

Vs.

Vs.

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Court : Patna

Decided On : Aug-30-2013

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (DB) No.186
of 1990

===== 1.
Hira Singh, son of Basdeo Singh, 2. Ram Pujan Singh alias Khublal Singh, son of
Basdeo Singh & 3. Surendra Singh, son of Jangali Singh, All resident of village-
Dauda Rampur P.S.Kuchaikot, District-Gopalganj. Appellant/s Versus The
State of Bihar Respondent/s

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Appearance : For the Appellant/s : M/S. Ashutosh Kumar & Chandra Mohan
Singh, Advs. For the Respondent/s : Mr. Ajay Mishra, APP. For the Informant : Mr.
Arbind Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHYAM KISHORE SHARMA and
HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI CAV

JUDGMENT

(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI) Date:

30. -08-2013 Heard learned counsel for the appellants, learned counsel for the
informant as well as learned Additional P.P.

2. Initially, there were three appellants Hira Singh, Ram Pujan Singh alias Khublal Singh and Surendra Singh out of whom Hira Singh and Surendra Singh are dead and on account thereof, the appeal to their extent is found to be abated and now survives only against appellant Ram Pujan Singh.

3. Challenge in this appeal is judgment of conviction and sentence dated 31.03.1990 passed by Sessions Judge, Gopalganj in Sessions Trial No.431 of 1983 whereby and whereunder appellant Surendra Singh(since deceased)has been found guilty for an offence punishable under Section 323 of the IPC and sentence to under go imprisonment for nine months while appellant Hira Singh (since deceased) and Ram Pujan Singh alias Khublal Singh were held guilty for an offence punishable under Section 302 of the IPC and they individually were sentenced to undergo imprisonment for life.

4. Raj Neshwar Singh(P.W.9) gave his fardbeyan on 08.10.1982 at 9.30 A.M. at Sadar Hospital, Gopalganj in an injured condition alleging inter-alia that on the same day at about 7 A.M. while he was at his Darwaja and his son Rup Narain Singh(deceased) was at his house. At that very time his servant Gopichand(P.W.8) had gone to throw cow dung at the place fixed therefore north to his house. Hira Singh, Tribhuwan Singh, Ram Pujan Singh alias Khublal Singh, Basudeo Singh and Surendra Singh who were armed with deadly weapon and sitting in a hut adjacent east to that place forbade his servant Gopichand over which Gopichand disclosed that they are not allowing him to throw the cow dung over which he rushed towards the place. His son also came out from his house after hearing his utterance. When he reached at that place, he found aforesaid persons variously armed with farsa and bhala who pounced upon him as well as his son. Basudeo Singh gave lathi blow on account of which, he fell down. Till then Birendra Singh and Harinarain Singh also came and provoked the accused persons to kill. Thereafter, 3 Tribhuwan Singh caught hold Rup Narain Singh after throwing bhala and Ram Pujan Singh @ Khublal Singh gave farsa blow. He, to save tried to get up over which Surendra Singh assaulted with the back portion of bhala on account of which, he again fell down. Hira Singh gave repeated farsa blow over Rup Narain Singh which Rup Narain Singh tried unsuccessfully to catch hold of. Ram Pujan Singh alias Khublal Singh again repeated farsa blow causing

injury over his left thigh and thereafter Rup Narain Singh fell down. Thereafter, Hira Singh and Ram Pujan Singh alias Khublal Singh gave blow repeatedly. On his alarm, Ram Babu Pandey rushed and tried to pacify who was also assaulted by Hira Singh and Ram Pujan Singh alias Khublal Singh by farsa. At that very time, Balkishore Singh, Bhikhan Chaudhary and his son Om Prakash Chaudhary along with Chandra Gokhula Singh including other co-villager who have assembled on hue and cry raised by them have witnessed the occurrence. The motive for the occurrence happens to be raising protest by the accused persons during course of putting cow dung.

5. On the basis of the aforesaid fardbeyan, Kuchaikote P.S. Case No.105 of 1982 was registered under Sections 147, 148, 149, 302, 324, 409 and 307 of the IPC and investigation was taken up. After concluding the same chargesheet was submitted and consequent thereupon, the case was committed to the court of 4 Sessions which ultimately concluded in conviction of the appellants, out of whom two happen to be dead while acquitting the others.

6. The defence case, as is evident from mode of cross-examination as well as from the statement recorded under Section 313 of the Cr.P.C. is of complete denial of occurrence. It has also been pleaded that manner as well as genesis of occurrence as disclosed by the prosecution happens to be completely false and frivolous and it has purposely been introduced in their safeguard from a counter case instituted by Ram Pujan Singh for the assault having over their person at the hands of prosecution party. On hue and cry, the villagers arrived who might have taken recourse of assault during course of saving the life and property of the appellant and in support thereof appellant had examined D.Ws. as well as also exhibited series of documents.

7. Altogether 17 witnesses have been examined on behalf of the prosecution, out of whom P.W.1 Chandrama Singh, P.W.2 Bhikham Choudhry, P.W.3 Om Prakash Chaudhary, P.W.4 Uday Narain Singh, P.W.5 Arman Singh, P.W.6 Kaulesh Sharma, P.W.7 Murari Shanker Kuer, P.W.8 Gopi Chand, P.W.9 Raj Neshwar Singh, P.W.10 Gopi Krishna Bihari Prasad, P.W.11 Havaldar Jagjeet Yadav, P.W.12 Baidyanath Pd. Srivastava, P.W.13 Dr. Indra Nand Jha, P.W.14 Baban

Prasad, P.W.15 Shashi Bhushan Dubey, P.W.16 5 Dinanath Mishra and P.W.17 Chandra Gokhul Prasad as well as had also exhibited, Ext-1 and 1/1 carbon copy of inquest report, Ext-2 fardbayan, Ext-3 forwarding note, Ext-4 and 4/1 requisition for examination of the injured, Ext-5 execution report, Ext-6 endorsement over fardbayan, Ext-7 formal FIR, Ext-8 seizure list, Ext-9 map, Ext-10 and 10/1 test map along with report, Ext-11 forwarding letter, Ext-12 and 12/1 postmortem report, Ext-13 ijury report, Ext-14 referral letter, Ext-15 x-ray report, Ext-16 rent receipt granted by Hathua Raj, Ext-17 rent receipt, Ext-18 report, Ext-19 endorsement over report, Ext-20 to 20/2 ordersheet, Ext-21 report of Forensic Science Laboratory, Ext-22 Complaint Case No.124 of 1983, Ext-23 map of Rampur Daud village as well as had also exhibited material Ext-I blood stand soil, II-Lungi, III-underwear, IV- shirt, V-gamcha and VI black thread. Side by side defence had also examined altogether four D.Ws. out of whom D.W.1 is Umashanker Singh, D.W.2 is Sudama Prasad, D.W.3 is Bindeshwasri Singh and D.W.4 is Kailash Saw. Defence had also exhibited A part six of C.D, B-fardbayan of Sessions Trial No.577 of 1984, C-formal FIR of Sessions Trial No.577 of 1984, D and D/2 injury report, E to E/4 rent receipt, F- receipt granted by Hathua Raj, G- sketch map along with report of Amin Bindeshwari Prasad, H- order of 144 proceeding, I- chargesheet of Tukpatti P.S.Case No.149 of 1981, J- Khatian of 6 Khata No.144 of village-Rampur Daud, Ext-K judgment of Cr.Appeal No.71 of 1987.

8. While assailing the judgment of conviction and sentence rendered by the trial court, it has been submitted that the learned trial court had committed inherent error while appreciating and judging the evidence adduced on behalf of the prosecution. It has further been argued that from the evidence available on the record, it is apparent that actually prosecution party were aggressors, they had assaulted the defence side and during course of rescue by the co-villagers they might have sustained injuries and for that the appellants are not at all accountable. It has further been submitted that the prosecution party had illegally advanced by raising false plea that the appellant forbidden them from throwing manure rather by such action the prosecution party illegally tried to encroach upon the land belonging to the accused persons. From objective finding of the I.O. recorded under para-6 of the case diary, it supports the plea of the defence.

9. It has also been submitted that from counter version, it is apparent that appellants have sustained injuries during course of commission of occurrence. The injury sustained by the defence appears to be grievous one and in the aforesaid background, non- explanation of the injuries sustained by appellant suggests that the prosecution has not come with clean hand and had suppressed the 7 manner as well as genesis of the occurrence.

10. It has further been submitted that taking into account objective finding of the I.O. recorded under para-6 of the case diary which happens to be Ext-A, it is apparent that the prosecution party, in the facts and circumstances of the case, were an aggressor and on account thereof there was no occasion for the learned Lower Court to convict the appellant in a manner as has been held so.

11. Then coming to oral evidence adduced on behalf of the prosecution, it has been submitted that presence of witness Balkishore Singh, Bhikhan Chaudhary and Om Prakash Choudhary at the house of informant to accompany him to Patna are just an imaginary story because of the fact that none of them succeeded to divulge the reasons for what purpose the informant was to be taken to Patna. Virtually, they were members of unlawful assembly who have participated during assault over the persons of appellants. With regard to remaining witnesses, it has been submitted that there happens to be much more flaw in their testimony coupled with presence of contradiction, embellishment as well as material development and on account thereof, their testimony are fit to be rejected. It has also been pleaded that neither the injury report nor the postmortem report supports the case of the prosecution and the inconsistency on that very score daubed the prosecution case

12. It has further been submitted that by series of document, the defence has advanced claim and substantiated the same relating to possession over the land which happens to be actual P.O. and in the aforesaid background, even if accepting prosecution case for a moment, it was not just and proper to the learned Trial Court to convict the appellant under Section 302 of the IPC. The learned trial court should have considered that there was bonafide land dispute and prima-facie documents relating to title and possession lean in favour of appellant and in the

aforesaid background, it happens to be a case whereunder there should have been finding attracting Section 304 of the IPC. So submitted that the finding recorded by the learned trial court is not at all justifiable and is fit to be set aside.

13. Refuting the argument raised on behalf of the appellant, it has been submitted on behalf of the learned Additional P.P. assisted by the learned counsel for informant that each and every aspects involving in this case have properly been explained and answered by the prosecution witnesses. The evidence of P.W.9, informant gave detail picturisation of the occurrence as well as had also disclosed the survey plot number of the P.O. having under his exclusive possession over which the defence was illegally claiming. The prosecution had also exhibited relevant documents with regard thereto. The objective finding of the I.O. regarding the place of occurrence is found to be in 9 favour of prosecution and not against the prosecution. Although para- 6 has been exhibited on behalf of the defence but that is not going to favour the defence because of the fact that I/O had found the P/O over the plot having in possession of prosecution and defence could not be able to stretch his evidence on this score.

14. It has further been submitted that all the material witnesses happens to be consistent and in conformity with each other on material aspect. Whatever embellishment or contradictions have been found that was natural one on account of their examination after long interval. More so, they are not going to dent upon the prosecution version.

15. Illegal claim of the party cannot be accepted as a legal right. The defence by way of exhibiting certain documents had simply tried to confuse the court in a way to seek benefit of doubt. None of the documents, so exhibited on their behalf speak regarding claim of the appellant over the land having in possession of the prosecution. It has also been submitted that prosecution is not duty bound to explain utopian ballad of the defence. In likewise manner prosecution happens to be not under obligation to explain the injuries, if any, contrary to it when the witnesses are found to be consistent, firm and creditworthy then in that event, the non explanation of the injuries sustained by the accused even during course of occurrence, 10 will not make any difference. Thus, the judgment of learned Lower

Court is found to be sound one, well reasoned dealing with each and every basic points while coming to its logical conclusion.

16. In order to appreciate the rival contention, proper scrutiny of the evidences adduced on behalf of respective parties is needed. From the evidence adduced on behalf of the prosecution, it is evident that Dr. R.B.Choudhary who had conducted postmortem over the dead body of Rambaboo Pandey is dead and said fact has been proved by P.W.11. By way of formal witness, P.W.14 the postmortem report relating to Rambaboo Pandey has been brought up on record. After taking into account the evidence of P.W.11 as well as P.W.14, the postmortem report relating to Rambaboo Pandey is found to be admissible in terms of Section 32 of the Evidence Act. The doctor had found following ante-mortem injury over the dead body of Rambaboo Pandey while conducting postmortem which are as follows:-

- 1) Stitched wound 7x1/2 (from front to behind) on the left side of head.
- 2) Stitched wound 1x1/2 on the front of right forearm. On dissection: left parietal and left part of occipital bone was bent and fractured. There was substantial haematoma on upper surface of the hemisphere. The injury no.1 was caused by sharp cutting heavy weapon. Injury no.2 was surgical wound (likely). Time passed since death was within 24 hours but more than 6 hours. Cause of death was head injury as mentioned above

17. Deceased Ram Baboo Pandey was taken to Gopalganj Hospital at first instance where he was attended by P.W.13, who referred him to PMCH hence no injury report was prepared by him although the injury report prepared by the I.O. Ext-4 contains following description:- 1. oozing injury over head and bandage.

2. bandage injury at right wrist.
3. injury over left palm.

18. P.W.13 Dr. Indra Nand Jha had conducted postmortem over the dead body of Roop Narain Singh and found following ante- mortem injuries.

1. Incised wound over the left thigh 4x13.

2. Incised wound over the left knee 2x1/2x1.

3. Traumatic amputation of left thumb at the proximal interglacial joint.

4. Incised wound on the left wrist 2x1/2x1/2.

5. Injuries lead to bleeding, shock and death caused by sharp weapon. Time within 12 hours.

19. So from the aforesaid exhibits, it is apparent that respective deceased died on account of ante-mortem injuries caused by sharp cutting weapon and there happens to be no controversy persisting to doubt over its veracity.

20. P.W.13 Dr. Indra Nand Jha had also examined Rajneshwar Singh and found following injuries over his person:- (i) Incised wound over left thigh 4x1x3 (ii) incised wound on left knee 2x1/2x1. (iii) traumatic amputation of left thumb at the level of 12 proximal inter pleatanlgeal joint. (iv) incised wound over left wrist 2x1/2x1/2 This kind of injury further fortifies having been caused by hard and blunt weapon.

21. Now the oral evidences have to be taken into consideration to see whether it support the medical evidence or not? P.W.1 had stated that on the alleged date and time of occurrence, while he was at the bathan, he rushed to the place of occurrence hearing alarm and on arrival he saw Rajneshwar Singh lying and Surendra Singh, Basudeo Singh, Hira Singh, Rampujan Singh, Bhuwan Singh assaulting. Basudeo Singh had assaulted Rajneshwar Singh with lathi and Surendra Singh with back portion of bhala. Roopnarayan Singh came out from his house and began to lift Rajeshwar Singh. Bhuwan Singh after throwing bhala, caught hold waist of Roopnarayan Singh. Bhuwan Singh is also known as Tribhuwan Singh. There was push and pull amongst them and reached near drain where Rampujan Singh and Hira Singh reached having armed with farsa. Rampujan Singh and Hira Singh gave repeated farsa blow cutting thumb as well as causing injury over thigh, hand, knee. Rambaboo @ Naresh came in rescue and forbade them. Then thereafter began to tie thigh of Roopnarayan Singh. Meanwhile, Rampoojan Singh gave farsa blow over his head causing injury 13

thereupon followed by assaulted with farsa by Hira Singh over his hand. Thereafter, so many villagers arrived there on account of which, accused persons fled away. All the injured were taken to Gopalganj hospital over tyre. During midst of way, they found tempo over which all the injured were sent to hospital along with other co-villager. He returned back with tyre. Subsequently, he came to know regarding death of Roopnarayan Singh in midst of way. After two or three days, he came to know that Rambaboo Pandey, died at P.M.C.H. He identified all the accused persons. During cross-examination, he had admitted his status as an accused in counter case. He had also admitted that he had drawn a case against Surendra Singh, Tribhuwan Singh, Manager Singh and Kameshwar Singh. He had also admitted that a proceeding under Section 107 Cr.P.C. was initiated on a police report wherein he happens to be the first party and Surendra Singh and Tribhuwan Singh etc. were the Opposite Party. He had also admitted that he had filed one criminal case before the occurrence against Basudeo Singh, Tribhuwan Singh and Rampoojan Singh. He had also admitted presence of one case launched by Kameshwar Singh against him but he did not accept status of Rampoojan Singh as a witness against him. He had further admitted that he had instituted a criminal case against Kameshwar Singh and Sadhu. He had further denied that in one case a notice under Section 211 of the IPC was 14 served upon him. He has further admitted that a proceeding under Section 145 of the Cr.P.C. was going on since before the occurrence in between Surendra Singh and Arman Singh wherein he has deposed in favour of Arman Singh after the occurrence. In para-13, there happens to be contradiction regarding status of accused Tribhuwan Singh and Rampujan Singh. There is also contradiction over Surendra Singh had assaulted Rajneshwar Singh with the back portion of bhala. There is also contradiction over disclosure of the parts of body whereupon Roopnarayan and Rambaboo were assaulted. In para-15 he had stated that his bathan lies 20 to 25 steps west to the place of occurrence. He had further stated that after reaching at the place of occurrence, he stayed at 5 to 7 steps west to the place where manure was being kept. He stayed there for half an hour. During said course he had not seen any injury over the person of accused. In para-16, he had stated that when he arrived at the place of occurrence, he found Rajneshwar Singh lying and assault was going on. At that very time, none of his family members or servant

was present. They came thereafter. Roopnarayan came where Rajneshwar was lying. Rajneshwar Singh was assaulted near drain lying 15 steps north to the place where Rajneshwar was lying. Rajneshwar Singh did not become unconscious. Roopnarayan was assaulted even after his fall. Two farsa blows were given by two accused persons causing injury over knee as well as left hand. Other accused persons were not there. Then, thereafter the injured were lifted to their house. Rambaboo had tied lungi over injury of Roopnarayan near drain. Then, thereafter, Roopnarayan was not assaulted rather Rambaboo was assaulted while he was tying lungi around the wound of Roopnarayan. Rambaboo fell down by the side of Roopnarayan. The accused who had assaulted Roopnarayan had also assaulted Rambaboo. Then, thereafter he had given the topography of P.O. The house of Rajneshwar is tiled roof having eastern front. Road lies north to the house. House of Basudeo Singh lies north to this road at a distance of 20 to 25 steps and the land lying in between belongs to Rajneshwar Singh over which the manure was being kept having an area of 5 or 6 dhurs. At the time of occurrence, approximately an area of 5 or 6 steps manure were accumulated. Darwaja of Basudeo lies west to the house of Roopnarayan Singh. Two or three steps away from this place happens to be hut.

22. P.W.2 is Bhikham Chaudhary, a resident of different village who had stated that he had gone to call Rajneshwar Baboo (Faram Baboo). He had gone there to accompany Faram Baboo to Patna for filing an appeal of his relative. Faram Baboo has said that after tea they will proceed. At the relevant time all of them were sipping tea. Gopichand shouted and said that they are allowing to throw cow dung. Faram Baboo asking that who is preventing proceed. Basudeo Singh gave lathi blow over his head. Roop Narayan had also gone with Faram Baboo whereupon Bhuwan Singh caught hold his waist after throwing bhala having in his hand and thereafter, Hira Singh gave farsa blow causing injury over his finger. Rampujan Singh gave farsa blow over his thigh. Roopnarayan Singh became injured. Rambaboo Pandey came and began to tie the wound of Roopnarayan by his lungi. During course of which Rampoojan Singh @ Khublal Singh gave farsa blow over his head followed by another farsa blow by Hira Singh. His son Om Prakash who had also come to see him was present there and had seen the occurrence. Hearing the sound of alarm 20 to 25 villagers arrived on account of

which the accused persons fled away. Thereafter from the tyre gari of Rambaboo Singh all the three injured were taken to Gopalganj hospital. During midst of way, the injured were shifted on tempo. Roopnarayan died in midst of way. The doctors of Gopalganj hospital had directed to take away Rambaboo to Patna. He returned back from Gopalganj hospital. After two or three days, he came to know regarding death of Rambaboo.

23. During course of cross-examination, he had admitted that his house lies at a distance of one mile. He had also admitted that he happens to be accused in counter case. He shown his ignorance regarding custody of deceased Rambaboo Pandey in a dacoity case. 17 He had denied the suggestion that he was called upon by Rajneshwar Singh along with others to forcibly dispossess the accused persons from the land. He had also denied the suggestion that during course thereof, they had assaulted the accused persons. He had also denied the suggestion that villagers have assaulted all the three injured. In para-11, he had said that the name of his relative happens to be Maharaj Choudhary on whose behalf appeal was to be filed but he cannot be said whether it was criminal appeal or civil appeal. Maharaj Choudhary had come to his place. However, he did not come to the place of Rajneshwar Singh. In para-12 he had said that he along with his son and Rajneshwar Baboo were taking tea while Gopichand has raised hue and cry. At that very time, Roopnarayan was inside his house. In para-13, he had stated that after hearing hue and cry of Gopichand, Faram Baboo had gone there. He along with his son Om Prakash remained at his Darwaja. Hue and cry was coming from northern western corner again corrected northern eastern corner of house of Rajneshwar Singh. The place was about 20 to 25 steps away from Darwaja of Rajneshwar Singh which was visible from the Darwaja. Gopichand was standing near heap of manure. There was no hut in between Darwaja and heap of manure. One hut is at the Darwaja of Faram Baboo. Again he disclosed that there was presence of hut in between Darwaja and heap of manure. He was on the road 18 lying north to the house of Faram Baboo. When he reached at the place of occurrence, at that very time Karak Baboo, Roopnarayan and Gopichand were near the heap of manure which was lying ten steps west to the house of Basudeo Singh. He stayed there for half an hour. All the accused persons reached near heap of manure. Roopnarayan was assaulted north to the heap of manure.

Rajneshwar Singh near the heap of manure. Roopnarayan and Rambaboo were assaulted near drain. He had seen the whole occurrence. He had further stated that the house of Basudeo and Sukhlal Singh lie five to six steps east to the place of Roop Narayan and Rambaboo was assaulted. He had further stated that Rajneshwar Singh fell down after sustaining injury. He became unconscious. There was no repetition of blow while he was lying. Roop Narain arrived there. While assault over person of Rajneshwar Singh was going on. Rambaboo Singh was not present. Roopnarayan Singh was caught hold by Bhuwan Singh at that very place. Bhuwan Singh caught hold waist of Roop Narayan Singh. Then thereafter, push and pull began. Bhuwan Singh was forcibly trying to pull Roop Narayan Singh and during course thereof, Roop Narayan Singh was assaulted by two persons. He had seen four injures over his person i.e., at left thumb, left thigh, left knee and left hand. When Rambaboo come all the accused persons were present there. While Rambaboo was tying lungi around the wound of Roop Narayan Singh 19 he was assaulted. He had sustained injuries over his head as well as his right hand.

24. P.W.3 is son of P.W.2. He had stated that on the relevant day and time, he had gone to call his father. While he was present at the Darwaja of Rajneshwar Singh, he saw Gopichand going to throw manure. Then, thereafter Gopichand had shouted Malik- Malik over which Rajneshwar Singh went towards that place. He along with his father followed him and stood at the road. He saw Basudeo Singh and Suresh @ Surendra Singh assaulting Rajneshwar Singh over which Rajneshwar Singh shouted. Basudeo Singh assaulted with lathi while Surendra Singh was assaulting with back portion of bhala. Roop Narayan Singh rushed. Hira Singh corrected as Bhuwan Singh caught hold Roop Narayan Singh after throwing bhala with which he was armed push and pull began amongst them and during course thereof, Roop Narayan Singh was taken near the drain. Hira Singh gave farsa blow on account of which left thumb of Roop Narayan Singh cut away. Thereafter, Ram Pujan Singh gave farsa blow over thigh of Roop Narayan Singh. Hira Singh again gave farsa blow over his left hand. Ram Poojan Singh again gave farsa blow over knee on account of which Roop Narayan Singh fell down. Rambaboo came running and then thereafter began to tie the thigh of Roop Narayan Singh by his lungi. During said course, Ram Poojan Singh 20 gave farsa

blow over head of Ram Baboo Pandey on account of which Ram Baboo Pandey fell down. Hira Singh gave farsa blow over left hand of Ram Bababoo Pandey. Then thereafter accused persons fled away. Villagers took Roop Narayan Singh, Ram Baboo and Rajneshwar Singh to Gopalganj hospital over tyre gari and during midst thereof they were shifted over tempo. He returned there from. Subsequently, he came to know regarding death of Roop Narayan Singh as well as Ram Baboo Pandey who was shifted to Patna. He had identified the accused.

25. During cross-examination, he has stated that he had gone to the place of Rajneshwar Singh for the first time on the alleged date of occurrence. When he reached at the Darwaja of Rajneshwar Singh, at that very time only his father along with Raj Neshwar Singh was present. In para-6, he had stated that they were on visiting term. In paras-7 and 8, there happens to be contradiction. In para-9, he had stated that just after five minutes of his arrival at the Darwaja of Raj Neshwar Singh, there was hue and cry. At that very time, he had seen three persons but again said that he is not remembering how many persons were there. He had further stated that he had seen the accused persons at the place of occurrence. Then, had stated that when he reached there, he had seen all the injured. They were standing and he had seen blood coming out from there wound in standing condition. 21 He had seen blood coming out from the head of Rambaboo Pandey, from the thumb, thigh, left elbow of Roop Narayan and from teeth of Rajneshwar Singh. He had further seen his hand was fractured. Then in para-10 had said that at the time of occurrence, villagers were present but again corrected it that none was present. Then at paras-11 and 12, he had given the topography. In para-16, he had narrated that he had not seen injury over the person of accused. He had denied the suggestion that he along with his father Rambaboo Pandey and Chandrama were laithath and were called upon by Rajneshwar Singh for possessing the accused persons as well as for assault. He further denied the suggestion that they have assaulted the accused. He further admitted that the another son of Rajneshwar Singh, Tej Narayan a Daroga who was present in court.

26. P.W.4 who is another son of informant had stated that on the alleged date and time of occurrence, he was sitting over plinth in front of his Darwaja. He had

procured the land in front of his house from Radheshyam Barai and the land happens to be under peaceful possession. 5-6 steps north east to his house, is the place where manure is being kept which happens to be under their possession. At the time of occurrence his servant Gopichand had gone to throw cow- dung which was resisted by Ram Poojan Singh, Tribhuwan Singh and Hira Singh. Ram Poojan Singh alias name is Khoob Lal Singh. On 22 account thereof, Gopichand called his father Raj Neshwar Singh. Basudeo Singh and Surendra Singh who were standing since before, began to assault his father. Basudeo Singh assaulted his father with fist and slaps and Surendra Singh assaulted his father with back portion of bhala and on account thereof, his father sustained fracture of left hand. His brother Roop Narayan Singh gone there. Tribhuwan Singh caught hold waist of his brother and thereafter Hira Singh and Khoob Lal Singh assaulted with farsa. Hira Singh assaulted with farsa causing injury over left thumb. Khoob Lal Singh gave farsa blow over left thigh of Roop Narayan Singh. Hira and Khoob Lal Singh again repeated farsa blow over Roop Narayan over which his brother fell down. Naresh @ Rambaboo Pandey came in his rescue and began to tie thigh of Roop Narayan by means of lungi. At that very time, Khoob Lal gave farsa blow over head of Ram Baboo Pandey. Ram Baboo Pandey fell down. Chandrama Singh, Bhikham Chaudhary, Om Prakash, Balkishore Singh have witnessed the occurrence. Then, thereafter they took Raj Neshwar Singh, Roop Narayan and Rambaboo to Gopalganj hospital on tyre and during midst of way they took tempo. He returned there from. Roop Narayan Singh died in midst of way while Ram Baboo died at P.M.C.H. Roop Narayan Singh was empty hand at the time of occurrence. He had identified the accused persons

27. During cross-examination, he had stated that plinth of house lies 15 steps away from his house. Darwaja was visible from that place. His father along with Bhikham Chaudhary and Om Prakash were sitting at his Darwaja while his brother Roop Narayan was inside the house. In para-6, he had stated that the occurrence took place 5-7 steps north to Darwaja. In para-7, he had stated that when he reached at the place of occurrence, he had found only Rajneshwar Singh. He further disclosed that he was at the road. He had not gone to place of occurrence. This road lies five steps north to his Darwaja. Again corrected it stating that at a distance of one step. He remained there for 5-7 minutes. Bhikham Chaudhary and

Om Prakash came near the place of occurrence and were standing west to the place of occurrence at the distance of 15 steps. Balkishore Singh and Chandrama Singh have arrived during course of occurrence. In para-8, he had stated that when he saw his father, his father had already sustained injury. When he reached at the place where he was standing, till then his father had fallen down. He found Roop Narayan Singh was present there. Paragraph-9 and 10 is the contradiction. Para-11 is the suggestion that he had not seen assault over his father. In para-12 and 13 there happens to be cross-examination with regard to land. In para-14, he had stated that there was neither 144 Cr.P.C. proceeding or 107 Cr.P.C. proceeding in between Basudeo Singh and his family since 24 before the occurrence relating to Radheshyams land. In para-15, he had stated that there was no dispute with the family of Basudeo Singh since before the occurrence. In para-17, he has stated that the place where manure was being kept was over the Radheshyams land covering an area of 2-3 dhurs at the southern side of the land. Roop Narayan and Rambaboo have were assaulted north west corner of this place at the distance of ten steps. In para-19, he had stated that Roop Narayan was apprehended by Tribhuwan Singh near that place and then was dragged near the drain. He was not assaulted up till dragging up to drain. At that very time, Rajneshwar Singh was lying west to that place. At that very time, Roop Narayan Singh was not armed with gun. In para-21 had stated that Tribhuwan Singh had caught hold Roop Narayan Singh after throwing lathi which he was carrying. There was push and pull amongst the Roop Narain and Tribhuwan, Khoob Lal and Hira Singh came. Basudeo Singh and Surendra Singh were standing near the place where manure was kept. He had not seen any injury over person of accused. In para-23, he had not stated that he had heard sound of firing. In para-24, he had stated that drain passes through over Gairmazura land but its flank also extend over the land which they have taken in exchange from Radheshyam. He had further stated that during course of push and pull, Roop Narayan fell down in drain. Further, he had stated that place where Roop 25 Narayan had fallen, he was assaulted. Roop Narayan had sustained injury in lying condition. He sustained four blows at that very time. He was conscious. Then, he disclosed the location of the injury. Then he said that after sustaining of all the injuries Rambaboo Pandey came and began to tie the injury with his lungi and during course thereof

Rambaboo Pandey was assaulted on account of which he fell down. He is not remembering the exact location of head where blow was given. Then, had said that at para-25 that during course of receiving the injury his cloth had also stained with blood. He is unable to say whether copious blood had fallen at the place of occurrence. In para- 26, he had stated that after this occurrence, he had gone to jail but he is not remembering the case then had denied the suggestion that they had after forming an unlawful assembly assaulted the accused persons with an intention to dispossess them from the land.

28. P.W.5 had stated that on the alleged date and time of occurrence while he was going to throw compost in his field and reached at Khalian of the village, he found Basudeo Singh, Surendra Singh assaulting Rajneshwar Singh with lathi and bhala(back portion of bhala) respectively. After fracture of hand Rajneshwar Singh raised alarm over which Roopnarayan Singh came from his house. As soon as Roopnarayan Singh arrived there, Bhuwan Singh @ Tribhuwan Singh meddled with him who at that very time was armed with bhala. 26 Roopnarayan Singh, Hira Singh who were armed with farsa began to assault. Hira Singh gave farsa blow on account of which his finger as well as hand of Roopnarayan Singh was cut. Ram Poojan Singh gave farsa blow on account of which his left thigh and knee was cut. Roopnarayan Singh fell down. Rambaboo Singh came and began to tie thigh of Roopnarayan Singh by his lungi. At that very moment Rampoojan Singh @ Khooblal Singh gave farsa blow over head of Rambaboo and thereafter Hira Singh gave farsa blow over his hand. On hue and cry, the accused persons managed to escape. Thereafter, all the injured were taken to Gopalganj hospital. The motive for occurrence has been suggested as the accused persons had forbidden the servant of Rajneshwar Singh from throwing manure at the place over which Rajneshwar Singh had gone there and the assault was made. During cross-examination, he had denied the suggestion that he happens to be the family members of the prosecution party as well as he is inimical but subsequently he admitted that he had deposed against accused Bhuwan Singh as well as there was 145 Cr.P.C. proceeding going on since before the occurrence with Surendra Singh. At para-3 of his cross-examination, he had disclosed the place of occurrence to be adjacent north to the house of Rajaram Singh which happens to be adjacent north to his house. He had further stated that he was carrying

compost in a bucket over head. Five or seven persons 27 were present at Khalian since before such as Bhikhan Chaudhary, Nawal Kishore, Gopichand and Omprakash. He had not seen injury over person of accused. In para-5, he had stated that he stayed at the place of occurrence for 15 minutes. He had not seen assault over Rambaboo in standing position. Rambaboo was assaulted in lying condition at his head as well as over his right hand. Ram Poojan Singh had inflicted over his head while Hira Singh at his hand. In para-6, he had stated that Roop Narayan Singh was assaulted in standing position during course of which, he had sustained injury over his finger as well as over his hand which was assaulted by Hira Singh. In lying condition, he was assaulted by Ram Poojan Singh causing injury over left thigh as well as below the left knee. In para-7, he has stated that Rajneshwar Singh was assaulted during standing condition. He sustained injury over his mouth as well as left hand. He was not assaulted after falling. Basudeo Singh assaulted with lathi over his face while Surendra Singh had assaulted with back of bhala over his left hand. Rajneshwar Singh lying 5-7 steps south to the place where Rambaboo was lying. Roopnarayan Singh fell down 5-7 steps north from the place where Rajneshwar was lying. Roop Narayan Singh was lying 1-1/2 hand north to Rambaboo. In his presence, all the three injured were lifted to Darwaja and then were taken to hospital. He had not seen Harinarayan Singh and Birendra Singh at the place of 28 occurrence but he had seen at the Darwaja of Rajneshwar Singh. Para-10 happens to be the contradiction.

29. P.W.8 happens to be Gopichand, the servant of Rajneshwar Singh. He had stated that he happens to be under employment of Rajneshwar Singh since his childhood. On the alleged date and time of occurrence, he was going to throw cow dung. Tribhuwan Singh caught hold to him and directed to call his master over which he called Rajneshwar Singh. When he came, Basudeo Singh assaulted him with lathi and Surendra Singh with back of the bhala. He became astonished. Roop Narayan Singh came. At that very time, Hira Singh and Ram Poojan Singh were in a hut. Tribhuwan Singh left him and caught hold Roop Narayan Singh on account of which there was push and pull and during said course, they came at the edge of drain where Hira Singh and Ram Poojan Singh, after coming out from hut began to inflict farsa blow over Roop Narayan Singh. During course thereof Roop Narayan Singh sustained injury over his left thumb from farsa blow given by

Hira Singh. Ram Poojan Singh gave farsa blow over left thigh. Then Hira Singh again inflicted farsa blow causing injury over thigh. During midst thereof, Rambaboo Pandey came and began to tie thigh of Roop Narayan Singh with his lungi, at that very time Hira Singh gave farsa blow over his head while Ram Poojan Singh gave farsa blow over right elbow. Then, 29 thereafter accused persons fled away. Thereafter, all the injured were taken to Gopalganj hospital during course of which Roop Narayan Singh died. Rambaboo Singh died at Patna.

30. During cross-examination, he had admitted that he happens to be the accused in counter case. In para-3 of the cross- examination, he had shown his ignorance to the fact that both the parties were on inimical term since before the occurrence. He had further stated that he is unaware with the fact that occurrence of Marpit had taken east to the house of Arman Singh. He had further stated that he had not seen the occurrence regarding which he is deposing. In para-6, he had stated that when Daroga Jee had come to the place of occurrence, at that very time Tejnarayan Baboo had gone to perform funeral of late Roop Narayan Singh.

31. P.W.9 happens to be the informant. He had stated that on the alleged date and time of occurrence, he was at his Darwaja while his son Roop Narayan Singh was inside house. At that very time Gopichand had gone to throw manure at the fixed place. Basudeo Singh, Hira Singh, Bhuwan Singh @ Tripurari Singh, Rooplal Singh @ Ram Poojan Singh and Surendra Singh had prevented Gopichand from keeping manure. On his alarm, he rushed and asked for, who is preventing. No sooner than Basudeo Singh gave lathi blow over his head, on his alarm, Roop Narayan Singh came out from his house and 30 tried to lift him. During said course, Bhuwan Singh caught hold his son Roop Narayan Singh and indulged in push and pull and had gone near drain west to the heap of manure where Hira Singh and Ram Poojan Singh began to inflict farsa blow over Roop Narayan Singh. On account of blow given by Hira Singh finger of left palm was cut followed by assault by Ram Poojan Singh over thigh. Again Hira inflicted farsa blow over left hand followed by Ram Poojan Singh near left knee. During midst thereof, Ram Baboo Pandey arrived and began to tie the thigh of Roop Narayan Singh. At that very moment Ram Poojan Singh gave farsa blow over his head and Hira Singh farsa blow over his hand. He tried to get up over which Surendra Singh assaulted

himself with back of bhala over his left hand causing fracture. Basudeo Singh gave lathi blow over his face as a result of which his teeth was broken. Then, thereafter the accused persons left the place of occurrence. Bhikhan, Balkishore, Aarman, Chandrama, Om Prakash and other villagers arrived and got them rescued. They were taken to Gopalganj hospital, during midst thereof, Roop Narayan died. Rambaboo was forwarded to Patna where he died. He had given his fardbeyan at Gopalganj hospital. He had further asserted that he has got peaceful physical possession for the last 20 years over Gairmazura land measuring an area 15 katha over which his house, Darwaja and the heap of manure was lying. During cross- 31 examination, he had admitted that he happens to be an accused in counter case. He had also admitted that one case was also going on amongst the parties before the occurrence. He had further shown his ignorance that a criminal case was launched against him by Raja Ram Singh in the year 1944. He had further admitted that he was accused of a murder case in the year 1945. He had further admitted that he had instituted dacoity case against his Pattidar Nawab Singh wherein he was acquitted but he denied that Basudeo Singh had deposed in favour of Nawab Singh. He had admitted that a criminal case was instituted against Shatrughan Singh which ended in compromise but Basudeo Singh was not an accused in that case. He had instituted one civil suit against Tilakdhari Singh in the year 1973. He had filed criminal case against Shiv Pujan Singh and others for cutting maize crop which is continuing. He had further admitted that in 1978 Ram Ratan Koieri had instituted a case against him which was dismissed. He had further submitted that he had instituted a case against Dharmveer Singh which was also compromised. In likewise manner, there happens to be disclosure with regard to other cases. He had denied the allegation that he happens to be a shrewd litigant. He had further denied that Gopichand was not his servant rather he was Khansama of his son Tejnarayan Singh, Daroga. He had further stated that his residential house lies over plot no.(717) Plot no.725 lies north to 717. He had 32 denied the suggestion that 725 lies west to 717. Then he disclosed that Gairmazarua land lies adjacent west to his residential house. He has got peaceful possession over 15 katha thereof for the last 25-30 years. Then he had disclosed that for the present there happens to be no building over 717 rather he has just given plinth. He had further stated that he has got possession extending 8-9 laggi

west from the ridge of 717 extending to 20 laggi in length. He had stated that plot no.725 has been recorded in survey as a Gairmazarua Malik. He has further stated that the land belongs to Hathuaraj. He has got possession extending 15 katha only. He further stated that his father was knowing, how the land was settled in his favour. At the time of occurrence, at two different places, the manure was being kept at a difference of 20 to 25 steps. The heap of dung for which occurrence had taken place was lying 5-7 laggi from northern flank of survey plot no.717. He had further stated that survey plot no.723 belongs to accused. The Sahan of house of accused happens to be west to their house while the south sahan lying to their house happens to be in his possession. Survey plot number 724 lies west to the house of accused Basudeo Singh having remark as Mangaru Barhi during revisional survey having total area of 1 katha 18 dhurs. He had further denied that this plot was sold away by Mangru on 04.01.1928 in favour of Bhangi Singh(F/O Basudeo). Mangru had one son Bholu who had 33 only one daughter Khisiya. He denied that Mangru died issueless. Khisiya had sold away this plot in favour of Radheshyam and Ramchandra Barai. He had purchased half portion from Radheshyam from eastern side. In para-8, he had disclosed that some portion of Khesara No.725 lies south to plot no.724. He had denied the suggestion that Basudeo Singh had taken settlement of an area of 1 katha 17 dhurs from Khesara No.725. He further denied payment of rent as well as filing of return by Hathua Raj during vesting. In para-9, he denied the fact that 1 katha 18 dhurs of survey plot no.724 and 1 katha 17 dhurs of survey plot no.725 happens to be in one block at the spot. He had further denied that, the police had not gone over the land before occurrence. No proceeding under Section 144 Cr.P.C. was ever drawn amongst them with regard to aforesaid land. He had also denied that after the occurrence a proceeding under Section 144 Cr.P.C. was initiated bearing case no.14/83. He had denied that he had appeared in that proceeding and lost. In para-10, he had admitted that they were not assaulted over survey plot no.724. He had denied that he had made statement before the police that they have sustained injury over survey plot no.724. Again said yes. His manure heap was survey plot no.724 for which an occurrence took place. Again he said that the occurrence took place over 15 katha land and not over survey plot no.724. In para-12 of his cross-examination, he had narrated that 34 he had not mentioned in the fardbeyan or

had stated in his further statement that he along with his son Roopnarayan Singh had gone to place of occurrence. Accused persons were present in a Palani duly armed which lies 7 to 8 steps north to the place where he sustained injury. That hut was belonging to the accused persons and was constructed about 5-6 years ago. When he reached there, at that very time, save and except Basudeo Singh rest accused were sitting in the aforesaid hut. He had stated that he had made Birendra Singh and Harinarayan Singh also an accused in the fardbeyan but as the Govt. P.P. has not asked about them therefore he has not named them. Both of them were involved during course of occurrence. Then had stated that he was on litigating term with them before the occurrence and till today, the litigation is going on. In para-12, he had stated that licensee gun stood in the name of his son Tejnarayana Singh who was not present at the house on the alleged date of occurrence. In para-13, he had stated that Gopichand had witnessed the occurrence from the same place. All the three injured were assaulted within 2-3 minutes. He had not sound of firing. He had not heard seen any of the accused having injured with gun shot. He had not seen accused Hira Singh firing. Then there happens to be contradiction. In para-14, he had denied the fact that Rambaboo was a dacoit and was under custody in connection with Turturi Jadua P.S.Case No.149 of 1981 under 35 Sections 302, 411 and 457 of the IPC. He had denied that his son deceased Roopnarayan Singh was one of his bailors. In para-15, he had stated that after arrival of Roop Narayan Singh, Bhuwan Singh caught hold after throwing the bhala having in his hand towards his house. At that very time, he was being assaulted. While Roop Narayan Singh had arrived, he was lying and as soon as he began to lift him, he was caught hold. Roopnarayan Singh was not assaulted at the place where Bhuwan Singh had caught hold him. Roopnarayan Singh was assaulted near drain. They have gone there during course of push and pull. During midst thereof, Roopnarayan Singh was not assaulted. Before assault over Roopnarayan Singh, 20 to 25 villagers have arrived and were present in an orchard lying north thereof including the witnesses. Again he corrected that they were standing south to the drain. In para-16, he had stated that Basudeo Singh and Surendra Singh have cordoned him during the occurrence. Roopnarayan Singh, sit down after sustaining first injury. At that very time, Bhuwan Singh was in between both thigh of Roopnarayan Singh.

Roopnarayan Singh had sustained injury on account of warding of blow given by Hira Singh in standing position. Thereafter, second blow was given over Roopnarayan Singh. At that very time Rambaboo was not present. He came after falling of Roop Narain. After second injury over his thigh, Roop Narain fell down and then 36 thereafter two more stroke was given over him. After having assault over Roopnarayan Singh, Rambaboo had arrived who was also assaulted by the accused persons. He had further stated in para-18 that the persons who have assaulted Roop Narayan Singh, assaulted Rambaboo. Rambaboo had sustained all the injuries while he was bended position. He was also given two stroke. He had further stated that all the three injured were taken to Gopalganj hospital. He had further admitted that accused Hira Singh, Ram Poojan Singh, Bhuwan Singh were also admitted in that hospital. He had further admitted that they were under police custody. He had denied the suggestion that his son Tejnarayan Singh had assaulted them in the hospital with the butt of rifle after taking it from the police personnel. He had denied the suggestion that no occurrence had taken place. He has also denied the fact that accused persons are not responsible for causing murder of Rambaboo Pnadey as well as his son. He had denied the suggestion that for the purpose of dispossessing the accused persons they borrowed the anti-social elements and during course thereof, deceased had fired from gun causing injury to the accused persons. He had further denied the fact that during said course Birendra Singh, Harinarayan Singh along with other villagers have chased. He had further denied the fact that Superintendent of Police, Gopalganj had seized the gun on the same day

32. P.W.12 is the Investigating Officer. He had stated that he had received fardbeyan of Rajneshwar Singh from Gopalganj P.S. on 08.10.1982 on the basis of which, a case was registered and investigation was taken up by him. He had gone to the place of occurrence and as pointed out by Gopichand he had inspected the place of occurrence which happens to be the barren land lying north to the house of the informant. Having boundary east house of Basudeo Singh, south house of Rajneshwar Singh, north cattle shed of Rajneshwar Singh and west Kuwar Singh. Water logging was at the northern side of plot, east of cattle shed. A drain has come out from that field which gone towards southern side and then had gone towards eastern direction. The place where drain had bend, there

was cement pipe. One village road was parallel to the aforesaid drain going towards eastern side passing through the aforesaid barren land. House of Rajneshwar Singh having eastern front. 30 hands thereof there was heap of manure. 40 hands away from the house of Rajneshwar Singh at northern side, the drain was having water up to knee. He had found trail of blood from this drain to the house of the informant. He had found copious blood over grass near drain. He had also found back portion of bhala. He had seized the same in presence of Barister Singh and Babulal Chaubey(Ext-8). He had found one hut at the Darwaja of Raneshwar Singh and 15 hands north thereof, he 38 had found heap of cow dung. The hut was east to the main house. He had found one hut at the back of Basudeo Singhs house. Bathan of Basudeo Singh was found 135 steps east near the house of Birendra Singh. He had prepared sketch map of the P.O. Blood stained earth, lungi and other items were sent to the Forensic Science Laboratory by the learned Chief Judicial Magistrate, Gopalganj(exhibited). On 09.10.1982 he had gone to Gopalganj hospital where he recorded his further statement of informant. He had also taken statement of accused Hira Singh, Tribhuwan Singh, Khublal Singh who were admitted. Then he returned back to P.S where had taken statement of witnesses. He had also taken statement of Birendra Singh and Harinarayan Singh who were locked at P.S. Hazat. He again had gone to place of occurrence and recorded statement of other witnesses. He had received injury report of Rajneshwar Singh, postmortem report of both the deceased, inquest report and after completing investigation submitted chargesheet.

33. During cross-examination, he had disclosed that Gopichand had shown the place where he had gone to throw cow dung and that happens to be at the eastern southern corner of plot number 725 which lies one plot away from the house of Basudeo Singh at western side. He had not mentioned the distance. It was south to the hut of Basudeo Singh. He had found land lying at north south 39 ploughed but western side was not ploughed. He had found one hand pipe lying west to the house of Basudeo Singh and east to the hut. He had also disclosed under para-5 of his cross-examination that the place where Rajneshwar Singh was assaulted was shown to him. This place was north to the place where cow dung was stored and where the drain had moved towards eastern direction. He had found blood as well as back partition of bhala from there. That was at the western flank of the

drain and more or less Rambaboo Pandey and Roop Narayana Singh were also assaulted at that very place. The place of occurrence incorporated by him in the case diary has also been exhibited at the end of defence. In para-6 of cross-examination, he had stated that Rajneshwar Singh had shown him the documents. Then thereafter he exhibited counter case(fardbeyan). In para-7 of his cross-examination, he had disclosed that after completing investigation, he had also submitted chargesheet in the counter case bearing 106 of 1982 under Section 307 along with other allied Sections. The place of occurrence of both the cases happens to be the same. Then he had denied the suggestion that the sketch map happens to be wrong. He had also denied the suggestion that place of occurrence of counter case was shown at western side of survey plot no.723 and eastern side of survey plot no.725 lying south to the house of Basudeo Singh. Then had denied the suggestion that he had script the case diary in 40 collusion with Tejnarayan Singh Daroga. In para-8, he had mentioned the fact that during course of investigation of a counter case accused Surendra Singh had produced document on behalf of Basudeo Singh. In para-9, he had disclosed that after great insistence he succeeded in getting injury report of accused persons on 27.12.1982 from Dr. Indranand Jha. He had denied the aforesaid event was at the instance of Tejnarayan Singh Daroga. He had also disclosed that on 09.08.1982 licensee gun of Tejnarayan Singh along with cartridges were seized from the house of Rajneshwar Singh which was sent to Forensic Science Laboratory. Paragraphs-10, 11,12, 13, 14 and 15 are the contradiction of the witnesses which will be taken into consideration later on.

34. P.W.6 happens to be the police official who had prepared the inquest report of Rambabo Pandey at P.M.C.H. while P.W.7 happens to be the police official of Gopalganj P.S. who had recorded fardbeyan of Rajneshwar Singh at the hospital.

35. P.Ws.15, 16 and 17 are the witnesses who have exhibited the documents.

36. The defence had also examined D.W., out of whom D.W.1 is Umashanker Singh, D.W.2 is Sudama Singh, D.W.3 is Bindeshwar Singh and D.W.4 is Kailash Lal who have exhibited the rent receipt and other documents on behalf of the defence

37. From the evidence available on the record, the following factual points are emerging there from:- (a) From the evidence of informant(P.W.9) he had found accused Hira Singh, Rampoojan Singh and Bhuwan Singh admitted in the same hospital which the I.O. had also confirmed. (b) P.W.13, Dr. Indranand Jha, who had conducted postmortem over the dead body of Roopnarayan Singh on 08.10.1982 and who had examined injuries of Rajneshwar Singh as well as Ram Baboo Pandey had also examined Rampoojan Singh, Hira Singh and Bhuwan Singh and found following injuries on their person - Rampoojan Singh:- Multiple pellets injuries over left thigh. Injury was simple in nature caused by fire arm-Ext.D Hira Singh:- Multiple pellet injury over left elbow caused by fire arm. Nature of injury was simple. (D/1) Bhoowan Singh:- 1. Fracture of left forearm caused by hard and blunt substance. Injury was grievous in nature(Exhibited D/2) (c) The defence had exhibited fardbeyan of counter case bearing no.106 of 1982 through, P.W.12 but it is apparent from the mode of cross-examination that the place of occurrence of instant case has not been controverted by the defence nor the defence has been able to sack the evidence of P.W.12 on that score. More interestedly during course of cross-examination of P.W.12 under para-7, the 42 defence had tried to shift the place of occurrence which the I.O. had denied to be western flank of survey plot no.723 and eastern flank of survey plot no.725 lying south to the house of Basudeo Singh. No other evidence has been brought up on behalf of the defence in a way to substantiate the P.O. of counter case. Case diary of counter case was not called for, for that purpose to confront P.W.12, and this intentional act of defence has got some bearing. (d) P.W.9, the informant faced lengthy cross-examination at the end of the defence. The defence had given suggestion under para-22 of his cross-examination and from perusal of the same, it is apparent that defence had not suggested the place of occurrence of the counter case to be that of whatever been suggested to P.W.12 under para-7. (e) It is also apparent from the cross-examination of P.W.9 that he had fully substantiated the place of occurrence as found by the I.O. as is evidence from para-15 of his cross-examination. From the cross-examination of remaining witnesses, it is apparent that they have shown the place of occurrence as has been found by the I.O. Not only this, save and except some sort of contradiction, materially they are consistent over the manner of occurrence whereunder three

persons were injured out of whom Ram Baboo and Roop Narayan succumbed. 43

(f) The medical evidence regarding presence of ante- mortem injuries over dead body of Rambaboo as well as Roop Narain support the prosecution version regarding manner of occurrence. The allegation of assault of Informant Raj Neshwar is also found in similar fact. (g) By way of arraying an accused to the witnesses in counter case more or less the defence had admitted their presence at the P.O. (h) Some sort of development is found in the evidence of some of the witnesses but that is not found to be much value on account of their admitted presence at the P.O. However, on account of deficiencies in the evidence of Gopichand, makes it a callous. PW-4 was neither named in the Fardbeyan nor his conduct is found to be that of family member of deceased and so is found confounded. (i) P.W.12 the I.O. had admitted that gun of Tejnarayan Singh Daroga was seized from the house of Rajneshwar Singh in connection with counter case bearing no. 106 of 1982 but defence had not cross-examined the P.W.12 to the effect that whether Ballistic report was received or not, nor any effort has been taken up to exhibit the report, if any, to say that aforesaid gun was ever used. (j) P.W.12 while was being cross-examined by the accused persons nothing was suggested to him with regard to seizure 44 of blood stained earth from the place where the occurrence as per prosecution had taken place as well as back partition of bhala. Lungi etc nor it was suggested that aforesaid things were introduced in collusion with Tejnarayan Singh. (k) While cross-examining of P.W.12 the accused had not suggested that there was ample material available on the place of occurrence of counter case which was intentionally withheld by him during course of inspection of the place of occurrence of the counter case in collusion with Tej Narain Singh. (l) During course of statement recorded under Section 313 of the Cr.P.C. accused Ram Poojan Singh, Tribhuwan @ Bhuwan Singh and Hira Singh have stated and supported the version of the counter case and also tried to explain the injuries over injured & deceased to be caused by the villagers, who came in rescue. (m) During course of cross-examination of other P.Ws. it was never suggested, however during course of cross-examination of P.W.9, injured that they were assaulted by Birendra Mukhia, Hari Narain Singh along with others while trying to save life of accused persons nor it has been legally brought up on record.

38. Having the evidence of P.Ws. minutely observed, it is apparent that they have substantiated the prosecution case in substratum. From evidence of P.W.12, it is apparent that there 45 happens to be some sort of contradiction in the evidence of P.W.1(Chandrama Singh)under para-10, P.W.2(Bhikham Choudhary) under para-11, P.W.3(Om Prakash) under para-12, P.W.4(Uday Narayan Singh) under para-13, P.W.5(Arman Singh) under para-14.

39. In Subal Ghorai and Others v. State of West Bengal reported in (2013) 4 SCC 60.at paras, 38, 39, it has been held:-

38. In the cross-examination of PW-19 PI Ghosh - the investigating officer, certain omissions in the evidence of prosecution witnesses have been brought on record. Surprisingly, his attention was not drawn to the evidence of PW-1 Promila at all. The evidence of PW-19 PI Ghosh has not been happily recorded. In any case, the omissions are minor omissions pertaining to non-mentioning of weapons carried by the accused or not referring to the parts of the bodies of the deceased on which the assault was made. Some of the witnesses have omitted to mention the names of some of the accused. But, in our opinion, on the substratum of the prosecution story, there are no omissions or contradictions. While analyzing the evidence, we have kept in mind the manner in which several accused persons armed with weapons attacked the deceased. In an attack of this type, in the nature of things, there are bound to be some omissions or discrepancies in the evidence of witnesses. Experience shows that witnesses do exaggerate and this Court has taken note of such exaggeration made by the witnesses and held that on account of embellishments, evidence of witnesses need not be discarded if it is corroborated on material aspects by the other evidence on record. Therefore, the fact that some witnesses have not referred to certain accused in their police statements but have attributed role to them in the court, does not lead us to conclude, in the peculiar facts of this case, that the said witnesses are not credible witnesses. In this connection, we may usefully refer to Leela Ram on which reliance is placed by learned counsel for the 46 State. The following observations of this Court are material.

12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment sometimes there could even be a deliberate attempt to offer embellishment- and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same.

39. It is true that the prosecution has relied on the evidence of interested witnesses but, interested witness is not necessarily a bad witness. In fact, if the witness is related to the deceased, there is less chance of his leaving aside the real assailants. The evidence of interested witness has to be analyzed with care. But, once the court comes to the conclusion that it is truthful and in accord with the relevant circumstances on record, the court should not hesitate to accept it and record conviction on the basis thereof. In this case, all the eye- witnesses are consistent about the prosecution case as regards assault on the deceased and setting on fire of the houses of Dharas. We are, therefore, not inclined to reject their evidence on the ground that they are related to the deceased. As already noted, two of the eye-witnesses i.e. PW-12 Jamini and PW-13 Mandakini are injured witnesses, whose presence at the scene of offence cannot be doubted. They completely bear out the prosecution case.

40. In the case of Gurmail Singh v. State of Punjab & Another reported in (2013)4 SCC 22.the theme of injury over the 47 person of accused and its non-explanation by the prosecution has been taken into account and elaborately dealt with under relevant para as quoted below

44. The learned counsel for the appellants contended that Gurmail Singh, son of Bachan Singh had suffered serious injuries and the prosecution has not explained these. Although Gurmail Singh, son of Bachan Singh in his statement under Section 313 of the Criminal Procedure Code says that Gurdial Singh, Dial Singh and Kaka Singh attacked him with gandasas, the evidence on record does not

indicate that any of the victims were armed. On the contrary, the evidence indicates that Gurmail Singh, son of Bachan Singh received injuries at the hands of his co-accused in the darkness. In these circumstances, the prosecution's failure to explain the injuries on Gurmail Singh, son of Bachan Singh would not disprove the case of the prosecution, namely, that Gurdial Singh was killed and some of those with him had been seriously injured.

45. As long as the evidence on record is trustworthy (and it has been found to be so by both the courts below) the failure of the prosecution to explain the injuries on an accused person may not necessarily adversely impact on its case. In a recent decision *Mano Dutt v. State of U.P.* (2012) 4 SCC 79 (authored by one of us, Swatanter Kumar, J.) it was held as follows: (SCC p. 94, paras 38-40) 38. This Court has taken a consistent view that the normal rule is that whenever the accused sustains injury in the same occurrence in which the complainant suffered the injury, the prosecution should explain the injury upon the accused. But, it is not a rule without exception that if the prosecution fails to give explanation, the prosecution case must fail.

39. Before the non-explanation of the injuries on the person of the accused, by the prosecution witnesses, may be held to affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injuries on the person of the accused were also of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question.

40. Where the evidence is clear, cogent and creditworthy; and where the court can distinguish the truth from falsehood, the mere fact that the injuries on the person of the accused are not explained by the prosecution cannot, by itself, be the sole basis to reject the testimony of the prosecution witnesses and consequently, the whole case of the prosecution. Reference in this regard can be made to *Rajendra Singh v. State of Bihar*, (2000) 4 SCC 29. *Ram Sunder Yadav v. State of Bihar* (1998) 7 SCC 36. and *Vijayee Singh v. State of U.P.* (1990) 3 SCC 190

41. The gist happens to be when there happens to be consistent prosecution version adhered by credible, trustworthy witnesses then in that event, the non-

explanation of injury is not at all found to be adverse to the prosecution case. Moreover, from the evidence of P.W.13 as referred above Ram Poojan Singh had sustained multiple pellet injury over left thigh, simple in nature, Hira Singh had sustained multiple pellet injury over left elbow, simple in nature while Bhuwan Singh fracture of left forearm caused by lathi, grievous in nature and for that save and except counter version along with evidence of P.W.13 doctor, no D.W. has been examined at least to say about truthfulness of defence version.

42. From the evidence of the I.O., it is evident that some sort of deficiency is persisting such as the seized blood stained earth, the seized back portion of bhala, lungi which was sent to Forensic Laboratory for its examination did not collect report. Furthermore, the evidence regarding P.O. in terms of sketch map as well as instead of preparing sketch map in his own pen, got it prepared by the Amin. In 49 Babu & Another v. State Represented by Inspector of Police, Chennai reported in (2013)4 SCC 448.it has been taken into account and held:- 18. We also do not find any merit in the submission of learned counsel for the appellants that there was no evidence to show that at the residence of the deceased there was a telephone through which the wife of the deceased received the threat call from A-1 at 5.30 p.m. on 25-1-2004. PW 1 has stated that the wife of the deceased Vijayalakshmi had a mobile phone and A-1 had talked over the cellphone to Vijayalakshmi. Similarly, we do not find any merit in the submission of the learned counsel for the appellants that the prosecution case should not be believed as the knives (MO 1 to MO

5) which have been recovered had not been examined by the fingerprint experts to find out the real accused persons because in this case there is direct evidence of three eyewitnesses, PW 1.PW 2 and PW 3.to establish beyond reasonable doubt that the appellants had struck the deceased with knives. If a defect in the investigation does not create a reasonable doubt on the guilt of the accused, the court cannot discard the prosecution case on the ground that there was some defect in the investigation.

43. Giving a look at defence case, it has got no bearing because of the fact that even bringing and exhibiting series of document, they have not been able to shift

the P.O. as per own version relating to counter case. In spite of acknowledging that P.W.12 was the official who had conducted investigation of both the cases, the defence due to reason best known to it could not dare to bring case diary of counter case and got his P.O. established, and whatever been flashed before P.W.12 under para-7 has completely been negated by 50 the I.O. himself. Furthermore, sketch map has been placed on record has not been found demolished except by way of suggestion to P.W.12. Hence, whatever exhibits have been brought up on record on behalf of defence is found to be worthless in the background of own lapses on the part of accused. Furthermore, from the statement of accused under Section 313 Cr.P.C. it is apparent that they were very much cautious on this score, but subsequently, as their conduct show, retreated.

44. Under criminal jurisprudence accused is deemed to be innocent unless contrary is proved. That means to say, it is an obligation on the part of prosecution to prove its case beyond reasonable doubt. When it is found to be proved, then in that circumstance, accused has to also discharge its obligation by placing cogent material to show their innocence. In *Anand Mohan v. State of Bihar* reported in 2012 (3) PLJR SC 190.it has been held:-

38. We now come to the submission of Mr. Jethmalani that as A-1 was sitting in a Contessa car which was in the front of the procession and as the killing of the deceased took place in the middle of the procession, the evidence of the eye-witnesses should be discarded as not probable. The prosecution has been able to adduce evidence through its witnesses that at the time of shooting of the deceased, A-1 was at the spot and was exhorting Bhutkun Shukla to shoot at the deceased. If A-1 wanted the Court to believe that at the time of the incident he was in the Contessa car in the front of the procession and not at the spot, he should have taken this defence in his statement under Section 313 Cr.P.C. and also produced reliable evidence in support of this defence. Section 103 of the 51 Indian Evidence Act, 1872 provides that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. The prosecution by leading evidence through its several witnesses has established that A-1 was at the place of occurrence and had exhorted Bhutkun

Shukla to shoot at the deceased. If A-1 wanted the Court to reject this prosecution version as not probable, burden was on him to lead evidence that he was not at the spot and did not exhort Bhutkun Shukla to shoot at the deceased. Since he has not discharged this burden, the High Court was right in holding that A-1 was guilty of the offence under Section 302/109 IPC.

45. After going through the entire circumstances visualizing from the record as well as having minute observation, it is found and held that prosecution has succeeded in proving its case. Consequent thereupon, the finding recorded by the learned Lower Court is upheld. As a result thereof, appeal is dismissed. Appellant is on bail. His bail bond is cancelled. He is directed to surrender before the Lower Court to serve out sentences. (Aditya Kumar Trivedi, J) Shyam Kishore Sharma, J I agree Patna High Court, Dated 30 August, 2013, (Shyam Kishore Sharma, J) Brajesh Kumar/AFR

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