

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No. 17 of 1993

Arising Out of Sheosagar PS.Case No. – 124 Year-1983 Thana –Sheosagar District- Sasaram
(Rohtas)

The State of Bihar

.... Appellant/s

Versus

- 1. Ram Kunwar Singh Son of Bhada Mahto.
- 2. Bindeshwar Singh Son of Raj Nath Mahto.
- 3. Rameshwar Singh Son of Magha Mahto.
- 4. Gulab Chand Singh Son of Bhada Mahto.
- 5. Ram Krit Singh Son of Bhada Mahto.
- 6. Megha Singh Son of Ram Janam Singh.
- 7. Ram Nath Mahto Son of Ram Janam Mahto.

All residents of Village-Simari, P.S.-Shiv Sagar, District-Rohtas.

.... Respondent/s

With

Criminal Appeal (DB) No. 60 of 1993

Arising Out of Sheosagar PS.Case No. -124 Year- 1983 Thana - Sheosagar District- Sasaram
(Rohtas)

Ram Parvesh Mahto Son of Shri Raj Nath Mahto, Resident of village-Semari, P.S.-
Sheo Sagar, District-Rohtas.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Revision No. 209 of 1993

Arising Out of Sheosagar PS.Case No. -124 Year- 1983 Thana –Sheosagar District- Sasaram
(Rohtas)

Janeshwar Mahto Son of deceased Ram Bharosa Mahto (Informant) resident of
village Semari, P.S.-Sheo Sagar, District- Rohtas.

.... Petitioner/s

Versus

- 1. Ram Kunwar Singh Son of Bhada Mahto.
- 2. Bindeshwar Singh Son of Raj Nath Mahto.
- 3. Rameshwar Singh Son of Megha Mahto.
- 4. Gulab Chand Singh Son of Bhada Mahto.
- 5. Ram Krit Singh Son of Bhada Mahto.
- 6. Megha Singh Son of Ram Janam Singh.
- 7. Ram Nath Mahto Son of Ram Janam Mahto.

All resident of village-Simari, P.S.-Siva Sagar, District-Rohtas.

..... Accused / Opposite Party/s

Appearance :
(In G. APP. (DB) No. 17 of 1993)

For the Appellant/s : Mr. Radhe Shyam Prasad, Adv.
Mr. Yogendra Kumar, Adv.
Mr. Ram Naresh, Adv.
Mr. Dr. M.K. Gautam, Adv.
Mr. Pravin Kumar Agrawal, Adv.
Mr. Santosh Kumar, Adv.

For the State : Mr. A. K. Sinha, A.P.P.
Mr. S.C. Mishra, A.P.P.
Miss S.B. Verma, A.P.P.

(In CR. APP (DB) No. 60 of 1993)

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Mr. Pravin Kumar Agrawal, Adv.
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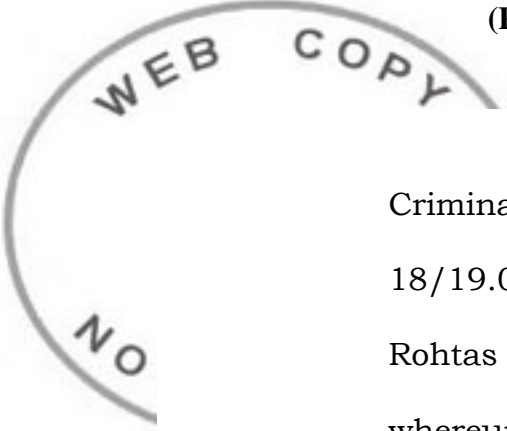
(In CR. REV. No. 209 of 1993)

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Miss S.B. Verma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 17-04-2015



This Government Appeal, Criminal Appeal and Criminal Revision arise out of Judgment/Order dated 18/19.01.1993 passed by the 1st Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 370/1 of 1985/86 whereunder the sole appellant has been convicted for the offence under Sections 302 of the Indian Penal Code, 27 of the Arms Act and sentenced to suffer rigorous imprisonment for life, one year under both the counts with further direction that the sentences shall run concurrently. The other seven accused persons put on trial along with the appellant have, however, been acquitted of the charge under Sections 302/149 of the Indian Penal Code.

2. Prosecution case as set out in the *fardbeyan* of Ram Bharosa Mahto, since deceased recorded by S.I. J. Singh of Sasaram (Muffasil) Police Station at Sadar Hospital Sasaram on 30.10.1983 at 19.30 hours is that co-villager of the informant Ram Parvesh Mahto, Megha Mahto and Raj Nath Mahto armed with gun, Gandasa, Spear respectively entered his house at about 4.30 P.M. others namely Kameshwar Mahto, Bindeshwar Mahto, Ram Krit Mahto and Gulab Chand Mahto armed with lathi remained outside. Megha Mahto exhorted his companion to kill the informant as he was litigating with them for the last twenty years. Ram Parvesh Mahto shot Ram Bharosa Mahto from his



licenced single barrel gun causing injury in his abdomen which led to his fall. In the *fardbeyan* it is further stated that at the time of occurrence brother of the informant Ramasis Mahto as also his son Janeshwar Mahto and wife Taramuni Devi were present in the courtyard. In the concluding portion of the *fardbeyan*, informant also indicated the motive i.e., pendency of dispute between the parties for 11 Bighas of land for the last 20 years. He also stated in the *fardbeyan* that the contents of the *fardbeyan* was read over to him in presence of his brother Ramasis Mahto and having found the same correct, put his left thumb impression over the *fardbeyan*. Brother of the informant Ramasis Mahto also put his signature over the *fardbeyan* as an attesting witness. S.I., J. Singh having recorded the *fardbeyan* forwarded the same to the Officer-in-Charge Sheosagar police station to institute a case under Sections 147/148/149/452/307 of the Indian Penal Code and 27 of the Arms Act as the place of occurrence was within his jurisdiction. Officer-in-Charge Sheosagar police station Sri Syed Ali Kamber after receipt of the *fardbeyan* registered Sheosagar P.S. Case No. 124 of 1983 dated 31.10.1983 under Sections 147/148/149/324/307/452 of the Indian Penal Code and 27 of the Arms Act and took up its investigation. The F.I.R. was dispatched from Sheosagar police station on 31.10.1983 but received by the C.J.M. Sasaram on 01.11.1983. In the light of Fardbeyan/F.I.R. the Investigating Officer of the case proceeded with the investigation and recorded further statement of the



informant as also the statement of his brother Ramasis Mahto and son Janeshwar Mahto. The injured Ram Bharosa Mahto was transferred from Sadar Hospital Sasaram to Shiv Prasad Gupta Hospital, Varanasi on 30.10.1983 where he was admitted as an indoor patient and was operated upon in the hospital. During further treatment in the same hospital Ram Bharosa Mahto died on 08.11.1983 at 6.15 P.M., his postmortem was also conducted in the same hospital on 09.11.1983 vide postmortem report (Exhibit-1). In the light of the fardbeyan, further statement of Ram Bharosa Mahto informant police statement of Ramasis Mahto, his brother Janeshwar Mahto son and wife Taramuni Devi, the contents of postmortem report, Investigating Officer submitted chargesheet against the appellant and seven others on the basis of which cognizance was taken. After supply of the police papers case was committed to the Court of Sessions. Charges were framed against all the eight accused persons under order dated 20.08.1991 to which the eight accused persons pleaded not guilty and claimed to be tried.

3. In support of the charges prosecution examined as many as 15 witnesses out of whom P.W. 1 to 6 are the co-villagers of the informant-deceased, have deposed in Court that they came to the place of occurrence soon after the occurrence and learnt about the occurrence from the informant and his family members. P.W. 2, 3 and 6 are also the co-villagers of the informant-deceased and have been tendered. P.W. 1, Sri Bhagwan

Singh, P.W. 2 Tilak Dhari Singh, P.W. 3 Bikarma Singh, P.W. 4 Ram Awtar Mahto, P.W. 5 Jamuna Singh and P.W. 6 Jagarnath Mahto are the co-villagers of the informant who came to the house of the informant soon after the occurrence and has learnt about the occurrence including the name of the assailants from the informant, his brother and son named in the fardbeyan as the one who were present in the courtyard at the time of occurrence. P.W. 7 Madan Kahar is also a eye witness of the occurrence who was present in the courtyard itself at the time of occurrence as he is said to have been feeding the cattle in the courtyard at the time of occurrence. P.W. 8 Ramasis Mahto is the brother of the informant and named in the F.I.R. as the one who was present at the time of occurrence in the courtyard. P.W. 9 Taramuni Devi is the wife of the informant and is said to have been present in the courtyard at the time of occurrence but has been tendered. P.W. 10 Janeshwar Mahto is the son of the informant and the deceased is also named in the Fardbeyan as eye witnesses of the occurrence. P.W. 11 Dr. Anil Kumar Rastogi is the autopsy surgeon serving in the Varanasi Hospital who conducted postmortem. P.W. 12 Syed Ali Kamber is the Investigating Officer of the case. P.W. 13 Dr. Sidha Gopal also served in the Shiv Prasad Gupta Varanasi hospital and treated the informant-deceased on 30.10.1983 after he was transferred from Sasaram Hospital to Shiv Prasad Gupta, Hospital Varanasi for better treatment. P.W. 14 Ram Chandra Pandey is the employee of the Shiv Prasad Gupta Hospital who has brought the hospital

register to the Civil Court and proved the same. P.W. 15 Jitendra Prasad Singh is a advocate clerk of Sasaram Civil Court and has proved the inquest report of the deceased drawn by the Police Officer in Shiv Prasad Gupta Hospital, Varanasi.

4. Before proceeding to consider the submission of the counsel for the appellant, it is necessary to appraise the evidence of the eye witnesses of the occurrence namely, P.Ws. 7, 8 and 10. P.W. 7 though not named as the eye witness of the occurrence in the *fardbeyan* but while deposing the witness claimed himself as eye witness of the occurrence and stated that at the time of occurrence he was feeding the cattle present on one side of the courtyard and had the opportunity to see the entire occurrence. P.W. 8 Ramasis Mahto and P.W. 10 Janeshwar Mahto are the brother, son of the deceased. They have claimed in the evidence that at the time of occurrence they were present in the courtyard where the accused persons entered and Ram Parvesh Mahto shot their brother/father from single barrel gun causing injury to Ram Bharosa Mahto whereafter both the witnesses went to the roof of their house and saw others standing outside. After causing injury the accused persons escaped from the place of occurrence. Both the witnesses further claimed that after P.Ws. 1 to 6 came to the place of occurrence hearing alarm raised after the occurrence, the name of the assailants was disclosed to P.Ws. 1 to 6.

5. From the trend of the cross-examination made



on behalf of the appellant, it appears that appellant suggested to the prosecution party that the occurrence as claimed by the prosecution party has not taken place. In this connection both P.Ws. 8 and 10 have been suggested by the defence counsel that Ram Janam Mahto and Ram Parvesh Mahto were returning from Sasaram market to their village and had reached near Singhi Syphon, were attacked by Ram Bharosa Mahto, his brother Ramasis Mahto and son Janeshwar Mahto. In the attack Ram Janam Mahto suffered gun shot injury and died near Singhi Syphon itself. Ram Parvesh Mahto managed to escape raising alarm where after villagers came and resorted to firing causing injury to Ram Bharosa Mahto. It was suggested that Ram Bharosa Mahto suffered injury near the Singhi Syphon and the present occurrence according to the counsel for the appellant did not take place in the courtyard rather injured/deceased of the present case suffered injury near Singhi Syphon.

6. From the trend of the cross-examination it also appears that two cases were registered, one for the death of Ram Janam Mahto i.e. Sasaram Muffasil P.S. Case No. 501/1983 dated 30.10.1983 and the other for causing gunshot injury to Ram Bharosa Mahto Sheosagar P.S. Case No. 124 of 1983 dated 31.10.1983. The time of occurrence in the fardbeyan of Ram Bharosa Mahto is 4.30 P.M. Perusal of the fardbeyan in the other case indicates that the occurrence took place at 4.00 P.M. while Ram Janam Mahto and Ram Parvesh Mahto returned from

Sasaram market and reached near Singhi Syphon.

7. From the two fardbeyan it, however, does not appear that both have been recorded in connection with the same occurrence as according to the Ram Nath Mahto the occurrence in which his father Ram Janam Mahto was killed took place near Singhi Syphon but from the fardbeyan of Ram Bharosa Mahto, it is evident that the occurrence took place inside his house in the courtyard in village Simiri.

8. Learned counsel for the appellant submitted that in the light of the two First Information Reports, two separate chargsheets were submitted on the basis of which two separate trials were conducted. For the murder of Ram Janam Mahto Sessions Trial No. 163 of 1985 was conducted. In the murder case of Ram Janam Mahto, the appellant and his other agnates were the member of the prosecution party. P.Ws. 8 and 10 were the accused facing the said trial and in the said trial it was suggested on behalf of P.Ws. 8 and 10 that the occurrence relating to the killing of Ram Bharosa Mahto also took place at the same place of occurrence on which Ram Janam Mahto was killed. Aforesaid suggestion was even pressed during argument as would appear from the consideration made by the learned trial Judge in paragraphs 18 and 19 of his judgment dated 26.05.1992 (Exhibit-D) wherefrom it would appear that Ram Janam Mahto deceased and his son were returning from Sasaram after marketing on two cycles, Ram Janam Mahto was little ahead and when he reached



near Singhi Syphon, Rajendra Mahto, Ram Bharosa Mahto, Ramasis Mahto, Janeshwar Mahto armed with riffle gun and other deadly weapons attacked him. Aforesaid suggestion given by the accused persons of the said Sessions Trial to the witnesses was not accepted by the trial Court and Rajendra Mahto and others were convicted. The accused persons of Sessions Trial No. 163/1985 are the members of the prosecution party of the present case and if they themselves have suggested to the prosecution party of Sessions Trial No. 163/1985 that Ram Bharosa Mahto was also one of the assailants of Ram Janam along with Rajendra and others then there is no difficulty for us to conclude that the prosecution story as disclosed by the informant in the F.I.R. of Sasaram Muffasil P.S. Case No. 501/1983 as also by the informant of the Sheosagar P.S. Case No. 124/1983 has not been correctly narrated and both have made attempt to withhold the other part of the occurrence as to how Ram Janam Mahto and Ram Bharosa Mahto suffered fatal injury on their person. In the fardbeyan of Sasaram Muffasil P.S. Case the informant has disclosed about the manner in which Ram Janam suffered injury. In the fardbeyan of Sheosagar P.S. case the informant Ram Bharosa Mahto has disclosed as to how he suffered injury but not the manner in which Ram Janam suffered injury. The timing of both the occurrence is almost same as the two fardbeyans indicate that the occurrence has taken place at about 4/4.30 P.M. on the same day but at two different places. The F.I.R. of Sheosagar P.S.



Case No. 124/1983 has perhaps been not correctly recorded as the same does not contain true description of the prosecution story. The version narrated in the two fardbeyans appears to be half truth and accordingly learned counsel submitted that we should proceed to disbelieve the prosecution story as set out in the fardbeyan of Ram Bharosa Mahto of Sheosagar P.S. Case No. 124/83.

9. Learned counsel for the appellant with reference to the evidence of P.W. 12 Syed Ali Kamber the Investigating Officer of the case submitted that on 31.10.1983 he was posted at Sheosagar P.S. as Officer-in-Charge and received the police statement of Ram Bharosa Mahto on the same day at 10:30 A.M. from Sasaram Hospital recorded by Sub-Inspector J. Singh of Sasaram (Mufassil) police station. On the basis of the same he registered the F.I.R. of the present case took up its investigation and went to Sasaram Hospital to record the further statement of injured Ram Bharosa Mahto but learnt at the hospital that the condition of Ram Bharosa Mahto being serious, he was taken to Varanasi for treatment. P.W. 12 having not found the injured at Sasaram Hospital proceeded to the place of occurrence and found blood stain on the ground, one mattress with blood stain in the courtyard of Ram Bharosa Mahto and seized both the articles. Having made the aforesaid seizure P.W. 12 recorded the statement of the witnesses, as also the statement of Ram Chandra Mahto, the father of injured Ram Bharosa Mahto who gave him a letter in



which it was stated that Ram Bharosa Mahto succumbed to the injury on 07.11.1983 in Kabir Chaura Hospital, Varanasi on the basis of which Section 302 was also added in the F.I.R. on 20.11.1983. The Investigating Officer collected postmortem report from the office of the Superintendent of Police, Rohtas where the same was received through the Superintendent of Police, Varanasi. The Investigating Officer was also shown papers with regard to land dispute between the parties. In the light of the material collected during investigation chargesheet was submitted on 15.03.1984.

10. Learned counsel in the light of the evidence of the Investigating Officer submitted that the claim of the prosecution that occurrence has taken place in the courtyard is wholly incorrect in view of the failure of the prosecution to produce the seizure list indicating seizure of the blood stain earth from the courtyard including blood stain mattress. It is submitted that Investigating Officer perhaps came to the place of occurrence village on 07.11.1983 when he was given the letter (Exhibit-5) by Ram Chandra Mahto, father of Ram Bharosa Mahto indicating that his son succumbed to the injuries in Varanasi Hospital. The occurrence having taken place on 30.10.1983 at 16.30 hours Investigating Officer came to the place of occurrence i.e. courtyard on 07.11.1983, there was no possibility of any blood stain available in the courtyard on that day the seizure list of the earth, mattress seized from courtyard being not available on the record



though Investigating Officer, P.W. 12 claimed in his evidence about such seizure. It is submitted that the blood stained mattress was not seized by the Investigating Officer on the date he visited the place of occurrence for inspection as neither the material exhibit nor the seizure list is available to support the claim of the Investigating Officer that he visited the courtyard of Ram Bharosa Mahto on 31.10.1983 and seized the mattress, blood stain earth does not appear to be true. It is submitted that occurrence took place near the Singhi Syphon there was no question of any mattress being available there and seized.

11. From the submissions noted above, it appears that Ram Janam Mahto and Ram Bharosa Mahto were killed on 30.10.1983 between 4.00-4.30 P.M. and for the two killings two separate cases i.e. Shiv Sagar P.S. Case No. 124/83 and Sasaram (Muffasil) P.S. Case No. 501/83 were registered. The accused persons in one case were the members of the prosecution party in the other case and vice-versa. Perusal of First Information Report of both the cases, however, indicate that the informant of each case suppressed part of the occurrence, as informant of Sasaram (Muffasil) P.S. Case No. 501/83 has not disclosed about the manner in which Ram Bharosa Mahto, deceased of Shiv Sagar P.S. Case No. 124/83 suffered injury. Similarly, Ram Bharosa Mahto informant and deceased of Shiv Sagar P.S. Case No. 124/83 has not disclosed about the manner in which Ram Janam Mahto, deceased of Sasaram (Muffasil) P.S. Case No. 501/83 was



killed. During trial of Sasaram (Muffasil) P.S. Case No. 501/83 accused persons of the said case i.e. prosecution party of Shiv Sagar P.S. Case No. 124/83 themselves gave suggestion to the prosecution party of Sasaram (Muffasil) P.S. Case No. 501/83 was accused persons of Shiv Sagar P.S. Case No. 124/83 that Ram Bharosa Mahto injured, deceased of the said case also suffered injury near Singhi Siphon, the place of occurrence of Sasaram (Muffasil) P.S. Case No. 501/83 and thereby on their own showing admitted that the place of occurrence of Shiv Sagar P.S. Case No. 124/83 is not the place of occurrence as stated in the fardbeyan and deposed in evidence in court. Such being the conduct of the members of the prosecution party of the instant case/ trial that they themselves during trial of the other case i.e. Sasaram (Muffasil) P.S. Case No. 501/83 suggested to the prosecution party of the said case that the place of occurrence of the present case is also near Singhi Siphon contrary to what was indicated in the fardbeyan and deposed in court in the present case. In the light of aforesaid conduct of the members of the prosecution party of the instant case that they themselves shifted the place of occurrence of the instant case from the court-yard of the house of the deceased to Singhi Syphon, it may not be safe for us to rely on the contents of the fardbeyan of the deceased and the evidence of the witnesses recorded in court, who made such suggestion to the accused persons of the instant case while they were prosecuting the other case registered for the murder of Ram Bharosa Mahto.



In this connection, we would also like to refer to the evidence of Investigating Officer (P.W. 12). He stated in his evidence that while serving as Officer-in-Charge, Shiv Sagar Police Station he received police statement of Ram Bharosa Mahto at 10.30 A.M. from Sasaram Hospital recorded by Sub-Inspector J. Singh of Sasaram (Muffasil) Police Station on the basis of which he registered First Information Report of the present case and took up its investigation. He also stated that on the same day he came to Sasaram Hospital to record further statement of Ram Bharosa Mahto but learnt at the hospital that condition of the injured being serious he was taken to Varanasi for treatment. P.W. 12 further stated that having not found the injured in the hospital he came to village Semri and as per instruction of P.W. 8 inspected the place of occurrence, which is the brick-built house of the father of the informant having four rooms each on the ground, first floor and found blood stained earth, one mattress also with blood stains in the courtyard of the house. P.W. 12 also stated that he seized blood stained earth, mattress from the court-yard. P.W. 12 further stated that he also obtained a written application (Ext. 5) from Ram Chandra Mahto, father of the informant stating that his son succumbed to the injuries in Kabir Chaura Hospital, Varanasi on 07.11.1983. In paragraph 3 of his evidence P.W. 12 categorically admitted that he did not make any seizure memo of blood stained earth, mattress seized from the courtyard. In the same paragraph P.W. 12 further stated that he has not mentioned



the name of the witnesses in whose presence seizure was made from the courtyard. P.W. 12 further stated that he did not even send the blood stained earth, mattress for forensic examination. In paragraph 5 P.W. 12 stated that he has not mentioned in the case diary that he found earthen pot kept in the courtyard for feeding the cattle thereby presence of P.W.7 Madan Kahar in the courtyard may become doubtful as he has said that at the time of occurrence he was feeding the cattle in the courtyard. In paragraph 10 P.W. 12 categorically admitted that P.W. 1 has not stated before him that when he came to the place of occurrence P.Ws. 8, 9, 10 i.e. brother, wife, son of the deceased disclosed the name of the assailant to him. In Paragraph 11 P.W. 12 accepted that P.W. 4 has not stated before him that he learnt the name of the assailant from P.Ws. 8, 10 i.e. brother, son of the deceased. In paragraph 12 P.W. 12 admitted that P.W. 5 has not stated before him that he learnt about the name of the assailant from P.Ws. 8, 10. In paragraph 14 P.W. 12 admitted that P.W. 8 has not stated before him that no sooner appellant resorted to firing he went to the first floor through stairs which was in the side of the courtyard and raised alarm. In paragraph 15 P.W. 12 accepted that P.W. 10 has not stated before him that at the time of occurrence Madan Kahar was feeding the cattle in the courtyard. In the same paragraph P.W. 12 further stated that P.W. 10 has not stated before him that after fall of Ram Bharosa Mahto he went up-stairs.



12. From the evidence of Investigating Officer (P.W. 12), it is evident that after registration of First Information Report on 31.10.1983 he came to Sasaram Hospital to record further statement of the injured-informant but having not found the injured in the hospital he came to the place of occurrence village and in the light of the instruction of P.W. 8 visited the place of occurrence court-yard and seized blood stained earth, mattress but seizure of both the articles becomes doubtful as P.W. 12 himself admitted in his evidence that he neither made seizure memo nor did he record the name of seizure witness in the case diary. Visit of P.W. 12 to the place of occurrence on 31.10.1983 itself becomes doubtful in view of his further deposition that on the date of his visit to the place of occurrence he also received application (Ext. 5) from Ram Chandra Mahto, father of the deceased stating that the deceased succumbed to the injuries on 07.11.1983, which is indicative of the fact that P.W. 12 visited the place of occurrence village some times after 07.11.1983, the date of death of Ram Bharosa Mahto.

13. Besides the prosecution case becomes further doubtful as the story that no sooner firing was resorted to by the appellant P.Ws. 8, 10 raising alarm went up-stairs and hearing the alarm P.Ws. 1, 4, 5 came to the place of occurrence to whom P.W. 8, 10 disclosed the name of the assailant, does not appear to be correct as P.Ws. 1, 4, 5 did not state in their police statement that they learnt about the name of the assailant from P.Ws. 8, 10.

14. For the reasons indicated in paragraphs 11 to 13 above, we have no option but to grant benefit of doubt to the accused appellant. Criminal Appeal is allowed. Government Appeal and the Criminal Revision are dismissed. Appellant Ram Parvesh Mahto who is on bail, is discharged of the liability of the bail bond.

(V.N. Sinha, J.)

(Ahsanuddin Amanullah, J.)

Anand Kr./N.A.F.R.

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