

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.266 of 1992

Arising out of PS.Case No.-140 Year-1989 Thana-Baniyapur District- Saran at Chapra

1. Raj Mahal Rai, Son of Sheo Narain Rai.

2. Shatrughan Rai, Son of Ram Sewak Rai

Both resident of village Harpur, P.S. Baniapur, District Saran.

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 277 of 1992

Arising out of PS.Case No.-140 Year-1989 Thana-Baniyapur District- Saran at Chapra

Ram Ekbal Rai, Son of Ram Sewak Rai, resident of village Harpur, P.S. Baniapur, District Saran.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No. 266 of 1992)

For the Appellants : Shri Aaruni Singh, Amicus Curiae

For the State : Shri Dilip Kumar Sinha, APP

(In CR. APP (DB) No. 277 of 1992)

For the Appellant : Smt. Fauzia Shakil, Amicus Curiae

For the State : Shri Abhimanyu Sharma, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 07-01-2015

The two appeals arise out of judgment of conviction dated 02.06.1992 passed in Sessions Trial No. 38 of 1991 by the learned IVth Additional Sessions Judge, Saran at Chapra by which each of the three appellants was held guilty of committing offences under Sections 302 read with Section 34 and 341 of the Indian Penal Code. The appellants were heard on



sentence on 06.06.1992 and each of them was directed to suffer rigorous imprisonment for life under Section 302/34 of the Indian Penal Code and simple imprisonment for one month under Section 341 of the Indian Penal Code which sentences were to run concurrently. While appellants Ram Ekbal Rai and Shatrughan Rai chose to appeal together against the judgment of conviction and order of sentence impugned herein, appellant Raj Mahal Rai filed his separate appeal. The two appeals have been heard together by us and they are being disposed of by this common judgment.

2. The prosecution story is contained in the First Information Report (Ext.6) lodged by informant Vishwanath Rai (P.W.3) at Baniyapur Police Station in the district of Saran on 27.07.1989 at about 7.45 P.M. It was stated by the informant that he had come to Paigambarpur market for marketing. It was the market day. At about 6.15 P.M. there was a sudden commotion in the market place and people started running helter skelter. P.W.3 saw Nagina Sah (P.W.4), one of his fellow co-villagers coming running from west and as soon as P.W.4 Nagina Sah had seen Vishwanath Rai (P.W.3), he stated to him that his uncle Master Saheb (Shiv Lochan Rai) was being killed by appellants Ram Ekbal Rai, Shatrughan Rai and Raj Mahal Rai on the pucca road



and P.W.4 had also been threatened by brandishing a knife and was also attempted to caught by the accused persons but he, any how, made good his escape, leaving Master Saheb in the clutches of the above named accused persons. No sooner the informant had heard the above story, he moved in the west on Paigambarpur-Siwan road and saw that his uncle Shiv Lochan Rai had been put down by the three appellants in front of the house of one Bhagwat Prasad. Appellant Raj Mahal Rai had caught the head of the deceased while appellant Shatrughan Rai had caught his left leg. Appellant Ram Ekbal Rai was twisting the right leg of the deceased in reverse direction so as to causing its fracture. The deceased was crying in pain but no one was daring to come near the accused persons for the rescue of the deceased. When appellant Ram Ekbal Rai started causing fracture of his right arm, the informant shouted in defence of his uncle when appellant Shatrughan Rai brandished a *Chaku* and ran towards P.W.3 to assault him. The informant Vishwanath Rai (P.W.3) ran from there and came to his house and being accompanied by family members who were all armed with *Lathis* came back again to Paigambarpur to the place of occurrence where he saw that his uncle was lying in a pool of blood and he was breathing very slowly. The informant started making arrangements for shifting

his uncle to the hospital but the deceased breathed his last and died on the spot.

It was stated by the informant that the right knee joint of his uncle was fractured and the bone had come out of the muscles and skin. The right scapula was also found dislocated and fractured and the right arm was also found fractured near the elbow joint. There was a bleeding injury in the back of the head of the deceased and the right thigh of the deceased was also bearing a bleeding injury. The informant could not see and note all injuries which could have been present on the person of the deceased.

The informant, as per his statement, came to the police station from village Paigambarpur for informing the police and accordingly, the First Information Report was drawn up. It was stated by the informant that the occurrence was the result of old enmity which was existing between his uncle (deceased Shiv Lochan Rai) and the accused persons and the crime had been perpetrated in a planned manner.

3. P.W.8 S.I. Madan Kishore Singh who was the Officer-in-Charge of Baniyapur Police Station on 27.07.1989 after drawing up the First Information Report took up the investigation himself and came to the place of occurrence. He found the dead body of Shiv Lochan Rai there and held inquest upon it. The

inquest report was prepared in presence of the witnesses. The inquest report was marked Ext.7 by the learned trial Judge. The proceedings of holding inquest and inspecting the place of occurrence, as may appear from the evidence of P.W.8 were carried out in the flash of the head light of the jeep by which he had travelled up to the place of occurrence.

4. As regards the place of occurrence it was situated west of Paigambarpur market on the Paigambarpur-Siwan macadamized road. The road was about 10 ft. in width and the dead body was lying on the southern flank of the road by its back. The dead body, up to his waist, was lying on the *pucca* part of the road whereas the parts below it, like, legs of the deceased were lying on the earthen flank of it. His head was lying on the middle of the road. There was mud on the earthen southern flank of the road and it appeared as if on account of the movement of a bullock cart, some deep mark had been left in the muddy part of the road. The blood which had oozed out of the right knee joint of the deceased had accumulated in the depression created by the wheels of carts in the earthen flank of the road and it existed in a length of about 4 ft. The blood had clotted and there were marks of shoes in the muddy part of the road. The shoe of the right leg of the deceased was found lying at about 5 ft. from the dead body and his



umbrella was lying on the earthen flank of the road 10 ft. away from the dead body. The umbrella and the shoes of the deceased as also the blood which was found in the sunken earthen flank of the road were all seized by preparing seizure memo. The Investigating Officer also found trampling of grass which had grown on the earthen flank of the road and further found mud sticking in the *Dhoti* and *Kurta* of the deceased with further marks created by tearing on the part of the *Kurta* around his neck which was indicative of the fact as if the deceased had been pulled and pushed before he was put down on the ground or while he was being assaulted by the accused persons.

5. Nakta Chowk was a place which was situated about 100 yards east of the place where the dead body was lying and there were fields on the southern part of the road. On the northern part of the place, where the dead body was found and which was also a place north of the road, was situated a *Palani* created by thatch which was facing north. A *Chowki* was found kept there over which a small aluminium *Lota* was lying. East of this *Palani* was a pucca house which was closed from inside and the Investigating Officer stated that in spite of having called the occupant of the pucca house, no one had responded to it. There was a liquor shop situated north of the road and that was also

closed at the time of inspection of the place of occurrence.

6. After preparing the seizure memo (Ext.8) and the inquest report (Ext.7), the Investigating Officer issued the dead body Challan and dispatched the dead body to Sadar Hospital, Chapra for post-mortem examination. He thereafter recorded the statements of witnesses and set out on search of the accused persons and found them absconding. He seized some of the articles belonging to appellant Ram Ekbal Rai by preparing production-cum-seizure memo and further recorded the statements of different witnesses.

7. Dina Nath Yadav (P.W.5) who happened to be the son of the deceased appeared before the Investigating Officer on 29.07.1989 and handed over to him a bunch of documents which were applications/letters written to different authorities of the administration by the deceased complaining against the accused persons. Those documents in the form of applications and letters were seized by preparing production-cum-seizure memo (Ext.9/1).

The Investigation Officer received the post-mortem examination report and finding materials sufficient, sent up the three accused persons for their trial which ended in the impugned judgment of conviction and order of sentence.



8. The defence of the accused was that in fact the deceased was run over by a truck carrying some articles and on account of the serious enmity which existed between the deceased on the one hand and the accused persons on the other, they had falsely been implicated in the case. The above defence appears from the suggestion given to P.W.3 Vishwanath Rai in paragraph-49 as also to P.W.4 Nagina Sah in paragraph-19 of their deposition. The further suggestion which was given to the Investigating Officer of the case was that he had some special interest in implication of the accused persons because someone who could be on the side of the accused persons had filed a complaint petition against P.W.8 and that was the reason that he had fabricated facts for roping falsely the three appellants.

9. Nine witnesses were examined by the prosecution and none by the defence. Out of the nine witnesses, Yogendra Prasad Rai (P.W.1), Mukurdhan Sah (P.W.2), Vishwanath Rai (P.W.3), the informant of the case, Nagina Sah (P.W.4), who had initially informed the informant about the acts of the accused persons of assaulting his uncle, and Ram Nath Rai (P.W.6) deposed as eye witnesses to the occurrence. Dina Nath Yadav (P.W.5) was the son of the deceased Shiv Lochan Rai @ Master Saheb and he produced the applications or letters which



were written to different authorities by the deceased complaining against the accused persons. Dr. Arvind Kumar Gupta (P.W.7) had held post-mortem examination on the dead body of the deceased and had prepared post-mortem examination report (Ext.5). We have already noted that the case was investigated into by P.W.8, S.I. Madan Kishore Singh, who had also drawn up the First Information Report in his own hand. Ammanullah Khan (P.W.9) had tendered the deposition sheets of two persons Shankar Sah and Fulena Sah in Sessions Trial No. 245 of 1988 and had deposed that he had heard the deposition of the above named two witnesses recorded by the trial court in that case and the certified copy which were tendered by him in court were content wise similar to what the two witnesses had deposed before the trial court. On the basis of the evidence of Ammanullah Khan (P.W.9), the depositions of Shankar Sah and Fulena Sah were marked Ext. 10 and 10/1. After considering the evidence of the prosecution, the learned trial Judge passed the impugned judgment of conviction and order of sentence upon the three appellants noted at the very out set of the judgment.

10. We did not have the privilege of hearing the counsel who had initially filed the two appeals. In spite of the fact that we sent words and our orderlies to inform them that the Court was desirous of hearing the counsel, none appearance of the

original counsel in the two appeals forced us to request Sri Aaruni Singh and Smt. Fauzia Shakil, the two advocates of the Court, to assist us as Amicus Curiae. We heard both of them. The two counsel took us through the evidence of witnesses.

11. It was contended that there was serious enmity between the parties which appears admitted by each and every witness and the details thereof had appeared in the evidence of Vishwanath Rai (P.W.3), Nagina Sah (P.W.4) and Dina Nath Yadav (P.W.5), the son of the deceased. Their testimony was tinged with deep shade of interestedness and it may appear that they might not be present at the scene of occurrence and on account of the motive of settling scores had deposed against them. Submission was that two witnesses P.Ws. 1 and 6, i.e., Yogendra Prasad Rai and his brother Ram Nath Rai were chance witnesses and their evidence has to be thrown over board. Likewise, the evidence of Vishwanath Rai (P.W.3) was also that of a chance witness and he could not also be relied upon for sustaining the conviction. Submission was that there were initially no minor details stated in the First Information Report but subsequently while deposing in Court, Vishwanath Rai (P.W.3) and Nagina Sah (P.W.4), the two star prosecution witnesses, were adding up more spices to the fact so as to making it acceptable to the Court. In fact



the addition of additional facts which were not initially stated renders their evidence doubtful. It was, lastly, contended that the Investigating Officer was motivated to create facts against the accused persons because of a complaint petition having been filed in 1997 against him and that was the reason that on the very next day of the occurrence, he was going all tong and hammer to virtually demolish the house of appellant Ram Ekbal Rai in the name of executing processes under Sections 82 and 83 Cr.P.C. without admittedly taking out the orders in that behalf from the court. It was contended that the defence of the appellants that it could be accidental that the deceased had died giving an opportunity to the witnesses to rope in their staunch enemies appears the probability.

12. Sri Dilip Kumar Sinha, the learned Additional Public Prosecutor was controverting the submissions on the reliability of the witnesses. It was contended that it may be true that the witnesses were inimically disposed towards the accused persons, but the occurrence had taken place almost in the broad day light at about 6.15 P.M. in the month of July, 1987 and if they were motivated by enmity to roping the accused persons falsely they could have broadened the array of accused by adding up some more names specially that of Prabhu Rai, who was an accused and



was being tried on the day of occurrence by the court of sessions for the offence of murder of the son of Nagina Sah. Submission was that a thread of consistency and reliability was running through the evidence of witnesses and there does not appear any reason to doubt their veracity merely by branding them as chance witnesses. The manner of occurrence was duly corroborated by the medical evidence and the oral evidence of other witnesses and the place of occurrence also found bearing testimonies to the commission of the offence. It was contended that the judgment of conviction and the order of sentence need not any interference from this Court.

13. The learned trial Judge while writing the judgment impugned herein was noting as may appear from paragraph-22 at page 31 of the impugned judgment almost in its bottom that the witnesses appeared definitely chance witnesses. This could be one of the reasons that the learned Amicus Curiae appearing on behalf of the appellants had a very good launching pad to attack the veracity of the witnesses branding them chance witnesses. The learned trial Judge in fact noted that the witnesses might be appearing chance witnesses, did not in our opinion, consider as to whether the reason for being present on or around the place of occurrence of the witnesses as per them, could be



making it difficult for him to reject their evidence. The reason had not been assigned definitely by the learned trial Judge who had chosen to place reliance upon these witnesses. We may remind ourselves that a trial Judge is in the best position to observe the demeanour of witnesses when they are present in the witness box and a court of appeal when it sits over a judgment of the lower court must shun and also free itself from the judicial superstition of viewing the evidence with doubt. In fact a Judge has to begin with a presumption that the witnesses are trustworthy and the reasons which are assigned were acceptable and genuine unless compelling and sound reasons are shown to the appellate court to displace the presumption of witnesses being untruthful. We must also remind ourselves that we are a country, which is formed by villages. Village life and its mores are completely different from what could be in some developed areas of the nation where people had certain set mores of life. It is not unusual in villages that on a particular day a market is organized where people converge to purchase the things of daily needs. It was the 27th of July, 1987 which was thursday and right from the First Information Report up to the evidence of witnesses, it had been stated that the market had been organized on that particular day in Paigambarpur village and the witnesses had come from their houses to make purchase of their



required articles. As regards Nagina Sah (P.W.4) and the deceased, there is no denial of the fact that the case for the murder of the son of Nagina Sah had been listed on that particular day before the trial court and the two had gone for making necessary *pairvi* on behalf of Nagina Sah (P.W.4). The deceased as appears from the evidence of the informant Vishwanath Rai (P.W.3) and also from the evidence of Dina Nath Yadav (P.W.5) besides the evidence of Nagina Sah (P.W.4) was carrying out some sort of campaign against the accused persons and their so called criminal behaviour and was writing to different authorities against them. The deceased probably appears to have raising a crusade against the accused persons to highlight their criminal behaviour and to ensure that they were brought to justice. The evidence of P.W.4 as also that of P.Ws. 3 and 5, i.e., informant Vishwanath Rai the nephew of the deceased and Dina Nath Yadav, the son of the deceased, are very consistent and without there being any challenge to it points out that the deceased was on the side of Nagina Sah who was prosecuting the same set of accused as also Prabhu Rai who happened to be the brother of appellant Ram Ekbal Rai. The two were returning from Chapra Civil Court after having gone there to attend the court proceedings. Besides that particular case in respect of the murder of the son of P.W.4 Nagina

Sah, there had been chronic litigation for 3½ *Bighas* of land between the deceased and some of the witnesses on the one side and the accused persons on the other. It had been admitted by Vishwanath Rai (P.W.3) in paragraph-39 that there had been a 144 Cr.P.C. proceeding against the deceased and the accused persons but he could not give the details of the land which was covered by that proceeding. However, Dina Nath Yadav (P.W.5) had stated the other details of the dispute by giving the *Khata* number of the plot in paragraph-16 of his deposition and had stated that the area was 3½ Bighas which was involved in the dispute and the record of rights was created in the name of the grandfather of P.W.5, i.e., the father of the deceased. The proceedings had been initiated in 1982 and the same had been decided in favour of the deceased and further that there were some criminal cases also between the accused and the deceased. From the evidence of Nagina Sah (P.W.4) as also from the evidence of other witnesses, like, Vishwanath Rai (P.W.3) and Ram Nath Rai (P.W.6), it is undisputed that the deceased and Nagina Sah (P.W.4) had gone together to Chapra to attend the proceedings of the sessions trial and it had clearly been stated by P.W.4 in his evidence in paragraph-9 that the deceased and P.W.4 had left Chapra court for their house at about 3 P.M. and as may appear further it has been

stated by P.W.4 in the same paragraph that the deceased was helping him out in the prosecution of the accused persons in that sessions trial and that on that particular day the case had been fixed for recording of the evidence of the Investigating Officer. Thus, what we find is that the reason assigned by P.W.4 for his presence or for accompanying the deceased appears acceptable.

14. So far as the evidence of Yogendra Prasad Rai (P.W.1), Mukurdhan Sah (P.W.2) and Ram Nath Rai (P.W.6) is concerned, while P.Ws. 1 and 6 were full brothers between themselves had given the solitary reason for their presence in the market place, Mukurdhan Sah (P.W.2) had given a separate reason. Both P.Ws. 1 and 6 stated that they had gone to market for purchasing clothes whereas Mukurdhan Sah (P.W.2) stated that he had gone to the flour mill of one Dhurandhar Sah and after putting his wheat back on the flour mill, he went to the tea stall of Sheojee Sah and was sitting there when there was a commotion about the incident.

15. The learned Amicus Curiae appearing for the appellants challenged the claim of P.Ws. 1 and 6 and submitted that their evidence had to be rejected because the Investigating Officer (P.W.8) had not recorded the statement of Yogendra Prasad Rai (P.W.1). During investigation P.W.8 had stated that

because Yogendra Prasad Rai (P.W.1) had given statements similar to that of his brother Ram Nath Rai (P.W.6) hence, he did not record his separate statements. We find from the evidence of both P.Ws. 1 and 6 as we have noted, that they claimed to have gone to purchase clothes and they had gone to the shop of one Vijay Kumar Pandey. The above fact has been stated by P.W.1 in paragraph-9 and the same fact has been supported by P.W.6 in paragraph-1 of his deposition when he stated that he also went with his brother to the same Vijay Kumar Pandey and purchased a *Lungi* and *Baniyan* for him and when they were there, the commotion was there about the killing of the deceased by the accused persons. It is true that P.W.8 had stated that he did not separately record the statement of Yogendra Prasad Rai (P.W.1) but at the same time he had stated that the witnesses had given similar statement as was given by his brother Ram Nath Rai (P.W.6) and this fact he recorded in the case diary. P.W.8 the Investigating Officer had noted that he also recorded the statement of Yogendra Prasad Rai (P.W.1) who supported the occurrence as an eye witness and gave similar statement, like, that of his brother P.W.6 Ram Nath Rai. In our opinion, the compliance of recording the statement of the witness is sufficient. Yogendra Prasad Rai (P.W.1) was questioned by the police and before him Ram Nath

Rai (P.W.6) was questioned by the Investigating Officer. P.W.6 gave a detailed account of the occurrence as an eye witness and it is noted in paragraph-10 as we have just recorded that Yogendra Prasad Rai (P.W.1) also supported the prosecution story as an eye witness and gave similar statement as of P.W.6.

The statement of a witness or any other person who could be acquainted with the facts and circumstances of a case could be recorded by an Investigating Officer under Section 161 Cr.P.C. and as may appear from sub-section (3) to Section 161, such a police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records. As may appear from the very plain reading of this part of sub-section (3) of Section 161, it is not a mandate of law that a separate statement has to be recorded. The police officer has to record the statement of every witness or person acquainted with the facts and circumstances of the case and if possible has to make a separate and true record of the statement of each such person whose statement he records but in our opinion, if the Investigating Officer finds the witness narrating the same facts as were narrated by any other witness as regards the details of the occurrence then it is



within the discretion of the police officer not to record the full and complete statement of such a witness and merely to record the fact that the witness had indeed reproduced the same facts as was stated by a particular witness or set of witnesses. It does not appear to us an irregularity which could be vitiating the proceedings. It may be within the very discretion of the Investigating Officer to record the statements in his own manner. If we look to Rule 164 of the Bihar Police Manual, 1978, we may find that the discretion of the police officer to record the statement of a witness is fully his and it is not a mandate that it should be a detailed record which should be made by the police Officer. Rule 164 of the Bihar Police Manual, 1976 directs that the statements which have to be recorded in the case diary have to be recorded in such a way as to make the case diary short and concise as far as it may be possible for the Investigating Officer. Thus, the mere reference to a statement of a witness and then noting that Yogendra Prasad Rai (P.W.1) was making similar statement, like, Ram Nath Rai (P.W.6), in our opinion, was full compliance with the provisions of Section 161 Cr.P.C. and read with Rule 164 of the Bihar Police Manual, 1978 and does not on that account render the evidence of P.W.1 unacceptable.

So far as their claim of being present at the scene of occurrence is concerned, we have already noted that they had

given good reason which was accepted by the court below and which was acceptable to us also and at the strength of those claims, we find that the witnesses could not be chance witnesses.

16. Enmity is one reason on account of which the evidence of witnesses have been viewed with some suspicion but it is not the rule of law that merely because the witnesses were inimically disposed towards the accused persons, their evidence has to be thrown over board. What is required of the court is that their evidence should be approached with care and caution and reasons should be found out as to whether they were compelling for the witnesses to depose falsely. One of the reasons we have already discussed as regards the claim of the witnesses regarding their presence at the scene of occurrence and the other reason could be that the witnesses in a spirit of enthusiasm of being believed by the court below may be adding up many facts so as to making it very difficult for the court to accept their evidence and act upon it. While considering the evidence of P.Ws. 1, 2, 3 and 4, we could not find out that they were concealing any fact or were adding up any other so as to making it difficult for us to act upon it. The witnesses were consistent in admitting that there had been some enmity between the accused persons on the one side and the witnesses on the other. Vishwanath Rai (P.W.3) was the very



nephew of the deceased and Yogendra Prasad Rai (P.W.1) and Ram Nath Rai (P.W.6) besides being full brothers between themselves and being residents of another village, had admitted as may appear from paragraphs-4, 21 and 25 of the evidence of P.W.6, to bear some interest against the accused persons. It had been admitted by P.W.6 in paragraphs-21 and 25 that one Dharmnath Rai was the brother of P.W.6 and thus, the brother of Yogendra Prasad Rai (P.W.1) and he had filed a criminal case against Prabhu Rai brother of Ram Ekbal Rai and on the day when P.W.6 was deposing in court, that particular criminal case was pending in some other court. Thus, one may say that the witness might have some interest in the prosecution and adverse to the defence but when we were considering the evidence of P.Ws. 1 and 6, we found that there was consistency as regards the claim as we have just discussed. So far as the evidence of Vishwanath Rai (P.W.3) is concerned, his interestedness is of course there, but he had not initially witnessed the occurrence rather he was told by Nagina Sah (P.W.4) as to what was being done to his uncle Shiv Lochan Rai @ Master Saheb by the accused persons which prompted him to rush towards the scene of occurrence to find out that the accused persons had put his uncle down on the ground and Ram Ekbal Rai had caught hold of the right leg of his uncle and

was reverse twisting it to cause fracture to it. Appellant Shatrughan Rai was at that time catching hold of the left leg of the deceased while appellant Raj Mahal Rai had caught the head of the deceased. When he attempted to intervene, he was threatened and he rushed towards his village when other family members of his and villagers met him on way and they came back to the scene of occurrence to find his uncle dead. Nagina Sah (P.W.4), as we have just discussed, was accompanied by the deceased while they were coming from Chapra court after attending the court proceedings and he had also supported the same manner of occurrence by narrating the same sequence of acts as was narrated by P.W.3. While considering the evidence of these two important witnesses, we were very much conscious about any embellishment having been incorporated by the two witnesses in their evidence and we found that no material facts could be brought on record which could diminish the value of the deposition of the two witnesses on account of being an improvement in the prosecution case. Enmity was there but that was solitary which related to the murder of the son of Nagina Sah (P.W.4) by the brother of Ram Ekbal Rai, namely, Prabhu Rai. This appears the motive for the occurrence. It was not the first time that the witnesses had narrated these facts. The deposition of witnesses, like, P.Ws. 1, 2 and specially P.Ws. 3

and 4 besides that of Ram Nath Rai (P.W.6) did not contain, as we have just noted, a single fact which could diminish the value of their evidence on account of having been improvised over the similar statement which was recorded by the Investigating Officer. They appear to us, as was with the case learned trial Judge, reliable witnesses and their evidence appears fit to act upon.

17. There is a consistency in narration of the event by the witnesses, like, P.Ws. 1, 2, 3, 4 and 6. They had stated that there was a commotion in the market place that the deceased had been captured by the three appellants and he was being killed on the road. The manner of occurrence, we have just pointed out by referring to the evidence of Vishwanath Rai (P.W.3) that appellant Ram Ekbal Rai was twisting the right leg of the deceased in reverse direction so as to causing fracture of it while Shatrughan Rai was catching hold of his left leg and appellant Raj Mahal Rai was holding the head of the deceased and it further appears that after Ram Ekbal Rai had succeeded in causing the fracture of right leg of the deceased, he did the same to the right scapula of the deceased and other joint of the legs and hands. While perusing the evidence of the witnesses, we came across that the witnesses had not been examined on the manner of occurrence so as to creating any confusion or doubt as regards the details thereof. In fact

whatever was stated by the witnesses in examination-in-chief was left untouched in cross-examination and thus, what was left on the record was unchallenged testimony of the witnesses as regards the manner of occurrence.

18. So far as the corroboration to the manner of occurrence is concerned, the evidence of Dr. Arvind Kumar Gupta (P.W.7) is worth noticing. While holding post-mortem examination on the dead body of Shiv Lochan Rai on 28.07.1989, P.W.7 found the following ante-mortem injuries:

(i) One swelling about 2" x 2" on right side of head with lacerated wound about 1/2" x 1/4" x 1/10" overlying it. No blood was found under scalp.

(ii) Dislocation of left elbow joint.

(iii) Dislocation of right shoulder joint.

(iv) One lacerated wound about 6" x 4" x bone deep on the lowest part of right thigh and back of knee with tibial head coming out of wound, i.e., posterior dislocation of right knee joint.

(v) On cutting open the thoracico-abdominal cavities, lungs was found pale, all chambers of heart were empty, stomach empty, bladder empty, liver was pale, spleen was pale and kidney was pale.

In the opinion of P.W.7, the cause of death was haemorrhage and shock due to the tear of the popliteal arteries and veins and extensive damage to joints during dislocation caused by forceful extension. P.W.7 was further of the opinion that the time elapsed since death and post-mortem held was within 12-24 hours.

19. Thus, the evidence of Vishwanath Rai (P.W.3) may be referred which we have already referred and we may also



note his evidence in examination-in-chief that there was a bleeding injury which was in the back part of the head of the deceased. The manner of occurrence which was twisting and extension of the legs, the joints of the legs and arms is clearly corroborated by the evidence of P.W.7. The shock and haemorrhage which was caused on account of the bleeding, must have caused the death as appears from the opinion of the doctor (P.W.7). Thus, what we find is that there is corroboration from the medical evidence also to the manner in which the deceased was killed or his death was caused.

20. It may be appropriate to consider the defence of the accused persons. It has been suggested, as we noted by referring to P.W.3 in paragraph-49 and P.W.4 in paragraph-21 that the deceased had been run over by a moving truck. We have just referred to the evidence of the doctor who had found the ante-mortem injuries on the dead body. There was no sign of treads of tyres found by the doctor on the dead body. The fractures were caused on account of the extensive twisting and extension of the joints of both the limbs. The doctor had very categorically stated that the injuries which were found by him had resulted on account of the forceful extension of the joints and parts of the joints. A vehicular accident could not cause twisting injuries we have just referred to above which itself is sufficient to reject the defence plea

set up by the accused persons.

21. It was contended before us that the Investigating Officer was interested in the prosecution and he was creating evidence in support of the prosecution case. This submission was addressed to us by virtue of the questions which were put to P.W.8 in paragraphs-23 and 24 of his deposition. P.W.8 was asked as to whether one Maiki Devi had filed a case against him and that one of the cousins of the accused, namely, Kamla Rai was cited as a witness in that complaint petition, P.W.8 replied that he did not have any knowledge of the filing of the complaint petition or contents of it nor did he have any knowledge that Kamla Rai who happened to be the cousin of the accused was cited as a witness. It was also put to P.W.8 as to whether he had attempted to get an affidavit filed by Kamla Rai who was not ready to swear and, as such, he had implicated him in several cases. We find from the record that the complaint petition was of course brought on record as Ext.B but whether any summoning order was passed on that complaint petition and further as to whether summons had been issued by the court before institution of the present case or during the pendency of the investigation had not been brought on record so as to determine that the Investigating Officer was inimically or otherwise disposed towards the accused



persons. Filing of complaint petition might be an event but on that account no person could be said to have the knowledge of such filing unless he had been served with a notice, we do not have anything before us. Likewise, we do not find that any record, showing that Kamla Rai was made accused in cases while P.W.8 was the Officer-in-Charge of the police station, has been brought on record. It is true that P.W.8 was acting against the provisions of Sections 82 and 83 and it appears that attachment of properties of appellant Ram Ekbal Rai had been made, but for that reason we cannot attribute any motive of ill-will to the Investigating Officer. Even assuming that the Investigating Officer was carrying any ill-will towards the accused persons, we could not on the face of the record hold that it had influenced the investigation in favour of the prosecution.

22. Smt. Fauzia Shakil was raising a submission on the non-conformity of questions put to the accused persons under Section 313 Cr.P.C. during their examination. She was pointing out that the accused persons had been charged under Section 302 of the Indian Penal Code by virtue of Section 34 of the Indian Penal Code but no question indicated that they had acted in furtherance of their common intention and had perpetrated the murder of the deceased. We were taken to the copy of the



statements of the three appellants recorded under Section 313 Cr.P.C. and we found that circumstances which were appearing individually against the accused persons definitely were put to them and it was very well pointed out to them that they had acted together in commission of the offence by individual participation and commission of a particular act. In our view, it is well known that a charge by virtue of Section 34 of the Indian Penal Code relates to pre-concert by meeting of minds of the accused persons and thus would ultimately be an act committed in conspiracy of the accused persons. One might have taken part individually and one might not have taken part in commission of the offence, but could have very well shared the common intention as a result of which the act had been committed. In all, Section 313 Cr.P.C. indicates that circumstances appearing from evidence against an accused person has to be put to him so as to eliciting his explanation on those circumstances which might be raising inference of his culpability. While perusing the questions which were put to the three appellants by the learned trial Judge, we found that they were very specific and clear as regards their individual and collective acts done or committed in furtherance of their common intention. The questions in our opinion have to be in very simple language which could be understood and which could reflect the



circumstances which were appearing from the evidence against an accused. On perusal of the questions which were put to the accused, we are satisfied that the questions were put to the accused persons in simple manner and language. The gist of the evidence and those circumstances appearing from it against each of the accused persons were so simply put as it would have been very easy for them to understand the questions to properly reply to them. The submission of Smt. Fauzia Shakil, in our opinion, does not stand good in the light of the language of questions which were formulated by the learned trial Judge.

It was lastly contended by Sri Aaruni Singh that there does not appear any immediate reason or cause as to why the accused persons had committed the murder of the deceased. Yet another theme of the impugned submission was that as to why when thousand of persons were present in the market place, as per Nagina Sah (P.W.4), others could not be coming forward and only interested persons were coming to depose. As regards the first submission, we may point out that the contention relates to the mental state of the accused and the defence could not have any answer to that particular issue. In the background of serious enmity, it would have been very much boiling in the mind of the accused persons that they should finally eliminate the deceased. It



has come in the evidence of Dina Nath Yadav (P.W.5), the son of the deceased that Shiv Lochan Prasad was writing against the accused persons from 1977 and had continued up to 1987 and the bunch of letters and applications which were produced by him in the court and which were taken on record by marking them exhibits clearly indicated the tenacity with which the deceased was agitating against the accused persons rightly or wrongly. This could be the very guiding factor that the accused persons had finally decided, when the deceased was coming after attending the proceedings of the sessions trial, to eliminate him.

As regards the contention of non-support from independent sources specially those who were present, we may note the behaviour of not coming forward to depose in court in a criminal trial. The evidence is consistent that there was a commotion in the market and many persons had been attracted to the scene of occurrence and most of them who were running helter skelter, as appears from evidence of P.W.4, should have been attracted to the scene of occurrence even out of curiosity to see as to what was happening there. The psychological tendency which appears in us is that an incident of murder or any such serious incident is still treated as a private matter of the family members and the accused. We keep ourselves aloof of such situation. This

is an unfortunate, sad development in ourselves but one has to learn living with it. The evidence is trustworthy and as may appear from Section 134 of the Evidence Act, it is the quality of the evidence than the quantity of witnesses, which matters in criminal trials and, as such, even if independent persons or some other persons had not come forward to support the prosecution charges, we do not pay much attention to it if the prosecution witness appear reliable.

23. After whatever we have noted in the light of the evidence available to us on record, we find that the appeals are of no merit and the same are hereby dismissed. The three appellants are on bail. Their bonds are cancelled. They should surrender and serve out the sentences inflicted upon each of them.

24. We were very ably assisted by Sri Aaruni Singh and Smt. Fauzia Shakil, Advocates and we direct the Patna High Court Legal Services Committee that each of them be paid Rs. 2500/- each as fee for assisting us. Let the first and last pages of the judgment be handed over to them.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

Sanjay/A.F.R.

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