

**Naraln Bind and ors. Vs. State of Bihar**

**Naraln Bind and ors. Vs. State of Bihar**

**SooperKanoon Citation :** [sooperkanoon.com/119791](http://sooperkanoon.com/119791)

**Court :** Patna

**Decided On :** Sep-08-2006

**Judge :** Chandramauli Kumar Prasad and Rekha Kumari, JJ.

**Acts :** Arms Act - Sections 27; Indian Penal Code (IPC) - Sections 34, 147, 148, 149, 302 and 307

**Appeal No. :** Criminal Appeal (DB) No. 298 of 2001 and Criminal Appeal (DB) No. 399 of 2001

**Appellant :** Naraln Bind and ors.

**Respondent :** State of Bihar

**Advocate for Def. :** Lala Kailash Bihari, APP

**Advocate for Pet/Ap. :** Ravindra Nath Dubey, Adv.Ratan Kumar and Sunil Kumar Singh, Adv. for Informant No. 1

**Disposition :** Appeal dismissed

**Prior history :** Rekha Kumari, J. 1. These two appeals arise out of the same judgment and hence, have been heard together and they are being disposed of by this common judgment. 2. Both the appeals are directed against the judgment dated 4.6.2001 passed by Sri Uma Kant Srivastava, 7th Additional Sessions Judge, Saran at Chapra in Session Trial No. 140 of 2000 by which he has convicted the appellants and on 6.6.2001 sentenced them each to undergo

imprisonment for life for the offences under Sections 148, 302 an

## **Judgement :**

### **Rekha Kumari, J.**

1. These two appeals arise out of the same judgment and hence, have been heard together and they are being disposed of by this common judgment.

2. Both the appeals are directed against the judgment dated 4.6.2001 passed by Sri Uma Kant Srivastava, 7th Additional Sessions Judge, Saran at Chapra in Session Trial No. 140 of 2000 by which he has convicted the appellants and on 6.6.2001 sentenced them each to undergo imprisonment for life for the offences under Sections 148, 302 and 302/149 of the Indian Penal Code.

3. The prosecution case, as disclosed from the Fardbeyan (Ext. 4) is that on 4.5.1999 the informant Biran Bind along with his brother Surendra Bind (deceased) was going to Rasulpur Bazar to make purchases for the marriage of their niece. When they had gone about 200 yards east of their village, they saw the appellants all belonging to his village, sitting in Chaur. When they reached near the appellants, appellant Master Bind asked him as to where they were going. On this he replied that they were going to make purchases for Tilak ceremony of their niece. Appellant Amir Bind then asked him to hand over the money and appellants Baliram Bind, Raj Kishore Bind and Sheo Kumar Bind, all armed with Pistols, surrounded them and Raj Kishore Bind and Sheo Kumar Bind tried to snatch the money from his brother at Pistol point and when his brother resisted, appellant Raj Kishore Bind opened fire with Pistol on his brother hitting him on his abdomen right side. His brother fell down. Appellant Sheo Kumar Bind then fired on his brother causing injury on abdomen. Appellant Baliram Bind also fired on his brother causing injury. When he (informant) protested, appellant Harendra Bind assaulted him with knife on right thigh and appellant Master Bind assaulted him on head with sword. He shouted. In the meantime, Raj Kishore Bind took out Rs. 11000/- and a golden chain from his brother. It is also alleged that on his hulla his cousin Shatrughan Bind reached and then he was assaulted by appellant Manager Bind with sword on head and appellant Narain Bind gave him

knife blow on his left rib. Then Panna Lal came, and he was assaulted by appellant Jimdar Bind with sword on right side shoulder and when Sugriv Bind came, appellant Amir Bind assaulted him with Nepala on head and when Raj Ballam Bind came, appellant Sawalia Bind assaulted him with Nepala on head. It is also said that Rajdeo Bind and others came from the village and then the appellants fled away. Injured Surendra Bind was then taken to Chapra Hospital for treatment, where he died in course of treatment.

4. On the same date at 21.00 hours Fardbeyan was recorded in Chapra Sadar Hospital by S.P. Singh, S.I. of Police of Bhagwan Bazar police station. On the basis of the above Fardbeyan formal F.I.R. (Ext. 5) was recorded. The police investigated the case and after completing investigation submitted chargesheet against the appellants.

5. Appellants Raj Kishore Bind, Baliram Bind and Sheo Kumar Bind were charged under Sections 148, 302, 307 of the Indian Penal Code and Section 27 of the Arms Act. The remaining appellants were also charged under Sections 148, 307/149 and 302/149 of the Indian Penal Code. They all pleaded not guilty to the charges.

6. The defence of the appellants is that no occurrence as alleged took place and the appellants have been falsely implicated in this, case.

7. The prosecution, in all, examined 12 witnesses to prove the charges. Among them P.W. 1 is Rajdeo Bind, P.W.2 is Shatrughan Bind, P.W.3 is Panna Lal, P.W. 4 is Sugriv Bind, P.W.5 Ram Prasad Bind and P.W.6 Pitambar Bind had reached the place of occurrence after the occurrence. P.W. 7 is Dr. Deepak Kumar, P.W.8 Bhagwan Bind claims to have reached the place of occurrence soon after the occurrence. P.W.9 Hemanti Devi, wife of the informant claims to be an eye witness. P.W. 10 Biran Bind is the informant, P.W.11 is Sita Ram Pandey, the Officer-in-charge, the I.O. of the case, P.W.12 Suresh Prasad Singh had recorded the Fardbeyan (Ext. 4) and had also prepared the inquest report (Ext. 7) of the dead body of the deceased.

8. The learned trial court after considering the evidence of the above witnesses has held that though one of the injured and other witnesses have not been examined, the evidence on record proves the charges under Sections 302 and 148 of the Indian Penal Code against appellants Raj Kishore Bind, Sheo Kumar Bind and Baliram Bind and charges under Sections 148 and 302/149 of the Indian Penal Code against the remaining appellants. They were convicted accordingly and sentenced to undergo imprisonment for life for the above offences. He did not convict any appellant under Section 27 of the Arms Act and 307/149 of the Indian Penal Code as they were convicted for graver offences.

9. Learned Counsel for the appellants submitted that no independent witness has been examined in this case. All the witnesses examined are interested witnesses and there are contradictions in their evidence. Some of the witnesses have come to depose as eye witnesses when they were not present at the alleged place of occurrence. The ocular evidence is at variance with medical evidence. Therefore, the trial court was not justified in convicting the appellants.

10. In order to appreciate the arguments of the learned Counsel, I have gone through the entire evidence of the witnesses.

11. P.W. 10 Biran Bind, the informant, has deposed that on 4.5.1999 at 3.00 p.m. he was going to Rasulpur market with his brother Surendra Bind. They had Rs. 11000/- with them and had to make purchases for the Tilak ceremony. When they reached 200 yards east of their house, near palm tree, in the Parti land of Kamta Bind, he saw (1) Raj Kishore Bind (2) Sheo Kumar Bind (3) Vijay Bind, (4) Harendra Bind, (5) Manager Bind, (6) Jamadar Bind, (7) Baliram Bind (8) Amir Bind (9) Narain Bind (10) Sawaliya Bind and (11) Master Bind sitting near the tree. They stopped them. Appellant Master Bind asked them as to where they were going. He (P.W.10) replied that they were going to make purchases for Tilak. They demanded money from them. Appellants Raj Kishore Bind, Sheo Kumar Bind and Baliram Bind surrounded them with Pistols in their hands and started snatching the money. Surendra Bind resisted. On this Raj Kishore Bind fired on him on his abdomen, Sheo Kumar also fired which hit his abdomen and Baliram Bind also fired at him. His brother fell down and appellant Raj Kishore Bind took out money

from his pocket and a golden chain from his neck. He has further stated that when he went to save him, Harendra Bind stabbed him on his right thigh with dagger. Appellant Master Bind attacked twice with sword causing injuries on head. Shatrughan Bind (P.W.2) then came to save him, when Manager Bind assaulted him twice with sword on his head and Narayan Bind assaulted him on left rib with knife. Panna Lal (P.W.3) came to their rescue when Jimdar Bind assaulted him with sword. He tried to ward off the blow and his finger was cut. He again hurled a blow and his shoulder was cut. Sugriv Bind (P.W. 4) came and appellant Amir Bind assaulted him with Nepala and appellant Vijay Bind assaulted him with lathi. Raj Ballam Bind came there when appellant Sawalia Bind assaulted him with Nepala on head. On alarm being raised by him, Rajdeo Bind, his father and wife and others came and the appellants fled away.

12. The witness has further stated that they went to Chainwa with the injured persons and from there they went to Chapra Hospital. On the way he met the A.S.I. of Rasulpur Police Station and he asked them to go to Chapra Hospital to save the life of Surendra Bind. They reached Chapra Sadar Hospital at about 6.45 P.M. where they were examined and treated and during the course of treatment Surendra Bind died. His evidence also is that the S.I. of Bhagwan Bazar Police Station came in the hospital and recorded his statement. In the morning at 7.00 a.m. the Sub Inspector of Police prepared the inquest report (Ext. 1/2) in the hospital.

13. P.W.1 Rajdeo Bind has stated that on 4.5.1999 at about 3.00 p.m. he was at his door when he heard halla and went near the palm tree of Kamta Bind in the Parti field and saw that Raj Kishore Bind, Sheo Kumar Bind and Baliram Bind fired with their Pistols on Surendra Bind. Surendra Bind received injuries on chest and abdomen. He has stated that besides the above appellants, appellants Harendra Bind with dagger, Master Bind with sword, Jimdar Bind with dagger and Manager Bind with sword, Narayan Bind with dagger, Amir Bind, Sawalia Bind both with Nepala and Vijay Bind with lathi were standing there. His evidence also is that Harendra Bind then assaulted Biren Bind (informant) with dagger on thigh when he went to save Surendra Bind, and appellant Master Bind gave two sword blows on his head. Sugriv Bind, Panna Lai, Raj Ballam Bind and Shatrughan Bind went to

save them, when Amir Bind assaulted Sugriv Bind on head with Nepala, Sawalia Bind assaulted Raj Ballam Bind with Nepala on his head. Jimdar Bind assaulted Panna Lal twice with sword on shoulder and hand. Manager Bind assaulted shatrughan Bind with sword and Narayan Bind assaulted him with dagger on rib and appellant vijay Bind assaulted him with lathi. He has also stated that Raj Kishore Bind took away money from the pocket of Surendra Bind and also a golden chain and that the injured persons were taken to Chapra Sadar Hospital where Surendra Bind died during treatment.

14. P.W. 2 Shatrughan Bind has deposed that on 4.5.1999 at 3.00 p.m. he was in his house and on hearing halla he went near the field of Kamta Bind and saw Raj Kishore Bind, Sheo Kumar Bind and Baliram Bind with country made Pistols quarreling with Surendra Bind and Biren Bind and that Master Bind, Jimdar Bind and Manager Bind armed with sword, Amir Bind and Sawaliya Bind armed with Nepala, Harendra Bind and Narayan Bind armed with Knife and appellant Vijay Singh armed with lathi were standing there. In course of altercation Raj Kishore Bind, Baliram Bind and Sheo Kumar Bind fired on Surendra Bind causing injuries on his chest and abdomen. Surendra Bind fell down and appellant Raj Kishore Bind took out chain and money from his pocket. He has stated that Biran Bind went to save him when Master Bind gave sword blow at two places on his head and Harendra Bind assaulted him with knife on right thigh. He (P.W.2) tried to save them, When Manager Bind assaulted him at two places on head with sword and Narayan Bind assaulted him with knife on left side of rib and then Sugriv Bind, Pannalal Bind and Raj Ballam Bind went to save, when Jimdar Bind assaulted Panna Lal with sword on shoulder and left hand. Amir Bind assaulted Sugriv Bind with Nepala on his head, Sawalia Bind assaulted Raj Ballam Bind with Nepala and that Vijay Bind gave lathi blow on the injured persons and then on seeing witnesses, the assailants fled away. His evidence also is that all the injured were taken to Hospital and that Surendra Bind was taken on cot upto Chainwa and from there all were taken to the Hospital on Tata 407 and during the course of treatment Surendra died.

15. P.W.3 Panna Lal has deposed that on 4.5.1999 at 3.00 P.M. he was in his house and on halla, he went to the field of Kamta Bind and near palm tree saw

appellants Raj Kishore Bind, Sheo Kumar Bind, Baliram Bind armed with Pistol, Master Bind, Manager Bind, Jimdar Bind armed with sword, Harendra Bind and Narayan Bind armed with knife, Amir Bind and Sawalia Bind armed with Nepala and appellant Vijay Bind armed with lathi surrounding the informant and Surendra Bind and altercating. In the meantime, Raj Kishore Bind, Sheo Kumar Bind and Baliram Bind fired on Surendra Bind causing him injuries and Surendra Bind fell down. Appellant Raj Kishore Bind took out money and a golden chain from him. When Biren Bind tried to save his brother, then Master Bind gave him sword blow on his head and Harendra Bind assaulted him with knife. Shatrughan Bind went to save him when Manager Bind with sword and Narayan Bind with knife assaulted him. He (P.W.3) tried to save them when Jimdar Bind assaulted him with sword on his thumb and also on shoulder. Sugriv Bind then went to save when appellant Amir Bind assaulted him on his head with Nepala. Raj Ballam Bind went to save when appellant Sawalia Bind assaulted him with Nepala. His evidence also is that appellant Vijay Bind was indiscriminately hurling lathi blows and that after assault the appellants fled away. His evidence further is that all the injured went to Chapra Sadar Hospital with Surendra Bind where they were treated and Surendra Bind died.

16. P.W. 4 Sugriva Bind has stated that on 4.5.1999 at 3.00 p.m. he was in his house. On halla he went to the field of Kamta Bind near palm tree and saw that Surendra Bind was lying with fire arm injuries and Raj Kishore Bind, Sheo Kumar Bind and Bali ram Bind were standing with country made Pistols. He further stated that he saw Biren Bind (P.W. 10), Shatrughan Bind (P.W.2), Raj Ballam Bind, Panna Lal (P.W.3) standing there and also saw appellants Master Bind, Jimdar Bind and Manager Bind armed with Sword Amir Bind and Sawalia Bind armed with Nepala, Narayan Bind and Harendra Bind armed with knife and Vijay Bind was armed with lathi. His evidence is that Raj Kishore Bind took out money from the pocket of Surendra Bind and a chain from his neck and appellants Master Bind and Harendra Bind with knife assaulted Biren Bind (informant) who had gone to save his brother. His evidence also is that appellant Sawalia Bind assaulted Raj Ballam Bind with Nepala, Manager Bind assaulted Shatrughan Bind twice with sword and appellant Narayan Bind assaulted Shatrughan Bind with knife on his ribs and that appellant Amir Bind assaulted him (the witness) with Nepala and

Vijay Bind assaulted him with lathi on both thigh and that in the meantime, Panna Lal was assaulted with Sword by appellant Jimdar Bind. He has further stated that the villagers reached and the appellants fled away and then the injured persons along with Surendra Bind went to Chapra Hospital via Chainwa where they were treated and during the course of treatment Surendra Bind died.

17. The evidence of P. Ws. 5 and 6 is that on halla they had gone to the field of kamta Bind and saw Surendra Bind lying injured and they saw Biren Bind, Shatrughan Bind, Panna Lal, Sugriv Bind and Raj Ballam Bind injured and they took the injured persons to the Hospital where Surendra Bind died. According to P.W. 5 in his presence the inquest report of the dead body of the deceased was prepared.

18. P.W.6 father of the informant has stated that he was at his house and on halla he went to the field of Kamta Bind along with his daughter-in-law Hemanti Devi (P.W.9) and saw that Surendra Bind was lying injured and had received fire arm injuries. He also saw Biren Bind, Shatrughan Bind, Panna Lal, Sugriv Bind and Raj Ballam Bind injured and that Surendra Bind told him that Baliram Bind, Sheo Kumar Bind and Raj Kishore Bind had fired on him and Raj Kishore Bind took away Rs. 11000/- and a chain from him.

19. P.W.9, the wife of the informant has also given an eye witness account of the entire occurrence.

20. P.W.7, the doctor has deposed that on 4.5.1999 he was posted at Sadar hospital, Chapra and on that date at 7.10 P.M. he examined Raj Ballam Bind and found the following injuries:

(i) Lacerated wound 1' x 1/4'x skin deep towards middle of scalp.

The injury was simple in nature caused by hard and blunt substance, within six hours.

21. He has stated that on the same day at 7.00 P.M. he examined Shatrughan Bind and found the following injuries on his person:

- (i) Incised wound 2' x 1/4' x scalp layer deep over left parietal region.
- (ii) Incised wound 1' x 1/4' x scalp layer deep over right parietal region.
- (iii) Incised wound 2' x 1/4' x muscle deep over lower side of left chest wall.

He has opined that all the injuries were simple in nature caused by sharp cutting weapon within six hours.

22. He has further stated that on the same day at 7.05 P.M. he examined Biren Bind and found the following injuries on his person:

- (i) Incised wound 1' x 1/4' x scalp layer deep over occipital region.
- (ii) Incised wound 1/2' x 1/4' x scalp layer deep over right upper forehead.
- (iii) Incised wound 1/4' x 1/8' x skin deep over right medial side of thigh.

According to the doctor the injuries were caused by sharp cutting weapon, simple in nature, within six hours.

23. His evidence then is that on that date at 6.55 P.M., he examined Sugriva Bind and found the following injuries on his person:

- (i) Incised wound 1 1/2' x 1/4' x scalp deep over occipital region.
- (ii) Diffused swelling over left thigh.
- (iii) Diffused swelling over right thigh.

He has stated that injury No. (i) was caused by sharp cutting weapon and the rest were caused by hard and blunt substance. The injuries were simple, caused within six hours.

24. The doctor has further stated that on that date at 6.50 P.M. he examined Panna Lal and found the following injuries on his person:

- (i) Incised wound 1' x 1/4' x muscle deep over right side of neck.

(ii) Incised wound of size 1/2' x 1/4'x muscle deep over thumb of right hand.

He has stated that injuries were caused by sharp cutting weapon within six hours and were simple in nature.

25. He has further stated that on 5.5.1999 at 9.20 a.m. he performed the post mortem examination on the dead body of Surendra Bind and found the following ante mortem injuries:

External -

(i) Multiple lacerated Pea shaped holes with blackening of skin scattered over right lower side of chest wall and right upper portion of abdomen.

He has further stated that on dissection he found chest cavity filled with dark clotted blood. Right viii<sup>th</sup>, ix<sup>th</sup> and x<sup>th</sup> ribs on front of chest fractured, right lung lacerated at base abdominal cavity filled with dark clotted blood, liver lacerated. Twelve pellets recovered from chest and abdominal cavity.

He has opined that the death was caused due to shock and haemorrhage as a result of the above injuries caused by fire arm and time elapsed since death was within 10-12 hours.

26. Thus, from the evidence of the above witnesses it appears that they all have supported the prosecution case and their evidence finds support from medical evidence.

27. Among the witnesses, P.Ws. 5 and 6 have not seen the occurrence. Hence, their evidence is not very material. But as they had reached on halla and had seen Surendra Bind lying in the field of Kamta Bind and had also seen the other injured there, their evidence proves that the occurrence as alleged took place at the alleged place of occurrence.

28. Similarly, P.W. 3 also reached the place of occurrence after the occurrence. So, his evidence is not material to prove the complicity of the appellants. But his evidence also proves that the occurrence took place at the alleged place of occurrence in which Surendra Bind and others had received injuries.

29. P.W.9 though in her evidence has given an eye witness account of the occurrence, the evidence of the I.O. shows that she was not an eye witness when her statement was recorded by him. The evidence of P.W. 8 also shows that she had gone to the place of occurrence along with him. So, it is evident that she did not see the occurrence. Therefore, I do not put reliance on her so far as actual occurrence is concerned.

30. But, P.W.10 the informant, though related to the deceased, he was accompanying the deceased and his evidence which is corroborated by the evidence of the doctor (P.W.7) also shows that he was injured during the occurrence. Therefore, he is the most competent witness; and there is absolutely nothing in his evidence to disbelieve him. It has been suggested to him that out of enmity, he falsely implicated the appellants, but he has denied the suggestion. He has also clearly stated that he had no enmity with the appellants from before. P.W.2, of course, has admitted in his cross examination that the mother of the appellant vijay Bind had filed a case against this witness, the deceased and others two years before the occurrence. But it has not been suggested to this witness (P.W. 10) that on account of that case the appellants were falsely implicated. Mere enmity is also no ground to disbelieve the evidence of the witnesses which is otherwise trustworthy.

31. The Fardbeyan (Ext. 4) also corroborates the testimony of this witness in material particulars. The occurrence had taken place on 4.5.1999 at 3.00 p.m. and the Fardbeyan was recorded on the same date at 9.00 p.m. at Sadar Hospital, Chapra. The evidence of this witness also shows that the injured were taken to Chainwa and then to Chapra. The evidence of P.W. 2 is that from Chainwa they took Maxi Tata 407 vehicle and went to Chapra. The evidence of the informant (P.W. 10) also is that they stopped for some time at Rasulpur and then went to Chapra. The evidence of the I.O. (P.W.11) is that Rasulpur Police station is about 7 kms, from the P.O. village and Bhagwan Bazar police station (under which Chapra hospital is situated) is 35-36 Kms. Therefore, considering the distance of the place of occurrence from Bhagwan Bazar police station, there appears no delay in recording the Fardbeyan. There was thus, no chance of concoction in it.

32. The evidence of P.W.2 is that there is hospital and police station at Rasulpur. The evidence of this witness (P.W.10) also is that he met the A.S.I. of the police station and he told them to take injured Surendra Bind to Chapra Hospital. Therefore, if the injured were not treated at Rasulpur or no case was registered at Rasulpur police station, the conduct of the informant cannot be said to be unnatural. Again P.W. 2 in his evidence has stated that at Rasulpur informant Biren Bind had a talk with the A.S.I. who gave a slip to him and sent them to Chapra Hospital with a constable. But, there is nothing in the entire evidence to show that the informant had told about the occurrence to the A.S.I. So, it cannot also be said that the Fardbeyan of this case is not the first statement of the informant and the first statement has been suppressed.

33. The evidence of the informant (P.W. 10) also finds full corroboration from the evidence of the doctor (P.W.7).

34. It has been submitted by the learned Counsel that according to the evidence of the witnesses, three shots were fired which hit the deceased on abdomen and chest but the doctor has found only one injury and so, there is variance between the ocular evidence and the medical evidence. The evidence of the doctor, as already mentioned, shows that he had found multiple lacerated Pea shaped wound with blackening of skin scattered over right lower side of chest wall and right upper portion of abdomen. His evidence further shows that 12 pellets were recovered from the chest and abdominal cavity and right viiiith, ixth and xth ribs on front of chest were punctured and right lung lacerated at base. Hence, the finding of the doctor clearly indicates that more than one shot was fired. It has also not been taken from the doctor that the injury was possible only by one shot. So, I agree with the learned trial court that there is no variance between the ocular evidence and the medical evidence, Besides this, inconsistency between the medical evidence and the ocular evidence has to be considered only when the ocular evidence is wholly inconsistent with the medical evidence. But, this is not the case here. There was also blackening of skin which suggests that the shots were fired from a close range. The evidence also shows that the appellants had fired on the deceased from a close range.

35. The evidence of P.Ws. 2, 3 and 4 show that they had received injuries during the course of occurrence. The evidence of the doctor also shows that he had found injuries on the person of these witnesses. The evidence of the doctor also shows that he had examined these witnesses on 4.5.1999 in between 6.50 p.m. to 7.10 p.m. and the age of the injuries was within six hours. The age given by the doctor, hence, also corresponds to the time of occurrence and suggests that the above witnesses had received the injuries at the time of the alleged occurrence. As these witnesses were injured, they are also competent witnesses. The witnesses belong to village Chapraini which according to P.W. 11 (I.O.) is only 100 yards from the field of Kamta Bind where the occurrence had taken place. Therefore, their presence at the place of occurrence is also natural. There appears nothing material in their evidence to disbelieve them. P.W.2, of course, has admitted that besides Raj Ballam Bind (not examined), all the injured belong to the same KHANDAN (family). But only because they are relatives of the deceased, that alone is not sufficient to discard their testimony.

36. The evidence of the I.O. (P.W.11), of course, is that P.W. 2 Shatrughan Bind did not state before him as to places in which the shots fired by appellants Raj Kishore Bind, Baliram Bind and Sheo Kumar Bind had hit the deceased as has been stated by P.W.2 in Court. He (P.W.2) also did not state that Master Bind assaulted Biren Bind or that he was assaulted with sword by Manager Bind at two places or that he had stated that Amir Bind assaulted Sugriv Bind with bhala when in his evidence he has stated that Amir Bind assaulted him with Nepala. But these omissions and contradictions are not vital and sufficient to impeach the credibility of the witness. His evidence is consistent that the deceased had received gun shot injuries at the alleged place of occurrence at the hands of the three appellants and the other appellants also assaulted the informant and other injured.

37. The evidence of P.W. 11 further shows that P.W. 3 did not state before him that appellant Master Bind had assaulted Biren Bind on his hand or Sawalia Bind assaulted Raj Ballam Bind. Similarly the evidence of the I.O. shows that P. W. 4. did not specifically state as to who had assaulted the other injured except himself. But these are also minor contradictions and do not affect the basic structure of the prosecution case or the evidence of these witnesses. Their evidence also is

consistent that the deceased had received fire arm injuries caused by the above named three appellants and other injured had also received injuries when they wanted to save the deceased and that, the occurrence had taken place in the manner as alleged.

38. Hence, I find that P. Ws. 2, 3 and 4 are trust worthy witnesses and their evidence fully corroborates the testimony of the informant.

39. As regards P.W. 1, he is named in the Fardbeyan as a witness. His evidence shows that his house is at a distance of 50 yards from the place of occurrence. His presence at the P.O. hence was also natural. He is brother of one of the injured, namely, Raj Ballam Bind and the evidence of P.W.2 shows that he is also one of the accused in the case lodged by the mother of appellant Vijay Bind. But these are not sufficient to dislodge his testimony. This witness in his cross examination has of course stated that when he reached the place of occurrence, only appellants Raj Kishore Bind, Sheo Kumar Bind and Baliram Bind were present at the place of occurrence and subsequently the other appellants came, which is not the prosecution case but it appears that out of confusion or under the stress of cross examination, he has given such statement in his cross examination. So, only on the basis of this contradiction his evidence cannot be thrown away. But even if the evidence of this witness is left out, the evidence of other witnesses is sufficient to prove the prosecution case.

40. In this case Raj Ballam Bind, one of the injured has not been examined but only for his non examination, when the other injured persons have been examined, no adverse inference can be drawn against the prosecution case.

41. It has been submitted by the learned Counsel for the appellants that no independent chargesheet witness has been examined in this case. As mentioned in the impugned judgment, by filing a petition, he prosecution has given up examination of some witnesses. Besides this, when the injured witnesses who were most competent to speak about the occurrence, have supported the prosecution case and as such overwhelming evidence is already available, non examination of other witnesses would not affect the prosecution case.

42. Learned Counsel further submitted that there is no evidence that there was any blood mark at the place of occurrence and so, the P.O. is not established. It is, of course, true that the I.O. has stated that he did not record whether any blood was found at the place of occurrence. But this cannot be made a basis to discard the evidence of the witnesses which otherwise inspire confidence.

43. Thus, on an analysis of the evidence of the witnesses I find that though some witnesses have not been examined in this case and there are minor contradictions in the evidence of the eye witnesses P.Ws. 2, 3, 4 and 7 are quite trustworthy and their evidence proves the prosecution case beyond reasonable doubt. As the appellants were sitting armed with deadly weapons and when the witnesses came to save the informant and the deceased, they assaulted the witnesses, it clearly indicates that the appellants had a common object also to commit murder of the deceased and the informant and as appellants Raj Kishore Bind, Sheo Kumar Bind and Baliram Bind fired on the deceased when he refused to part with the money, it is evident that they there also developed common intention to commit the murder.

44. It may be mentioned here that the name of appellant Vijay Bind is not mentioned in the Fardbeyan. But as all the witnesses have stated about his participation in the occurrence, the omission of his name in the Fardbeyan alone is not sufficient to hold him not guilty.

45. I, therefore, find that the learned trial court was justified in convicting all the appellants except Vijay Bind under Section 148 of the Indian Penal Code and as regards appellant Vijay Bind he is liable under Section 147 of the Indian Penal Code and appellants Narayan Bind, Harendra Bind, Master Bind, Jimdar Bind, Sawalia Bind, Manager Bind, Amir Bind and Vijay Bind under Section 302/149 of the Indian Penal Code. The learned trial court has convicted the appellants Raj Kishore Bind, Sheo Kumar Bind and Baliram Bind under Section 302 of the Indian Penal Code but as all the three participated in committing the murder and shared common intention, they are convicted under Section 302/34 of the Indian Penal Code. The learned trial court was justified in awarding life imprisonment to all the appellants. The sentence passed by him, therefore, is maintained with the only

modification that appellants Raj Kishore Bind, Sheo Kumar Bind and Baliram Bind would undergo imprisonment for life for the offence under Section 302/34 of the Indian Penal Code instead of Section 302 of the Indian Penal Code. There would be no separate sentence for the offence under Sections 147 and 148 of the Indian Penal Code.

46. In the result, both the appeals are dismissed in the manner as indicated above. The bail bonds of the appellants, who are on bail, are hereby cancelled. They are directed to surrender before the court below to serve out the sentence.

**Chandramauli Kumar Prasad, J.**

47. I agree.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**