

IN THE HIGH COURT OF JUDICATURE AT PATNA

Abhishek Singh and Another

vs.

The State of Bihar

Criminal Appeal (DB) No. 620 of 2016

[With Criminal Appeal (DB) 562 of 2016; Criminal Appeal (DB) 611 of 2016]

21 November, 2024

(Hon'ble Mr. Justice Vipul M. Pancholi and Hon'ble Mr. Justice Dr. Anshuman)

Issue for Consideration

1. Whether judgment of conviction and order of sentence passed by learned Additional District & Sessions Judge-V, Buxar in Sessions Trial No.82/2012 (CIS No.47/15), arising out of Brahmpur P.S. Case No.38/12 is correct or not?

Headnotes

Indian Penal Code, 1860—Sections 302, 307, 326—Arms Act, 1959—Section 27—triple murder—accused/appellants came at the house of the informant and at the door of the house, and accused started firing—four persons sustained firearms injuries, out of four, three persons died—there are major contradictions, improvement and inconsistencies in the deposition of the prosecution witnesses—all the prosecution witnesses are from one branch of family and no independent witness has been examined—dead bodies were found near the house of several independent witnesses—prosecution has failed to prove the exact place of occurrence.

Held: sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law—acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who—each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt—prosecution has failed to prove the case beyond reasonable doubt—impugned judgment of conviction and order of sentence quashed and set aside—appellants were acquitted of the charges levelled against them by the learned Trial Court—appeals allowed.

(Paras 28, 29, 43, 44.3)

Case Law Cited

Brahm Swaroop & Anr. vs. State of Uttar Pradesh, (2011) 6 SCC 288; State through Central Bureau of Investigation vs. Hemendhra Reddy & Anr. etc., (2023) 7 S.C.R. 134; Dilavar Hussain & Ors. vs. State of Gujarat & Anr., (1991) 1 SCC 253—Relied Upon.

List of Acts

Indian Penal Code, 1860, Arms Act, 1959.

List of Keywords

triple murder, major contradictions, improvement and inconsistencies in the deposition of the prosecution witnesses, prosecution has failed to prove the exact place of occurrence.

Case Arising From

From judgment of conviction dated 20.05.2016 and order of sentence dated 27.05.2016, passed by learned Additional District & Sessions Judge-V, Buxar in Sessions Trial No.82/2012 (CIS No.47/15), arising out of Brahmpur P.S. Case No.38/12.

Appearances for Parties

For the Appellants: Mr. Ajay Kumar Thakur, Advocate, Ms. Vaishnavi Singh, Advocate, Ms. Surya Nilambari, Advocate (in all).

For the State: Mr. Sujit Kumar Singh, APP (in all).

For the Informant: Mr. Sunil Kumar, Advocate (in all).

Judgment/Order of the Hon'ble Patna High Court

THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.620 of 2016

Arising Out of PS. Case No.-38 Year-2012 Thana- BRAHMPUR District- Buxar

1. Abhishek Singh son of Shekhar Singh,
2. Shekhar Singh @ Chandrashekhar Singh, son of Shankar Dayal Singh, Both residents of Kathar, P.S. Brahampur Krishna Braham, Disrict Buxar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 562 of 2016

Arising Out of PS. Case No.-38 Year-2012 Thana- BRAHMPUR District- Buxar

Shankar Dayal Singh son of Late Girdhari Singh, resident of Village- Kathar, P.S- Brahampur, Krishna Braham in the district Of Buxar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 611 of 2016

Arising Out of PS. Case No.-38 Year-2012 Thana- BRAHMPUR District- Buxar

1. Ashok Singh
2. Vinod Singh @ Vinod Kumar Singh, Both Sons of Shankar Dayal Singh, Resident of Kathar, P.S. - Brahampur Krishna Braham, District - Buxar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 620 of 2016)

For the Appellants

:

Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Ms. Surya Nilambari, Advocate

For the State

:

Mr. Sujit Kumar Singh, APP

For the Informant

:

Mr. Sunil Kumar, Advocate

(In CRIMINAL APPEAL (DB) No. 562 of 2016)



For the Appellants : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Ms. Surya Nilambari, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Sunil Kumar, Advocate
(In CRIMINAL APPEAL (DB) No. 611 of 2016)
For the Appellants : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Ms. Surya Nilambari, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Sunil Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 21-11-2024

These appeals are filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘the Code’) against the judgment of conviction dated 20.05.2016 and order of sentence dated 27.05.2016, passed by learned Additional District & Sessions Judge-V, Buxar in Sessions Trial No.82/2012 (CIS No.47/15), arising out of Brahmpur P.S. Case No.38/12, whereby the court has convicted all the appellants for the offences punishable under Sections 302/149 and 307/149 of the Indian Penal Code, appellant Ashok Singh has also been convicted for the offence punishable under Section 326 of the Indian Penal Code and appellants, namely, Shekhar Singh @ Chandrashekhar Singh, Abhishek Singh and Vinod Singh have also been convicted for the offence punishable under Section 27 of the Arms Act and all the appellants have been sentenced to



undergo R.I. for life and to pay a fine of Rs.50,000/- (Rs. Fifty Thousand) each for the offences punishable under Sections 302/149 of the Indian Penal Code and in default of payment of fine, it will be recovered against them as revenue arrears. Appellants Shekhar Singh @ Chandrashekhar Singh, Abhishek Singh and Vinod Singh have also been sentenced to undergo R.I. for three years each and to pay a fine of Rs.5,000/- (Rs. Five Thousand only) each for the offence punishable under Section 27 of the Arms Act and in default of payment of fine, they have been sentenced to S.I. for three months each. All the sentences have been directed to run concurrently.

2. The factual matrix of the present case is as under:-

2.1 *Fardbeyan* of Awadhesh Tiwari came to be recorded on 30.01.2012 at 10:00 hours at village Kthar wherein the informant has stated that on 30.01.2012 at about 8.00 a.m., his nephew (Sadhu) Sanjay Tiwari was praying in the Shiva temple, east of the village, when Ashok Singh came to village Kathar and started abusing his nephew. In the meanwhile, there was a scuffle between the two and the trouble ended and both of them came back to their respective homes. In the meantime, Shekhar Singh, Abhishek Singh, Ashok Singh, Vinod Singh, and



Shankar Dayal Singh came to his door armed with rifle and gun and started shooting at his family members in which Baban Tiwari @ Pintu Tiwari was shot in the mouth and he died on the spot, Mintu Tiwari and Sachidanand Tiwari were shot in the stomach and Munna Tiwari was shot in the thigh and he was sent to Dumraon hospital for treatment where Mintu Tiwari and Sachidanand Tiwari died and Munna Tiwari was sent to Sadar Hospital, Buxar for better treatment.

2.2. After registration of the formal FIR on the basis of the aforesaid *fardbeyan*, the Investigating Agency started investigation. During course of investigation, the Investigating Officer recorded the statement of the witnesses, collected the documentary evidence and thereafter filed charge-sheet against the appellants.

2.3 As the case was exclusively triable by court of sessions, the learned Magistrate committed the same under Section 209 of the Code to the concerned sessions court where the same was registered as Sessions Trial No.82/12.

2.4 During course of trial, the prosecution has examined 16 witnesses, namely, PW-1 Dr. Ram Kumar Gupta, PW-2 Mohan Tiwari, PW-3 Munna Tiwari, PW-4 Abhishek Tiwari, PW-5 Awadh Bihari Tiwari, PW-6 Awadhesh Tiwari,



PW-7 Dr. Bhupendranath, PW-8 Dr. Ravi Bhushan Srivastava, PW-9 Ram Bilash Chaudhary, PW-10 Shashi Bhushan Mishra, PW-11 Sanjay Kumar Tiwari, PW-12 Dr. Rajesh Kumar Singh, PW-13 Dr. Sanjay Kumar, PW-14 Sunil Ray, PW-15 Shiv Bihari Ram and PW-16 Paras Nath Yadav (declared hostile). The defence has also examined 5 witnesses, namely, DW-1 Umesh Singh, DW-2 Tejnarayan Singh, DW-3 Kamlesh Singh, DW-4 Kamal Singh and DW-5 Pankaj Singh. Besides the above, one court witness was also examined, namely, CW-1 Sudhir Kumar Singh. Thereafter further statement of the accused persons under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court convicted and sentenced the appellants, as stated hereinabove.

3. Heard Mr. Ajay Kumar Thakur, learned counsel for the appellants, Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State as well as Mr. Sunil Kumar, learned counsel appearing on behalf of the informant in all the appeals.

3.1. At the very outset, learned counsel for the appellants, Mr. Ajay Kumar Thakur submits that appellant no.2 of Criminal Appeal (DB) No.620 of 2016, namely, Shekhar Singh @ Chandrashekhar Singh died during the pendency of the



appeal, therefore, Criminal Appeal (DB) No.620 of 2016 abates against appellant no.2. Learned counsel for the appellants further submits that sole appellant of Criminal Appeal (DB) No.562 of 2016, namely, Shankar Dayal Singh also died during the pendency of the appeal, therefore, Criminal Appeal (DB) No.562 of 2016 has completely abated. Appellant No.1 of Criminal Appeal (DB) No.620 of 2016 and both appellants of Criminal Appeal (DB) No.611 of 2016 are alive, therefore, learned counsel argued on their behalf.

Submissions on behalf of the appellants

4. Mr. Ajay Kumar Thakur, learned counsel for the appellants submits that the impugned judgment of conviction and order of sentence are bad in law as well as on facts as there are major contradictions, inconsistencies and discrepancies in the depositions adduced by the prosecution witnesses. He submits that the Trial Court ought to have rejected the evidences of two injured witnesses, namely, Munna Tiwari (PW-3) and Sanjay Kumar Tiwari (PW-11) as there are major contradictions in the evidences of these prosecution witnesses. He further submits that the Trial Court has also failed to appreciate this aspect of the matter that the ocular evidence is in sharp contradiction with medical evidence. It is submitted that sharp



contradictions also exist in the evidence of Investigating Officer (PW-9) and further in the evidence of the second Investigating Officer (CW-1).

4.1. It has been submitted that the prosecution has miserably failed to prove the case beyond reasonable doubt as the Investigating Officer has made entry in station diary about the said occurrence at 09:05 a.m. on 30.01.2012 by virtue of Station Diary Entry No.636 of 30.01.2012 followed by his presence at the place of occurrence at 09:15 a.m., inquest at 10:30, 10:45 and 11:00 a.m., but fardbeyan itself prepared at 11:00 a.m. and received in the police station at 13:00 (01:00 p.m.). But, the said station diary has not been produced during trial. Further doubt has been raised with regard to the place of occurrence as PW-9, the Investigating Officer has not found any blood, splinter etc. at the place of occurrence. Therefore, doubt has been raised with regard to correct version of the prosecution case. Learned counsel for the appellants further submits that in his evidence, the Investigating Officer (PW-9) states that all witnesses, i.e., Mohan Tiwari (PW-2), Munna Tiwari (so called injured), Abhishek Tiwari (PW-4), Awadh Bihari Tiwari (PW-5) and Awadhesh Tiwari (PW-6) all were present in the village but PW-3, Munna Tiwari (so called injured) has stated that police



recorded his statement in the hospital and has mentioned that he has not met prior to giving his statement or prior to going to hospital. By the said statement, it may be concluded that PW-3 was not the person injured to whom the informant (PW-9) sent for treatment. Learned counsel for the appellants further submits that in para-6 of his statement, it has been stated by him that police has also recorded his statement when he returned back to his village and, therefore, three versions come at the mouth of Munna Tiwari (PW-3) that he gave his statement at PMCH and further he disclosed that the police has recorded his statement when he returned back to village and the Investigating Officer says that he has recorded his statement in village when police reached at 09:15 a.m., therefore, there is sharp contradiction in the evidence of injured witness (PW-3), Munna Tiwari and it may not be believed.

4.2. Place of occurrence has also not been identified by the Investigating Officer (PW-9) as he particularly in para-10 stated that investigation has already been commenced on 30.01.2012 at 09:05 a.m. and place of occurrence was inspected at 09:10 a.m. Hence, from the above submissions, it shall be presumed that the prosecution has suppressed his version, which was given to the police when they firstly met him. It has been



submitted by learned counsel for the the appellants that those statements were not favourable for the prosecution and only due to this reason another *fardbeyan* was taken, the version of the prosecution witnesses, place of occurrence has not been identified as PW-9 states that Shivala temple is situated at a distance of 200 meters from Krishna Brahm Arak road and the said road is situated on the southern side of the village. Further, the second place of occurrence has been said to be on the extreme southern side of the road where transformer is situated, as mentioned by PW-9, whereas PW-11 states in para-7 that from village, temple is situated at about ½ k.m. north, therefore, different places of occurrence are present in this case.

4.3. Mr. Thakur, learned counsel for the appellants further submits that the Investigating Officer (PW-9) in para-29 stated that he has not recorded the statement of people who were residing near the place of occurrence. In para-27, he stated that he has recorded the statements of Surendra Singh, Sri Ram Kamar, Chowkidar Paras Ram Yadav and Shiv Bihari and most of them have not been examined by the prosecution. It is further submitted that the doctor (PW-7) has conducted *post-mortem*. He found blackening around the wound of entry and stated that firing was resorted within 1-1.5 meters, whereas all witnesses



stated that firing was resorted at a distance of 8 to 15 meters, which creates doubt in the prosecution case. PW-11 stated that the occurrence took place near Shivala temple from where he proceeded for taking meal, PW-15 in para-2 stated that the occurrence took place at Shivala at 05:00 to 06:00 a.m. when there was fog. These two witnesses have not been declared hostile and, therefore, their statements may not be ignored and binding on the prosecution. Learned counsel further submits that Pws.-2, 3, 4, 5 and 6 stated that at about 08:00 a.m., Sanjay Kumar Tiwari (PW-11), who was doing worship at temple, was abused by Ashok Singh and scuffling took place between him and Ashok Singh. By the said scuffle, Sanjay Tiwari sustained injury. Deceased Sachidanand Tiwari gave him Rs.200/- and he went to the doctor for treatment. It is submitted that the genesis of occurrence has been falsified by Sanjay Kumar Tiwari (PW-11) as either PW-11 has not received any injury or the prosecution is competent to manufacture the report of the doctor because Dr. Rajesh Kumar Singh (PW-12) had examined Sanjay Tiwari on 23.02.2012 at 01:30 p.m. and stated that age of injury was 2-3 hours, whereas occurrence took place prior to 09:00 a.m., therefore, sharp contradiction exists.

4.4. Mr. Ajay Kumar Thakur, learned counsel for



the appellants also submits that the court witness, i.e., CW-1, the second Investigating Officer stated that during investigation no material was found against named FIR accused persons, namely, Shankar Dayal Singh and Vinod Singh, therefore, final report was submitted on 30.04.2013. The second Investigating Officer further submits that on 30.04.2013, he filed application in the court that earlier charge-sheet submitted against accused, Shankar Dayal Singh and Vinod Singh being Charge-sheet No.11 of 2012 dated 25.02.2012 be not accepted, which is record as Ext.A. Learned counsel further submits that the prosecution has failed to examine ASI, Ram Avtar Yadav, who came at the place of occurrence, prepared inquest report and recorded *fardebayn* and similarly V. Shukla, who prepared seizure list, have not been examined particularly in the light that the said ASI, Ram Avtar Yadav has prepared the inquest report of one of the accused at 11:00 a.m. and alleged to record the *fardebayan* of the informant at 11:00 a.m. on the same day. Learned counsel for the appellants further submits that by virtue of the statement of PW-9, the Investigation Officer, he has started investigation since 09:15 onwards, prepared inquest at 10:30, 10:45 and 11:00 prior to lodging of the FIR. This situation has always hit under Section 162 Cr.P.C. and same will



not be admissible. He further submits that PW-3 received injury in the right thigh as per the version of PW-6 in para-1 of his statement, but PW-3 in his statement has not stated that on which thigh of his leg, he received injury. The doctor has examined him and found injury on his left thigh and further the injury is superficial and the doctor has stated that it can be self inflicted injury also and penetration can be caused by sharp weapon.

4.5. Learned counsels for the appellants, therefore, contended that the prosecution has failed to prove the case against the appellants beyond reasonable doubt, despite which the Trial Court has passed the impugned judgment of conviction and order of sentence against the appellants. Learned counsels, therefore, urged that all these appeals be allowed and impugned judgment of conviction and order of sentence be quashed and set aside.

Submissions on behalf of the State and the Informant.

5. On the other hand, the learned Additional Public Prosecutor for the State as well as learned counsel appearing on behalf of the informant have opposed the present appeal. They have submitted that from the evidence of the prosecution, it is



clear that accused Chandrashekhar Singh @ Shekhar Singh, Abhishek Singh and Vinod Singh kept rifle/guns in their hands. Other accused persons kept *lathi* in their hands. By the said gun, murder of three persons was committed and Munna Tiwari (PW-3) became injured. There are eye-witnesses of the said occurrence and particularly the evidence of injured witness, PW-3, may be taken into consideration. The Trial Court has convicted the accused persons completely in accordance with law after due appreciation of all the evidences including of eye-witness. Emphasis has been made by the counsels that there is no lacuna in the findings of the Trial Court and prosecution has proved the case against the appellant beyond all reasonable doubts. There is no error committed by the Trial Court while passing the impugned judgment of conviction and order of sentence. Counsels submit that it is a case of triple murder in which inquest has been made. The *post-mortem* report supports the allegation that death has been caused due to injury of gunshot and names of accused persons have been filtered by the deposition of witnesses. Learned counsels submit that further evidence and non-consideration of evidences, which has come by further investigation, shall in no way treated to be a major discrepancy in the trial. It is also submitted that there are eye-



witnesses in the present case and one of the eye-witnesses has been injured and his deposition completes the entire story in this case. It is also submitted that the prosecution has proved the case against the appellants beyond reasonable doubt and, therefore, no error has been committed by the Trial Court while passing the impugned judgment of conviction and order of sentence. Learned Additional Public Prosecutors as well as learned counsel for the informant, therefore, urged that the present appeal be dismissed.

6. We have considered the submissions canvassed by learned counsel appearing for the parties. We have also perused the materials placed on record and the evidence led by the prosecution before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined 16 witnesses, the defence has examined 5 witnesses and one court witness was also examined. At this stage, we would like to appreciate the entire relevant extract of the depositions of the prosecution-witnesses.

7. PW-1, Dr. Ram Kumar Gupta is a formal witness who has deposed in his examination-in-chief that on 30.01.2012, he was posted as Medical Officer at Sadar Hospital, Buxar. He was one of the members of the Medical Board



constituted for conducting the *post-mortem* on the dead bodies of Baban Tiwari, Jitendra @ Mintu Tiwari and Sachidanand Tiwari. He has put his signature on the post-mortem reports marked as Exhibits 1, 2 and 3 respectively.

8. PW-2, Mohan Tiwari has deposed in his examination-in-chief that the incident took place at about 8-9 a.m. on 30.1.2012. He was cleaning his *Dalan*. Sachidanand Tiwari, Jitendra Tiwari @ Mintu Tiwari, Pintu Tiwari @ Baban Tiwari, Munna Tiwari, Abhishek Tiwari, Awadh Bihari Tiwari and Awadhesh Tiwari were with him. They were all cleaning when Sanjay Tiwari came there. Blood was oozing out from the mouth of Sanjay Tiwari. His lower teeth were broken. Sanjay said that Ashok Singh had beaten him up and made him in this condition. He also abused him. After some time they were going home for breakfast. We had gone about 10-12 meters from our door when we saw Shekhar Singh, Abhishek Singh, Vinod Singh, Ashok Singh and Shankar Dayal Singh in front of us. Behind Shekhar Singh, we saw his daughter Sneha Singh and wives of Shankar Dayal, Vinod Singh, Shekhar Singh and Ashok Singh. Shekhar Singh, Vinod Singh and Ashok Singh had rifles-guns in their hands, Ashok Singh had a lathi in his hand and Shankar Dayal Singh had a small stick in his hand. The



above mentioned people came forward and started abusing him by taking the name of his grandfather Kashi Nath Tiwari. Before he could understand anything, Shankar Dayal Singh instigated to kill them. By then Shekhar Singh shot Baban Tiwari and Abhishek Singh shot Mintu Tiwari. Then Sachchidanand Tiwari came forward with folded hands and said what are you people doing, then at the same time Abhishek Singh shot Sachindanand Tiwari. By that time Munna Tiwari had also moved ahead a bit, then Vinod Singh shot Munna Tiwari. That time he was on the platform at Om Prakash Singh's door and there was a staircase there. At that very moment Vinod Singh shot at him but the bullet did not hit him. The bullet hit the wall of Om Prakash Singh's house. He hid behind the stairs. Baban Tiwari died on the spot due to bullet injury. Mintu Tiwari and Sachidanand Tiwari died while coming to Dumraon. Munna Tiwari was shot in the shoulder and was referred from Dumraon to Buxar. He was brought to Sadar Hospital in Buxar and then admitted to Vishwamitra Hospital. After treatment there, he was referred to Patna. This witness claims to identify Abhishek Singh, Shekhar Singh, Vinod Singh and Ashok Singh in court.

8.1. The said witness has stated in his cross-examination that his father has four brothers, Ramji Tiwari,



Awadhesh Tiwari, Shyam Bihari Tiwari and Awadh Bihari Tiwari. On the eastern end of his village there is a paved road in north-south direction. There is a Shiva temple about 20-30 meters east of that road. The three accused in this case are the sons of Shankar Dayal Singh and Abhishek is his grandson. It is further stated by this witness in his cross-examination that when he looked for the first time, the accused advanced a step or two while speaking and started firing. When the first bullet hit Baban Tiwari, he climbed up the stairs and sat down; this was the reason why he was not shot. All the accused did not fire from the gun and rifle simultaneously. They fired in turns. When the first bullet hit Baban Tiwari, the people accompanying him tried to run away but there was no time to do so. Jitendra Tiwari was shot at a distance of north and a little east of Baban Tiwari. Sachchidanand Tiwari was two steps ahead of Baban Tiwari towards the west. At that time Munna Tiwari and Baban Tiwari were one, two or three steps ahead. Baban Tiwari was fired upon from a distance of eight to ten meters. All firings were done with the barrel facing east. Shankar Dayal Singh was neither the foremost nor the last among the accused. All the accused were together. Shankar Dayal Singh was in the front row among the accused. Ashok Singh was at the back of the



accused. Vinod Singh was ahead of Ashok Singh. Abhishek Singh was ahead of Vinod Singh and then Shekhar Singh. It is further stated by this witness that all the four dead and injured had fallen. All four had fallen at some distance from each other. Jitendra Tiwari had fallen in front of Kamal Singh's house in the north. Sachita had fallen at a distance of 15-20 cubits from Jitendra Tiwari towards the west. Baban Tiwari had fallen at a distance of 5-7 cubits from Jitendra Tiwari. Munna Tiwari had fallen at a distance of 10-12 cubits to the west of Jitendra Tiwari. The injured were taken away by the neighbours. The Yadav people took away the three cots. It is further stated by this witness in his cross-examination that Sanjay Sadhu from our family had accompanied the injured. The injured people returned dead. Sachita Tiwari and Jitendra Tiwari returned dead. When Sachita Tiwari and Jitendra Tiwari returned dead, their cots were not placed at the same place where they had fallen. Before the arrival of the deceased, Darogaji had visited the place of occurrence and recorded statements. When Darogaji arrived, Baban Tiwari was placed on a cot. He does not remember whether he gave statement to Darogaji that Sanjay Sadhu had abused them. He does not remember whether he had said to Darogaji or not that he was going to have breakfast with



the deceased and the injured. The bullet hit him in the western wall of the house of Om Prakash. The bullet hit at a height of 10-15 feet. The in-laws house of Vinod Singh is in Balua. He does not know if Vinod Singh lives in Balua with his family or not. The age of Shankar Dayal Singh would be 75-80 years. It is not true that the age of Shankar Dayal Singh would be 85 years. Shankar Dayal Singh walks with the help of a stick and does not need anyone's support. It is not true that Vinod Singh was not in Kathar village on the day of the incident and the police found Shankar Dayal Singh and Vinod Singh innocent in the investigation. It is not true that Ashok Singh is injured. It is not true that he is giving false testimony and no such incident took place.

9. PW-3 is an injured witness who has deposed in his examination-in-chief that the incident took place 1½ years ago. It was 8:30 am. At that time he was at his door. Baban Tiwari, Mintu Tiwari Sachidanand Tiwari, Munna Tiwari, Awadhesh Tiwari, Abhishek Tiwari and Awadh Bihari Tiwari were with him. His cousin's wedding was at his house and he was cleaning the door. Sanjay Sadhu came and told that Ashok Singh had beaten him. His tooth was broken. His father took out Rs.200/- and gave it to Sadhuji to get him treated. He left and



they started cleaning. When they went to *Janani Kita* for breakfast, Shekhar Singh, Vinod Singh, Abhishek Singh and Shankar Dayal Singh came armed with guns and Ashok Singh came armed with *lathi*. Shankar Dayal Singh started abusing them by taking name of their grandfather and instigated to kill them. Then Shekhar Singh shot Baban Tiwari. Abhishek Singh shot Pintu Tiwari and Sachchidanand Tiwari. When Vinod Singh shot him, the bullet hit his thigh. Vinod Singh shot Mohanji Tiwari but the bullet did not hit him. The women were abusing and pelting bricks and stones. Thereafter the accused ran away after making 2-4 round of firing in air. He was brought to Dumraon Hospital and taken to Vishwamitra Hospital in Buxar and then to PMCH. Mintu Tiwari, Sachidanand Tiwari and Baban Tiwari died. The police took his statement in the hospital. The witness claims to identify Shekhar Singh, Vinod Singh, Ashok Singh and Abhishek Singh. He also claims to identify those who have not come.

9.1. The said witness has stated in his cross-examination that he does not know in which hospital the police recorded his statement. He was brought to Dumraon. He does not remember after how many days of the incident the police recorded his statement. When his statement was being recorded,



no one from his family was there. When his statement was being recorded, he knew that a case had been lodged. This was the first time he gave statement about the incident to the police. He came home from the hospital after 10-11 days. In these 10-11 days, the police did not take him from the village to the hospital. He did not meet the police before going to the hospital. The police recorded his statement at PMCH. The Patna police recorded his statement. He met the police when he came home. He gave his statement second time at home. Sadhuji came to our place at 8:30 hours and stayed for a while and talked. He cannot tell for how long the firing continued. On the day of the incident he wore a towel, shorts and a vest. The bullet had pierced the towel. He cannot tell whether the towel was given to the police or not. He cannot tell from how far the bullet hit him. The bullet was fired from a distance of 10-20 cubits. He had said in his statement to the police that the women were abusing and throwing bricks. The in-laws house of Vinod Singh is in Balua. Vinod Singh does not live in his in-laws' house. He had said in his statement to the police that after making 2-4 rounds in the air, the accused fled away.

10. PW-4 has deposed in his examination-in-chief that the incident is of 30.01.2012. The time was 08:00-08:30



AM. At that time he was cleaning the *Dalan*. Sanjay Tiwari @ Sadhu Tiwari came running and he saw that blood was oozing out from his mouth and his tooth was broken and he said that there was a quarrel with Ashok Singh at the Shivala regarding burning straw and Ashok Singh had beaten him up. Then Sachidanand Tiwari gave Rs.200/- to Sadhu Tiwari and told him to go and get treatment. After sometime Baban Tiwari, Mintu Tiwari, Munna Tiwari, Sachidanand Tiwari, Mohan Tiwari and Abhishek Tiwari were going to the house of Awadhesh Tiwari for breakfast. Shankar Singh, Abhishek Singh, Vinod Singh, Ashok Singh, Shankar Dayal Singh, Sneha Singh, wives of Shankar Singh, Vinod Singh, Ashok Singh and Shankar Dayal Singh came. Shankar Singh, Vinod Singh and Abhishek Singh were armed with guns. Ashok Singh and Shankar Dayal Singh were armed with Danda. Sneha Singh was carrying a bag of bullets. All of them came abusing that they had to kill the family of Kashi and when Shankar Dayal Singh instigated them, Shekhar Singh shot Baban Tiwari, which hit his mouth and he fell down there. Vinod Singh shot Munna Tiwari in the thigh. Vinod Singh fired the second bullet at Mohan Tiwari, which did not hit Mohan Tiwari but hit on the wall of Om Prakash. Abhishek Singh shot Mintu Tiwari and Sachidanand Tiwari.



Mintu Tiwari and Sachchidanand Tiwari were hit in the chest. All of them fell down after being shot. Baban Tiwari died there. Mintu Tiwari also died after some time. Sachidanand Tiwari died in Dumraon hospital. Munna Tiwari was taken to Dumraon and then sent to Vishwamitra Hospital and then to PMCH. The accused persons fled towards the west. The witness claims to identify Abhishek Singh, Chandrashekhar Singh and Ashok Singh in court. He also claims to identify those who have not come.

10.1. The said witness has stated in his cross-examination that he goes to Ara Jain College. He studies in B.A., 1st year. At the time of the incident, he was studying in Inter 2nd year in Adarsh Inter College, Varanasi. He used to live in a room in Varanasi with a friend from Bhabua. When the firing started, they hid in the corner of the lane and did not run. That lane is adjacent to the south of their courtyard. He hid in the lane to save himself so that no one could see me and the bullet could not be fired. He remained hidden in the corner of the street until the accused left. The deceased or the injured did not try to hide anywhere. Mohan Tiwari was hiding a little distance south of where he was hiding. He had given statement to the police. He had said in his statement to the police that at



that time he was cleaning the *Dalan* and he was with Awadhesh Tiwari and Awadh Bihari Tiwari at the *Dalan*. He also stated before Darogaji that he and Mohan Tiwari were going to take breakfast to the house of Awadhesh Tiwari. It is further stated by this witness in his cross-examination that the police reached after 20 minutes after the incident. Krishna Brahm police station is 1 ½ k.m. away from his village. He does not remember that when Darogaji came, who gave statement. It is not like that he did not see any incident and he gave false testimony.

11. PW-5 has deposed in his examination-in-chief that occurrence took place on 30.01.2012 at 08:00-08:30 in the morning. At that time he was at his door. There was a wedding in his family and the door was being cleaned. Sanjay Sadhu had gone to the temple to pray and was warming himself then Ashok Singh said that he is throwing dust on him and abused and beat him due to which his teeth were broken. Sachida Tiwari gave him Rs.200/- for treatment. When he started going to the *Janani Kita* for breakfast, Chandrashekhar Singh came armed with a rifle, Abhishek Singh and Vinod Singh came armed with guns, Ashok Singh came armed with a lathi and Shankar Dayal Singh came armed with a stick and Shankar Dayal Singh instigated that kill the family of Kashi. Chandrashekhar Singh shot Baban



Tiwari and Baban Tiwari died on the spot. Abhishek Singh shot Jitendra Tiwari @ Mintu Tiwari and Chandrashekhar Singh also shot him and the bullet hit his chest. Jitendra Tiwari @ Mintu Tiwari also died on the spot due to the bullets of both of them. Sachida Tiwari folded his hands and asked why they did this then Abhishek Singh shot him too and the bullet hit his ribcage of right side and he also died on the spot. Vinod Singh shot Munna Tiwari and the bullet hit his thigh. Mohan Tiwari was shot but the bullet did not hit him and the bullet hit the wall. Sneha Singh was taking out the bullets. Thereafter the accused persons went towards west. Munna Tiwari was taken to Dumraon and from there he was referred to Buxar and then to PMCH. He put his signature on the fardbeyan which is marked as Ext.4. Panchnama of the bodies of the deceased was done. He put his signature on the inquest report of Baban Tiwari and Jitendra Tiwari which are marked as Ext.5 and 6 respectively. The police seized ash of burnt straw near the temple. Empty cartridges and sample of blood were also seized and he put his signature on the seizure list which is marked as Ext.7 The witness claims to identify the accused persons in the court.

11.1. The said witness has stated in his cross-examination that he was not at the Shivala when the incident



took place with Sadhuji. Sadhuji had gone to the Shivala in the morning to pray. He used to sleep at the Shivala and lived there. When the police came, Sadhuji went to the doctor to get treatment. That day Sadhuji came home after the incident and when he came, the police was there. The police saw the field of Sadhuji and recorded his statement. Sadhuji came to the *Dalan* at 08.00 hours and left after 5 minutes. Shortly after Sadhuji left, he was going to take breakfast. The accused were in a line and they started firing in a parallel line. They fired one by one. Whoever was standing did not get hit by the bullet. Whoever got shot, died on the spot and Munna Tiwari survived. The shell fell at the place from where the accused fired. He had also given statement to the police. He had not told Darogaji that when firing started, he and the villagers hid in the *Dalan* and when the firing ended, he came at the place of occurrence. He did not inform the police. His elder brother tried to inform the police. The police came after sometime. When the police came, Munna Tiwari was in the village. Sachida Tiwari and Jitendra Tiwari were not brought to the hospital. Blood was oozing out from the wounds of all three. He does not remember whether he signed the fardbeyan first or the inquest report. When Darogaji came, he first saw the dead-bodies and the injuries they sustained. A



report was prepared. He signed and then the statement of Awadhesh Tiwari was recorded. The police stayed in the village the whole day. The S.P. and the D.M. all stayed the whole day. The dog also came from Patna. He cannot tell how long after the arrival of the dog squad, the statement of his brother was recorded. He cannot tell whether the seizure list of ash at the temple was made on the same day or after 2-4 days. He does not remember where he signed the seizure list relating to ash. He did not go to the hospital with Munna Tiwari. They brought Munna Tiwari on the day of *Shradh*. He does not remember after how many days he signed on the sample of empty cartridges and the sample of blood. He had signed on his door. He does not remember after how many days of the incident he gave his statement to Darogaji. Darogaji had seen the blood stained cloth of the Sadhuji but he did not take it. He had told Darogaji that Sadhuji came to the door smeared in blood and Sachida Tiwari gave Rs./-200 for treatment and when we started going to the *Janani Kita* to have breakfast, Chandrashekhar Singh came armed with a rifle, Shankar Dayal Singh came armed with a stick and Sneha Singh with a bag of bullets and Shankar Dayal Singh said that kill and finish off the family of Kashi and Chandrashekhar Singh shot Baban Tiwari and Baban



Tiwari died on the spot. Abhishek Singh and Chandrashekhar Singh also shot Jitendra Tiwari @ Mintu Tiwari, which hit his chest and Jitendra Tiwari @ Mintu Tiwari died on the spot due to the bullets of both of them and Sachida Tiwari folded her hands and asked why did you do this then Abhishek Singh shot him and the bullet hit his right ribcage resulting into his death at the spot. Vinod Singh shot at Munna Tiwari which hit in his thigh. Mohan Tiwari was also shot but the bullet did not hit him.

12. PW-6 is the informant of this case who has deposed in his examination-in-chief that the incident took place on 30.01.2012 at 08:00 a.m. At that time he was at his shop. Awadhesh Tiwari, Awadh Bihari Tiwari, Sachidanand Tiwari, Mintu Tiwari, Baban Tiwari, Abhishek Tiwari, Mohanji Tiwari and Munna Tiwari were with him. They were cleaning the garden. Sanjay Sadhu came from the Shivalaya and said that Ashok Singh has beaten him and he has abused him. Sachida Tiwari gave Rs.200/- to Sanjay Sadhu and told him to go and get his medicine. They went for breakfast and when they moved towards the west, they saw that Shekhar Singh came with a rifle, Abhishek Singh with a gun, Vinod Singh with a gun, Ashok Singh with a stick, Shankar Dayal Singh with a stick and Shankar Dayal Singh said to finish off the family of Kashi



Tiwary. Shekhar Singh shot Baban Tiwari resulting into his death at the spot. Abhishek Singh shot Mintu Tiwari and Sachida Tiwari. Vinod Singh shot at Munna Tiwari which hit in his right thigh. Vinod Singh shot Mohanji Tiwari also but the bullet did not hit him. The daughter of Shekhar Singh was carrying a bag of bullets and she was giving bullets to the accused. The witness claims to identify accused Vinod Singh, Ashok Singh, Awadhesh Singh and Shekhar Singh in court. He also identified those who had not come. He gave his statement to Darogaji and put his signature on the statement. Awadh Bihari Tiwari also signed it. The police seized ash near the temple.

12.1. The said witness has stated in his cross-examination that the house of Shankar Dayal Singh is situated 500 Gaj away from his *Dalan*. The houses of other villagers are situated between the house of the accused and his *Dalan*. It is further stated by this witness in his examination-in-chief that when Darogaji came, the deceased and the injured were present in the village. The deceased and the injured were brought to Dumraon on cot. Dumraon is 2 *Kos* away from the village. He showed the place of occurrence to Darogaji. He did not say before Darogaji that the accused persons came near his door. He told Darogaji that at that time, he was in his courtyard. He did



not tell Darogaji that Awadhesh Tiwari, Awadh Bihari Tiwari, Sachida Tiwari, Mintu Tiwari, Baban Tiwari, Abhishek Tiwari, Mohanji Tiwari and Munna Tiwari were engaged in cleaning. He told Darogaji that Sanjay Sadhu came from the temple and informed that Ashok Singh assaulted him. He also did not tell Darogaji that Sachida Tiwari gave Rs.200/- to Sanjay Sadhu and told him to go and get his treatment done, then Sadhuji left. He had told Darogaji that Sadhuji had left and then we went to have breakfast and when we moved towards the west, Shekhar Singh came with a rifle, Abhishek Singh with a gun, Vinod Singh with a gun, Ashok Singh with a lathi and Shankar Dayal Singh with a stick and Shankar Dayal Singh said to finish off the family of Kashi Tiwari. He had told Darogaji that Shekhar Singh shot Baban Tiwari and Baban Tiwari died on the spot and Abhishek Singh shot Mintu Tiwari and Sachita Tiwari and he had also said that Vinod Singh shot Munna Tiwari which hit his right thigh and Vinod Singh shot Mohanji Tiwari but the bullet did not hit him. It is further stated by this witness in his cross-examination that he had also told Darogaji that Sneha Singh was carrying a bag of bullets and she was giving bullets to the accused persons. It is stated by this witness that when firing started, Sadhuji did not come. After the incident, Darogaji came and saw and had



gone crying and weeping. The accused persons did not fire together rather they fired one by one. He does not remember that the police wanted to record his statement under Section 164 Cr.P.C. and he did not come. He has denied the suggestion that he did not see the occurrence and has given false testimony.

13. PW-7 is Dr. Bhupendranath who has deposed in his examination-in-chief that on 30.01.2012, he was posted at Sadar Hospital, Buxar as Medical Officer. He was one of the members of the Medical Board constituted for conducting *post-mortem* examination on the dead bodies of the deceased. This witness has found following *ante-mortem* injuries on the dead body of Baban Tiwari:

(i) Lacerated wound of size 1.5"x3/4" with inverted margin and blackening around the wound and communicated with wound of exit described below. It is situated at left angle of mouth wound of entry.

(ii) Lacerated wound of size 2"x1" with everted margin situated at upper and lateral part of right side of neck. It communicated to wound in (i) wound of exit.

On dissection of Head and neck, lower jaw that is mandible fracture, right carotid artery lacerated.

Opening of chest- Lung pale, Heart both chamber



empty.

Abdomen-Liver, spleen, kidney- Pale

Stomach- empty

Urinary bladder contains- scanty urine

Genital- NAD

Cause of death- Shock and Haemorrhage due to fire
arm injury.

Time elapsed since death- Within 24 hours.

On that day, post-mortem examination on the dead
body of Sachidanand Tiwari was also conducted and the doctor
has found following *ante-mortem* injuries on the person of the
deceased:

(i) Lacerated wound of size 1/2"x1/2" with inverted
margin and blacky around wounded situated just below the
coastal margin 4" away from mid line on left side of back. It
communicated with wound no (ii) distorted below wound of
entry.

(ii) Lacerated wound of size 2"x1" with everted
margin communicated with wound of entry wound no (i)
situated at 1" below right sub postal margin on mid axiatry line
on right side wound of exit.

On dissection of chest- Left lung lower part



lacerated, Heart both chamber empty chest cavity contain wound and clots.

On dissection of abdomen- Liver lacerated, cavity contain blood, spleen, kidney, liver pale. Stomach empty. Urinary bladder- Scanty urine present

Cause of death- Shock and haemorrhage caused by fire arm injury.

Time elapsed since death- Within 24 hours.

On the same day, the doctor had conducted *post-mortem* on the dead body of Jitendra @ Mintu Tiwari and found following *ante-mortem* injuries:

(i) Lacerated wound of size 1/2"x1/3" with inverted margin and blackening around communicated wound No. (ii) described below, It is situated at 2nd intercoastal space on (not legible) axillary line on left side of chest wound of entry.

(ii) Lacerated wound of size 1.5"x3/4" with inverted margin communicating with wound No. (i) situated at 4" below inferior (not legible) of right scapula and 3" away from mid line on right side of back wound of exit.

On dissection of chest- Antera chest walls muscle on left side, haemorrhage around the wound no.(i) chest cavity contain blood, left and right lungs lacerated, heart both chamber



empty.

On dissection of abdomen- Liver, spleen, Kidney
Pale. Stomach empty, Urinary bladder- empty

Cause of death- Shock and Haemorrhage due to fire
arm injury.

Time elapsed since death- Within 24 hours.

13.1. The said witness has stated in his cross-examination that rigor mortis was present in all four limbs. Rigor mortis appears six hours after the death and completes in twelve hours. All the dead bodies were received for post-mortem at 04:35 p.m. He did not know the deceased. It is further stated by this witness in his cross-examination that if any person wearing clothes was shot at then also blackening occurred around his wound.

14. PW-8, Dr. Ravi Bhushan Srivastava has deposed in his examination-in-chief that on 30.01.2012, he was posted as Medical Officer at Sadar Hospital, Buxar. On that day, he conducted *post-mortem* on the dead body of Baban Tiwari at 04:40 p.m. He put his signature on the *post-mortem* report which is marked as Ext.12. He also put his signature on the *post-mortem* reports of Sachidanand Tiwari and Jitendra @ Mintu Tiwari marked as Exhibits 12/1 and 12/2.



14.1. The said witness has stated in his cross-examination that rigor mortis appears four hours after the death. He did not know the deceased from before.

15. PW-9, Ram Bilash Chaudhary is the Investigating Officer of this case and he has deposed in his examination-in-chief that on 30.01.2012, he was posted as SHO in Krishna Brahm police station. He himself took charge of investigation. He has inspected the place of occurrence as described in para-1 of his examination-in-chief. He described the second place of occurrence in para-2 of his examination-in-chief where the firing took place. He found the dead body of Baban Tiwari. Jitendra Tiwari @ Mintu Tiwari, Sachidanand Tiwari and Munna Tiwari sustained injuries who were sent to Sub-Divisional Hospital, Dumraon where Jitendra Tiwari @ Mintu Tiwari and Sachidanand Tiwari died. Bullets, empty cartridges, jacket and blood were seized. He recorded the re-statement of the informant. He also recorded the statements of Abhishek Tiwari, Awadh Bihari Tiwari, Mohan Tiwari, Munna Tiwari and Sanjay Tiwari. He submitted charge-sheet being Charge-sheet No.11-12, dated 25.02.2012.

15.1. The said witness has stated in his cross-examination that he got information about this incident through



rumour. He entered the information in the station diary on 03.01.2012 at 09:05 hours. He took charge of investigation after forwarding. The fardbeyan was recorded at 11:00 hours. The fardbeyan was recorded by Ram Avtar Yadav. He has written the inquest report of the deceased in the diary. Thereafter the dead bodies were sent for *post-mortem*. He has started writing the case diary on 30.01.2012 at 09:05 hours. When he started writing the case diary, he did not know the name of the accused. He reached at village Kathar on 30.01.2012 at 09:15 hours. The place of occurrence was shown by Awadhesh Tiwari at 09:20 hours. Seizure list was prepared at 10:30 hours. The inquest report of the deceased was prepared in village Kathar. Dog squad was also called in this case. The second place of occurrence was also written in the diary. The dead body of Baban Tiwari was found there and the injured were sent for treatment. Bullets, empty cartridges and blood were scattered on the place of occurrence. He found the sign of bullet on the wall. It is clear from para-29 of the diary that the clothes of the deceased were seized. He prayed for issuance of warrant from the CJM on 31.01.2012. Supplementary case diary was also written by him. He has recorded the statements of Surendra Singh, Sri Ram Kamkar, Chowkidar Paras Ram Yadav and Shiv



Bihari in the supplementary case diary. From the statements of the aforesaid witnesses, it became clear that Vinod Singh was not involved in the occurrence. He was directed to inquire about the involvement of Vinod Singh and Shankar Dayal Singh in the said occurrence. He did not inquire on this point and charge of investigation was handed over to SHO Sudhir Kumar Singh. It is further stated by this witness in his cross-examination that Mohan Tiwari had not stated before him that Shankar Dayal Singh said that kill all the persons and he was near the wall. He has recorded the statement of Munna Tiwari on 12.02.2012. Munna Tiwari had not stated that Awadhesh Tiwari, Abhishek Tiwari and Awadh Bihari Tiwari were also with him. He has not stated before him that female members from the family of the accused were also with the accused. Abhishek Tiwari had not stated that he was cleaning the *Dalan* and Awadhesh Tiwari, Awadh Bihari Tiwari were present in the *Dalan*. Awadh Bihari Tiwari had stated before him that the accused persons started firing near the house of Tej Singh.

16. PW-10 has identified the writing and signature of S.I. Ram Bilash Chaudhary, who has submitted charge-sheet no.11/2012, which is marked as Ext.14.

16.1. The said witness has stated in his cross-



examination that the charge-sheet was not written in his presence. He does not know the contents of the charge-sheet.

17. PW-11 has deposed in his examination-in-chief that he does not remember the date and time of the occurrence. The occurrence took place 3-4 years ago at 08:00 a.m. He was offering prayer in a temple which was situated outside the village in the south. When he was sitting in the temple, he saw Mintu Tiwari, Baban Tiwari, Sachidanand Tiwari and Munna Tiwari who were going to eat. Till then Shekhar Singh, Abishek Singh, Ashok Singh and Vinod Singh came variously armed and started firing. Shekhar shot Munna. Abhishek shot Sachidanand and Mintu. Vinod shot Munna. Ashok assaulted him by fist and his teeth was broken.

17.1. The said witness has stated in his cross-examination that he does not remember about the number of firing. He was busy in prayer. The occurrence took place at temple at 08:00 hours. The temple is situated $\frac{1}{2}$ k.m. away from the village in the north. His statement was recorded before Darogaji at the time of occurrence. He has denied the suggestion that no such occurrence took place and he has given testimony on the dictate of Awadhesh Tiwari.

18. PW-12 is the doctor who had treated Sanjay



Tiwari and had found following injuries on his body:

- (i) Swelling in little finger of right hand.
- (ii) Broken tooth of lower jaw.
- (iii) Chest Pain

M.I. Old Scar mark on elbow region of right hand.

Age of injury- More than 2 to 3 hours.

18.1. The said witness has stated in his cross-examination that the patient had come for treatment on 23.02.2012. He does not remember about tooth pain or chest pain.

19. PW-13 is Dr. Sanjay Kumar, who has treated injured Munna Tiwari and found following injuries on his person:

(i) Swelling and punctured wound on left thigh and burnish colour around wound size 1/2"x1/2". The patient was referred to Sadar Hospital, Buxar.

Age of Injury- Within 1 to 4 hours.

Weapon used- Gun shot

19.1. The said witness has stated in his cross-examination that he did not give the exact location of the wound in the injury report. He did not write wound of entry and wound of exit. He did not write the basis of age of injury. The opinion



of the injury was reserved. The wound is superficial and if one takes risk, it can be possible. It is further stated that puncture wound is possible by a sharp weapon. The injury is simple in nature.

20. PW-14 is a formal witness who has identified the report and signatures of the authorities of FSL in his examination-in-chief.

21. PW-15 has deposed in his examination-in-chief that he was present in the village on 30.01.2012. He heard on that day that Rajputs made firing and three Babaji died after sustaining gunshot injuries.

21.1. The said witness has stated in his cross-examination that firing took place at the temple. He heard that Vinod Singh was present in his in-laws' house on the day of occurrence.

22. DW-1 has deposed in his examination-in-chief that the occurrence took place 3 ½ years ago at 05:30 in the morning. The occurrence took place at Shivala situated outside the village. It is further deposed that Shankar Dayal Singh and his family are not involved in the occurrence and they have falsely been implicated. Vinod Singh was present in his in-laws' house situated in Balua. Shankar Dayal Singh is aged about 88-



90 years.

22.1. The said witness has stated in his cross-examination that he went to the place of occurrence after the occurrence. He saw three dead bodies and he did not see any injured. The dead bodies were seen at Shivala.

23. DW-2 has deposed in his examination-in-chief that the occurrence took place 3 ½ years ago at 05:30 in the morning. The occurrence took place at Shivala situated outside the village. Shankar Dayal Singh and his family are not involved in the occurrence. He knows Vinod Singh. Vinod Singh was present in his in-laws' house situated in Balua on the day of occurrence. Shankar Dayal Singh is aged about 90-95 years.

23.1. The said witness has stated in his cross-examination that murder took place 3 ½ year ago at the temple. Mintu Tiwari, Baban Tiwari and Sachidanand Tiwari were killed. No one was injured.

24. DW-3 has deposed in his examination-in-chief that he knows Vinod Singh of Kathar. Marriage of Vinod Singh was solemnized in village Balua. After marriage, Vinod Singh lived in Balua with his family. It is further deposed that on 03.01.2012, Vinod Singh was present in Balua with him.



24.1. The said witness has stated in his cross-examination that the in-laws' house of Vinod Singh is situated in front of his house. He has denied the suggestion that he has given false testimony on the dictate of Vinod Singh.

25. DW-4 has deposed in his examination-in-chief that the occurrence took place 3 ½ years ago at 05:30 in the morning. The occurrence took place near Shiv temple situated outside the village. Shankar Dayal Singh and his family are involved in the said occurrence and they are innocent. Vinod Singh was not present in village Kathar on the day of occurrence rather he was in village Balua with his family. Shankar Dayal Singh is aged about 90 years.

25.1. The said witness has stated in his cross-examination that the occurrence took place on 30.01.2012. He was present at his door. He did not hear the sound of firing. He saw the dead bodies of Mantu Tiwari, Baban Tiwari and Sachidanand Tiwari. The house of the deceased was situated 600 meters away from the place of occurrence.

26. DW-5 has deposed in his examination-in-chief that he knows Vinod Singh of village Kathar. His marriage was solemnized in village Balua. Vinod Singh lived in Balua with his family. On 30.01.2012, he was present in village Balua.



26.1. The said witness has stated in his cross-examination that he does not know whether Vinod Singh keeps arms or not. He has denied the suggestion that he has deposed falsely as in-laws' house of Vinod Singh is situated in his village.

27. CW-1, Sudhir Kumar Singh has deposed in his examination-in-chief that he took charge of investigation from Ram Bilash Choudhary on 28.01.2013 on the order of his superior police officers. He recorded the statements of several witness. It is further deposed that from the statements of the witnesses, it revealed that Vinod Singh, Shankar Dayal Singh, wife of Shankar Dayal Singh, wife of Vinod Singh and wife of Chandrashekhar Singh are not involved in this case and submitted final report against the aforesaid persons on 30.04.2013.

27.1. The said witness has stated in his cross-examination that on 30.04.2013, he filed application in the court that charge-sheet, earlier submitted against Shankar Dayal Singh and Vinod Singh being Charge-sheet No.11/2012, dated 25.02.2012, be not accepted, which was marked as Ext.A.

Findings

28. 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. It transpires from the evidence of the prosecution that the alleged incident took place at about 08:00 a.m. on 30.01.2012, for which *fardbeyan* of Awadhesh Tiwari (PW-6) came to be recorded at 11:00 a.m. It is specific case of the informant (PW-6) that the accused came at the house of the informant and at the door of the house, the accused started firing from the rifle and pistol which they were carrying. In the said incident, Baban Tiwari, Mintu Tiwari, Sachidanand Tiwari and Munna Tiwari sustained firearm injuries out of whom Baban Tiwari died on the spot whereas Mintu Tiwari, Sachidanand Tiwari and Munna Tiwari were sent to the hospital. It is further case of the informant in the *fardbeyan* that Mintu Tiwari and Sachidanand Tiwari died whereas Munna Tiwari was taken to Sadar Hospital, Buxar for further treatment. It is also relevant to note that in the *fardbeyan*, the informant has specifically stated that at about 08:00 a.m. on the date of incident, his nephew Sanjay Tiwari (PW-11) was doing Puja at Shiv Temple. The accused went to the said place used abusive language. Scuffle took place between them. Thereafter the accused went to their house and once again came at the house of the informant.



28.1. From the evidence led by the prosecution, it would further reveal that the prosecution has projected Munna Tiwari and Sanjay Kumar Tiwari (PW-11) as injured witnesses. Thus, we would like to examine the deposition given by the injured witnesses.

28.2. PW-3, Munna Tiwari has deposed in the examination-in-chief that all the accused came at the place of occurrence with pistol and Lathi. Accused Shekhar Singh shot Baban Tiwari. Abhishek Singh shot Pintu Tiwari and Sachchidanand Tiwari. When Vinod Singh shot him, the bullet hit his thigh. Vinod Singh shot Mohanji Tiwari but the bullet did not hit him. It is specific case of PW-3 that appellant Vinod Singh fired from his pistol and the bullet hit on his thigh. He has further deposed that the police recorded his statement in the hospital however, during cross-examination he has stated that he is not aware that in which hospital police took his statement. At this stage, it is also required to be observed that in para-1, PW-3 has stated that he and other family members were cleaning the house as there was marriage in the family. At that time, Sanjay Sadhu came and informed that Ashok Singh has beaten him, his teeth has been broken and blood is oozing out and thereafter father of PW-3 gave Rs.200/- to Sadhuji (Sanjay Kumar Tiwari)



for the purpose of treatment/medicine and thereafter Sanjay left the said place. Once again they started cleaning the house and when they were near *Janani Kita*, all the accused came with weapons and thereafter incident, as narrated by him, took place.

28.3. At this stage, we would like to examine the deposition given by PW-13, Dr. Sanjay Kumar who had given the treatment to PW-3. The doctor found swelling and punctured wound on left thigh. The said witness has admitted during cross-examination that puncture wound could be possible by sharp weapon and he had not mentioned about the wound of entry and wound of exit in his injury report. Even there is no reference with regard to pellet/bullet found from the body of PW-3.

28.4. At this stage, we would also like to refer the deposition given by PW-6, Awadhesh Tiwari. The said witness has specifically stated in examination-in-chief that Vinod Singh (appellant) shot Munna Tiwari and the bullet hit on right thigh of PW-3.

28.5. At this stage, we would also refer the deposition given by PW-9, the Investigating Officer. From the deposition of the said witness, it is revealed that in para-31 of his cross-examination, he specifically stated that he recorded the statement of Munna Tiwari (PW-3) on 12.02.2012 at the house



of PW-3. It is also admitted by the Investigating Officer that Munna Tiwari in his statement did not state that female members from the family of the accused were using filthy language and throwing bricks.

28.6. It is required to be observed at this stage that PW-9, the Investigating Officer specifically admitted in para-27 of his cross-examination that supplementary case diary has been written by him in which he had recorded the statements of Surendra Singh, Sri Ram Kamar, Chowkidar Paras Ram Yadav and Shiv Bihari. He has further admitted that from the statement given by the aforesaid persons, it was revealed that accused Vinod Singh is not involved in the incident in question. Similarly, CW-1, Sudhir Kumar Singh has specifically deposed before the court that he had taken over the charge of investigation from Ram Bilash Choudhary (PW-9) on 28.01.2013 on the basis of instruction of higher police officers and during the course of his investigation, he did not find any evidence from which it can be said that accused Shankar Dayal Singh and Vinod Singh are involved in the alleged incident. Further, he did not find any evidence connecting wife of Shankar Dayal Singh, wife of Vinod Singh, Wife of Chandrashekhar Singh and, therefore, he filed final report on



30.04.2013.

28.7. Thus, from the aforesaid evidence led by the prosecution, it can be said that there are major contradictions, improvement, inconsistencies in the deposition of PW-3 and other prosecution witnesses. Thus, simply relying upon the deposition given by so called injured witness, conviction cannot be recorded.

28.8. At this stage, we would like to examine the deposition given by another injured, Sanjay Kumar Tiwari (PW-11). In examination-in-chief, PW-11 has deposed that he was doing Puja at Shiv Temple and Ashok Singh (accused) came at the temple and used filthy language. Thereafter when they were sitting near the temple, Mintu Tiwari, Baban Tiwari, Sachidanand Tiwari and Munna Tiwari were going to their house for taking breakfast. At that time, the accused came at the place of occurrence with weapons in which Baban Tiwari, Sachidanand Tiwari, Mintu Tiwari and Munna Tiwari sustained firearm injuries whereas accused Ashok Singh gave fist blow to the said witness (PW-11) and his tooth was broken. The said witness further stated during cross-examination that he did not know how many rounds of firing took place at the temple.

28.9. With a view to prove the injury sustained by



PW-11, the prosecution examined PW-12, Dr. Rajesh Kumar Singh who has stated that on 23.02.2012, he was posted at Sub-Divisional Hospital, Dumraon and at about 01:30 p.m., he examined Sanjay Tiwari (PW-11). He found swelling in little finger of right hand, broken tooth of lower jaw and chest pain. However, surprisingly the said witness has stated that age of injury is more than 2 to 3 hours. During cross-examination, the said witness has stated that the injured came to hospital on 23.02.2012 and on the same day, he gave injury report.

28.10. At this stage, it is pertinent to note that most of the prosecution witnesses including PW-3 have deposed that initially quarrel took place at *Shivala* (Shiv Temple) between Ashok Singh and Sanjay Tiwari and in the said scuffle, the tooth of Sanjay Tiwari was broken and, therefore, Sachidanand Tiwari gave Rs.200/- to him for treatment and thereafter Sanjay Tiwari left the house and as per case of other prosecution witnesses, the incident took place at the door of the informant (PW-6). Thus, there are major contradictions, improvement and inconsistencies in the deposition of the prosecution witnesses and, therefore, PW-11 cannot be termed as injured eye-witness and he is not a truthful or reliable witness.

29. We have also examined the deposition given by



other so called eye-witnesses, who are near relatives of the deceased. It is pertinent to note that the prosecution has failed to examine the independent witnesses. From the evidence led by the prosecution, it transpires that doubt has been raised with regard to the place of occurrence. As per FIR, occurrence took place at the door of the informant (PW-6) where the accused persons came and indulged in firing whereas as per PW-2, Mohan Tiwari, occurrence took place at a distance of 10-12 meters from his door. Similarly, PW-3, Munna Tiwari in para-1 of his deposition has specifically deposed that when he went in *Janani Kita* to have breakfast, the accused persons came and at that place, occurrence took place. Thus, as per PW-3, place of occurrence is *Janani Kita* of his house. At this stage, it is also required to be observed that PW-4, Abhishek Tiwari in para-1 has stated that from Dalan while they were going to take breakfast at the house of Awadhesh Tiwari, the accused persons came and indulged into firing. PW-11, Sanjay Kumar Tiwari deposed that while they were sitting at the temple, the other persons were going for taking breakfast at their house and by that time, accused persons came with firearm and resorted to fire. Similarly, PW-15, Shiv Bihari Ram in para-2 has stated that firing took place at Shivalaya Temple at about 05:00-06:00 a.m.



and at that time, there was fog. Thus, from the aforesaid deposition of the prosecution witnesses, we are of the view that even prosecution has failed to prove the exact place of occurrence.

30. As observed hereinabove, in the present case, all the prosecution witnesses are from one branch of family and no independent witness has been examined although from the deposition of the Investigating Officer (PW-9), it is revealed that dead bodies were found near the house of several independent witnesses. In fact, PW-9 has admitted in para-29 of cross-examination that he had not recorded the statement of people who resided near the place of occurrence.

31. At this stage, it is required to be observed that from the deposition given by PW-9, the Investigating Officer, it is revealed that in the supplementary case diary, he had recorded the statements of Surendra Singh, Sri Ram Kamar, Chowkidar Paras Ram Yadav and Shiv Bihari and from the statements of the aforesaid persons, it was revealed that Vinod Singh was not involved in the incident in question. Similarly, as observed hereinabove, CW-1, Sudhir Kumar Singh, who had carried out the further investigation, has specifically deposed before the court that during course of further investigation, it was revealed



that accused Shankar Dayal Singh and Vinod Singh as well as female members of their family are not involved in the alleged incident and, therefore, he filed final report against them. Thus, from the aforesaid evidence produced before the Trial Court, it would reveal that though two of the accused, i.e., Vinod Singh and Shankar Dayal Singh as well as female members of their family were not present and they have falsely been implicated. Thus, the so called eye-witnesses have not placed the correct story before the court and thereby falsely implicated the accused persons.

32. Now, the submission canvassed by learned counsel for the informant is that if the plea of *alibi* has been taken by the accused, it is his duty to prove the same by leading cogent evidence before the court and in the present case, the aforesaid accused have failed to lead any evidence from which it can be said that they were not present at the scene of occurrence. Learned counsel has also placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of **Brahm Swaroop & Anr. vs. State of Uttar Pradesh**, reported in **(2011) 6 SCC 288**, wherein the Hon'ble Supreme Court has observed in paras-26 to 28 as under:

“26. Merely because the witnesses were closely related to the deceased persons, their testimonies cannot be discarded. Their relationship



to one of the parties is not a factor that affects the credibility of a witness, more so, a relation would not conceal the actual culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. However, in such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible evidence. (Vide *Dalip Singh v. State of Punjab* [(1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465] , *Masalti v. State of U.P.* [AIR 1965 SC 202 : (1965) 1 Cri LJ 226] , *Lehna v. State of Haryana* [(2002) 3 SCC 76 : 2002 SCC (Cri) 526] and *Rizan v. State of Chhattisgarh* [(2003) 2 SCC 661 : 2003 SCC (Cri) 664] .)

27. Injured witness Atar Singh (PW 1) has been examined, his testimony cannot be discarded, as his presence on the spot cannot be doubted, particularly, in view of the fact that immediately after lodging of FIR, the injured witness had been medically examined without any loss of time on the same day. The injured witness had been put through a gruelling cross-examination but nothing can be elicited to discredit his testimony.

28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." (Vide *State of U.P. v. Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] , *Krishan v. State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214] , *Dinesh Kumar v. State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472] , *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] , *Annareddy Sambasiva Reddy v. State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630 : AIR 2009 SC 2661] and *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC



(Cri) 211] .)”

33. We cannot dispute the proposition of law laid down by the Hon’ble Supreme Court in the aforesaid case. However, in the present case, it is not merely the defence taken by the concerned accused that they were not present despite which they have falsely been implicated but there is evidence of PW-9, the Investigating Officer, who has specifically deposed that during further investigation, he had recorded the statements of independent witnesses whose names are referred from which it was revealed that accused Vinod Singh was not involved in the incident in question. Further, CW-1, Sudhir Kumar Singh, who was also a police officer, has deposed before the Trial Court that when the further investigation was handed over to him by his superior police officers, it was revealed that Vinod Singh and Shankar Dayal Singh and female members of their family were falsely implicated and, therefore, he filed final report in their favour. Thus, it is not mere defence taken by the accused but was supported by the deposition of prosecution witnesses as well as court witness. Further, we have already discussed that under which circumstances, the deposition given by so called two injured witnesses, cannot be believed.

34. At this stage, we would like to examine the contention taken on behalf of the informant that when the court



has taken cognizance on the basis of the charge-sheet filed by the Investigating Officer against all the accused, it was not open for the concerned Investigating Officer (CW-1) to further investigate into the matter and to file final report in favour of some of the accused. With a view to appreciate the aforesaid contention, we have examined the records of the Trial Court from which it transpires that though the concerned Magistrate had not specifically accepted the final report submitted by CW-1, the said report was kept with the file as the Trial Court in the impugned judgment and order has not assigned any specific reason as to why the final report submitted by CW-1 is required to be ignored. Further, the question with regard to power of a police officer for further investigation in absence of order passed by the concerned Magistrate court is also to be gone into.

35. In the case of **State through Central Bureau of Investigation v. Hemendhra Reddy & Anr. etc.**, reported in **(2023) 7 S.C.R. 134**, the Hon'ble Supreme Court has observed in para-64 as under:

“64. Thus, in view of the law laid down by this Court in the various decisions cited hereinabove, it is well settled that sub section (8) of Section 173 of the CrPC permits further investigation, and even de hors any direction from the court, it is open to the police to conduct proper investigation, even after the court takes cognizance



of any offence on the strength of a police report earlier submitted.”

36. Thus, from the aforesaid observation made by the Hon’ble Supreme Court, it can be said that it is open to the police to conduct proper investigation, even after the court takes cognizance of any offence on the strength of a police report earlier submitted. Further, in the facts of the present case, as observed hereinabove, PW-9, who was the first Investigating Officer, himself has stated in para-27 that in supplementary case diary, he has specifically referred about the statements of certain persons which he had recorded from which involvement of accused Vinod Singh was ruled out. Thus, looking to the aforesaid facts and the law laid down by the Hon’ble Supreme Court, the submission canvassed by learned counsel for the informant cannot be accepted.

37. From perusal of the records, it would further reveal that the Investigating Officer (PW-9) has not produced station diary entry no.636 dated 30.1.2012 during trial in court which was earliest version received by him about the present occurrence but he has admitted that in the said information there was no name of any of the accused. PW9 has stated in his cross-examination that he reached in village Kathar at 09:15 hours on 30.1.2012 and sent the injured to Dumraon Hospital but no



police requisition of any injured has been brought on record. In para-12, the Investigating Officer (PW-9) has stated that at 09:20 hours, Awadhesh Tiwari (PW-6) shown him the place of occurrence and at the place of occurrence he has not found any blood, splinter etc. It is further stated by the said witness that he prepared seizure list at 10:30 hours and in para-15 he stated that inquest of Baban Tiwari was prepared at 10.30 A.M., Jitendra at 10.45 A.M. and Sachidanand Tiwari at 11.00 A.M. and in all the three inquest at serial no.1 in case reference he has mentioned about *fardbeyan* of Awadhesh Tiwari.

37.1. The aforesaid fact itself goes to show that much prior to 10:30 hours when the inquest of Baban Tiwari was prepared, there was *fardbeyan* given by Awadhesh Tiwari and the said *fardbeyan* has been withheld by the prosecution in the present case.

37.2. From the statement of Awadhesh Twari (PW-6), it is evident that he claims to have remained present in the village throughout and he has not gone alongwith the injured to any hospital and thus it can be presumed that he met with the Investigating Officer at 9:15 hours when the Investigating Officer came at place of occurrence because at 9.20 hours he showed the place of occurrence to the Investigating Officer.



37.3. Similarly, from the statement of the Investigating Officer (PW-9), it will be evident that all witnesses including Mohan Tiwari (PW-2), Munna Tiwari (PW-3), Abhishek Tiwari (PW-4), Awadh Bihari Tiwari (PW-5) and Awadhesh Tiwari (PW-6) were present in the village and they must have met the police officer.

37.4. Mohan Tiwari (PW-2) in para-38 has stated that when Darogaji came he did not know who gave statement first to him and till Darogaji remained in village, he was present and apart from him, his father (PW-5), his uncle Awadhesh Tiwari (PW-6), Abhishek Tiwari (PW-4), Ram Shankar Tiwari (not examined) were present and injured were carried by the neighbour on cot by Yadav people. Meaning thereby that when the police arrived in village at 9.15 hours, he met the police. PW-2 in para-40 has stated that prior to arrival of deceased, Darogaji has inspected the place of occurrence and has recorded the statement.

37.5. Munna Tiwari (PW-3), the so called injured, in para-2 has stated that police recorded his statement in hospital. In para-6 he stated that he has not met police prior to giving his statement or prior to going to hospital. This itself goes to show that he was not a person injured whom PW-9 sent



for treatment. He further stated in para-6 that Patna police has also recorded his statement. When he returned back to village the police also recorded his statement. PW-3 has stated that he has given statement to the Police in hospital in para-2. In para-6 he stated that he gave his fandbeyan at PMCH and both these statement has been withheld by the prosecution and PW-9 has stated that he recorded the statement of PW-3 in his village on 12.2.2012.

37.6. Awadh Bihari Tiwari (PW-5) in para-2 has stated that the information of incident was given by the villager. In para-14, the said witness has stated that he has not informed the police. His brother tried to inform the police but he cannot say as to whether on the information of his brother, police came or not. He further stated that after sometime police has arrived. He further stated that when police arrived Munna Tiwari (PW-3) was in the village.

37.7. PW-6 in para-8 has stated that when Darogaji has arrived, deceased and injured were in the village. Similarly, in para-17 he stated that after the occurrence Darogaji came and saw and went weeping and crying and none of the persons, who brought the injured to hospital, is the witness in the present case.

37.8. From the aforesaid facts, it will be evident



that the earliest version, which was received by the police, has been withheld by the prosecution in the present case. Similarly, when the police arrived in the village at 09:05 a.m., the information given to the police either by the informant Awadhesh or by other so called witnesses, i.e., PWs-, 3, 4 and 5, the same has been withheld by the prosecution. The investigation has already commenced on 30.01.2012 at 09:05 a.m. Inspection of the place of occurrence was done at 09:10 a.m. and under that circumstance it can be said that the witnesses have suppressed their version which was given to the police when they firstly met the police but as those statement were not favourable to the prosecution, subsequently another *fardbeyan* was given.

37.9. From para-40 of PW-2, it is evident that Darogaji has recorded the statements of several persons prior to preparation of inquest report and villagers have given information about the incident to the police.

38. PW-7, Dr. Bhupendranath, who conducted *postmortem* has stated that he found blackening around the wound of entry and he further stated that the firing was resorted within 1-1.5 meters whereas almost all witnesses have stated that firing was resorted at a distance of 8 to 15 meters (PW-2,



Para-32, PW-3, para-12, PW-5, para-11 and PW-6, para-18).

39. In the present case, PW-11 has stated that occurrence took place near Shivala Temple from where he proceeded for taking food. PW-15 in para-2 has stated that occurrence took place at Shivala at about 05:00-06:00 a.m. when there was a fog. These two witnesses have not been declared hostile and thus their statement is binding on the prosecution.

40. In the present case, in the *fardbeyan* as well as in the deposition given in court by PWs- 2, 3, 4, 5 and 6, they have stated that at about 08:00 a.m. Sanjay Tiwari (Sadhu) who was worshipping at temple was abused by Ashok Singh resulting into scuffle and quarrel ended and both came to their houses and in trial they have stated that Sadhuji (Sanjay Tiwari) came at *Dalan* weeping and stated that he was assaulted and his tooth was broken and he received injury at some other part of the body also and thereafter Rs.200/- was given to him by Sachidanand Tiwari for treatment and he went for treatment to the doctor and thereafter the accused persons allegedly came at *Dalan* or house and committed the occurrence.

41. The genesis of occurrence is being falsified from the statement of Sanjay Tiwari (Sadhu) PW-11 and he has



allegedly stated that from temple when the deceased left for taking food, the occurrence took place in which deceased persons and injured received injury and he too was assaulted causing damage to his tooth and other parts of the body. Thus, from his statement it will be evident that the deceased and PW-11 were assaulted at the same time and in the same transaction. PW-11 has not received any injury or the prosecution is competent to manufacture the false injury report of the doctor is more evident from the fact that PW-12 namely Dr. Rajesh Kumar Singh has stated that he examined Sanjay Kumar Tiwari on 23.2.2012 at 01:30 in the noon and he further stated that the injury was caused within 2-3 hours and thus the prosecution has miserably failed to prove the very genesis of the occurrence. CW-1, namely, Sudhir Kumar Singh has stated during trial that during investigation there is no material against F.I.R. named accused Sankar Dayal Singh and Vinod Singh (Para-3) and final report was submitted on 30.04.2013 against Vinod Singh and others and further investigation was closed. This witness has further stated that on 30.04.2013, he filed application in the court that charge-sheet, earlier submitted against Shankar Dayal Singh and Vinod Singh being Charge-sheet No.11/2012, dated 25.02.2012, be not accepted, which was marked as Ext.A.



42. At this stage, we would also like to consider the submission canvassed by learned counsel for the informant that present is a case of triple murder and, therefore, looking to the seriousness of the matter, the present appeals be dismissed.

42.1. In the case of **Dilavar Hussain & Ors. vs. State of Gujarat & Anr.**, reported in (1991) 1 SCC 253, the Hon'ble Supreme Court has observed in para-3 as under:

3. All this generated a little emotion during submissions. But sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty. Although guilty should not escape (*sic*). But on reliable evidence, truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution however abhorrent and hateful cannot reflect in deciding the guilt.

43. From the aforesaid observation, it can be said that sentiments or emotions, howsoever strong, are neither relevant nor have any place in a court of law. Acquittal or



conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. In the present case, as observed hereinabove, when the prosecution has failed to prove the case beyond reasonable doubt, though it is a case of triple murder, we would like to acquit the appellants herein by quashing and setting aside the judgment of conviction and order of sentence.

44. Accordingly, Criminal Appeal (DB) No.620 of 2016 stands allowed with regard to appellant no.1, namely, Abhishek Singh and stands abated with regard to appellant no.2, namely, Shekhar Singh @ Chandrashekhar Singh as he has died during pendency of the appeal.

44.1. Criminal Appeal (DB) No.562 of 2016 stands abated as the sole appellant, namely, Shankar Dayal Singh has died during pendency of the appeal.

44.2. Criminal Appeal (DB) No.611 of 2016 stands allowed.

44.3. The impugned common judgment of conviction dated 20.05.2016 and order of sentence dated 27.05.2016, passed by learned Additional District & Sessions



Judge-V, Buxar in Sessions Trial No.82/2012 (CIS No.47/2015), arising out of Brahmpur P.S. Case No.38/2012, are hereby quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

44.4. Appellants Ashok Singh and Vinod Singh @ Vinod Kumar Singh (in Cr. Appeal (D.B.) No. 611 of 2016) are on bail. They are discharged from the liabilities of their respective bail-bonds.

44.5. Since appellant, namely, Abhishek Singh (in Cr. Appeal (D.B.) No. 620 of 2016) is in jail, he is directed to be released from jail custody forthwith, if his presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Dr. Anshuman, J.)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.12.2024
Transmission Date	03.12.2024

