

Devendra Singh and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-20-1998

Reported in : 1998CriLJ3324

Judge : S.K. Phaujdar and ;N.S. Gupta, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 302 and 307; Code of Criminal Procedure (CrPC) - Sections 82, 83, 107, 116 and 164

Appeal No. : Criminal Appeal No. 2954 of 1979

Appellant : Devendra Singh and ors.

Respondent : State of U.P.

Advocate for Def. : K.C. Saxena, D.G.A.

Advocate for Pet/Ap. : Iqbal Narain Mulla, ;Sudhakar Pandey and ;G.S. Chaturvedi, Advs.

Disposition : Appeal dismissed

Judgement :

N.S. Gupta, J.

1. This criminal appeal is directed against the judgment and order of conviction dated 30-10-1979, passed by Shri Ram Singh the then Sessions Judge, Ballia, in

Session Trial No. 232 of 1978, convicting and sentencing the accused appellants named above under Section 302/34, I.P.C. to imprisonment for life and further under Section 307/34, I.P.C. to four years R.I. each. The sentences were to run concurrently.

2. The prosecution case briefly states is as follows :-

Accused appellants Devendra Singh and Surendra Singh are real brothers. Tej Narain Singh and Shreeram Singh are said to be their close associates. They were all residents of village Gaighat, police station Sahatwar, district Ballia (U.P.) PW 5 Shashi Shekher Singh injured was the son of Narsingh Prasad. Narsingh Prasad was originally a resident of Alam Nagar, Bihar. He was Thakur by caste. He had four sons, out of whom Shashi Shekhar Singh (PW 5) was given in adoption in the family of Ram Briksh Singh. He was brought up by Ram Briksh Singh. Narsingh Prasad had his cultivation in Alam Nagar. Ram Briksh Singh had also his agricultural plots at Alam Nagar. Ram Briksh Singh, the adoptive father of Shashi Shekher Singh (PW 5) was a resident of village Gaighat, Ballia. Ram Briksh Singh and Nar Singh Prasad were good friends. He was a Nikambh Thakur by caste. The deceased Smt. Mukhbadni Devi was the wife of Ram Briksh Singh and as such she became the mother of Sashi Shekher Singh after his adoption by Ram Briksh Singh. Ram Briksh Singh had his agricultural plots in Gaighat, district Ballia. Ram Briksh Singh had two brothers viz. Ram Paribhan Singh and Jagdish Singh. Ram Paribhan Singh in turn had four sons viz. Devendra Singh (A-1) Lallan Singh (accused since acquitted), Surendra Singh (A-2) and one another. The prosecution claimed that there was a partition in between Ram Briksh Singh, the husband of the deceased and his brothers in respect of the house and all other properties including agricultural plots. Since Ram Briksh Singh had no issue, he had taken (PW 5) Shashi Shekher Singh in adoption. After the partition of properties, Ram Paridhan Singh, the father of accused appellant Devendra Singh and Surendra Singh had constructed his separate house. Ram Briksh Singh died in the year 1969. After his death the agricultural plots held by Ram Briksh Singh at Alam Nagar, Bihar and Gaighat, Ballia (U.P.) were being looked after by the deceased Smt. Mukhbadni Devi, widow of the Ram Briksh Singh and his adopted son Sashi Shekher Singh, injured (PW 5). The deceased Smt. Mukhbadni Devi

and injured Shashi Shekher Singh (PW 5) used to come from Alam Nagar to Gaighat off and on for supervising the affairs of agricultural land left by Ram Briksh Singh. Accused Appellant Devendra Singh, Surendra Singh and their other family members were displeased with the adoption of Shashi Shekher Singh (PW 5) and were feeling inimical towards him and the deceased Smt. Mukhbadni Devi regarding their possession over the plots left by Ram Brisksh Singh. They used to threaten the deceased and the injured with dire consequences. Proceedings under Sections 107/116, Cr.P.C. were taken against the accused persons and Ors. in district Saharsa, Bihar. Ravindra Prasad Singh (accused since acquitted) was the brother-in-law (Sala) of Devendra Singh (A-1). PW 4 Basdeo Mandal was the servant of deceased Mukhbadhi Devi and Shashi Shekher Singh (PW 5). He was serving with them for about 5-6 years before the date of the incident of this case. After the incident of this case, he left the service of the deceased and began to live at the house of Devendra Singh (A-1).

3. The incident of this case had taken place on 16-7-1978 at about 7.30 p.m. inside IInd Class Railway compartment of 294 Dn. passenger Train near Railway Station Bakulaha, police station G.R.P. Ballia, district Ballia. The deceased Smt. Mukhbadni Devi, injured Shashi Shekher Singh (PW-5) and their servant Basdeo Mandal (PW

4) and boarded the said train for going to Alam Nagar, district Saharsa (Bihar) via Chhapra at Revti station at about 6.30 p.m. They purchased tickets for boarding the said train up to Chhapra and from Chhapra they intended to board another train for going to Alam Nagar, Bihar. At Revti Station accused appellant Tej Narain Singh (A-3) also boarded the said compartment. Devendra Singh (A-1) was already sitting in the compartment. Tej Narain Singh (A-3) during the course of his talks with Shashi Shekher Singh (PW

5) informed that he too was going to Chhapra for talking to his another brother Trilok Singh who was at Jamshedpur on telephone. There was electricity light inside the railways compartment. Deceased Mukhbadni Devi and Shashi Sheker Singh (PW

6) took their seats near the Gate of the said compartment. They put their luggage in between the two doors of the compartment, with the result that the northern door of the compartment was blocked. Tej Narain Singh (A-3) was sitting in front of the deceased and Shashi Singh (PW 5). Their servant Basdeo Mandal (PW

4) was sitting near the luggage. Devendra Singh (A-1) was sitting on another berth towards the east. There were 3-4 other passengers in the said compartment. At about 8.00 p.m. when the train had stopped at Bakulaha Railway Station, Tej Narain Singh (A-3) got up to open the door of the compartment. Shashi Shekher Singh injured (PW

5) asked Tej Narain Singh (A-3) to not open the door as his luggage was kept there, but he did not pay any heed to his request. He opened the door and thereupon Surendra Singh (A-2) and Shreeram Singh (A-4) along with Ravindra Pratap Singh and Lallan Singh (the two accused since acquitted) entered into the said compartment Surendra Singh (A-2) was having a country made pistol in one hand and a Chhura in his another hand. Shreeram Singh (A-4) was holding Chhura (a big knife) in both his hands. Lallan Singh and Ravindra Singh (accused since acquitted) were also having knives. After entering into the compartment Surendra Singh (A-2) made a show of the pistol and said to Shashi Shekher Singh (P. W

5) and his mother deceased Mukhbadni Devi as to how they would now be saved and where would they go. Soon thereafter Tej Narain assaulted Shashi Shekher Singh (P. W

5) by means of rod. Surendra Singh (A-2) assaulted Shashi Shekher Singh by means of Chhura. The accused appellants and their associates surrounded Shashi Shekher Singh and assaulted him by means of Knives and Churas. When his mother, deceased Mukhbadni Devi tried to save him and asked the accused appellants and their associates to refrain from killing Shashi Shekher Singh (P. W 5), the accused appellants and their associates also assaulted Smt. Mukhbadni Devi by means of their respective Knives and Churas and killed her. Tej Narain Singh (A-3) took the Chura from Shreeram Singh (A-5) and he too assaulted Shashi Shekher Singh and Mukhbadni Devi by means of the said Chura.

Devendra Singh (A-1) had also assaulted by means of Chura. As a result of assault made by the accused appellants and their associates by means of their chura and knives Smt. Mukhbadni Devi had died on spot and Shashi Shekher Singh (P. W

5) fell down over the floor of the compartment. A Mungfali vendor had also sustained some injury in the occurrence in question. After the outer signal of Bakulaha Railway station, the train stopped. The accused appellants and their associates ran away. They also took away the servant of the complainant Basdeo Mandal (P. W 4). When the train stopped at Rigal Ganj railway station, two constable of G.R.P. came into the compartment to whom the incident was narrated by Shashi Shekher Singh. Those two constables took the injured to Chhapra where the injured was admitted in the hospital and the police Sub-Inspector recorded the statement of Shashi Sheker Singh on the basis of which case Crime No. 80 under Section 302, I.P.C. at police station G.R.P. Ballia was registered and investigation followed.

4. Dr. Chandra Shekher.PW 1 who was working as Medical Officer of district hospital Chhapra in Bihar had medically examined Shashi Shekher Singh (P. W 5) at about 10.00 p.m. on 16-7-1978 and found the following injuries on his person :-

Injuries of Shashi Shekher Singh (P. W. 5)

1) One incised wound 7' x 1 ' bone deep across the back of neck.

2) Seven incised wounds on back of neck placed transversely varying from 6' x 1' long 4' x 2/1' broad and skin deep to bone deep.

3) Two incised wounds on left fore arm 3' x 1' x ' deep transversely on lower part and 1' x 1' x skin deep on upper part.

4) One incised wound left side scalp lying vertically 4' x 1' x skin deep.

5) one incised wound on right side of face 4' x 1 ' x skin deep lying obliquely.

5. Dr. Gauri Shanker Sinha, PW 2, Medical Officer of district hospital Chhapra, Bihar con-ducted autopsy on the dead body of the deceased Mukhbadni Devi on

17-7-1978 at about 1.00 p.m. and found the position as under :-

The deceased was wearing Sari, Petikot and Blouse. She was wearing one Bangle like of gold on both the hands. There was one ring made of gold on right finger. Rigor Mortis was present, both the eyes were half open, mouth was closed.

Dr. Gauri Shanker Singh, PW 2 found the following Antemortem injuries on the person of the deceased:-

- 1) One cut wound 6' x 3' cutting the under-line trachea, larynx, oesophagus on the front of the neck.
- 2) One cut wound Spindled shape " x " x chest cavity deep on the left side chest about 1 proximal to breast.
- 3) Two cut wound ' x ' x chest cavity and ' x ' x chest on the right side of chest.
- 4) One cut wound 1' x 1/4' x abdominal cavity close to left iliac fosa.
- 5) Multiple cut wounds of various sizes on the right arm.
- 6) One cut wound 1' x 1' x 1' on the posterior aspect right fore arms 4' distal to elbow.
- 7) Multiple cut wounds covering the left fore arm and arms of various sizes.

Dr. Gauri Shanker Sinha found that the underlying vessels of trachea and larynx were cut under injury No. 1 on opening the cavity, the Doctor found Vth and VIth ribs of the deceased cut under injury No. 3. Abdominal cavity contained clotted blood. The doctor opined that the Antemortem injuries found on the person of the deceased, should have been caused by means of sharp edged weapons and were sufficient in the ordinary course of nature to cause death. He opined that the deceased should have died because of these injuries immediately which should have resulted in shock and haemorrhage.

6. S.I. Tej Bahadur Singh (P. W 8) who was then working as S.H.O. G.R.P. Ballia received information about this incident at about 10.00 p.m. on 16-7-1979, By

means of the statement of Shashi Shekher Singh (P. W 5) which was recorded by Sub Inspector of Police of Chhapra and which was brought before him by police constable of Chhapra. He immediately rush to Chhapra at about 1.50 a.m. on 17-7-1978, He went to the district hospital Chhapra where Shashi Shekher Singh (P. W 5) was admitted, but he did not think it proper to record his statement as his condition was precarious. He again went to Chhapra hospital on the next day at about 7.00 a.m. and recorded the statement of Shashi Shekher Singh (P. W 5). He tried to trace out Bijai Mungfaliwali of Rigal Ganj and submitted a report for his medical examination. He tried to trace out Basdeo Mandal (P. W 4) and other witnesses but could not find their whereabouts. He tried to search out the accused appellants but they were not traceable. On 30-7-1978, he again went to Chapra Hospital and took blood stained clothes of Shashi Shekher Singh (P. W 5) and prepared recovery memo about the same. He recorded the statement of Basdeo Mandal (P. W 4) on 27-8-1978 at Alarm Nagar and submitted a report for getting the statement of this witness Basdeo Mandal (P. W 4) recorded under Section 164, Cr.P.C. He obtained processes under Sections 82/83, Cr.P.C. against accused Tej Narain (A-3) Devendra Singh (A-1), Surendra Singh (A-2) and Shreeram Singh (A-4) had already surrendered before the Court. After the appearance of the accused appellants before the Court and after completing his investigation, he submitted charge sheet against the accused appellants and two others.

7. Accused Lallan Singh and Ravindra Pratap were separately committed to the court of Sessions at Ballia on the basis of which Session Trial No. 232 of 1978 (State v. Devendra Singh, Surendra Singh, Tej Narain, Shreeram Singh and Lallan Singh) were registered. As against Ravindra Singh Sessions Trial No. 75 of 1979 was registered. Since all these six persons were said to be involved in one and the same incident, they all were tried together. At the trial accused appellants and Lallan Singh and Ravindra Pratap pleaded not guilty and maintained that they were falsely implicated into this case due to enmity.

8. After needful trial into the matter the learned trial Judge gave the benefit of doubt to Ravindra Pratap Singh and Lallan Singh. He accordingly acquitted them. He, however, found the accused appellants guilty under Sections 302/ 34, I.P.C.

and 307/34, I.P.C. and convicted and sentenced them as aforesaid. Hence his appeal.

9. We have heard Shri (G.S. Chaturvedi, learned Senior counsel for the accused appellants and Shri K.C. Saxena, learned A.G.A. for State considered their submissions and have reap-praised the evidence on record.

10. The prosecution in support of its case had examined eight witnesses, Out of whom (P. W .4) Basdeo Mandal (P. W. 5) Shashi Shekher Singh, injured were the eye witnesses of fact. (P. W. 1) Dr. Chandra Shekher Verma had proved the injuries of Shashi Shekher Singh (P. W. 5) as noted above. (P.W. 2) Dr. Gauri Shanker Sinha conducted autopsy on the dead body of the deceased and proved the post mortem report relating to the deceased Mukhbadni Devi. (P.W. 3) Head Constable Raja Ram Sharma was the formal witness who made G.D. entry and who proved the chick report. (P.W. 6) S.I. Raj Narain Prasad was the Sub Inspector of police of police station Chhapra who stated that on hearing the information of the incident in question he reached at the railway station Chhapra where the railway doctor was already present and was providing first aid to the injured Shashi Shekher Singh (P.W. 5). He stated that he found the injured lying in between the two berths of the compartment on the floor and by his side a female was lying dead. The luggage of the deceased was found kept near the gate of the compartment. Two constables of G.R.P. Chhapra viz. Parmeshwar Das and Bhup Narain were also present there. He stated that he enquired name and details from the injured Shashi Shekher Singh (P.W. 5) who with great difficulty told his name as Shashi Shekher Singh son of Narshing Prasad, resident of Gaighat, Bihar and name of the deceased as Mukhbadni Devi. He sent the injured Shashi Sheker Singh to the district hospital Chhapra and got the Coach compartment in question detached from the train. He stated that immediately after being sent to the hospital, the injured was sent to Operation Theatre. He, therefore, recorded the statement Exh. Ka. 9 of Shashi Shekher Singh on 17-7-1978 at about 4.00 a.m. Since the incident had happened within the jurisdiction of G.R.P. Ballia, he therefore transmitted the statement which was duly signed by the injured to G.R.P. Ballia along with his own memo. He prepared inquest report in respect of the dead body of the deceased and sent the same for post mortem examination, He found a

bag of grain, Palang Ki Pati, plastic Dori and a Purse containing eighty five rupees as also three second class tickets. He found currency note of Rs. 1,010/-, which were tied by means of Dora around the back of the deceased. He prepared recovery memo Exh. Ka 13 about the same. He also found cartridge and a lot of blood lying on the floor of the compartment. He took that blood and kept the same in a sealed packet. He made an entry about all these observations in G.D. of police station. He obtained the blood stained clothes as also the ornaments which the deceased was wearing after the post mortem examination of the deceased and sent the same to G.R.P. Ballia.

11. (P.W. 7) Devendra Prasad Srivastava was the A.S.M. Chhapra. He stated that on 16-7-1978 he received information on telephone that in Coach No. 8413 of Train No. 294 Dn. a man has been murdered and the other has been seriously injured. He immediately conveyed this information to A.S. M. on outdoor Duty who made an entry about this fact in his diary, A copy of which was filed as Exh. Ka 21.

12. (P.W. 8) Tej Bahadur Singh was the Investigating Officer who conducted investigation into the matter and submitted charge sheet Exh. Ka. 26 against the accused appellants. Subsequent investigation into the matter was done by Kailash Singh S.O. G.R.P. who submitted charge' sheet Exh. Ka. 27 against Ravindra Singh (Accused since acquitted).

13. Sri G.S. Chaturvedi, learned Senior Counsel for the accused appellants has vehemently argued before this Court that it was in fact a case of train robbery and murder and the accused appellants have been falsely arrayed into this case due to enmity. We are unable to agree.

14. This is the admitted case of the parties that Ram Briksh Singh, Jagdish Singh and Ram Paridhan were real brothers. They all were residents of village Gaighat, district Ballia. They had their agricultural land at Gaighat, Ballia, U.P. as well as Alam Nagar, Chandsara, Gangapur, district Saharsa, Bihar. It is also not disputed that Ram Briksh Singh and Narsingh Prasad who was a resident of Alam Nagar were good friends and that Shashi Shekher Singh injured ((P.W. 5) was the natural son of Narshing Prashad and was taken in adoption by Ram Briskh Singh. It is also admitted case of the parties that after his adoption by Ram Briksh Singh,

Shashi Shekher Singh (P.W. 5) came to reside with Ram Briksh Singh. The deceased Smt. Mukhabadni Devi was admittedly the widow of Ram Briksh Singh, the adoptive father of Shashi Shekher Singh (P.W. 5). Shashi Shekher Singh (P.W. 5) being an injured eye witness of the occurrence is the starred witness of the prosecution. He stated in his statement on oath before the Court below that Ram Briksh Singh had died in the year 1969 and after his death his name was mutated over the plots held by Ram Briksh Singh at both the places viz. Gaighat as well as Alam Nagar and that he used to look after the cultivation at both these places along with his adoptive mother Smt. Mukhabadni Devi (deceased). He has clearly stated that because of his adoption by Ram Briksh Singh and because of the fact that he was reaping the fruits of the properties held by Ram Briksh Singh, his collaterals viz. accused appellants and their other family members and associates were bearing ill will towards him and deceased Mukhabadni Devi, the widow of Ram Briksh Singh, the adoptive mother of this witness. He clearly stated that Devendra Singh (A-1) and Surendra Singh (A-2) were real brothers and Tej Narain (A-3) and Shriram (A-4) were the close friends of Devendra Singh. Ravindra Singh (accused since acquitted) was the brother-in-law of Devendra Singh (A-1) and Basdeo Mandal (P. W. 4) was working as his servant for the last about 5-6 years before the date of occurrence of this case. The clear case of the prosecution as has been stated by Shashi Shekher Singh (P.W. 5) is that about two months before the occurrence of this case, he along with his mother, deceased Mukhabadni Devi and servant Basdeo Mandal (P.W. 4) had come to Gaighat for looking after the cultivation. He stated that in view of the tense atmosphere prevailing at Gaighat the deceased Mukhabadni Devi wanted to sell of her plots at Gaighat. He stated that the deceased had in fact accepted some earnest money for selling of her plots. The accused appellants Devendra Singh (A-1) and Surendra Singh (A-2), their friends and associates all knew about the fact that the deceased wanted to sell of her plots at Gaighat. While giving the version about the occurrence of this case, Shashi Shekher Singh (P.W. 5) stated that on the date of the occurrence of this case viz. 16-7-1978, he along with his servant and mother deceased Mukhabadni Devi started for Alam Nagar and had boarded the train, at about 6.30 p.m. Following him Tej Narain (A-3) also came into the same compartment. Devendra Singh (A-1) was already sitting in the said

compartment. There was a stoppage of only about five minutes of the said train. The train immediately started. There was sufficient light inside the railway compartment. He and his mother sat on the side berth. He kept his luggage in between the two doors of the compartment where his servant Basdeo Mandal (P.W. 4) was sitting. He stated that when the train stopped for a while at railway station Sarmanpur, a Mungfaliwala and some other passengers entered into the said compartment. Thereafter nearabout 8.00 p.m. the train had stopped at railway station Bakulaha. When the train moved from there, a man pushed the northern gate of the compartment. Tej Narain (A-3) got up to open the gate and thereupon Surendra Singh (A-2), Shreeram Singh (A-4) and Ravindra Pratap and Lallan Singh (accused since acquitted) entered into the said compartment. He further stated that Surendra Singh (A-2) was having a pistol in his one hand and in his another hand he was holding, a Chhura. Shreeram (A-4) was holding Chhura in both his hands. Lallan Singh and Ravindra Pratap Singh (accused since acquitted) were holding knives. After entering into the compartment, Surendra Singh (A-2) rounded his pistol and said as to how the injured and the deceased would now be saved and thereafter Tej Narain (A-3) assaulted him by means of Chhura and the others also assaulted him by means of Chhura and knives. His mother deceased Smt. Mukhbadni Devi tried to save him. She too was assaulted by the accused appellants by means of Chhura and knives. Shashi Shekher' Singh (P.W 5) further stated that Tej Narain Singh took out the Chhura from Shree Ram (A-3), and he too assaulted him and his mother by means of Chhura. Devendra Singh (A-1) also assaulted by means of Chhura. He sustained injuries and fell down on the floor. After his falling down from the berth, the accused appellants further assaulted him. He stated that because of the injuries caused by the accused appellants his mother Mukhbadni Devi died on the spot. The Mungfali wala had also sustained injuries. His servant or any other passenger did not dare to save him or his mother. When the train stopped on the outer signal of Bakulaha, the accused appellants and their associates ran away. They also took away with them Basdeo Mandal (P.W. 4) the servant of this witness. He thereafter stated that two constables came into his compartment who took him to Chhapra where he was admitted in the hospital and where the police Sub-Inspector recorded his statement, on the basis of which this case was registered as Case Crime No. 89

under Section 302, I.P.C. at Police Station G.R.P Ballia.

15. He further stated that he remained admitted at Chhapra hospital for about 21 days and became all right after several months. He stated that after the incident of this case his servant Basdeo Mandal (P.W. 5) never came to him.

16. During the course of his cross-examination this witness stated that since after his adoption the accused persons used to quarrel with him. They used to threaten him but the matter was usually pacified by the intervention of the villagers. When admittedly the accused appellants Devendra Singh (A-1) and Surendra Singh (A-2) were real nephew of Ram Briksh Singh Who had taken Shashi Shekher Singh in adoption, it was quite natural for them to not have appreciated the adoption of Shashi Shekher Singh (P.W. 5) by Ram Briksh Singh for the obvious reason that after the death of Ram Singh and his widow, the entire property held by Ram Briksh Singh would have gone to them when the complainant and his mother were having properties at both the places viz. Gaighat Ballia, U.P. and Alam Nagar, Bihar, it was very natural for them to visit both the places off and on, in order to supervise the affairs of their agricultural land. The circumstances that because of the annoyance of the accused appellant the deceased Smt. Mukhbadni Devi thought in terms of disposing of her property situate at Gaighat and that she did enter into the argument about the same should have naturally aroused the bad feeling of the accused appellant to this extent as to do away with the complainant Shashi Shekher Singh (P.W. 5) and his mother Smt. Mukhbadni Devi.

17. The circumstances that the accused respondents Devendra Singh (A-1) and Surendra Singh (A-2) were close relations of the deceased and they were living in one and the same place, it is quite probable for us to believe that the movements of the deceased and the complainant from Gaighat to Alam Nagar were very well known to the accused appellants, and, therefore the accused appellants hatched a plan to do away with the deceased and the complainant, Shashi Shekher Singh (P.W. 5) in the railway compartment.

18. The circumstances that Devendra Singh (A-1) Was already sitting in the said compartment, the circumstance that Tej Narain (A-3) Surendra Singh (A-2) and Shreeram (A-4) boarded the train subsequently and further circumstance that

Surendra Singh (A-2) was armed with a country made pistol and he exhorted 'Aaj Bachkar Kahan Jaoge' and thereafter the accused appellants assaulted Shashi Shekher Singh (P.W. 5) and deceased Smt. Mukhbadni Devi by means of Chhuras and knives fully go to show that the accused appellants had assaulted the injured Shashi Shekher Singh (P.W. 5) and deceased Smt. Mukhbadni Devi with an intention to kill.

19. We should state here that the number and nature of the injuries which were found on the person of Shashi Shekher Singh (P.W. 5) and which consisted of an incised wound 7' x 1' x bone deep across the back of neck, seven incised wounds on back of neck varying from 6' x 1' long and 4' x ' broad x skin deep, two incised wounds 3' x 1' x ' on left fore arm, one incised wound measuring 4' x 1' x skin deep on left side of scalp, one incised wound on right side face measuring 4' x 1 ' skin deep were all such injuries which should have been caused to this witness by the assailants with the clear intention of committing murder of this witness.

20. The medical evidence of Dr. Chandra Shekher (P.W. 1) who medically examined this injured on 16-7-1978 at about 10.00 p.m. at Chhapra hospital fully proves that all these injuries should have been caused within six hours. All these injuries were dangerdus to life and could have been caused by a sharp edged weapon like knife or Bhujali meaning thereby Chhura. The medical evidence of Dr. Chandra Shekher (PW 1) was quite clear on the point that all those injuries could have been caused at about 8.00 p.m. on 16-7-1978 the date and time of the occurrence stated by Shashi Shekher Singh (P.W. 5).

21. Similarly, the medical evidence of Dr. Gauri Shanker Singh (P.W. 2) who conducted autopsy on the dead body of the deceased fully proves that he found a cut wound measuring 6' x 3' underlying Trachea on the front of the neck of the deceased Smt. Mukhbadni Devi, one cut wound spindle shape ' x ' x chest cavity deep on left side chest, another cut wound on chest, one cut wound measuring 1' x 1/4' x abdominal cavity and multiple cut wounds on right arm and left fore arm.

22. Dr. Gauri Shanker Sharma (P.W. 2) further stated that the aforesaid antemorten injuries found on the person of the deceased Smt. Mukhbadni Devi were sufficient in the ordinary course of nature to cause death.

23. It would thus be seen that the medical evidence of two doctors viz. Dr. Chandra Shekher (P.W. 1) and Dr. Gauri Shanker Sinha (P.W. 2) lends full corroboration to the ocular evidence of Shashi Shekher Singh (P.W. 5) on the point that the injuries found on his person as also those caused to his mother deceased Smt. Mukhbadni Devi were caused by the accused appellants by means of sharp edged weapons like Chhuras. Thus to us Shashi Shekher Singh (P.W. 5) appears to be a wholly reliable witness and his testimony was rightly believed by the Court below.

24. Coming to the evidence of Basdeo Mandal (P.W. 4) , it would suffice to state that although this witness had turned hostile with regard to the participation of the accused appellant Devendra Singh (A-1) in the occurrence in question, yet he fully corroborated the statement of Shashi Shekher Singh (P.W. 5) on the point that after entering into the compartment Surendra Singh (A-2), Tej Narain (A-3) and Shreeram Singh (A-4) had assaulted his master Shashi Shekher Singh and his mother Smt. Mukhbadni Devi by means of Khukhri and knife, as a result of which the deceased Smt. Mukhbadni Devi and Shashi Shekher Singh had fallen down from their seats. He stated that after this incident when the train had slowed down he jumped down and went away and reached to Alam Nagar after 4-5 days.

25. It would suffice to state here re that this witness Basdeo Mandal (P.W. 4) being petty servant, it is not improbable to believe that after the incident, he shifted loyalties and started working with accused appellant Devendra Singh (A-1) as was suggested by the prosecution during the course of cross examination of this witness.

26. The mere fact that even this witness who shifted loyalties from the complainant and the deceased to the accused appellants has fully corroborated the prosecution story as against three accused appellants viz. Surendra Singh (A-2) Tej Narain (A-3) and Shreeram Singh (A-4), fully to establish that the incident in question had taken place in the manner stated by Shashi Shekher Singh (P.W. 5) against whom accused appellants Devendra Singh (A-1) and Surendra Singh (A-2) had a grudge on the point of agricultural land and property and on the point of his adoption by their own uncle but for which the entire property held by their uncle Ram Briksh

Singh should have gone to them.

27. Thus the theory of train robbery as has been set up by the learned counsel for defence becomes palpably false. It is important to note here that had it been a case of train robbery and murder, the miscreant should have first of all tried to rob the ornaments which the deceased was wearing, they should have tried to rob the other passenger and then a message should have gone to the railway authorities and the police authorities to the effect that some train robbery and murder has been committed and not the simple message that a man had been killed and another assaulted inside the compartment.

28. It was further argued on behalf of the accused appellants that there was no light in the compartment in question at the time of the occurrence and, therefore, the real assailants could not have been identified. Shri G.S. Chaturvedi learned counsel urged before us that since the train in question was a loop-line train, it is usual that the light of the compartment of such train generally remains off and therefore, since this incident was committed in the cover of darkness, the accused appellants deserve benefit of doubt. It is not possible for us to appreciate the arguments built up by the learned counsel for the defence for the simple reason that Shashi Shekher Singh (P.W. 5) as also Basdeo Mandal (P.W. 4) have specifically stated the existence of light in the compartment at the time of occurrence in question. The presumption of law is that the Court can presume that a common course of business was followed. Thus the presence of light in the railway compartment was the common course of business and when specific evidence on this point by way of the statement of the injured Shashi Shekher Singh (P.W. 5) and Basdeo Mandal (P.W. 4) has come on this point, it is not possible for us to appreciate the argument built up by the learned counsel for the accused appellants.

29. It was next argued on behalf of the accused appellants that the prosecution by withholding the two police constables who had arrived in the compartment soon after the occurrence as also the Guard of the railway has failed to discharge its burden of proving the guilt of the accused appellants beyond reasonable doubt, and therefore, the accused appellants deserve acquittal. We are unable to agree.

30. It has come in the evidence of (P.W. 7) Devendra Prasad Srivastava who was then working as A.S.M. Chhapra that at about 8.25 p.m. on 16-7-1978 he received information from Regal Ganj Railway Station on telephone that a murder has been committed in Coach No. 8413 of 194 Dn. Train: He immediately transmitted this information to A.S.M. Out Door and thereafter the machinery of law was set into motion.

31. P.W. 6 Raj Narain Prasad who was Sub. Inspector Police posted at Chhapra stated on oath before the Court below that on receiving information about the incident in question he immediately reached to the Coach in question where the railway doctor was already present. He found that on the floor of the Coach the injured Shashi Shekher Singh (P.W. 5) and the deceased were lying along with their luggage. He immediately referred the injured for medical examination.

32. The circumstances that from the railway authorities to the police authorities only a message regarding murder and assault was conveyed fully goes to prove that the incident in question was not a case of train robbery and murder, it was purely and simply a case of cold blooded murder.

33. The circumstances that no injury caused by blunt weapon like rod which accused Tej Narain (A-3) is said to be holding does not establish the innocence of the accused appellant for the simple reason that it has come in the evidence of Shashi Shekher Singh (P.W. 5) that Tej Narain (A-3) after assaulting him by means of rod further assaulted him and his mother by means of Chhura which he had taken from Shreeram Singh (A-4). It appears to us that initially Tej Ram (A-3) was armed only with a rod but when he found it ineffective, he took out the Chhura from his associate Shree Ram (A-4) and assaulted the deceased and the injured by means of the same.

34. Thus the very fact that Tej Narain (A-3) subsequently took a Chhura from the hand of Shreeram Singh (A-4) and further assaulted the injured and the deceased fully go to establish that the alleged rod which Tej Narain (A-3) was initially holding in his hand wa a small rod and even if any assault was made by him by means of the same it did not cause any visible or serious injury worth being noted by the medical Officer. Thus the absence of any contusion etc. does not go to

establish the innocence of this accused appellant who had played an important role in the occurrence in question, first by opening the gate of the train and assisting his other associates to enter into the compartment with the obvious object of killing the deceased and the injured Shashi Shekher Singh (P.W. 5) and secondly by using the Chhura for assaulting these persons.

35. The mere fact that two other co-accused persons viz. Ravindra Pratap Singh and Lallan Singh were given benefit of doubt and were acquitted by the trial Court itself does not discredit the solemn testimony of the injured eye witness Shashi Shekher Singh (P.W. 5) as against the appellants for the obvious reason that those two accused persons were not named in the F.I.R. which was lodged on the basis of the statement of Shashi Shekher Singh (P.W. 5), which he made to police Sub Inspector on 17-7-1978 at 4.00 a.m. in Surgical Ward, Sadar Hospital Chhapra.

36. Thus to sum up we find that there was a well founded motive to the accused appellants to do away with the deceased and injured Shashi Shekher Singh (P.W. 5) and that in furtherance of their common intention the accused appellants Devindra Singh (A-1), Surendra Singh (A-2), Tej Narain Singh (A-3) and Shreeram Singh (A-4) did cause the murder of the deceased Smt. Mukhbadni Devi and attempted to commit murder of Shashi Shekher Singh (P.W. 5). They were, therefore, rightly convicted by the Court below for the offence punishable under Sections 302/ 34, I.P.C. and 307/34, I.P.C. and the finding of fact recorded by the Court below on this score is accordingly affirmed.

37. Coming on the point of sentence, we find that the manner in which the accused appellants had committed the gruesome murder of the deceased Smt. Mukhbadni Devi and had attempted to kill Shashi Shekher Singh, the sentence of imprisonment for life inflicted under Sections 302/34, I.P.C. and four years R.I. under Sections 307/34, I.P.C. warrants no interference by this Court. Thus the appeal fails and is hereby dismissed. It is directed that the bail granted to the accused appellants stands cancelled. Let them be taken into custody forthwith and committed to prison to serve out their sentences. If the accused appellants fail to surrender themselves before the Court below for being committed to prison within

a period of 15 days from the date of this order, the Court below shall take all sorts of coercive measures against the accused appellants to commit them to prison.

38. Let the record of the case along with a copy of this judgment be sent to the Court below for needful compliance and report within a period of three months.

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