to be satisfied.

41. Thus, upon a consideration of the entire evidence, it would appear that P.W.6 Rajeev Kumar Singh and P.W.9, i.e. the informant are the only persons who have claimed to be eye witnesses and such claim of theirs has fallen to the ground in view of the contradictions between their evidences inter se and also while being read along with the evidence of the Investigating Officer. The two witnesses would also be categorized as closely related and interested witnesses who have



deposed in the background of animosity between the deceased and the accused persons and it goes without saying that such enmity, if any, would act as a double edged sword which would cut both ways i.e. it would also lead to an inference of false implication of the appellants. In the absence of any evidence of other independent witnesses to the occurrence, although the place of occurrence as alleged is an open field, the same creates further doubt on the veracity of the testimony of the two alleged eye witnesses. It has also fallen for our consideration that the deceased was himself having a criminal background, involved in several litigations with others, hence a possibility of being killed by any of his enemies cannot be completely ruled out. Thus, the present case rests upon the proposition that it 'may be true' and it 'may not be true', whereas the requirement for establishing a case beyond all reasonable doubts would be that of 'must be true' and this fact has to be established by way of clear, cogent and unimpeachable evidence produced by the prosecution and cannot be said to be proved only on the basis of suspicion. A reference is made in this regard to the judgment rendered by the Hon'ble Apex Court in the case of **Sujit Viswas Vs. State of Assam, reported in (2013) 12 SCC 406**, paragraph no. 13 whereof is being quoted hereinunder:

“13. Suspicion, however grave it may be,



cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.



(Vide *Hanumant Govind Nargundkar v. State of M.P., State v. Mahender Singh Dahiya and Ramesh Harijan v. State of U.P.*)”

42. Thus taking an overall perspective of the entire case, emerging out of the totality of the facts and circumstances as indicated hereinabove as also analyzing the entire evidence available in the present case, we find that the evidence against the appellants is not sufficient for establishing their guilt beyond all reasonable doubts, inasmuch the testimony of the witness are not cogent, creditworthy and of sterling nature. Considering the fact that the entire case rests upon the evidence of the informant, i.e. P.W.9 whose evidence itself is not of an unimpeachable character but is rather replete with inconsistencies and contradictions, no conviction can be based on his solitary testimony coupled with the facts that the other attending circumstances in the nature of objective evidence, medical evidence, etc. also do not come in support of the prosecution. Thus, based on a conspectus of the aforementioned facts and circumstances of the case and also considering the law prevailing on the subject matter, we have come to a considered finding that the prosecution has failed to establish its case beyond all reasonable doubts, hence by way of extending benefit of doubt, the appellants deserve to be acquitted of the charges.

43. Accordingly, the finding of the conviction



recorded by the Ld. Trial Court, in our opinion is not sustainable and requires interference, therefore, the judgment of conviction and order of sentence dated 12.04.1994, passed by the learned Additional Sessions Judge-6th, Begusarai, in Sessions Trial No. 65 of 1993 (arising out of Bakhari P.S. Case No. 69 of 1992) are hereby set aside. The appellants are acquitted of all the charges levelled against them.

44. The appellants of both the aforesaid appeals are stated to be on bail, hence they are discharged from the liability of their bail bonds.

45. The aforesaid appeals stand allowed.

(Mohit Kumar Shah, J)

(Soni Shrivastava, J)

divyanshi/devendra

AFR/NAFR	NAFR
CAV DATE	NA
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