

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.191 of 2009

(Arising out of judgment/ order dated 19.01.2009/ 23.01.2009, passed by Additional Sessions Judge, F.T.C. II, Jehanabad, in Sessions Trial No. 177/2001/ 145/2006, arising out of Arwal P.S. Case No. 02/98)

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1. Sadhu Sao, son of Dukhan Sao
2. Sri Sao @ Sri Baishnaw Sao
3. Sri Bhagwan Sao, both sons of Harihar Sao
All are residents of Village & P.S. Rampur Chouram, District Arwal
..... Appellant/s

Versus

The State of Bihar
..... Respondent/s

With

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Criminal Appeal (DB) No. 121 of 2009

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Saiju Ram, son of Bakhoran Ram, resident of Village Haibatpur, P.S. Rampur Chauram, District Arwal
..... Appellant/s

Versus

The State of Bihar
..... Respondent/s

With

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Criminal Appeal (DB) No. 209 of 2009

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Santu Ram @ Laxman Ram, son of Munni Ram, resident of Village Rampur Chauram, P.S. Rampur Chauram, District Arwal
..... Appellant/s

Versus

The State of Bihar
..... Respondent/s

With

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Criminal Appeal (DB) No. 239 of 2009

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1. Raj Nandan Ram @ Raj Nandan Prasad, son of Late Lakhnan Ram
2. Raj Kumar Mochi, son of Late Gangu Mochi
3. Umesh Sao @ Dakaitwa Sao, son of Raj Nandan Sao
4. Nirbhay Ram, son of Late Ramashish Ram
5. Jhaman Paswan, son of Late Aklu Paswan
6. Ramadhar Yadav, son of Manrup Yadav
7. Ram Pravesh Ram, son of Late Bholan Ram

All are residents of Village Rampur Chouram, P.S. Rampur Chouram, District Jehanabad

8. Kamta Singh, son of Late Nathuni Singh, resident of Village Khedru Bigha, P.S. Ramopur Chaouram, District Jehanabad

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 243 of 2009

Ashok Kumar Sinha, son of Late Kameshwar Prasad Sinha, resident of Village Rampur Chauram, P.S. Rampur Chauram (Arwal), District Arwal

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 191 of 2009)

For the Appellant/s : Mr. Sri Uma Kant Sukla, Advocate
Mr. Arun, Advocate

(In CR. APP (DB) No. 121 of 2009)

For the Appellant/s : Mr. Alamdar Hussain, Advocate
Mr. Syed Asgher Najmi, Advocate

(In CR. APP (DB) No. 209 of 2009)

For the Appellant/s : Mr. Rama Kant Sharma, Sr. Advocate
Mr. B. N. Singh, Advocate
Mr. Sanjay Kumar Pandey No.1, Advocate

(In CR. APP (DB) No. 239 of 2009)

For the Appellant/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Baxi S.R.P. Sinha, Sr. Advocate
Mr. Sunil Kumar Dubey, Advocate
Mr. Ajit Kumar Singh, Advocate
Mr. Shailendra Kumar, Advocate
Mr. Prem Ranjan Kumar, Advocate

(In CR. APP (DB) No. 243 of 2009)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Manoj Kumar, Advocate
Mr. Shyama Kant Singh, Advocate
Mr. Upendra Kumar Chaubey, Advocate

For the State

(In all the cases) : Mr. A.K. Sinha, APP
Mr. S.C. Mishra, APP

Mr. D.K. Sinha, APP
Ms. S.B. Verma, APP
Mr. A Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 25 -02-2015

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These five appeals arise out of judgment/ order dated 19.01.2009/ 23.01.2009, passed by Additional Sessions Judge, F.T.C.-II, Jehanabad, in Sessions Trial No. 177 of 2001/ 145 of 2006, whereunder appellants of Criminal Appeal (DB) Nos. 191, 121, 239 all of 2009 have been convicted for the offences under Sections 148, 302/149, 307 of the Penal Code and Section 27 of the Arms Act with direction to suffer 3, life, 7, 3 years Rigorous Imprisonment under these counts. Appellants in Criminal Appeal (DB) Nos. 209, 243 both of 2009 besides being convicted for the offences under Sections 148, 302/149, 307 I.P.C. have further been convicted for the offence under Section 120-B of the Penal Code and Section 27(1) of the Arms Act but awarded the same sentence which the appellants of the aforesaid three criminal appeals have been awarded. The sentences, however, have been directed to run concurrently.

2. Prosecution case, as set out in the fardbeyan of Anjani Sharma (not examined) recorded by Sri K.P. Singh, S.I. of Arwal Police Station on 09.01.1998 at 11.00 P.M. at village Rampur Chauram,



is that he is recording his fardbeyan on Friday 09.01.1998 at 11.P.M. near the place of occurrence in his village that he along with co-villagers Srikant Sharma, Harendra Sharma, Devlakh Sharma, Bhola Sharma, Dashrath Sharma, Parma Sharma, Krishna Sharma, Laddu Sharma, Nityanand Mishra, Surendra Sharma (P.W. 2), Ram Tawakya Sharma (P.W. 1) Ramesh Sharma (P.W. 10), Atmesh Sharma (P.W. 3), Sahjananad Sharma @ Rahish Sharma (P.W. 4), all residents of Village Rampur Chauram, P.S. Arwal, District Jehanabad had gone to perform the funeral of co-villager Suresh Sharma at Arwal in Sone River during day at 1.30 P.M. on a jeep bearing Registration No. MWD 7767. Having performed the funeral informant and others were returning on the same jeep to their home, around 8.45 P.M. reached near the bamboo clump grown near the pond situate north-west of the village, saw Sadhu Sao Accused No. 1, Raj Nandan Ram Accused No. 14, Raman Paswan (absconder), Jhaman Paswan Accused No. 21, Nirbhay Ram Accused No. 6, Bhola Ram (absconder), Raj Kumar Mochi Accused No. 15, Lalan Ram (absconder), Ram Pravesh Ram Accused No. 19, Sri Sao Accused No. 9, Sri Bhagwan Sao Accused No. 7, Dakaitwa Sao Accused No. 2, Kanhai Ram Accused No. 4, Pankaj Srivastava (absconder), Ram Pukar Sao (absconder), Ramadhar Yadav Accused No. 23, Dukhit Rajbanshi (absconder), Santu Ram Accused No. 32, Satyendra Ram Accused No. 12 (acquitted by the trial court), Jhalak



Paswan (absconder), Sitaram Paswan, Shiv Kumar Paswan, Tapeswar Paswan Accused No. 28, Manish Ram Accused No. 3, Judagir Paswan Accused No. 27, Ashok Kumar Sinha Accused No. 18, Mahendra Ram Accused No. 17, Yogendra Paswan Accused No. 10, Awadhesh Ram Accused No. 11, Ugeswar Singh, Hari Mohan Singh Accused No. 13, Saiju Ram Accused No. 5, Haribansh Singh Accused No. 25, Kamta Singh Accused No. 22, all residents of Village Khaderu Bigha, P.S. Karpi, District Jehanabad variously armed with rifle, gun standing on the road, forced the jeep to stop. Informant and others became apprehensive as the vehicle had been forced to stop. Driver Ramesh Sharma (P.W. 10), however, tried to move the jeep ahead. In the meantime, Bhagwan Sao Accused No. 7 fired twice from his rifle flattening the tyres of the jeep, ordered to kill the occupants whereafter all the 34 accused resorted to indiscriminate firing from all sides. Absconder accused Pankaj Srivastava also exhorted that all should be killed and killed Harendra Sharma, absconder Ram Pukar Sao killed Parma Sharma. Informant and others, however, managed to jump out of the jeep and ran straight on the road towards village whereafter miscreants resorted to firing from behind Akarkhan tree. The informant and others, however, with tottering steps succeeded in making good their escape from the place of occurrence. It appeared to the informant that near Akarkhan tree also 50-60 miscreants had concealed themselves



to block the road, resorted to firing causing injury to Surendra Sharma (P.W. 2) and Ram Tawakya Sharma (P.W. 1), both somehow, however, managed to escape. Having heard the firing sound as also the alarm raised by the informant and others co-villagers Ramanuj Sharma (not examined), Ram Niwas Sharma (not examined) Udho Sharma (not examined), Binod Sharma (not examined) Triveni Sharma (not examined) and many other persons came running, resorted to firing whereafter all the miscreants ran towards east, west. Informant and other villagers returned to the place of occurrence and saw the dead bodies of Harendra Sharma, Parma Sharma inside the jeep. Informant and others also found the dead bodies of Krishna Sharma, Deolakh Sharma, Laddu Sharma, Dashrath Sharma, Srikant Sharma, Bhola Sharma, Nityanand Mishra lying on either side of the jeep. There was several gun shot injuries on the person of the deceased. It is further claimed in the fardbeyan that all the assailants were members of I.P.F. (ML) Libration and had imposed economic blockade over the lands of the informant and others for the last three years and that they indulged in such ghastly occurrence as and when they got opportunity. It is further asserted in the fardbeyan that the plan to execute the murder was hatched by Harihar Sao Accused No. 8, Ambika Paswan Accused No. 26, Banaras Ram Accused No. 24, Shiv Pujan Ram Accused No. 31, Munni Ram Accused No. 30, Kamlesh Sharma Accused No. 29, Kamal Paswan (absconder),



Raj Bali Paswan (absconder), Raj Nandan Ram Accused No. 14, who also got the same executed, out of whom Accused Nos. 18, 16, 24, 31, 30, 29 have been acquitted. Accused Nos. 41, 42, however, have been absconded during investigation, as such, have not been tried. Two days earlier aforesaid persons had assembled in the house of Sadhu Sao in Village Rampur Chauram and hatched the conspiracy. After hearing the firing shots police party came to the village and exchanged several rounds with the miscreants in the eastern side of village Rampur Chauram but the miscreants managed to escape from the village. In the last but one paragraph of the fardbeyan informant claimed that the aforesaid accused persons having hatched conspiracy forming unlawful assembly variously armed with rifle, gun resorted to indiscriminate firing killing nine persons inflicting gun shot injury on two of them with intention to kill them. In the last paragraph of the fardbeyan informant stated that he not only read the contents of the fardbeyan but the contents thereof was also read over to him and finding the same to be true he put his signature over the same in presence of Om Prakash Sharma of village Sarauti, P.S. Arwal. Besides the informant Om Prakash Sharma (not examined) also put his signature over the fardbeyan. The scribe of the fardbeyan Sri K.P. Singh, S.I. of Arwal Police Station forwarded the same to the Officer-in-Charge, Arwal Police Station on 09.01.1998 for instituting a case under Sections 147,

148, 149, 341, 324, 307, 302/120-B of the Penal Code, Section 27 of the Arms Act and Section 17 of the Criminal Law Amendment Act with further endorsement that he has already taken up its investigation.

3. In the light of the aforesaid fardbeyan S.I. Manish Kumar, Arwal Police Station registered First Information Report of the instant case on 10.01.1998 at 4.00 A.M. From Column No. 15 of the said First Information Report, it is evident that the same was dispatched from police station to the court on 10.01.1998 at 10.00 A.M. and received in the court of Chief Judicial Magistrate, Jehanabad on 12.01.1998. Investigating Officer having forwarded the fardbeyan recorded the further statement of the informant but could not proceed with further investigation because it was night. In the morning he conducted inquest proceedings of the nine deceased between 6.00-8.40 A.M. in presence of M/s. Anil Sharma @ Anil Kumar Singh (P.W. 6), Lal Bahadur Sharma (not examined), Mukesh Kumar (P.W. 7) and Madhusudan Sharma (not examined). He also seized incriminating articles i.e. 15 empty cartridge of 3 nought 3, 7 empty cartridge of .315, front portion of one fired cartridge, earth stained with human blood from the place of occurrence i.e. from the road on the western side of the pond situate in the north-west of village Rampur Chauram in presence of Ramesh Kumar (P.W. 10) and Udho Sharma (not examined). The post mortem of the nine dead bodies was conducted by Dr. Srinath

Prasad, Civil Assistant Surgeon, Jehanabad Sadar Hospital in the place of occurrence village on 10.01.1998 between 1.00-4.30 P.M. under the order of District Magistrate-cum-Collector, Jehanabad.

4. In the light of the statement of the witnesses and the materials collected during investigation first charge-sheet No. 37/98 dated 09.04.1998 was submitted against 42 accused persons, out of whom 28 were in judicial custody and 14 were absconders. Supplementary charge-sheet No. 90/98 dated 19.08.1998 was submitted against only one accused Ram Bali Rajbansi, who was in judicial custody. In the light of the charge-sheet and the materials collected in the case diary cognizance was taken and after supply of police papers to the appearing accused case was committed to the Court of Sessions. Trial court framed charge against 27, 7, 2, 1 accused persons under orders dated 12.02.2002, 09.04.2002 for the offences under Sections 148, 307, 302, 120-B of the Penal Code and Sections 27(1), 27(3) of the Arms Act to which the accused persons pleaded not guilty.

5. In support of the charge prosecution examined 13 witnesses, out of whom P.Ws. 1 to 4, 8 to 10 are the eye-witnesses. Out of the aforesaid eye-witnesses P.Ws. 1 and 2 are the injured. P.Ws. 8, 9 Lallan Sharma, Rajendra Sharma at the time of occurrence were at their residence, having heard gun shots being fired in the village both organized themselves along with other villagers and resorted to firing as



also visited the place of occurrence soon after the occurrence, saw the dead bodies of the deceased. P.W. 5 is the Investigating Officer. P.Ws. 11, 12 are the Medical Officers who conducted the post mortem and proved the post mortem report of five deceased, Exhibits-4, 4/1, 4/2, 4/3 and 4/4 respectively. P.W. 13 is the Advocate's Clerk who proved the post mortem report of four deceased, Exhibits 4/5 to 4/8. P.Ws. 6, 7 are the inquest witnesses as in their presence inquest report of 2, 7 deceased has been prepared by the Investigating Officer (P.W. 5). From the statement of the accused persons recorded under Section 313 Cr.P.C. it appears that their defence is complete denial and they have also examined six defence witnesses.

6. Before appreciating the submission raised by the counsel for the appellants, it is necessary to appraise the evidence of the eye-witnesses as also the Investigating Officer of the case.

(i) P.W. 1 Ram Tawakya Prasad Singh stated in his evidence that the occurrence took place about four years and three months earlier. It was around 8.45 P.M., P.W. 1 and 14 others were returning from Arwal bank of Sone River after performing funeral of co-villager Suresh Sharma in a jeep. Besides P.W. 1, P.W. 2 Surendra Sharma, Anjani Sharma (not examined), P.W. 3 Atmesh Sharma @ Laliteshwar Sharma, P.W. 4 Sahja Sharma @ Rahish Sharma, P.W. 10 Driver Ramesh Sharma, Harendra Sharma, Srikant Sharma, Dashrath



Sharma, Parma Sharma, Laddu Sharma, Deolakh Sharma, Bhola Sharma @ Rameshwar Sharma, Krishna Sharma, Nityanand Mishra (all nine deceased) were in the jeep. While the jeep was on the metal road near bamboo thicket of Udho Sharma situate at a distance of 500 yards north-west of the village P.W. 1 and others saw 50-60 persons armed with rifle, gun and stain-gun waiting. Two of them flashed torch signaling the jeep to stop. Driver proceeded ahead accelerating the jeep dodging the person flashing torch signaling the vehicle to stop. The miscreants whistled and resorted to firing from the rear and left side of the jeep leading to flattening of all the wheels of the vehicle. The driver asked the occupants to run otherwise they would not survive. P.W. 1 identified amongst the miscreants Pankaj Srivastava armed with stain-gun, Ram Pukar Sao armed with rifle. Besides the two P.W. 1 also identified Kanhai Ram (acquitted), Dukhit Rajbansi (absconder), Ramadhar Yadav (convicted), Bhola Ram (absconder), Nirbhay Ram (convicted), Moti Sao, Rajnandan Sao (both absconder), Dakait Sao (convicted), Parvez Alam (absconder), Sadho Sao (convicted), Sanjay Sao (absconder), Ram Pravesch Ram (convicted), Nathuni Ram, Mukeshwar Pandit, Ashok Lal (all the three absconder), Rajnandan Ram (convicted), Tuntun Mochi (convicted), Sattu Ram, Ram Kumar Mochi, of Danapur, Kamta Kurmi of Khaderu Bigha, Saju Ram of Habibatpur (all the four absconder), Vaishnav Sao (convicted), Shri Bhagwan Sao



(convicted), Raman Ram (absconder), Jhaman Ram (convicted), and Madheshwar Ram (absconder). He further stated that about nine persons died in the firing, namely, Harendra Sharma, Srikant Sharma, Dashrath Sharma, Parma Sharma, Laddu Sharma, Krishna Sharma, Deolakh Sharma, Bhola Sharma, and Nityanand Mishra. In Paragraph 8 P.W. 1 stated that other seven passengers of the jeep succeeded in running away. While running away Surendra Sharma suffered bullet injury on his right heel and P.W. 1 suffered bullet injury on his thigh and hydrocele after he ran 5-7 yards and concealed himself in Akarkhan bush. Others, however, succeeded in reaching the village. In Paragraph 9 P.W. 1 stated that Pankaj Srivastava, Kamta Kurmi, Saiju Ram, Bhola Ram proclaimed that all should be killed and fired 5-7 shots each so that none could be spared. In Paragraph 10 P.W. 1 stated that when the villagers reached, opened fire near the school situate at a distance of 100 yards from the place of occurrence the miscreants fled away and he could somehow return to his house. Meanwhile, police came in the village. In Paragraph 11 P.W. 1 stated that Surendra Sharma and he underwent treatment in Arwal Hospital and then referred to P.M.C.H., Patna and as there was strike in P.M.C.H. both were admitted in Nutan Nursing Home, Kadamkuan. In Paragraph 12 P.W. 1 stated that ML members had imposed blockade for the last 5-7 years prior to the occurrence to establish their dominance in the area and cultivation work



in the village was completely stopped. ML men killed Kamlesh Paswan, Shailesh Sharma earlier and committed the present occurrence in order to terrorize the villagers. In Paragraph 13 P.W. 1 stated that ML members had met at the house of Sadhu Sao a local confectioner just before the occurrence and the miscreants who perpetuated the occurrence were also present in the meeting. In the same paragraph P.W. 1 stated that he identified the miscreants in the light of the vehicle. In Paragraph 14 P.W. 1 stated that distance of Arwal Police Station from the place of occurrence village is about 8 kilometers. In Paragraph 17 P.W. 1 stated that the three wheels of the jeep got flattened and he could not see because he was injured. The driver, who directed P.W. 1 and others to run away, fled away switching off the light of the vehicle. In Paragraph 26 P.W. 1 stated that Sujan Sharma, Kishori Sharma are his co-villagers and that it is incorrect to suggest that accused persons had land dispute with them. In the same paragraph P.W. 1 further stated that the dispute was about the blockade of the area which was against the entire village and it is incorrect to suggest that the accused persons were farm labourers of the prosecution party and were not being paid adequate wage. In the same paragraph P.W. 1 further denied the suggestion that prosecution party has falsely implicated the accused persons for demanding adequate wage. In Paragraph 28 P.W. 1 stated that there was fog in the night of occurrence. In Paragraph 29 P.W. 1



stated that he is not aware about any case under Section 107 Cr.P.C. pending between Harihar Sao and Umesh Sharma. P.W. 1 further stated in the same paragraph that he is also not aware that Umesh Sharma had opened exit in the land of Harihar Sao and that he is further not aware about Superintendent of Police, Jehanabad coming to the village to enquire into the dispute between Harihar Sao and Umesh Sharma. In Paragraph 30 P.W. 1 stated that he has not gone to the house of Umesh Sharma, rather has gone by the side of his house and is not aware that Umesh Sharma opened a new exit which Superintendent of Police got closed. In Paragraph 31 P.W. 1 stated that Anjani Sharma is resident of village Lata in the district of Aurangabad but resided in the place of occurrence village for the last 8-10 years prior to the occurrence to manage the cultivation work of Umesh Sharma as he was in service. In the same paragraph P.W. 1 further stated that Anjani Sharma and Umesh Sharma are co-brothers as he is the husband of the sister of his wife but P.W. 1 clarified that he is not fully aware about the said fact. In the same paragraph P.W. 1 denied the suggestion that he has deposed falsely.

(ii) P.W. 2 Surendra Sharma is another injured. He also deposed on the same lines as that of P.W. 1. In Paragraph 6 P.W. 2 stated that no sooner he came down from the jeep he was shot in his right heel but he succeeded in running towards the village raising alarm.



In Paragraph 9 P.W. 2 stated that after about half an hour of the occurrence the police came to the village, took him and Ram Tawakya Sharma (P.W. 1) to Arwal Hospital, Jitendra Sharma (not examined) also went to the hospital. In the same paragraph P.W. 2 further stated that after treatment at Arwal Hospital both were sent to P.M.C.H., Patna and as there was strike in P.M.C.H. both went to Nursing Home of Dr. Ramesh Babu for treatment. In Paragraph 12 P.W. 2 stated that 15 villagers had gone to perform the funeral of Suresh Sharma on a jeep reaching Arwal at about 2.00 P.M., funeral was over by 7.00 P.M. whereafter those who had gone to perform the funeral had food and proceeded for the village at about 8.00 P.M. In Paragraph 16 P.W. 2 stated that his village is situate at a distance of 8 kilometers south of Arwal, between Arwal and his village on the main road there is only one village Sukhi Bigha, which is mid-way from Arwal. In the same paragraph P.W. 2 further clarified that one another village Umairabad is also situate on the road which connects Arwal with his village but the said village is just adjacent to Arwal and besides these two villages the road from Arwal to his village is lonely as the other villages are not on the road side but away in the interior. In Paragraph 20 P.W. 2 stated that as soon as the vehicle stopped its lights were switched off and that he and others taking advantage of darkness ran towards the village raising alarm, villagers 50-60 in number also responded and came with gun,



rifle and other weapons. In Paragraph 21 P.W. 2 stated that he cannot say that the villagers resorted to firing targeting the jeep or something else. In the same paragraph P.W. 2 further stated that he cannot say the duration for which firing exchanged between the villagers and the miscreants. In Paragraph 22 P.W. 2 deposed that he fled away through the road as miscreants were not there and volunteered that shots were being fired at him from behind. In Paragraph 17 P.W. 2 stated that in the night of occurrence jeep took about 30-35 minutes to reach the place of occurrence from Arwal. Due to fog the jeep was moving slowly. In Paragraph 25 P.W. 2 stated that police came to the place of occurrence half an hour after the occurrence in the same night but his statement was recorded after he reached Arwal Hospital. In Paragraph 26 P.W. 2 stated that Anjani Sharma is not his villager but he resided in the village in the house of his brother-in-law for about 10 years. In Paragraph 34 P.W. 2 stated that Dukhan Sao had four sons. In the same paragraph he further stated that two of the sons of Dukhan Sao, namely, Harihar and Sadhu have been made accused in the present case. Accused Ram Pukar, Sri Bhagwan and Vaishnav Sao are the sons of Harihar Sao and they have also been made accused in the present case. In Paragraph 35 P.W. 2 stated that the house of Umesh Sharma (who is brother-in-law of the informant as the wife of the two are sisters) is south of the house of accused Sadhu Sao and his brother. In the same paragraph P.W. 2



admitted that his house is also situate 6-7 houses north from the house of accused Sadhu Sao. In Paragraph 36 P.W. 2 stated that he identified the villagers by their name and parentage. In the same paragraph he further stated that he did not disclose the name of Umesh Sao to the police, rather furnished the name of Umesh Sharma to the police. In Paragraph 37 P.W. 2 stated that the entrance of the house of Umesh Sharma, Sadhu Sao is facing east. In the same paragraph he further deposed that dispute for the land located between the house of Umesh Sharma, Sadhu Sao is pending from before the occurrence but he is not aware any suit or proceeding under Section 107 Cr.P.C. is pending, initiated in that connection. In the same paragraph P.W. 2 further stated that he is not aware whether the police made any enquiry in connection with land dispute concerning opening of the exit on the disputed land. In the same paragraph P.W. 2, however, admitted that Circle Officer had come to the disputed land and got the exit closed. In Paragraph 38 P.W. 2 admitted that Anjani Sharma was not residing in the house of Umesh Sharma when land dispute between the two families continued and that he is not aware about the present residence of Anjani Sharma. In Paragraph 39 P.W. 2 stated that a case was lodged in connection with the murder of Sudarshan Sao, the brother of Sadhu Sao. Anjani Sharma, the informant of the present case, is also an accused in the said case. In Paragraph 40 P.W. 2 deposed that he has been named as accused in



murder case lodged after killing of three scheduled caste men at Ankopur much before the present occurrence. In the same paragraph P.W. 2 further stated that he was falsely implicated in the said case but is not aware as to who implicated him in that case. In the same paragraph P.W. 2 also stated that Ankopur is at a distance of 1 ½ kilometers from his house. In Paragraph 50 P.W. 2 stated that men belonging to Sao Community prepare sweets, food items on the occasion of marriage besides having a sweetmeat shop. In the same paragraph P.W. 2 further stated that he had no dispute with the men of Sao Community in connection with preparation of sweet, food items.

(iii) P.W. 3 Atmesh Sharma @ Laliteshwar Sharma deposed in paragraph 1 of his evidence that the occurrence took place about 4½ years earlier, it was 8.45 P.M. when he was in the jeep along with 14 others including driver of the vehicle, namely, namely, P.W. 2, P.W. 4, Anjani Sharma (informant) (not examined), Dashrath Sharma, Parmanand Sharma, Srikant Sharma, Laddu Sharma, Nityanand Mishra, Bhola Sharma, Krishna Sharma and Deolakh Sharma (all nine deceased) and were returning after performing funeral of co-villager Suresh Sharma on the bank of River Sone at Arwal. His further deposition is also on the same lines as that of P.Ws. 1, 2. P.W. 3 deposed in Paragraph 8 of his evidence that on hearing the sound of firing shots and alarm raised by him and others co-villagers came out from the village



armed with lathi, spear and their licensee gun, exchange of firing took place between the villagers and the miscreants. Miscreants, however, managed to escape towards east, west. In Paragraph 19 P.W. 3 stated that a minor dispute had taken place between Umesh Sharma and Sudarshan Sao in connection with opening of exit in the disputed land situate between the house of Umesh Sharma and Sudarshan Sao which was settled by the villagers (members of all the castes). In Paragraph 20 P.W. 3 stated that he is not aware about killing of Sudarshan Sao. In Paragraph 22 P.W. 3 deposed that he came to know about some of the occurrence which took place in the village but there are other occurrences about which he may not be aware. In the same paragraph P.W. 3 deposed that a case was filed in connection with murder of Sudarshan Sao in which his co-villagers are also accused but in the same paragraph P.W. 3 clarified that earlier he did depose that Sudarshan Sao has not been killed as he was abducted and volunteered that case for his abduction has been filed. In Paragraph 24 P.W. 3 admitted that Sudarshan Sao is the brother of accused Sadhu Sao. In Paragraph 25 P.W. 3 stated that informant of the present case is presently residing in his native village and earlier he lived in the native village of P.W. 3 for 10-12 years. In the same paragraph P.W. 3 stated that that he never saw informant casting his vote in his native village. P.W. 3 also stated in the same paragraph that he is not aware that informant of the present case is



absconder in another murder case. In Paragraph 36 P.W. 3 stated that in his village number of male member of his caste is between 200-250. Informant Anjani Sharma along with his wife resided in the house of his brother-in-law Umesh Sharma and his daily necessities were being taken care of by the proceeds coming from the property of Umesh Sharma and he was managing his cultivation and other affairs. In Paragraph 52 P.W. 3 stated that economic blockade was imposed against Bhumihar families of his village. Ambika Paswan, Sheo Kumar Paswan are daily-wage earners but Ambika Paswan has also some land. In the same paragraph P.W. 3 stated that economic blockade was imposed on account of failure to pay tax on cultivation and denied the suggestion that economic blockade was imposed on account of failure to pay higher wages. In Paragraph 60 P.W. 3 stated that the night of occurrence was neither cloudy nor there was dense fog and it is incorrect to suggest that there was cloud, dense fog because of which he could not see the direction in which the miscreants fled away. In Paragraph 62 P.W. 3 admitted that many years earlier Jhaman Paswan was his plough-man and that it is incorrect to suggest that he did not pay him due wages, which prompted him to leave his work contrary to his instruction and on account of failure to pay due wages the witness has falsely implicated him. In the same paragraph P.W. 3 further deposed that there are documents and case diary to indicate that accused persons are members of ML. In the



same paragraph P.W. 3, however, admitted that he does not have any such document with him in his pocket. In the same paragraph P.W. 3 denied the suggestion that accused persons are peace loving people and not the members of ML. In the same paragraph P.W. 3 also denied the suggestion that after forming group members of Bhumihaar caste of the village of P.W. 3 want to take work from the accused persons but on their refusal to work they have been falsely implicated. In the same paragraph P.W. 3 also denied the suggestion that he has given false evidence. In the same paragraph P.W.3 deposed that Ramadhar Yadav is his co-villager and to the knowledge of the witness Ramadhar Yadav has studied up to intermediate and he possessed 4-6 bighas of agricultural land.

(iv) P.W. 4 Sahjanand Sharma @ Rahish Sharma was also an occupant of the jeep and had gone to cremate his co-villager Suresh Sharma on the bank of River Sone at Arwal. P.W. 4 deposed in Paragraph 6 of his evidence that his co-villagers, namely, Udho Sharma, Ramanuj Sharma, Sri Niwas Sharma, Triveni Sharma, Binod Sharma (all not examined) and others rushed towards the jeep after hearing the alarm raised by him and others and also fired shots from their licensee guns. In Paragraph 23 P.W. 4 stated that Jhaman Paswan used to work as labourer in the establishment of Atmesh Sharma but he cannot say whether he used to get due wages or not. In the same paragraph P.W. 4



further stated that not only Jhaman Paswan but all other labourers of the village had stopped their work and imposed economic blockade. In the same paragraph P.W. 4 denied the suggestion that Jhaman Paswan has been falsely implicated in the case as he refused to work as a farm labourer of Atmesh Sharma. In Paragraph 25 P.W. 4 stated that Chamotha Badhar is the outer area of his village and that his plot is also situate in the said outer area. In the same paragraph P.W. 4 further stated that Ram Pukar Sao, Sri Bhgwan Sao, Sri Sao, Sadhu Sao and Harihar Sao are the members of same family. P.W. 4 further stated in the same paragraph that there is bamboo thicket in one of his plot situate in Chamotha outer area of the village and that plot of Ram Pukar Sao and others is situate adjacent to the bamboo thicket. In Paragraph 30 P.W. 4 stated that there was dispute regarding wages as farm labourers were demanding more wages and were being paid less. In Paragraph 31 P.W. 4 stated that accused persons were standing near the bamboo thicket and that he recognized them in the jeep light but is not in a position to say who were in front and who were in rear as the jeep was moving in speed. In Paragraphs 32, 33 P.W. 4 stated that while the jeep was 50-60 yards north of the bamboo thicket whistle was blown, shots were fired from two sides and behind and that P.W. 4 was sitting in the front of the jeep, before the witnesses escaped from the jeep none sitting in the jeep suffered any gun shot injury. In Paragraph 34 P.W. 4 deposed that it is



only after arrival of the police party he and other villagers went to the place of occurrence. In the same paragraph P.W. 4 further stated that attention of the police party was towards the miscreants who were also chased by the police personnel, other police personnel surrounded the vehicle. Police personnel having surrounded the jeep P.W. 4 and others also went near the jeep. In Paragraph 54 P.W. 4 admitted that Nirbhay Ram is a labourer, after stopping work at the farm land of the prosecution party labourers were working at other places outside the village. In Paragraph 55 P.W. 4 admitted that accused Ashok Sinha is his co-villager and he has 22-23 bighas of land but his cultivation work had not been stopped despite blockade. In the same paragraph P.W. 4 further stated that he is in service but he is not aware about his place of posting and that he visits the village after sometime to manage, look after his landed property. In Paragraph 58 P.W. 4 deposed that it is not a fact that one of the Bhumihar of his village, namely, Nirbhay Sharma has recently succeeded in forcibly cultivating the land of one of the relatives of Ashok Sinha, namely, Shambhu Lal. In the same paragraph P.W. 4 further stated that Raj Nandan Ram is a Kahar (a sub-caste in Hindu) and that he is an old man but denied the suggestion that P.W. 4 and others wanted to engage him and his family as labourer but on their refusal to work as labourer they were implicated. In Paragraph 60 P.W. 4 deposed that Umesh @ Dakaitwa does not work as labourer, he does

his own cultivation, he has about 6-7 bighas of land and it is incorrect to suggest that prosecution party wanted to take work from him but on his refusal to work he has been falsely implicated.

(v) P.W. 10 Ramesh Sharma is the owner/ driver of the jeep bearing Registration No. MWD 6777 on which the deceased and the witnesses, 15 in number, had gone to the bank of River Sone in Arwal for cremating co-villager Suresh Sharma and while returning to the village when the vehicle reached near bamboo thicket/ pond in the village miscreants signaled the vehicle to stop but P.W. 10 apprehending trouble speeded up the vehicle prompting the miscreants to resort to indiscriminate firing upon the vehicle flattening its tyres whereafter P.W. 10 switched off the lights of the vehicle, jumped, ran out of the vehicle. Evidence of P.W. 10 is also on the same lines as that of P.Ws. 1 to 4.

(vi) P.Ws. 8 and 9 Lallan Sharma and Rajendra Sharma at the time of occurrence were at their residence, having heard gun shots being fired in the village both organized themselves along with other villagers, resorted to firing as also visited the place of occurrence soon after the occurrence, saw the dead bodies of the deceased. P.W. 8 stated in Paragraph 6 of his evidence that prior to the present occurrence a meeting was organized in the house of Sadhu Sao in which his co-villagers Sadhu Sao, Harihar Sao, Vaisnav Sao, Ram Pukar Sao, Lallan



Ram, Ram Pravesh Ram, Raj Kumar Mochi, Dakait Sao, Bhola Ram, Nirbhay Ram, Kamta Singh resident of Khaderu Bigha and others were present. The meeting was held to organize a massacre in the village in retaliation of Bathe Massacre. In Paragraph 7 P.W. 8 stated that those who participated in the meeting raised slogan that they shall settle for nothing less than blood. In Paragraphs 17, 19 P.W. 8 stated that at 12.00 noon he had gone to purchase tobacco in the shop of Sadhu Sao where he saw a meeting in progress. In Paragraph 26 P.W. 8 admitted that he never recorded his police statement and that he has falsely deposed about purchase of tobacco, a meeting being held in the house of Sadhu Sao and that he heard about the deliberations of the meeting while he had gone to purchase tobacco. P.W. 9 stated in Paragraph 15 of his evidence that his police statement was recorded at the camp police station situate in his village after 15-20 days of the occurrence when Chaukidar asked him to come to the camp where other 10-15 persons also came but he does not remember their name.

(vii) P.W. 5 Kailash Prasad Singh is the Investigating Officer of the case. On 09.01.1998 he was posted as Junior Sub-Inspector in Arwal Police Station, received information from Sarauti Picket that firing sound is heard from Village Rampur Chauram and proceeded for the said village along with armed force, Dy.S.P. and Officer-in-Charge of Arwal Police Station. He met police personnel of



Sarauti Picket 500 yards north-west of said village and found one jeep in damaged condition on the road with dead bodies inside the jeep. In Paragraph 3 P.W. 5 stated that villagers of Rampur Chauram also reached at the same time near the jeep and both the police personnel as also the villagers chased the miscreants in east, west direction as indicated by the villagers. In Paragraph 4 P.W. 5 stated that the police personnel also resorted to firing but the shots did not cause injury to any of the miscreants as there was fog. In Paragraph 11 P.W. 5 stated that dead body of Sri Kant Sharma was lying supine east-west, east of the jeep with gun shot injury on its temple, adjacent east of the jeep dead body of Bhola Sharma was found, near its wheel to the west of the vehicle the dead body of Nityanand Mishra was found. The dead body of Laddu Sharma was also found by the side of the dead body of Dashrath Sharma. The dead body of Harendra Sharma was found partly hanging outside the other part was on the rear seat of the vehicle. Dead body of Parmanand Sharma, Krishna Sharma was between the two rear seats of the jeep. In Paragraph 12 P.W. 5 stated that he found blood stains in the jeep as also outside the vehicle on the ground near the dead bodies. The mark of firing shots was also found on the jeep. In Paragraph 16 P.W. 5 stated that he prepared the seizure list through carbon process after he seized empty cartridge and blood stained earth but neither the cartridge nor the blood stained earth is shown to him



during his deposition. In Paragraph 17 P.W. 5 stated that he recorded the statement of other witnesses, injured persons after visiting Nutan Nursing Home, Patna. In Paragraph 22 P.W. 5 stated that the informant himself had given details of the occurrence and other witnesses were also present at the time police statement of the informant was being recorded. In the same paragraph P.W. 5 further stated that he also recorded the statement of remaining witnesses in presence of other witnesses. In Paragraph 23 P.W. 5 stated that he did not ask any witness to leave the place where he recorded the statement of other witnesses. P.W. 5 further stated in the same paragraph that the witnesses repeated the same statement which was given by the informant Anjani Sharma. In Paragraph 27 P.W. 5 stated that the time of receiving the information and proceeding for the place of occurrence has not been recorded separately. In the same paragraph P.W. 5 further stated that as per case diary it had taken 45 minutes for the police party to reach the place of occurrence. In Paragraph 32 P.W. 5 stated that he did not prepare the seizure-list in respect of the empty cartridge of the shots fired. In Paragraph 36 P.W. 5 stated that he did not prepare the inquest report in the night, rather he prepared the same on the next day. In Paragraph 43 P.W. 5 stated that the width of the metal road, chart land has not been recorded by him as he has only mentioned in the case diary the distance of the place of occurrence village from the place of occurrence but such



distance is not being taken from the last house of village Rampur Chauram. In the same paragraph P.W. 5 further clarified that he has not recorded the distance of place of occurrence from the pond and the bamboo thicket. In Paragraph 47 P.W. 5 stated that he did not record the statement of Ashok Kumar Sinha separately nor did he record that he is native of village Rampur Chauram and that he visits the village of and on. In Paragraph 49 P.W. 5 stated that neither documentary evidence nor arms were recovered by him from the house of any of the accused persons when he raided their house to confirm their involvement. In Paragraph 50 P.W. 5 stated that he has not recorded the time of recording the police statement of any of the witnesses. In Paragraph 52 P.W. 5 stated that he has not recorded the statement of Surendra Sharma and Ram Tawakya Sharma on the date of occurrence as they were injured and he had sent them for treatment. In Paragraph 53 P.W. 5 stated that he did not ascertain whether the deceased and the injured were connected with Bathe Massacre and made accused in the said case but their antecedent remained clean. In the same paragraph he also stated that the case was also supervised in his presence, during supervision of the case news was flashed that economic blockade was imposed on the land of Kishori Sharma, Sugan Sharma. In Paragraph 54 P.W. 5 stated that he did not investigate whether economic blockade was imposed only against Kishori, Sugan Sharma and that Bhumihaar



Community residing in the village was divided into two factions and was inimical to each other, consequently the occurrence took place. In Paragraph 56 P.W. 5 deposed that there is metal road connecting Arwal with village Rampur and a jeep takes half an hour to reach village Rampur from Arwal. Any private vehicle coming from Arwal to the Civil Court, Jehanabad will reach within one hour but the bus takes two hours to complete the same journey from Arwal. In Paragraph 57 P.W. 5 deposed that time of recording the First Information Report has been shown as 4.00 A.M. of 10.01.1998, which was also seen by Chief Judicial Magistrate on 10.01.1998, cause of delay has not been shown any where. In Paragraph 58 P.W. 5 deposed that the arrest of the accused persons was made on 10.01.1998 and they were forwarded to the court on 11.01.1998 but P.W. 5 is not aware about the time of their remand. In Paragraph 64 P.W. 5 stated that to his knowledge the informant is resident of Rampur Chauram where fardbeyan and restatement were recorded. In Paragraph 65 P.W. 5 stated that he has not mentioned in the case diary that the informant is native of which place, which fact has been mentioned in the charge-sheet. In Paragraph 67 after recall for re-examination P.W. 5 deposed that he seized empty cartridge, blood stained earth, front portion of cartridge, prepared the seizure-list and proved the same as Exhibit-3. In Paragraph 68 P.W. 5 conceded that he did not get the seized articles examined.



7. Learned counsel for the appellants in the light of the evidence led by the prosecution witnesses itself submitted that prosecution has not disclosed the true version of the occurrence and has falsely implicated the appellants along with other acquitted accused and they could succeed in their endeavour to falsely implicate the appellants and others in the instant case with active connivance of the Investigating Agency, especially Investigating Officer of the case and Sri Manish Kumar, Sub-Inspector Arwal Police Station who registered the First Information Report and dispatched the same on 10.01.1998 at 10.00 A.M. but the same reached the court of Chief Judicial Magistrate on 12.01.1998, although, distance between Arwal Police Station and the court of Chief Judicial Magistrate, Jehanabad can be covered by a private vehicle in one hour and by bus in two hours and the delay caused has not been explained by the Investigating Officer (P.W. 5), who deliberately made incorrect statement in court that the First Information Report was seen by Chief Judicial Magistrate on 10.01.1998 but in fact the First Information Report was seen by Chief Judicial Magistrate on 12.01.1998. In this connection, reference is made to the evidence of the Investigating Officer in Paragraphs 56, 57. From the lower court record and the certified copy of the First Information Report, which was produced by the counsel for the appellants during hearing, it is quite evident that fardbeyan of the instant case was scribed on 09.01.1998 at



11.00 P.M. in village Rampur Chauram and dispatched to Arwal Police Station in the same night, First Information Report also registered in Arwal Police Station on 10.01.1998 at 4.00 A.M. and then sent to the court of Chief Judicial Magistrate, Jehanabad by Sub-Inspector, Arwal Police Station who registered the same on 10.01.1998 at 10.00 A.M., which is evident from Column Nos. 5, 15 of the First Information Report. It is, thus, quite evident that P.W. 5 not only failed to explain the delay of more than two days in receipt of the First Information Report in court but also attempted to suppress the fact that First Information Report was actually seen by the Chief Judicial Magistrate, Jehanabad for the first time on 12.01.1998. The natural inference of delay in receipt of the First Information Report in the court of Chief Judicial Magistrate, Jehanabad is that the same was perhaps not registered and dispatched at the time which is mentioned in Column Nos. 5, 15 of the First Information Report, perhaps for the reason that the informant and other so called eye-witnesses had not identified the miscreants who fired shots on the jeep and killed the nine deceased and the time after the occurrence till the First Information Report was received in the court of Chief Judicial Magistrate, Jehanabad was utilized to confabulate, decide about those who were to be named in the fardbeyan. In this connection, we have also to take into account the fact that neither the first informant Anjani Sharma nor the five villagers



named in the fardbeyan, namely, Ramanuj Sharma, Ram Niwas Sharma, Udho Sharma, Binod Sharma and Triveni Sharma who came to the place of occurrence with fire-arms and resorted to firing to chase the miscreants from the place of occurrence have been examined as witness to support the charge. Omission to examine the informant and First Information Report named witnesses is indicative of the fact that there has been a deliberate attempt by the prosecution party of the instant case to withhold the witnesses ostensibly for the reason that it wanted to suppress the true version of the occurrence from coming to the fore with a view to implicate as many as 42 accused persons in the fardbeyan giving details of their parentage to feed-fat grudge against them. Learned counsel in this connection submitted that several senior police officials and administration had come to the place of occurrence but none of them have been examined nor any explanation has been furnished for their non-examination. Reference in this connection is made to the judgment of the Supreme Court in the case of **Rajeevan and another Vs. State of Kerala (2003) 3 Supreme Court Cases 355, Ramesh Baburao Devaskar and others Vs. State of Maharashtra (2007) 13 Supreme Court Cases 501, The State of Bihar Vs. Girja Singh and others 2013(4) PLJR 464 Paragraph 66.**

8. Learned counsel for the appellants next contended that the evidence of P.Ws. 1, 2, the two injured prosecution eye-



witnesses also lacks credence in view of the fact that none of the two injured witnesses have produced any document to suggest that they were treated after the occurrence either at Arwal Primary Health Centre or in Nutan Nursing Home of Dr. Ramesh Babu as claimed by the two injured. In this connection reference is required to be made to the evidence of P.W. 1 Paragraphs 8, 11 and P.W. 2 Paragraphs 6, 9 in which both the injured have explained that there was strike in P.M.C.H. and both went to Private Nutan Nursing Home. Both P.Ws. 1, 2, however, did not produce even a chit of paper to indicate such treatment. In the circumstances, there is no credible, corroborative material on record to suggest that both P.Ws. 1, 2 suffered injury during the occurrence and were treated in Primary Health Centre, Arwal and Nutan Nursing Home, Patna.

9. Learned counsel next submitted with reference to the evidence of P.W. 1 Paragraph 28, P.W. 2 Paragraph 17 and the Investigating Officer (P.W. 5) Paragraph 4 that there was fog in the night of occurrence and it was not possible for the informant and others (so called eye-witnesses) to have identified the miscreants as from the prosecution case itself it will appear that there was no source of light at the place of occurrence in which the informant, eye-witnesses could have identified the miscreants in view of the fact that it is the clear evidence of P.Ws. 1, 2 the two injured eye-witnesses and the driver of



the jeep (P.W. 10) in Paragraphs 17, 20, 3 respectively that the driver switched off the light of the jeep before jumping out from the vehicle. In view of the aforesaid prosecution evidence, it may have been impossible for the occupants of the jeep who survived attack but somehow succeeded in making good their escape from the place of occurrence, to have identified the miscreants while firing was being made from behind in the foggy dark night.

10. In this connection, learned counsel further pointed out that the prosecution story, as set out in the fardbeyan and deposed in evidence, lacks credibility that 15 occupants were there in the jeep, firing was made from both sides as also from behind but only nine of the occupants could be killed. Reference in this connection is made to the evidence of the Investigating Officer (P.W. 5) in Paragraphs 3, 4, 12, 16, 27, 32, 67.

11. Learned counsel for the appellants further submitted that there has been material contradiction in the evidence of the prosecution witnesses and referred to the evidence of P.W. 10 the owner/ driver of jeep bearing Registration No. MWD 6777 in Paragraph 1 in which he stated that in the night of the occurrence there were 15 occupants in the jeep including the driver but he has furnished the name of only 12 persons. In this connection learned counsel also referred to the evidence of P.Ws. 1, 2 who claimed themselves to be injured and to

have received treatment at Arwal, Nutan Nursing Home, Patna but not produced any document to suggest such fact.

12. Learned counsel also referred to the evidence of P.W. 3 in which he stated that there was no fog at the time of occurrence contrary to the evidence of other prosecution witnesses including Investigating Officer (P.W. 5).

13. Learned counsel further submitted that evidence of P.Ws. 8, 9 is also fit to be rejected as P.W. 8 in Paragraph 6 admitted that he did not record his police statement and the police statement of P.W. 9 was recorded after 15-20 days of the occurrence, which is evident from the evidence of P.W. 9 Paragraph 15.

14. Learned counsel next submitted that the appellants have been falsely implicated in the present case as they had refused to work as farm labourer of the members of the prosecution party, which is evident from the evidence of P.W. 1 in Paragraph 12, P.W. 3 in Paragraph 52, which fact has also been confirmed by the Investigating Officer in Paragraphs 53, 54 of his evidence.

15. Learned counsel for the appellants next referred to the evidence of P.W. 1 Paragraphs 29, 30, P.W. 2 Paragraph 37 and P.W. 3 Paragraphs 19, 20, 22, 24 and submitted that there was dispute for the land situate between the house of Umesh Sharma and Harihar Sao in which Umesh Sharma opened his exit, which was objected to by



Harihar Sao who also reported the matter to the police and at the instance of Superintendent of Police, Jehanabad, Circle Officer came to the place of occurrence and got the exit opened in the disputed land closed. In retaliation Umesh Sharma through his brother-in-law Anjani Sharma got Harihar Sao, his sons Ram Pukar, Sri Bhagwan, Vaishnav and brother Sadhu Sao implicated in the instant case, out of whom only Harihar Sao has been acquitted but others have been convicted without appreciating that they have also been falsely implicated in the case on account of the aforesaid land dispute. In this connection, learned counsel also referred to the evidence of P.W. 2 Paragraphs 34 to 40, 50, P.W. 3 Paragraph 22, P.W. 4 Paragraphs 25, 30, 34, 60. In order to establish the fact that informant (not examined) is the brother-in-law of Umesh Sharma learned counsel placed reliance on the evidence of P.W. 1 Paragraph 31, P.W. 2 Paragraphs 26, 38, 39, P.W. 3 Paragraphs 25, 36 and the Investigating Officer (P.W. 5) Paragraphs 64, 65.

16. Learned counsel also submitted that investigation of the present case has not been proper, fair. In this connection learned counsel pointed out with reference to the evidence of the Investigating Officer (P.W. 5) Paragraph 36 that inquest of the dead bodies was conducted on 10.01.1998 at 6.00 A.M. and onwards. From the evidence of Investigating Officer (P.W. 5) Paragraphs 22, 23 it will appear that police statement of the informant was recorded in presence of other



witnesses and after recording the police statement of the informant other witnesses repeated the same version about the occurrence. From further evidence of Investigating Officer in Paragraph 50 it will appear that he has not even indicated the time of recording the police statement of any of the prosecution witnesses. Investigating Officer further admitted in Paragraph 43 that he has not taken down the distance of the place of occurrence from the last house of village Rampur Chauram as also the distance of place of occurrence from the pond, bamboo thicket where miscreants had concealed themselves and resorted to firing. In Paragraph 47 P.W. 5 further admitted that he has not recorded the police statement of accused Ashok Kumar Sinha as also did not investigate that Ashok Kumar Sinha is in Government service and that he is not regular visitor of the place of occurrence village as he came to the place of occurrence village once a while and had come two days prior to the occurrence to celebrate the birth of his grand child. Learned counsel also referred to the evidence of P.W. 5 Paragraph 49 that nothing incriminating was recovered from the house of the accused persons to suggest that they were involved in the occurrence. Learned counsel also referred to the evidence of the Investigating Officer in Paragraph 63 that the post mortem report of the nine deceased was not available until 20.01.1998 and that injury report of the two injured was also not ready until 09.02.1998 and submitted with reference to the aforesaid evidence

of the Investigating Officer that the investigation of the case was wholly improper, unfair to the accused.

17. Learned counsel next submitted with reference to the evidence of P.W. 2 in Paragraphs 38 to 40 that there is not only serious enmity between the members of the prosecution party and the members of the Sao family but also Harihar Sao, his sons and his brother Sadhu Sao have been implicated in the present case, the informant of the present case has also been made accused in abduction, murder case of Sudarshan Sao and P.W. 2 is accused in another murder case of three scheduled caste men of village Ankopur.

18. Learned counsel for the appellants also referred to the post mortem report, Exhibits 4/5 to 4/8 proved by the Advocate's Clerk and submitted that the same cannot be admitted in evidence. In this connection learned counsel referred to the judgment of the Supreme Court in the case of **Vijender Vs. State of Delhi (1997) 6 Supreme Court Cases 171 Paragraph 19 and Sukhi Yadav Vs. The State of Bihar 2014(4) PLJR 242**. He further referred to the post mortem reports (Exhibits 4 to 4/4) proved by P.Ws. 11, 12 the Medical Officers conducting the post mortem who found blackening of the injury on the person of the deceased. In this connection learned counsel referred to Modi's Medical Jurisprudence & Toxicology 13th Edition Chapter X and submitted that blackening is found by the fire-arm like shotgun



discharged from a distance of not more than 3 ft. A revolver or a pistol discharged within 2 ft. then only blackening over the injury may be found. High power rifle can also cause blackening up to 1 ft. Learned counsel also referred to Ballistic Fire-Arms and Jurisprudence by R.L. Gupta 1964th Edition Chapter IX dealing with the topic ascertaining the range of shot, blackening mark and submitted that blackening is the result of the deposit from the dirty powder gases. It begins when the scorching range ends; blackening is not affected by wet surface. This is also affected by the powder charge and pressure. In case, a big powder charge and high pressure the range of blackening is increased. In a low pressure the dirty deposit shall be greater as the combustion shall be less blackening with a high power rifle occurs up to about 9' and with a revolver or a pistol up to 6'. In the light of the aforesaid authority, it is submitted that in the instant case, as per prosecution story, shots were fired from a distance more than 3 ft., as such, blackening of the wounds found on the body of the deceased ought not to have been found.

19. Learned counsel also submitted with reference to the evidence of the Investigating Officer (P.W. 5) in Paragraph 58 that Accused Nos. 3, 6, 7, 8, 10, 13, 16, 21, 27, 28 were arrested on 10.01.1998, forwarded to court on 11.01.1998 but Investigating Officer of the case is not aware about the date of their judicial remand.

20. Learned counsel for the State though supported the



impugned judgment/ order of conviction/ sentence but having perused the original fardbeyan, First Information Report and the order dated 12.01.1998, passed by Chief Judicial Magistrate, Jehanabad accepted the fact that the fardbeyan of the instant case was recorded in the place of occurrence village at the place of occurrence itself on 09.01.1998 at 11.00 P.M. The First Information Report was registered on 10.01.1998 at 4.00 A.M. and dispatched to the court on the same day at 10.00 A.M. but was received in the court of Chief Judicial Magistrate, Jehanabad on 12.01.1998 when Accused Nos. 3, 6, 7, 8, 10, 13, 16, 21, 27, 28 were produced in the court for judicial remand. Learned counsel also accepted the position that informant of the case has not been examined during trial. He further accepted the position that the two injured, though examined themselves as P.Ws. 1, 2, but none of them has produced any document to support the fact that they suffered injury and were treated either in the night of occurrence or any time thereafter. He further accepted the position that many of the witnesses named in the First Information Report, namely, Ramanuj Sharma, Ram Niwas Sharma, Udho Sharma, Binod Sharma, Triveni Sharma have not been examined during trial to support the accusation. Learned counsel for the State also accepted the position that on account of delay in receipt of the First Information Report in court, the possibility of the same having been antedated cannot be ruled out.



21. In view of the prosecution evidence as appraised by us, we have considered the rival submissions. From the order-sheet of the court dated 12.01.1998, it appears that First Information Report of the instant case was received by the Chief Judicial Magistrate, Jehanabad on 12.01.1998. From the order-sheet of the same date it further appears that after receipt of the First Information Report aforesaid accused persons were also forwarded to the court and taking note of their forwarding by the Investigating Officer, Chief Judicial Magistrate, Jehanabad remanded the accused persons to judicial custody on 12.01.1998. The evidence of the Investigating Officer (P.W. 5) Paragraph 57 that the First Information Report in the instant case was seen by the Chief Judicial Magistrate, Jehanabad on 10.01.1998, his further evidence in Paragraph 58 that the aforesaid accused persons were arrested on 10.01.1998 and forwarded on 11.01.1998 and that he is not aware about their date of remand is not only incorrect but is falsehood in view of the order-sheet of Chief Judicial Magistrate, Jehanabad dated 12.01.1998 in which Chief Judicial Magistrate, Jehanabad recorded that in the light of the forwarding of the Investigating Officer 10 accused persons have been remanded to judicial custody, is indicative of the fact that the fardbeyan, First Information Report of the instant case was not seen by Chief Judicial Magistrate, Jehanabad on 10.01.1998 perhaps for the reason that neither the



fardbeyan nor the First Information Report of the instant case was recorded on 09.01.1998 at 11.00 P.M. and registered on 10.01.1998 at 10.00 A.M. and have been antedated to enable the prosecution party to confabulate and falsely implicate the accused persons/ appellants in the instant case. Aforesaid finding is further corroborated by the fact that informant and many of the prosecution witnesses have not come forward to examine themselves in court that too without giving any explanation. The two injured (P.Ws. 1, 2) also do not appear to be reliable as neither any chit of paper has been produced to support the treatment given to them nor the Medical Officer, who treated them, was examined as witness in the trial. Further from the prosecution evidence itself, it is clear that there was no source of light available at the place of occurrence in which the so called eye-witnesses had the opportunity to identify the miscreants. The post mortem report is also indicative of the fact that the deceased were shot from a close range within 3 ft., in such circumstances, further prosecution story that the two injured and the other eye-witnesses including the driver of the vehicle succeeded in jumping out of the jeep and to run away from the place of occurrence though indiscriminate firing was made from both the sides of the vehicle as also from behind does not appear to be plausible. In any case, there being no source of identification available at the place of occurrence, the night of occurrence being foggy, the miscreants could not have been



identified by the eye-witnesses. In the circumstances, it is quite evident that the prosecution party deliberately delayed dispatch of the First Information Report from Arwal Police Station to court only with a view to utilize the time in the meanwhile to falsely implicate the accused persons including the appellants and in our considered opinion they deserve grant of benefit of doubt.

22. Accordingly, judgment/ order dated 19.01.2009/ 23.01.2009, passed by Additional Sessions Judge, F.T.C.-II, Jehanabad, in Sessions Trial No. 177 of 2001/ 145 of 2006 is set aside. All the five appeals are allowed. Appellants Sadhu Sao (Cr. Appeal (DB) No. 191 of 2009), Raj Nandan Ram @ Raj Nandan Prasad, Raj Kumar Mochi, Umesh Sao @ Dakaitwa Sao, Jhaman Paswan, Kamta Singh (Cr. Appeal (DB) No. 239 of 2009) are in jail custody. They are directed to be released forthwith if not wanted in any other case. Appellants Saiju Ram (Cr. Appeal (DB) No. 121 of 2009), Sri Sao @ Sri Baishnaw Sao, Sri Bhagwan Sao (Cr. Appeal (DB) No. 191 of 2009), Santu Ram @ Laxman Ram (Cr. Appeal (DB) No. 209 of 2009), Nirbhay Ram, Ramadhar Yadav, Ram Pravesh Ram (Cr. Appeal (DB) No. 239 of 2009), Ashok Kumar Sinha (Cr. Appeal (DB) No. 243 of 2009) are on bail. They are discharged from the liabilities of their respective bail bonds.

23. Before parting with this judgment, it is necessary to



take notice of the instructions issued by the Principal Secretary, Home Department, Government of Bihar, Patna contained in letter no. 997 dated 13.01.2014 as also letter nos. 1080, 1081 both dated 08.12.2014 addressed to the Director General of Police, Bihar and all the District Magistrate, Senior Superintendent of Police, Superintendent of Police, Superintendent of Police (Rail), Public Prosecutor, District Public Prosecution Officer and Sub-Divisional Prosecution Officer in compliance of the direction of the Supreme Court in Criminal Appeal No. 169 of 2014 disposed of under order dated 20.01.2014 directing the State to establish a mechanism to examine the acquittal made in criminal cases on account of lapses committed by the Investigating/ Prosecuting Team(s). Instructions issued in this regard contained in letter nos. 1080, 1081 both dated 08.12.2014 indicate that the mechanism established by the Government to examine the acquittal on account of lapses committed by Investigating/ Prosecuting Team does not take into account the mandate of Section 25-A of the Criminal Procedure Code, 1973 which inter alia provide for establishment of a Directorate of Prosecution with eligibility criteria for appointment of Director/ Deputy Director of Prosecution. The Directorate have not been associated with the mechanism to examine the merit of the acquittal made at different levels i.e. Sessions Court, Magisterial Court etc. The instructions also do not provide for examining the acquittal at the level of the High Court. In the

circumstances, the State is directed to first establish a Directorate of Prosecution in the light of the provisions contained in Section 25-A of the Cr.P.C. and to reconstitute the committees to examine the acquittal made in the criminal court on account of lapses of the Investigating/ Prosecuting Team by associating the officers from the Directorate of Prosecution appointed after observing the mandate of Section 25-A of the Cr.P.C. Necessary exercise in this regard be made as early as possible, in any case, within three months from the date of receipt/ production of a copy of this judgment before the Home Commissioner, Bihar.

(V.N. Sinha, J.)

I agree.
Prabhat Kumar Jha, J.

(Prabhat Kumar Jha, J.)

Arjun/Rajesh/A.F.R.

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