

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.760 of 2009

Arising Out of PS. Case No. -47 Year- 2005 Thana -Mokama District- PATNA

(Against the judgment dated 29.06.2009/30.06.2009 passed by Additional District & Sessions Judge-XIII, Patna in Sessions Trial No. 209 of 2008/40 of 2009, arising out of Mokama P.S. Case No. 47 dated 11.04.2005)

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Gyan Ravi Das @ Gyan Prakash, S/o Hari Ravidas, R/o- Chandi Brindavan, P.S.- Sheikhpur, District- Sheikhpura at present of Doghara, P.S.- Bihta, District- Patna.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant	:	Mr. Rama Kant Sharma, Sr. Advocate. Mr. Binod Murari Mishra, Advocate. Mr. Prem Kumar, Advocate.
For the State	:	Mr. Ashwani Kumar Sinha, A.P.P.
For the Informant	:	Mr. K.M.Joseph, Advocate. Mr. Hemant Kumar, Advocate.

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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: 11 -02-2015

This appeal has been filed by the sole appellant/accused against the judgment dated 29.06.2009/30.06.2009 passed by Additional District & Sessions Judge-XIII, Patna in Sessions Trial No. 209 of 2008/40 of 2009, arising out of Mokama P.S. Case No. 47 dated 11.04.2005, initially registered for the offences under Sections 307, 326, 324, 448 and 387 of the Penal



Code for causing grievous injury to Father Mathew, who succumbed to the injuries on 01.05.2005, whereafter Section 302 of the Penal Code was also added on 05.05.2005, whereunder the sole accused appellant has been convicted for the charge under Sections 302, 452 of the Penal Code and sentenced to suffer Rigorous Imprisonment for life under Section 302 of the Penal Code with a fine of Rs. 5,000/-, in default of payment of fine, Simple Imprisonment for five years. For the offence under Section 452 of the Penal Code, sole accused has been directed to suffer Rigorous Imprisonment for seven years with direction to pay fine of Rs. 2500/-, in default of payment of fine to suffer Simple Imprisonment for one year nine months. Both the sentences, however, have been directed to run concurrently.

2. Prosecution case, as set out in the *fardbeyan* of informant Father Thomas (P.W. 5) in Nazareth Hospital, Mokama, District- Patna, recorded by Sub-Inspector Suresh Ram of Mokama Police Station on 11.04.2005 at 19:30 hours (7:30 P.M.) in Father's room Nazareth Hospital is that informant along with Sister Suza of Notredam, Jamalpur (P.W.3) (who came to Mokama only yesterday) was returning at 7:05 P.M. from the Old Church and had just reached near the



residence-cum-office of the Father of the Church where Sadhu Shila Nand (P.W. 1), Ajay Kumar (not examined) were talking to each other, heard Father screaming from inside the office room and rushed there and saw Father Mathew fallen on the ground west of his chair near the almirah and blood was oozing from his body. In front of the Father, appellant, who is resident of Mohangachhi, P.S.- Mokama, armed with blood stained knife, was also standing, moved out of the Father's room scaring the informant and others with the knife and ran away towards north. Father informed the informant that the injury has been caused by the knife over his throat and the blood was oozing therefrom. The informant also noticed blood on the floor of the room. Informant and others telephonically informed the hospital wherefrom staff came and carried the Father on the stretcher to the hospital. Injured Father's personal staff Maso, whose name Father was calling, also helped in carrying Father on the stretcher to the hospital. After reaching the hospital, injured Father Mathew informed those present in the hospital that appellant was asking for money but on his refusal to pay, he inflicted the injury and that Father Mathew is being treated in the hospital. In the last paragraph of the *fardbeyan* informant claimed that



appellant has inflicted the injury as Father refused to pay him. Informant having read the *fardbeyan* found the same to contain the correct version of the occurrence, put his signature over the same. The *fardbeyan* has also been attested by Sadhu Shila Nand (P.W. 1), Sister Meri Suza (P.W. 2).

3. Sub-Inspector Suresh Ram having scribed the *fardbeyan* forwarded the same to the Officer-in-Charge, Mokama Police Station and then proceeded to make seizure of incriminating articles from the table of Father Mathew as also one small broken piece of almirah glass was seized vide seizure-list dated 11.04.2005 in presence of Joseph Rajendra (P.W. 4) and the informant (Exhibit-8). The Officer-in-Charge, Mokama Police Station, on the basis of the aforesaid *fardbeyan*, registered Mokama P.S. Case No. 47/05 dated 11.04.2005 and requested Sub-Inspector Suresh Ram to investigate the case.

4. During investigation of the case Father Mathew, injured, was referred to Kurji Holy Family Hospital, Patna on 16.04.2005 for better treatment. While in treatment at Kurji Holy Family Hospital, Patna, Father Mathew passed away on 01.05.2005, whereafter his Inquest was made on the same day at 8:00 A.M. in



the Private Ward Room No. 328 of Kurji Holy Family Hospital by Sub-Inspector Bharat Upadhyay of Patliputra Police Station, Patna, who found knife injury over his throat/neck and left side of chest near nipple. Inquest proceeding was conducted by Sub-Inspector Bharat Upadhyay in presence of Josh Nampeli (Assistant Administrator of the hospital) (not examined), Father Sabestin (P.W.8). Post mortem on the dead body of Father Mathew was also conducted on 01.05.2005 by Dr. Vishnu Deo Prasad of P.M.C.H. During investigation Sub-Inspector Suresh Ram not only collected the Inquest Report from Sub-Inspector Bharat Upadhyay of Patliputra Police Station but also obtained the Post Mortem Report from Dr. Vishnu Deo Prasad (P.W. 6) and in the light of the police statement of as many as 11 witnesses, recorded during investigation, the second Investigating Officer Shrawan Kumar Rajak (P.W. 10) submitted *charge-sheet* No. 162/07 on 14.11.2007 against sole accused appellant indicating that he was arrested in the present case on 02.11.2007 from his Bihta residence and forwarded to Court on 03.11.2007.

5. In the light of the materials referred to in the *charge-sheet* and the case diary, cognizance for the different offences, found true during investigation, was

taken and after supply of police paper to the sole accused case was committed to the court of Sessions. Charges were framed against the sole accused appellant under order dated 02.06.2008, to which he pleaded not guilty and claimed to be tried.

6. In support of the charge, prosecution examined as many as 10 witnesses. P.W. 1 Sadhu Shila Nand, P.W. 3 Sister Mery Suza and the informant (P.W. 5) Father Thomas Charowelly are the eye-witnesses of the occurrence. P.W. 2 Dr. Dilip Kumar is the Medical Officer of Nazareth Hospital, Mokama who initially examined injured, later deceased, Father Mathew on 11.04.2005 at 8:05 P.M. in the Nazareth Hospital. P.W. 6 Dr. Vishnu Deo Prasad is the other doctor who conducted Post Mortem examination of the deceased. P.W. 4 Joseph Rajendra is a seizure-list witness. P.Ws. 7, 9 and 10 are the three police officers who prepared the Inquest Report, conducted investigation and submitted *charge-sheet*. P.W. 8 Sebastin is the inquest witness. Defence of the accused appellant is complete denial. He has also examined two defence witnesses. They are D.W. 1, 2 Sujeet Kumar, the Cook, who is also named in *fardbeyan* and cited as a prosecution witness in the *charge-sheet*, Durga Prasad Yadav.

7. Before proceeding to consider the submission made by the counsel for the appellant, State and the informant, it is necessary to appraise the evidence of the three eye-witnesses of the occurrence and other witnesses examined by the prosecution.

7 (i). P.W. 1 Sadhu Shila Nand has claimed in his evidence that on 11.04.2005 between 6:30-7:00 P.M. he was in the campus of Mokama Church and while standing in front of office-cum-residence of the Father of the Church was talking to Ajay Kumar. Just then informant P.W. 5 and Sister Suza, talking to each other, also came there from somewhere. Cook Sujeet (not examined) was also around as he was coming and going. Meanwhile, scream was heard from the office of Father Mathew. P.W. 1 and others rushed towards the room and saw Father Mathew fallen from his chair, was screaming, blood was also oozing from his neck. Appellant Gyan Das was by his side armed with a blood stained knife and appeared angry, extending threat by gesture went out of the office room. P.W. 1 also followed, saw him running away. In Paragraph 2 of his evidence P.W. 1 stated that the injured Father Mathew was saying that Gyan Das wanted to establish a fictitious N.G.O. and that he refused to put his signature. Father Mathew



also stated that he was asking for money, which request was also refused by him and he is forgiving him. In Paragraph 3 P.W. 1 stated that he telephonically informed all concerned about the occurrence. Telephone call to the hospital, however, could not materialize, then someone was asked to call the doctor from hospital. Father Mathew was taken to Nazareth Hospital, Mokama for treatment. After few days he was taken to Kurji Hospital, Patna for further treatment and that he passed away during treatment. In Paragraph 4 P.W. 1 identified the accused. P.W. 1 in Paragraph 5 has stated that earlier in Mokama Father Mathew, Father Martin and Father Philip were posted and Father Martin was also killed at the same place. In the same paragraph he declined the suggestion that Father Martin was killed because there was rivalry between the priests to become Father. In Paragraph 6 P.W. 1 named the locality adjoining Mokama Church i.e. Chandwari and Madan Gachhi but stated that he is not aware of the communities residing in those localities but accepted that he has visited those colonies. In the same paragraph he further stated that he is not aware about the number of persons in the two localities who were converted from Hinduism to Christianity including the



community of those converted into Christianity. In the same paragraph P.W. 1 stated that both the localities are just adjacent to the church but he is not aware about their distance from the church. P.W. 1 also stated in the same paragraph that Chandwari locality is just contiguous to the church but the other locality is at a distance of one furlong. In Paragraph 7 P.W. 1 has stated that he is not aware about the population of the two localities. In the same paragraph he also stated that he is not aware about the area of the church but the main gate of the church is on the north eastern side. In the same paragraph P.W. 1 feigned ignorance about the security arrangement on the main gate of the church. He also stated in the same paragraph that he is not aware as to whether any watchman is posted in the church. In the same paragraph he also stated that he used to meet the watchman but he had no personal interaction with him. He also stated in the same paragraph that he is not aware about the number of watchman available in the church. In the same paragraph he also stated that in few of the church proper security arrangement is made but in others there is no such arrangement. In Paragraph 8 P.W. 1 stated that approach road from the Mokama Hospital to the Nurses' hostel is through church and



there is security arrangement. In the church campus the Nurses' Hostel is not there. In Paragraph 9 P.W. 1 stated that he is not aware about the total area of land which is in church campus. In the same paragraph he also stated that within the church campus there is Categorical Training Centre, Mission School, Hospital, Cemetery, main church. In the main church at times prayer is organized in the evening between 600-7:00 P.M. There is orchard, pond etc. also within the campus of church. In Paragraph 10 P.W. 1 stated that next to the office-cum-residence of Father Mathew, there is residential bungalow of Father Shakespeare. In the same paragraph he further stated that he is not aware whether any separate staff was there for Father Shakespeare. In the same paragraph P.W. 1 also stated that he at times also met Father Shakespeare. In Paragraph 11 P.W. 1 stated that he is not residing in Sanjivan Niwas at Makdumpur but his name is there in the voter-list and he does have Voter Identity Card in which his address is indicated at St. Xavier's School. In the same paragraph P.W. 1 further declined the suggestion that he is residing in the Sanjivan Niwas, Kurji, Patna. In Paragraph 12 P.W. 1 stated that he has also met the Missionaries posted at Mokama and that he is also a Missionary. In the same



paragraph he further stated that from the Missionaries posted at Mokama he could not ascertain the difficulties coming in their way in spreading Christianity. In Paragraph 13 P.W. 1 stated that he used to visit Mokama as a friend and at times for teaching music relating to Missionary, social activity. In the same paragraph he also admitted that on the fateful day he had not come to Mokama to teach music. In Paragraph 14 P.W. 1 stated that on the fateful day he was at a distance of 1.5-2 furlong from the main gate of the church and that he is not aware as to how many persons came to the church on that day. In Paragraph 15 P.W. 1 stated that he did not point out the place to the Sub-Inspector where he was standing, talking. P.W. 1 in Paragraph 16 stated that he cannot say if the occurrence was after 7:00 P.M. but clarified that it was around 7:00 P.M. In Paragraph 18 P.W. 1 admitted that on the fateful day he did not give any call to the Police Station and that he is not aware as to who called the Police Station from the church. In the same paragraph he also stated that he did not tell the police as to whom did he call to inform about the occurrence. In Paragraph 19 P.W. 1 stated that he is not aware that the accused was an obstruction in Missionary activities and then proceeded to deny the



suggestion that on account of rivalry between the Fathers Father Mathew was killed. In Paragraph 20 P.W. 1 stated that he is not aware about the number of days for which Father Mathew was treated at Nazareth, Holy Family Hospital, Kurji, Patna. In Paragraph 21 P.W. 1 stated that he went to meet Father the day following the occurrence and at that time Father Mathew recognized him but did not speak to him and thereafter he never went to see him. In Paragraph 22 P.W. 1 stated that he does not remember that after hearing the scream of Father Mathew anybody raised alarm. After hearing the scream of Father Mathew, 3-4 persons rushed to his room. There is only one entry point to enter the office room of Father Mathew. In Paragraph 23 P.W. 1 stated that those who entered the office room of Father Mathew tried to lift him for about 4-5 minutes, meanwhile few other persons also came but he is not sure about their number as he was trying to concentrate in making telephone calls. In Paragraph 24 P.W. 1 stated that in the office room of Father Mathew he and others remained for 15-20 minutes but did not try to lift him. The telephone call could materialize at some place but not at all the places. In the same paragraph he also stated that he does not remember the places where the



telephone call materialised. In the same paragraph he also stated that he does not remember that until Father was removed how many of his acquaintances came in the office room. In Paragraph 25 P.W. 1 stated that he is not aware about the length, breadth of the table placed in the office room. In the same paragraph he further stated that he is not aware about the number of almirahs kept in the room. He also stated in the same paragraph that Father was lifted by 3-4 persons but he is unable to name them. Those who lifted the Father and carried him to the hospital were Christians. In the same paragraph P.W. 1 also stated that he is not aware whether there was blood smeared on the body/clothes of those who lifted Father Mathew. In the same paragraph P.W. 1 also stated that he did not touch Father Mathew. In Paragraph 26 P.W. 1 stated that Father Mathew was not lean and thin rather he was a healthy and strong man. In Paragraph 27 P.W. 1 stated that the boundary wall of the church is 8-9 ft. high but he does not remember that there is fencing over the boundary wall. In Paragraph 29 P.W. 1 stated that he is not in a position to give the description of the boundary of the house of the accused as also he is not aware about the number of his family members as he (P.W. 1) resides in Patna. In



Paragraph 29 P.W. 1 stated that he did state in his police statement that occurrence has taken place between 6:30-7:00 P.M. and then volunteered that he does not remember whether he made such statement. In the same paragraph he also stated that he does not remember whether he informed the police that Cook Sujeet was also coming and going from the office room. In the same paragraph he further stated that he did state in his police statement that Father Mathew had fallen from his chair and was groaning. In the same paragraph he further stated that he did state in his police statement that Gyan Das was angry and his face looked menacing. P.W. 1 also stated in the same paragraph that he did state before the police that he followed the accused. He also stated in the same paragraph that Father Mathew was telling that Gyan Das wanted to establish a fictitious N.G.O. and that how could he put his signature over such document and refused to put his signature over the document by which Gyan Das wanted to establish fictitious N.G.O. In the same paragraph P.W. 1 further stated that Father Mathew also informed him that Gyan Das was asking for money which was refused by him. He also stated in the same paragraph that Father Mathew also told P.W. 1 that still he forgives Gyan Das. In the



same paragraph P.W. 1 stated that he did state before the police that he telephonically called all around but the call could not get through to the hospital and then sent someone to call the doctor. In the same paragraph P.W. 1 declined the suggestion that because of conspiracy Father Mathew was killed and Gyan Das has been falsely implicated in the present case.

7 (ii). P.W. 3 Sister Meri Suza has also claimed herself to be an eye-witness of the occurrence. In Paragraph 1 she has stated that on 11.04.2005 she was at Mokama. The occurrence took place around 7:05 P.M. and at that time she along with Father Thomas, was coming from Nazareth old Church towards the office of Father Mathew, deceased. The office of Father Mathew is his residence-cum-office. Outside the office Sadhu Shila Nand (P.W. 1), one Ajay (not examined) were talking to each other. P.W. 3 having come near them also joined the conversation. Just then loud scream was heard from the office of Father Mathew. P.W. 3 rushed towards his office and saw Father Mathew fallen on the ground west of his almirah and blood oozing from his neck, there was copious blood on the floor as well. In Paragraph 2 P.W. 3 stated that she also saw one man standing in the room armed with a knife in his right



hand. The witness volunteered that she learnt later that his name is Gyan Das. In the same paragraph witness further stated that he was armed with blood stained knife, showing the knife the man went out of the room. In the same paragraph P.W. 3 identified the appellant. In Paragraph 3 P.W. 3 stated that informant Father Thomas gave information about the occurrence to the police, which was recorded as his *fardebayan*, over which P.W. 3 also put her signature and proved as Exhibit-2. She also stated in the same paragraph that P.W. 1 Sadhu Shila Nand also put his signature over the *fardebayan* and that she also identified his signature marked Exhibit-2/1. In Paragraph 4 P.W. 3 stated that after the accused ran away, she went near the Father and asked him as to what happened and where has he suffered injury. Father informed her that the assailant was Gyan Das who was repeatedly asking for money for establishing fictitious N.G.O. and wanted his signature which he refused. In Paragraph 5 P.W. 3 stated that hospital was informed wherefrom stretcher was brought and Father was carried to the hospital. P.W. 3 and others also went to the hospital where police came and recorded their statement. P.W. 3 in Paragraph 6 stated that she was never posted at any school in Mokama as she remained



posted at Sasaram, Jamalpur, Bariarpur and Patna. In the same paragraph she also stated that prior to her arrival at Mokama on the fateful day she had not spoken either to Father Thomas or to Sadhu Shila Nand. In Paragraph 7 P.W. 3 stated that at the relevant time Father Thomas was posted in church at Patna and she cannot say since when he was posted at Patna as she is not in touch with him and others concerned with the posting. In the same paragraph she also stated that she is not aware about the place of stay of Sadhu Shila Nand on the date of occurrence but clarified that at that time Father Thomas used to stay at Patna. P.W. 3 then volunteered that at the time of occurrence Father Thomas was at Mokama and both Father Mathew and Thomas used to stay in the same house and that she is not aware about the number of days prior to the occurrence he stayed at Mokama. In the same paragraph she also stated that she is not aware whether Father Mathew and Thomas used to eat and stay together. In Paragraph 8 P.W. 3 stated that she did not go to Father Thomas's room as she had come with few girls for a prayer meeting from Jamalpur for four days. The occurrence happened on the second day. In the same paragraph she further stated that she had written to



Father Mathew two months back saying that she wants to come for the prayer meeting with four girls and he should make arrangement for their stay. Behind Father's residence there was a religious site where arrangements were made for their stay and there were five girls with her, namely, Sunita, Vandana, other name she does not remember. In Paragraph 9 P.W. 3 stated that she along with five girls without any attending staff had come to Mokama and arrangement for their boarding, lodging was by the Mission where there was only one kitchen from where arrangements were being made but she is not aware as to who was looking after such arrangement, Father Mathew or Father Thomas. In the same paragraph she also stated that she does not have any concern with the cook preparing the food. She also stated in the same paragraph that she is not aware about the number of staff posted there. She also stated in the same paragraph that she had not seen Father Shakespeare. In the same paragraph she further stated that she is not aware that Father Shakespeare was the Incharge of church. In Paragraph 10 P.W. 3 stated that in church there is morning, evening prayer but she did not attend those prayers. In the same paragraph she stated that on Monday she did join the morning prayer



in the church, which is 20 ft. north of the residence of Father Mathew. In the same paragraph she further stated that residential room of Father Mathew, Thomas and Shakespeare is also in the same building. In the same paragraph she also stated that she had not taken a round of the entire Mokama church campus but did see the church in which she had come to offer prayer which is old church in which there is a Father and she used to offer prayer herself. In the same paragraph she further stated that she is not aware as to who others were offering prayer in the same church. In Paragraph 12 P.W. 3 stated that silent meditation is performed for 4-6 days. In the same paragraph she also stated that on the fateful day she left the church with Father Thomas. Five girls were also along with them. After coming out of the church the girls went ahead and she along with Father Thomas went towards north, approximately hundred metres, from the church and met Sadhu Shila Nand. By that time the girls had gone 25-30 metres ahead. In Paragraph 13 P.W. 3 stated that it took her and Father Thomas 5-7 minutes to complete the prayer and reach near Sadhu Shila Nand. The girls, however, went to dining hall for taking dinner. P.W. 3, however, did not go to the dining hall. There is verandah and rooms between



the bed room of Father Mathew and the dining hall. In the day time lunch is served to the girls by a maid and in the night by a boy. There were three workers in the kitchen, one Cook, the other Maid, and the third a boy. Father used to take his meal in the end. In Paragraph 14 P.W. 3 stated that she is not aware whether the staff was allowed to leave after Father took his meal. In Paragraph 15 P.W. 3 stated that when she and others heard the scream, ran 10-12 ft. It took them less than two seconds to reach the Father's room where Father was not holding the chair but had fallen down between the chair and the almirah. He had fallen on the floor leaning on almirah north-south. Broken glass pieces of large and small size, straight and pointed, were lying by his side. In Paragraph 16 P.W. 3 stated that there was blood on the floor in the radius of one ft. near Father's head. In Paragraph 17 P.W. 3 stated that Christians are taught to serve people. In the same paragraph she further stated that she does not remember if any bandage/cover was put on the wound to stop oozing of blood because she was nervous. In the same paragraph she also stated that she went near him and saw the wound for 10-15 minutes and consoled him. Father Thomas was also with P.W. 3 and he also consoled Father Mathew. In



Paragraph 18 P.W. 3 stated that she did not have a mobile telephone and that she did not see Father Thomas calling anyone. Father Thomas also did not call up the hospital. It was Shila Nand who was making calls. In Paragraph 19 P.W. 3 stated that in office room of Father Mathew there was almirah, table, 2-3 chairs and Father Mathew's chair. In the same paragraph she further stated that even after Father was taken to the hospital, she continued to remain at the place of occurrence for 20 minutes because she was told that police will come there to record her statement. After 10-15 minutes police came to the place of occurrence. In Paragraph 20 P.W. 3 stated that until the time police came, Father Thomas, Shila Nand, Church staff and a hospital staff remained in the Father's office room. Police remained in the office room for about 1-1.5 hours and did paper work. In the same paragraph she also stated that she informed the police about the place where she and others were talking after returning from church. Police inspected both the rooms of Father. During inspection of the two rooms P.W. 3 was waiting in the verandah or inside the room. Police went around and spoke to those present. In Paragraph 21 P.W. 3 stated that the girls did not stay with P.W. 3 and others as after



having food they went away. In the same paragraph she also stated that the girls were not produced before the Sub-Inspector. In Paragraph 22 P.W. 3 stated that she and others stayed back for 2 days, offered their prayer and left on 14th, but did not meet the Sub-Inspector after the date of occurrence, though police kept coming to the place of occurrence. In Paragraph 23 P.W. 3 stated that she met Sadhu Shila Nand three years back at Patna and Father Thomas at Mokama one year back and at that time he was posted at Mokama and that she is not aware that Father Thomas came to Mokama after retiring from Patna church. In the same paragraph she further stated that Father Thomas use to come to the hospital for prayer meeting with the hospital staff. In Paragraph 24 P.W. 3 stated that Father Thomas was posted at Jamalpur, Sheikhpura few years back, but at that time she was not there. In Paragraph 25 P.W. 3 admitted that she, Father Thomas, Father Mathew, are residents of Kerala. In the same paragraph she denied the suggestion that there was relationship between her and Father Thomas from Kerala itself. In the same paragraph she also denied the suggestion that wherever Father Thomas used to stay, she used to visit. In the same paragraph she stated that she is not aware if



Father Mathew ever worked under Father Thomas. In Paragraph 26 P.W. 3 admitted that in the present case she was not taken to the jail to identify the accused and further stated that accused is standing alone in the dock, earlier also he was alone. In Paragraph 27 P.W. 3 further stated that she does not remember if she told the Sub-Inspector the description of the accused but stated that she had stated before the police that she was coming towards Father Mathew's office. P.W. 3 has also stated in the same paragraph that she had stated that after reaching there she began to talk to Sadhu Shila Nand (P.W. 1). She also stated that blood was oozing from the neck of Father Mathew and lot of blood had fallen on the floor. She also stated that after the accused ran away, she went to Father and asked him where was he hurt and Father told her that it was Gyan Das who was asking for money, used to come often and wanted to establish a fictitious N.G.O. and was asking for his signature which was refused. In Paragraph 28 P.W. 3 stated that she also stated before the police that hospital was informed. She also stated in the same paragraph that when Father Thomas's police statement was being recorded, she and Shila Nand were sitting there. Father Thomas was speaking and Sub-Inspector was recording



as also asking in between. Sub-Inspector also asked her and Shila Nand in between. Sub-Inspector further asked her separately. In the same paragraph she further stated that over the statement of Father Thomas she and Shila Nand also put their signature but thereafter no further statement was recorded. In Paragraph 29 P.W. 3 stated that on 13.04.2005 she went to the hospital to meet Father Mathew and remained there for 3-4 minutes, saw Father Mathew and then came back, did not tell Father Mathew about the case. He also did not ask about the same. She further stated in the same paragraph that she was asked not to hold conversation with Father. In Paragraph 30 P.W. 3 denied the suggestion that because of the conspiracy between Father Thomas, Shila Nand and herself, Father Mathew was killed but Father Mathew, to save the dignity, did not say anything. In the same paragraph she further denied the suggestion that Gyan Das has been falsely implicated in the case and that she was deposing falsely in the case.

7 (iii). P.W. 5 Father Thomas Charowelly is the informant of the case and has stated in Paragraph 1 of his evidence that on 11.04.2005 he was posted in the Nazareth Hospital as Chaplain. On the date of occurrence around 6:00 P.M. he along with Sister Suza



had gone to the old Church for prayer and was in prayer for one hour. After prayer at about 7 O' clock five students, Sister Suza and P.W. 5 came out of the Church and walked towards his residence. The residence of P.W. 5 and the deceased was in the same building. In the same evening at about 7:05 P.M. P.W. 5 while talking to P.W. 3 reached near the portico of his residence and met P.W. 1 Sadhu Shila Nand who was talking to Ajay Kumar (not examined), a sudden loud cry was heard coming from the room of Father Mathew. Informant and others rushed towards the room of Father Mathew and found Father Mathew fallen on the ground, groaning. P.W. 5 also saw in the room a young man standing with a blood stained knife in his right hand. The young man rushed towards the informant and others but the informant moved towards injured Father Mathew. The young man reached the door and then looked back at the informant and others and fled away. In Paragraph 3 P.W. 5 stated that he rushed and picked up Father Mathew and blocked the bleeding by putting his hand on the wound on his chest. Blood was still coming out. P.W. 5 then asked Father Mathew about any other wound who informed with much difficulty that there is one more wound on the neck and



another wound on the other side of neck. P.W. 5 told Sister Suza (P.W. 3) to take a bed-sheet and block the bleeding. Injured Father Mathew informed P.W. 5 that Gyan Das caused injury to him because he did not give him money which he was asking for. In Paragraph 4 P.W. 5 stated that he asked Sadhu Shila Nand (P.W. 1) to ring up the hospital but the call did not materialise then he asked P.W. 1 to send someone personally to the hospital. The hospital people came with stretcher and 2-3 Para-medical men and rushed Father Mathew to the hospital. Meantime P.W. 5 also asked Sadhu Shila Nand to inform the other Father who was away in the village. After about 10 minutes word came from the hospital that Father Mathew is out of danger and soon he will be operated upon and police has come in hospital. In Paragraph 5 P.W. 5 stated that after half an hour of the occurrence i.e. about 7:30 P.M. police came at the place of occurrence and that he pointed out the place of occurrence room and the blood on the floor of the room to the police party. Police party asked him to record his statement which he recorded and having heard the contents of his statement, he put his signature over the same which he identified and proved as Exhibit-2/2. In Paragraph 6 P.W. 5 stated that the police party picked



up an envelope on which there was blood drops, a registered letter also on which also there was blood drops from the table. Police party also picked up blood stained glass piece from the floor and obtained his signature over the seizure-list. P.W. 5 proved his signature over the seizure-list as Exhibit-3/1. Joseph Rajendra (P.W. 4) also put his signature over the seizure-list. In Paragraph 7 P.W. 5 stated that the young man whom he saw in the room with blood stained knife in the hand is present in court and identified the accused. In Paragraph 8 P.W. 5 informed the court that Father Mathew passed away on 01.05.2005 in Holy Family Hospital, Kurji, Patna. In the same paragraph he further stated that after four days of treatment at Mokama he was shifted to Holy Family Hospital, Kurji for further treatment. In Paragraph 9 P.W. 5 stated that he recorded his police statement in Hindi. The police officer, who scribed his statement was Suresh (P.W. 9). In the same paragraph he further stated that his birth place is in Kerala and that he came to Bihar at the age of 26-27 years and was posted as religious priest at Barbigha with designation of Assistant Father and remained there for five years, whereafter posted as Father Incharge at Sheikhpura where he remained



posted for 13 years. In the same paragraph P.W. 5 further stated that his work was not to convert the people but he took part in prayer and worship in church and at places where he was called. In the same paragraph he denied the suggestion that he was assaulted by public twice at Sheikhpura. In Paragraph 10 P.W. 5 stated that he never met Sister Suza while his posting was at Sheikhpura. In the same paragraph he also stated that he also worked at Jamalpur for 13 years and became acquainted with her at Jamalpur. In the same paragraph he also stated that there is Village Chandi Vrindawan in Sheikhpura but he is not aware whether villagers of Chandi Vrindawan are against Christianity. He also stated that he never went to Chandi Vrindiwan because he was never called there. In the same paragraph he also stated that at that time neither any Brother nor Sister was posted at Sheikhpura and he had to do every work. He also stated that distance of Chandi Vrindawan is about five miles from Sheikhpura church. He also stated in the same paragraph that some land was purchased at Chandi Vrindawan before his posting at Sheikhpura and that he is not aware about the name of the then Father or the person from whom land was purchased. In the same



paragraph he feigned his ignorance about the fact that the land was purchased at Chandi Vrindawan by Father Mathew Adam, deceased. In the same paragraph he also stated that the land was purchased for Mission purpose. Mission building was, however, not raised at Chandi Vrindawan. In the same paragraph P.W. 5 stated that he does not know that accused Gyan Das is a resident of Chandi Vrindawan. In the same paragraph he also denied the suggestion that due to opposition in construction of the building he sold the land at Chandi Vrindawan and then stated that he is not aware whether land at Chandi Vrindawan has been sold or not. In the same paragraph P.W. 5 stated that it is not a fact that the family members of Gyan Das were opposing construction of Mission building on the land at Chandi Vrindawan. In the same paragraph he also stated that he is unable to produce the papers of the land because he is not the custodian of such papers. In Paragraph 11 P.W. 5 stated that it is not a fact that he was giving speech in Sheikhpura church against other religion and one Bindeshwar Das, President of Pen Dehri assaulted him. In Paragraph 12 P.W. 5 stated that he knew Sister Dia while his posting was at Sheikhpura. Sister Dia was Head Mistress and that his relation with



her was cordial. In Paragraph 13 P.W. 5 stated that Nurse Felomine was earlier taking nurse's training at Kurji Hospital. Nurse Felomine had come to Sheikhpura to meet him on one or two occasions and that she was his first cousin. In the same paragraph P.W. 5 declined the suggestion that it is not a fact that public at Sheikhpura was annoyed with him due to his relation with Sister Dia and Felomine. In Paragraph 14 P.W. 5 stated that relief goods from foreign country came for distribution in hospital, store. The relief goods received were for free distribution and that P.W. 5 is not aware that Amarkant, son of Mertin was caught red handed while selling relief goods. In Paragraph 15 P.W. 5 stated that he was posted at Kurji for the last three years and that he is retired. In the same paragraph he further stated that he was never a Father at Patna. In the same paragraph he further stated that Bishop House, Bankipur at Patna is his permanent address. In the same paragraph he also stated that Bishop House is the headquarter from where he was ordered to be posted at Mokama in August, 2001 and that he was posted for arranging worship of hospital staff. Time for worship by hospital staff is at 8:30 for 30-40 minutes. The resident hospital staff took part in worship. In Paragraph 16



P.W. 5 stated that he had good relation with hospital staff due to worship work. He was posted at Bangalore before his posting at Mokama. In Paragraph 17 P.W. 5 stated that he cannot say the boundary of Mission compound at Mokama. In the same paragraph he also stated that he cannot furnish village address of the other persons. In the same paragraph he also stated that he is not aware about the population of Christians, Hindus in surrounding areas. In Paragraph 18 P.W. 5 further stated that he had no concern with the worship at church but sometimes he went there to assist on request of Father Mathew. In Paragraph 19 P.W. 5 stated that on the date of occurrence general prayer in church would have been done in morning. Prayer in church was done before 8:30 P.M. and then prayer in hospital starts. Bell for worship in church rings at 6:30 A.M. In Paragraph 20 P.W. 5 stated that he knew Sadhu Shila Nand for the last 4-5 years prior to the occurrence as he met him sometimes at Patna. In the same paragraph he further stated that he did not show the exact place to police where he was talking to Shila Nand. That place is at a distance of about 40-50 yards from his residence room. In the same paragraph P.W. 5 also stated that his bed-room and the bed room of



Father Mathew were in different wings. Brother Satya Prakash (not examined) and Father Shakespeare also resided in different rooms of the same building. In Paragraph 21 P.W. 5 stated that those who heard the cry, rushed to the room. In Paragraph 22 P.W. 5 stated that when he was in place of occurrence room, no outsider came there. Those who came to the place of occurrence room were from Mission hospital. In Paragraph 23 P.W. 5 stated that he is not sure as to how many people were working under Father Mathew at that time. 8-10 persons had come in the room till Father Mathew was there. One of them was staff of Father Mathew and others were hospital staff. In Paragraph 24 P.W. 5 stated that he does not know how many persons were working in kitchen at that time. Female, male both are engaged in kitchen and as Sweeper. Cook was Sujeet, a lady had come for assistance to serve food to Sisters. He cannot furnish the description of that lady. In Paragraph 25 P.W. 5 stated that Father Mathew was Incharge of kitchen also. He also stated in the same paragraph that in the evening all the Fathers residing in Mokama used to dine together. In Paragraph 26 P.W. 5 stated that some Sisters and Para-medical staff of hospital came there



(place of occurrence room) but he cannot furnish their name and that those who came to the place of occurrence room had not participated in prayer in hospital. Sister Dr. Ansila came to the place of occurrence room but did not begin treatment in place of occurrence room but she asked to pick up Father Mathew. In Paragraph 27 P.W. 5 stated that Father Mathew remained lying at the place of occurrence room for about 8-10 minutes and then he (P.W. 5) lifted him in his arms and his clothes were also stained with blood after he lifted him. During the 8-10 minutes P.W. 5 remained sitting on the floor and blocked the oozing of blood from chest with his hand. In the same paragraph he further stated that the wound on the neck was blocked with a bed-sheet kept on a stool. In Paragraph 28 P.W. 5 further stated that the bed-sheet was also taken to hospital. In the same paragraph P.W. 5 also stated that he did not tell about the bed-sheet to the police because the police did not ask about it but did state before the police that he tried to block the oozing of blood from chest wound with his hand. In Paragraph 29 P.W. 5 stated that the blood had scattered within 1-1 ½ ft. area till he reached there, which was 1-1 ½ ft. away from the door connecting the bed-room. In



Paragraph 30 P.W. 5 stated that Sadhu Shila Nand made telephone calls. He also saw the same thing which P.W. 5 saw. In the same paragraph P.W. 5 also stated that P.W. 1 Sadhu Shila Nand telephoned to the hospital and not to the Police Station. In the same paragraph he also stated that he is little hard of hearing with weak eye sight. In Paragraph 31 P.W. 5 stated that the Police Station was not telephonically informed from the room where the occurrence took place. In the same paragraph he also stated that he did not operate the telephone. Sadhu Shila Nand (P.W.1) telephoned for about 3-4 minutes. In the same paragraph P.W. 5 also stated that he did not know as to who gave information about the occurrence to the police. In the same paragraph P.W. 5 stated that when police party met him they told P.W. 5 that they are coming from hospital. In Paragraph 32 P.W. 5 stated that when police party came to the place of occurrence room he along with Sadhu Shila Nand (P.W. 1) and Sister Suza were present in the place of occurrence room. In Paragraph 33 P.W. 5 stated that the five students and Ajay were not produced before the police. He also stated in the same paragraph that the police remained at the place of occurrence for about 40 minutes to one hour and that he cannot say



as to whose statement was taken by the police and at what place. In the same paragraph P.W. 5 also stated that he can say about the time for which police remained in hospital. In Paragraph 34 P.W. 5 stated that he did not take the police to the place where he, Shila Nand, Sister Suza and Ajay were talking. In Paragraph 35 P.W. 5 stated that he cannot say as to whether there was any income in the office of Father Mathew from outsiders, Donation Box. In the same paragraph he declined the suggestion that all the Fathers were annoyed due to non-distribution of such income to them. In the same paragraph P.W. 5 also stated that he cannot say as to whether Father Mathew used to send income of his office to his own home. In Paragraph 36 P.W. 5 stated that he did not participate in the Test Identification Parade during investigation. In the same paragraph he also stated that the accused was standing alone in dock yesterday and today also he is standing alone in dock. He also stated in the same paragraph that he had not come to this Court on last Thursday. He further stated in the same paragraph that he was in P.P. Office on last Thursday and further declined the suggestion that on last Thursday he was called in court premises to identify the accused. In the



same paragraph P.W. 5 further stated that it is not a fact that Father Mathew was attacked due to his conspiracy with other Fathers and the occurrence took place between 6:00-6:30 P.M. In the same paragraph he further stated that it is not a fact that Father Mathew was assaulted by 3-4 persons by overpowering him. In the same paragraph P.W. 5 declined the suggestion that “Mar-Peet” between the Fathers began in the bed-room of Father Mathew but thereafter volunteered that he saw him for the first time while he had fallen in the office-room. In the same paragraph P.W. 5 further stated that it is not a fact that police was not informed by him and others as a result of conspiracy. In the same paragraph he further stated that it is not a fact that the first statement about occurrence given to police was destroyed by taking the police in collusion. In the same paragraph he also declined the suggestion that the death of Father Mathew was caused after taking doctors in collusion. In the same paragraph he also declined the suggestion that this case is a concocted case and an innocent person has been falsely implicated. In Paragraph 37 P.W. 5 stated that he had given statement to police that he and others were in prayer for about one hour and after prayer at about 7:00 P.M. five students,



Sister Suza and P.W. 5 came out of the church and walked towards his residence and that he had stated in his police statement that young man rushed towards him and others but P.W. 5 moved towards Father Mathew's side. In the same paragraph he also stated that he gave statement to police that he asked from Father Mathew about any other wound and that he informed with much difficulty that there is one more wound on the neck and another wound on the other side of neck and then he asked Sister Suza to take a bed-sheet and block the bleeding. In the same paragraph he further gave statement to police that in the room itself Father Mathew told him that Gyan Das did this to him because he did not pay the money demanded. In Paragraph 38 P.W. 5 stated that he also gave statement to police that he asked Sadhu Shila Nand to ring up the hospital and when the hospital phone was not picked up, he told him to send someone personally. In the same paragraph he also stated that he also gave statement to police that he asked Sadhu Shila Nand to inform the other Father who was away in the village. In the same paragraph he further stated that he gave statement to police that after half an hour of the occurrence at about 7:30 P.M. police came at the place

of occurrence and he pointed out to the police party the room and the blood. In the same paragraph P.W. 5 further volunteered the wording of his previous statement, may be different, but he stated all such facts. In Paragraph 39 P.W. 5 stated that in his statement to police he did state that Father Mathew was taking the name of his staff Maso (wrongly stated in the evidence as Baso).

7 (iv). P.W. 2 Dr. Dilip Kumar has stated in his evidence that on 11.04.2005 he was posted at Nazareth Hospital, Mokama as Consultant Surgeon. On that date Father Mathew was brought to the hospital at 8:05 P.M., he examined him and found :

(1). incised wound over anterior (front) surface of neck about 8 cm. long which was still bleeding.

(2). Incised wound over posterior surface of neck about 10 cm. long and muscle deep which was still bleeding.

(3). Penetrating wound of size $\frac{1}{2}$ "x $\frac{1}{2}$ " below left nipple. X-ray of chest was taken which indicated mild contusion of left lung.

Nature, age of injury was grievous, within six hours. Injury Nos. 1, 2 were caused by sharp cutting



object and Injury No. 3 was caused by pointed object. P.W. 2 proved the injury-report (Exhibit-1). In Paragraph 5 P.W. 2 stated that patient was conscious and cooperative. In the same paragraph he further stated that patient was referred to Patna on 16.04.2005. In reply to query made by the court in Paragraph 6 the witness stated that Injury Nos. 1, 2 were dangerous for life. In Paragraph 7 P.W. 2 stated that breadth and depth of Injury Nos. 1, 2 has not been stated in his report because it was bleeding. In the same paragraph he further stated that Injury No. 2 was muscle deep. Injury No. 1 was not muscle deep. In the same paragraph he also stated that it is not correct to suggest that if depth, breadth of the injury is not mentioned, the injury would be superficial or simple in nature. In Paragraph 9 of his evidence P.W. 2 further stated that if vital organ is affected, the injury is called grievous and dangerous injury. Knife generally causes piercing injury but it may cause incised injury also.

7 (v). P.W. 4 Joseph Rajendra has stated in his evidence that on 11.04.2005 in the evening around 7:00 P.M. after offering prayer in the church he was returning home. In the way he learnt that Gyan Das has injured Father Mathew with a knife and came to the

place of occurrence i.e. office room of Father Mathew and saw Father Mathew fallen on the ground in injured condition and that blood was oozing from his neck where Father Thomas, P.W. 5, Brother Shila Nand (P.W.1), Sister Suza (P.W. 3) and many others were present. In Paragraph 2 of his evidence P.W. 4 stated that staff came with stretcher from the hospital so as to reach Father Mathew to hospital and P.W. 4 also went along with him to the hospital, wherefrom he again came back to the place of occurrence. Police also came to the place of occurrence. During investigation police party seized blood stained piece of glass, few blood stained envelopes and the blood found on the floor vide seizure-list, over which he also put his signature as a witness and proved the same (Exhibit-3). He also identified the appellant in the dock. In Paragraph 3 P.W. 4 stated that he learnt that the occurrence had taken place because of demand of money. In Paragraph 4 P.W. 4 stated that the total area of Mission compound situate in Mokama is about 450 Bigha in which there is a big pond, 250 trees of Mango and one thousand tree of Sisam. 250 acres of land is under agricultural operation for which there is a tractor also. For conducting agricultural operation and to look after the trees there



are several staff including 4-5 watchmen. In the Mission compound there is also hostel for boys' and girls' school. For spreading Christianity there is C.T.C., Catholic Training Centre but training programme is not always organized. In Paragraph 5 P.W. 4 stated that at the time of occurrence incharge of Training Centre was Father James. Training Centre is at a distance of 60-70 yards from the office of deceased Father. Hospital is 70-75 yards east of the Training Centre, office of deceased Father. There is a road between hospital and the office of deceased Father and on the two sides of the road there is school, hostel. In Paragraph 6 P.W. 4 stated that the hostel is only for boys. Nurses' hostel is at a distance of 70-75 yards east from the boys' hostel. In Paragraph 7 P.W. 4 stated that Father was kept in I.C.U. room, approximate size whereof is 20 ft. x 15 ft. and at that time besides the Father there was none in the I.C.U. In Paragraph 8 P.W. 4 stated that in the Father's I.C.U. room police came around 8:00 P.M. and at that time 15-20 men were also present in the room. Sub-Inspector interrogated the Father for about 10 minutes. In Paragraph 9 P.W. 4 stated that he is not in a position to disclose the name of those who carried the Father on the stretcher. In the same paragraph P.W. 4



further stated that from the hospital Sub-Inspector did not go along with him. He also stated in the same paragraph that he is not in a position to state whether the Sub-Inspector examined the 15-20 persons present in the I.C.U. room. He also stated in the same paragraph that while leaving Sub-Inspector did not inform him about the place where he was going. In Paragraph 10 of his evidence P.W. 4 stated that neither Sub-Inspector interrogated him in the hospital nor he disclosed anything to him in the hospital. In Paragraph 11 P.W. 4 stated that the name of Gyan Das is also Gyan Prakash. In the same paragraph P.W. 4 further stated that he is acquainted with Surajbhan, Lallan etc. of Mokama but has not seen their face. In the same paragraph he has further stated that he has not seen them coming from the office of the Mission and that he is not aware about those who use to come and meet Father Mathew or Father Thomas. In Paragraph 12 P.W. 4 stated that gate of Mission compound is closed for the outsiders at 4:00 P.M. Those who reside in the campus are engaged in prayer from 4:30-5:00 P.M. In Paragraph 13 of his evidence P.W. 4 stated that in the church at the time of prayer 10-15 persons were present but he cannot state how many of them were male and female.



It is not necessary for all the hostel inmates to join the prayer. 3-4 persons residing in the campus were present at the prayer and they were Father, Sister. In the prayer besides Father Shakespeare all other Fathers were present. In Paragraph 14 P.W. 4 stated that the articles which were seized by the Sub-Inspector are not presently available before him. In Paragraph 15 P.W. 4 stated that while Father was being carried on the stretcher, his wounds were open and not bandaged. It took about 10 minutes to carry him to the hospital and during that period there was bleeding from the wound. In the same paragraph P.W. 4 stated that he is not aware whether the stretcher on which Father was carried to the hospital was shown to the Sub-Inspector. Father has put on pant, shirt and there was blood stains in his shirt. In Paragraph 16 P.W. 4 stated that he is not aware whether Sub-Inspector seized the pant, shirt of Father Mathew. In the same paragraph he further stated that he has visited the office room of Father Mathew several times and the door of bed-room of Father Mathew is 1 ½ -2 ft. away from the table kept in his office room. The bed of Father Mathew is placed at a distance or 3-4 ft. away from the door. There was blood near the door as well and the door is further west



of the chair of Father Mathew. In Paragraph 17 P.W. 4 stated that he also followed the religion of Father. P.W. 4 further stated in the same paragraph that he is not aware whether alcohol is used in the Mission programme but has participated in the religious congregation. In Paragraph 18 P.W. 4 stated that dining room is not attached with the bed room of Father. There is verandah on the three sides of the office room of Father, protected by grill gate. The grill gate of the verandah through which his office is approached is kept open which is 4-5 ft. in width. In front of the grill gate there is portico. In Paragraph 19 P.W. 4 stated that he does not remember that he has informed Sub-Inspector that at the place of occurrence Father Thomas, Brother Shila Nand and Sister Suza were present. He also stated in the same paragraph that he does not remember that he disclosed before the Sub-Inspector that he came back to the office of Father. He also stated in the same paragraph that he does not remember that he has stated before the police that occurrence has taken place on account of the assailant asking for money which was refused. In Paragraph 20 P.W. 4 stated that Gyan Das is a resident of his locality and he resides with his maternal grandmother. In the



same paragraph he further stated that he is not aware that Gyan Das left the house of his maternal grandmother in the year 1998-99. In the same paragraph he further stated that he is not aware that Gyan Das was working in Delhi. In Paragraph 21 of his evidence P.W. 4 declined the suggestion that Gyan Das was opposed to converting people to Christianity by duping them, which made the prosecution party angry against him. In the same paragraph he also declined the suggestion that Gyan Das has been falsely implicated in this case as a result of the conspiracy and that he has deposed falsely.

7 (vi). P.W. 6 Dr. Vishnu Deo Prasad, Autopsy Surgeon, was posted on 01.05.2005 in the P.M.C.H. as Associate Professor in the department of Forensic M.T. On that date he received the dead body of Mathew Ujuttal, aged about 69 years of Catholic Church, Mokama, which was identified by Constable No. 301 Ram Awatar Singh of Patliputra Police Station, Patna. The Post Mortem examination began at 11:00 A.M. Rigour Mortis was present all over the dead body. He found following ante mortem injury:

(1). Stabbed wound of size 1.5"x1/2". Cavity bone deep was present over the left side of neck tube.

(2). Stitched wound of size $\frac{1}{2}$ " was present on the chest $\frac{1}{2}$ " left of the nipple.

(3). Stitched wound of 3" was present at the front of the neck 1" above sternal notch.

In Paragraph 2 of his evidence P.W. 6 stated that dissection of head, neck, chest and abdomen was also done. Pus and sero, sanguineous fluid was present in both the lungs. The spinal cord was present with cut injury at the level of 4th cervical vertebra. The stomach contained about 4 ounces of watery fluid, the urinary bladder was found empty. The liver, spleen, both kidneys and brain were found congested. In the opinion of the doctor cause of death was septicaemia due to above mentioned injuries. Regarding nature of violence the doctor has stated that Injury No. 1 was caused by stabbing instrument. Regarding Injury Nos. 2, 3 the doctor has stated that nature of the said injuries could not be ascertained due to surgical interference and suggested that operating surgeon may be consulted. About the time of death doctor has stated that death took place within 6-12 hours approximately from Post Mortem examination. In Paragraph 6 P.W. 6 stated that when pus enters in blood circulation, it is caused septicaemia.



7 (vii). P.W. 7 Bharat Upadhyay, Sub-Inspector, Patliputra Police Station prepared the Inquest Report of deceased Father Mathew at Kurji Holy Family Hospital on 01.05.2005 at 8:00 A.M. and proved the same (Exhibit-8). Reference is made to Paragraph 4 of his cross-examination where P.W. 7 stated that the body of the deceased was bandaged and that inquest witnesses did not tell him that they had seen the occurrence and he did not ask them as to how they could know that deceased was stabbed. In the same paragraph he also stated that he has not prepared any supplementary case diary. Factum of handing over of Inquest Report to the Officer-in-Charge is mentioned in the case diary vide Station Diary Entry No. 9/05 dated 01.05.2005. In the same paragraph he further stated that he has not recorded any statement before the Investigating Officer of the present case.

7 (viii). P.W. 8 Sabstin has stated that he is Director of Seva Kendra, Sadakat Ashram, Patna from 2003. He has stated in Paragraph 1 of his evidence that after the death of Father Mathew on 01.05.2005 in Kurji Holy Family Hospital, information was given by Kurji Holy Family Hospital Administration to Patliputra Police Station about his death, whereafter A.S.I. Bhart

Upadhyay of Patliputra Police Station came to the Kurji Holy Family Hospital and prepared his Inquest Report in presence of P.W. 8 and Assistant Administrator of the hospital Josh Nampeli (not examined), over which both put their signature.

7 (ix). P.W. 9 Suresh Ram is the Investigating Officer of the case. He has stated in Paragraph 1 of his evidence that he was posted in Mokama Police Station as Sub Inspector on 11.04.2005 and on that day at about 7:10 P.M. information was received in the Police Station that some occurrence has taken place in Nazareth Hospital. In the light of the information received at the Police Station P.W. 9 Officer-In-Charge, A.S.I. Lallanji Rai, A.S.I. Parshuram Prasad along with armed force came to Nazareth Hospital for verification and the required action. In the same paragraph P.W. 9 has stated that having come to the hospital the police party found that Father Mathew was seriously injured and he was not in a position to make any statement. From the hospital police party came to the place of occurrence which was Father Mathew's residence-cum-office and *fardbeyan* of informant Father Thomas was recorded by him in his own writing and signature which he proved as Exhibit-7. In Paragraph 2



P.W. 9 stated that on the *fardbeyan* besides Father Thomas, Sadhu Shila Nand (P.W. 1) and Sister Mery Suza (P.W. 3) also put their signature. In Paragraph 3 P.W. 9 stated that after recording the *fardbeyan* he prepared the seizure-list at the place of occurrence of the articles seized from the table of Father Mathew i.e. blood stained torn empty envelope on which registered Letter No. 15/09.04.2005 was found written along with blood stained broken piece of glass of the almirah. In the same paragraph he also stated that the witnesses of the seizure-list are informant Father Thomas and Joseph Rajendra and proved the seizure-list (Exhibit-8). In Paragraph 4 P.W. 9 stated that he recorded further statement of the informant and thereafter proceeded to inspect the place of occurrence, which is the office room of Father Mathew, situate in his residence-cum-office building on the western end facing east of the Nazareth hospital campus. Main exit door of the room is facing east on the verandah and is of 10"/10" size. There is a table kept in the room on which few papers were found kept. Blood stain was found on the table, few of the papers kept on the table. Father's chair was kept west of the table facing east. By the side of the table on the western side there was a small table over which



computer, television were kept. By the side of the small table near the wall there was a steel almirah. There was another bookshelf kept close to the wall north of the Father's chair, which has four shelves, glass of the second shelf was found broken. There was yet another bookshelf close to the western wall facing east in which other books, papers were kept and 4th shelf of the other book-shelf was also found broken. There was yet another room contiguous north of the office room where a bed was placed. There was copious blood near the door of the bed-room along with broken piece of glass. In the same paragraph Investigating Officer stated that he was informed that injured Father was also lying at the same place where copious blood was found on the floor of the office-room. In the same room on the western wall there is a window which was found closed. In front of the table there were three chairs close to the south wall. East of the place of occurrence office room there is a verandah and thereafter a corridor and further thereafter there is garden. West of the place of occurrence there is an orchard and further thereafter there is boundary-wall. Contiguous north of the place of occurrence there is bed-room of the Father whereafter there is verandah, store-room and T.V. room and in the south there was old



prayer room and thereafter there was room of Father Prefet. In Paragraph 5 P.W. 9 stated that he sent the *fardbeyan* of Father Thomas with A.S.I. Dilip Kumar Sinha and A.S.I. Shahibuddin to the Police Station for registration of case. In the same paragraph he further stated that in paragraph 2 of the case diary he has stated that the Officer-in-Charge handed over investigation of the case to him at the place of occurrence itself. In Paragraph 6 of his evidence P.W. 9 has stated that the forwarding over the *fardbeyan* is in his handwriting which he proved and marked Exhibit-7/1. Endorsement concerning registration of the case is in the handwriting of Officer-in-Charge Sub-Inspector Dilip Kumar Sinha, which he proved as Exhibit-7/2. In Paragraph 7 P.W. 9 has stated that formal First Information Report is in the handwriting of Literate Constable Prithvi Narayan Singh which he identifies on which Sub-Inspector Dilip Kumar Sinha has also put his signature which he identified and on his identification First Information Report was marked as Exhibit-9. In Paragraph 8 of his evidence P.W. 9 stated that he also recorded the statement of Joseph Rajendra who is a witness of the seizure-list as also the statements of P.W. 1 Sadhu Shila Nand, P.W. 3 Sister Suza, Sujeet Kumar



(D.W.1), Vasudeo Das (not examined), Father Shakespeare (not examined), Brother Satya Prakash (not examined). In Paragraph 9 P.W. 9 stated that he searched for the knife and the accused but could not find them as also went to the hospital, wanted the statement of Father Mathew but doctor told him that Father Mathew was not in a position to speak, hence, his statement could not be recorded. In Paragraph 10 P.W. 9 stated that he telephonically contacted the Police Station to ascertain the case number which was furnished with further information that he has been entrusted with the investigation of the case. In Paragraph 11 of his evidence P.W-9 stated that on the basis of the secret information, in order to arrest the accused, he conducted raid in Mohalla Mohangachhi, Chandmari, Gopai Village, Ravi Kumar's house in Station Road but he was not found. In Paragraph 12 of his statement Investigating Officer (P.W. 9) stated that he went back to the Police Station on 12.04.2005 at 4:00 A.M. in the morning and again proceeded at 8:30 in the same morning to apprehend the accused in Mohan Gachhi and also conducted raid in Village- Memra on the basis of secret information but the accused was not found. Investigating Officer also conducted raid in Kanhaipur, Sultanpur Mor and other



places where the accused was likely to be apprehended but he was not found. In Paragraph 15 P.W. 9 has stated that on 04.05.2005 he received Inquest Report of the deceased duly prepared by Bharat Upadhyay, A.S.I. of Patliputra Police Station along with dead body challan whereafter he took steps by filing appropriate petition for adding Section 302 of the Penal Code in the case before A.C.J.M., Barh and thereafter again took steps for apprehending accused but he could not be apprehended. In the same paragraph he has stated that he also received Supervision Note of the superior police officer. In the same paragraph he further stated that he received Injury Report of Father Mathew from Nazareth Hospital, Mokama on 15.06.2005 which was noted in the case diary. In the same paragraph P.W. 9 further stated that he received the Post Mortem Report of Father Mathew on 24.08.2005. In Paragraph 16 of his examination P.W. 9 has stated that on account of his transfer on 30.06.2005 he handed over charge of the investigation of the case to Officer-in-Charge, Mokama Police Station, Police Inspector Chandrashekhar Kumar Sinha. In Paragraph 17 of his cross-examination P.W. 9 has stated that in Column No. 5 of the formal First Information Report it is mentioned that distance between the place of occurrence



and the Police Station is approximately 2 K.Ms. In the same paragraph he further stated that place of occurrence of the instant case is the Father's office of Mokama Church. In Paragraph 18 P.W. 9 stated that entry is made in the Station Diary about any information received in connection with any occurrence. Information which was received in the instant case may have been entered in the Station Diary by the clerk or the Officer-in-Charge. He further stated in the same paragraph that if the person who gives his names, place of occurrence that is also entered in the Station Diary. In the same paragraph he further stated that he did not go through the Station Diary before leaving the Police Station but left along with the Officer-in-Charge and police officers. In Paragraph 19 of his evidence P.W. 9 stated that the case diary of a case is written by the Investigating Officer during the investigation. In the same paragraph he further stated that in the top portion of the *fardbeyan* of the present case with regard to the place where the *fardbeyan* was recorded it is mentioned (Nazareth Hospital Father's Room). In the same paragraph he further stated that he reached the Nazareth Hospital along with the Inspector at 7:30 P.M. Recording of the *fardbeyan*, preparation of the seizure-list and



endorsement of the investigation of the case to him took about 1-1.5 hours. In the same paragraph P.W. 9 further stated that in the bottom of the *fardbeyan* beneath his signature Nazareth Hospital Father's Room is mentioned. In the same paragraph he further stated that Sadhu Shila Nand (P.W.1) and Sister Suza (P.W. 3) also put their signature over the *fardbeyan*. In Paragraph 20 of his evidence P.W. 9 stated that he sent the *fardbeyan* to Mokama Police Station for recording of the case and First Information Report was registered during investigation which he had already taken up on the instructions of the Officer-in-Charge given to him at the place of occurrence. In Paragraph 21 of his evidence P.W. 9 stated that case number on seizure-list was mentioned after he reached Police Station. In the same paragraph he also stated that he did not return to Police Station on 11.04.2005 but clarified that seizure-list was sent along with the *fardbeyan* to the Police Station together with Dilip Kumar Sinha but such fact is not mentioned in the case diary, though seizure-list was sent along with the *fardbeyan*. In the same paragraph he declined the suggestion that seizure-list was prepared after sending the *fardbeyan* to the Police Station and stated that in Paragraph 4 of the case diary he has



mentioned about sending the *fardbeyan* to the Police Station and in Paragraph 5 of the case diary he has stated as to how the seizure-list was prepared. In Paragraph 22 he has clarified that he has not indicated the time of writing paragraph 4 of the case diary. In Paragraph 23 of his evidence P.W. 9 stated that the time of receiving the *fardbeyan* and the time of sending the First Information Report to the court is mentioned in the Station Diary. In the same paragraph he further stated that any Sub-Inspector when he leaves the Police Station for some work that is also recorded in the Station Diary along with the time on which the Sub-Inspector returns to the Police Station as also the details of the seized articles but the details mentioned in the Station Diary is not mentioned in the case diary. In Paragraph 24 P.W. 9 stated that he has not mentioned in the case diary the distance between the hospital room where Father Mathew was admitted and his office. Church area is spread in about one kilometre. Near Father Mathew's office there is a school. In the same paragraph P.W. 9 further stated that he does not remember if outside the office there is Christian Training Centre also. In Paragraph 26 of his deposition P.W. 9 has stated that he mentioned the time for preparation of the seizure-list i.e.



09:15 P.M. on 11.04.2005 in Father Mathew's office-cum-residence within Mokama Church campus. In the same paragraph P.W. 9 stated that during the investigation informant and other witnesses have given an eye-witness account of the occurrence. Informant and other eye-witnesses have seen the accused running away with knife. In the same paragraph P.W. 9 also stated that in his opinion informant (P.W. 5), Sadhu Shila Nand (P.W. 1), Sister Suza (P.W. 3), Sujeet Kumar (D.W. 1), Joseph Rajendra (P.W.4) etc. are the eye-witnesses. In Paragraph 27 P.W. 9 further stated that he searched for Ajay Kumar but he was not found, as such, his statement is not available in the case diary. In the same paragraph he, however, clarified that it is not mentioned in the case diary that he tried to look for him or asked any witness about him. In the same paragraph he further stated that if he had asked anyone about him he would have mentioned such fact. In Paragraph 28 P.W. 9 further stated that it is not mentioned in the case diary how Ajay Kumar went there. In the same paragraph he further stated that in the *fardbeyan* it is mentioned that Father Mathew was calling the name of his staff Maso. Maso's statement was, however, not recorded. In the same paragraph P.W. 9 also stated that he did not



investigate about Maso's parentage, his residence and why Father was calling him because Father was not in a position to speak then and others could not have given such information. In Paragraph 29 of his evidence P.W. 9 stated that it is mentioned in the *fardbeyan* that till Father reached the hospital he was in a position to speak. In Paragraph 32 P.W. 9 stated that he studied the Injury Report given by the doctor to Nazareth Hospital and mentioned the same in the case diary. From the Injury Report it is evident that injured was conscious and cooperative. In repeat Paragraph 32 P.W. 9 stated that if the injured is unconscious then police authorities request the doctor to inform them when the injured gains consciousness. In the same paragraph he also stated that he did not investigate about those who were attending on the Father in the hospital. In the same paragraph he further stated that he did not mention in the case diary if he went again to record the statement of Father Mathew till the time Father was at Nazareth Hospital but stated that he kept going there. In the same paragraph P.W. 9 stated that it is not mentioned in the case diary when Father was sent from Nazareth Hospital to Kurji Holy Family Hospital, Patna. In Paragraph 33 P.W. 9 candidly admitted that he never visited Kurji Holy



Family Hospital, Patna during entire investigation of the case and learnt about the name of the officer who prepared Inquest Report of Father Mathew as also the witnesses over the same after perusing the Inquest Report which he obtained from the Police Station room and there is no mention about the same in the case diary nor did he examine the author and the witnesses of the Inquest Report. In Paragraph 34 of his evidence P.W. 9 stated that in Paragraph 79 of the case diary parentage, address of the accused is mentioned. In Paragraph 35 of the evidence P.W. 9 stated that there was copious blood at the door of Father's bed-room. In Paragraph 36 of his evidence P.W. 9 stated that he is not aware about the number of staff serving in the office of Father Mathew on the date of occurrence. In Paragraph 37 P.W. 9 has stated that he did not investigate about Father Mathew's relationship with his staff nor did he investigate about Father Mathew's character. In Paragraph 38 of his evidence P.W. 9 stated that Sadhu Shila Nand and Sister Suza were outsiders and he learnt that Sadhu Shila Nand used to teach music in the Church but he neither confirmed the same nor did he ascertain who were the persons who were being taught music by him. In Paragraph 39 of his evidence



Investigating Officer (P.W. 9) stated that after inspecting the place of occurrence it looked as if there was lot of struggle between the injured and the assailant. In the same paragraph he further stated that he is not aware about the number of girls who came along with Sister Suza and Sister Suza did not make him meet those girls. In Paragraph 40 P.W. 9 stated that he has not stated in the case diary as to where the girls who had come with Sister Suza were at the time of occurrence. In Paragraph 41 P.W. 9 stated that he did not seize the blood from the floor and that the articles seized from the place of occurrence room are not before him. He also stated in the same paragraph that he did not investigate the point that the broken piece of mirror may cause the injury. In the same paragraph P.W. 9 further stated that none of the witnesses produced before him the bed-sheet which was used to stop the oozing blood from the wound of the injured. In Paragraph 42 of his evidence P.W. 9 stated that he has not seen the stretcher on which Father Mathew was carried to the hospital. In Paragraph 43 P.W. 9 stated that Police Station was informed about the occurrence through a telephone call. It is, however, not mentioned in the case diary as to who called the Police Station. The information that the caller furnished the



information must have been entered in the Station Diary. In Paragraph 44 P.W. 9 stated that he can file the Station Diary entry with regard to the present case. In the same paragraph he further stated that it is not mentioned in the case diary that the witnesses who recorded their statement had blood on their body or clothes. In the same paragraph he further stated that if the witnesses had blood on their body or clothes, it is recorded in the case diary. In Paragraph 45 P.W. 9 stated that he did not investigate on the point that the occurrence had taken place due to connivance of other Fathers. In the same paragraph he also stated that none of the Fathers available in the Mokama Church campus during investigation of the case ever informed P.W. 9 that Father Martin was also killed. In Paragraph 46 P.W. 9 stated that distance between the Police Station and the court is 25-27 Kilometres but it takes about 25-30 minutes to reach the court from the Police Station by motorcycle, as the two are connected through National Highway. In Paragraph 47 P.W. 9 stated that it is incorrect to suggest that Father Mathew had given a statement to the Inspector in the hospital in which other Fathers, Sisters were being implicated. In the same paragraph P.W. 9 further stated that it is incorrect to



suggest that Father Mathew's statement was concealed and another First Information Report was prepared on 12.04.2005. In the same paragraph P.W. 9 further stated that he is not aware when the First Information Report of the present case was sent from the Police Station to court and further denied the suggestion that through the second First Information Report Gyan Das has been implicated falsely. In Paragraph 48 P.W. 9 has stated that it is incorrect to suggest that on 12.04.2005 a second First Information Report was prepared at the residence of Father Thomas. In the same paragraph he further denied the suggestion that he and Inspector Incharge of Mokama Police Station took a huge bribe to change the First Information Report. In the same paragraph P.W. 9 also denied the suggestion that Gyan Das is innocent and has been falsely implicated in the present case. In Paragraph 49 P.W. 9 has stated that in the case diary it has been mentioned that place of occurrence is situate by the side of the hospital. In the same paragraph he further stated that in Paragraph 7 of the case diary it has been stated that the place of occurrence of the case is the office room of Father Mathew situate within Nazareth hospital campus on the western end facing east. In the same paragraph he



further stated that in the case diary after inspection of the place of occurrence he has not mentioned that the place of occurrence building is situate by the side of the hospital building. In the same paragraph P.W. 9 as further stated that in the case diary he has also not stated the distance between the hospital and the place of occurrence building. In Paragraph 50 P.W. 9 stated that he scribed the *fardbeyan* and that informant has stated in the *fardbeyan* that on going to the hospital the injured Father told people that “ . In Paragraph 51 P.W. 9 stated that on the date/time of occurrence which guard was on duty at the Church gate, he did not investigate. In the same paragraph he further stated that he did not mention in the case diary that after the date of occurrence he ever went to see the injured. In Paragraph 52 P.W. 9 stated that Sadhu Shila Nand (P.W. 1) did not mention in his statement the date, time of occurrence. He said that he has come from Patna today itself at 6:00 P.M. He did not say in his statement that Cook Sujeet was around the place of occurrence and that he was coming, going. He did not say in his statement that Father Mathew had fallen from the chair and was groaning, instead he said that he saw Father Mathew had fallen and that he had injury on his neck. He did not



say that Gyan Das was angry and had angry expression on his face. He also did not say that he followed him. He also did not say that Father Mathew told him that Gyan Das wanted to open a fictitious N.G.O. and wanted his signature which he refused. He also did not say that Gyan Das asked for money and he refused and that he forgives him. He also did not state in his police statement that he called, informed all around or that the call to the hospital could not get through, so sent a call to the doctor. In Paragraph 53 P.W. 9 stated that Sister Suza in her police statement did not state that she was coming towards Father Mathew's office, instead she had stated that she was returning with Father Thomas from church and reached the office-cum-residence of Father Mathew. She did not say that after reaching there she started talking with Sadhu Shila Nand (P.W. 1). She also did not say that after the accused ran away, she went near Father and asked him what happened, where was he hurt, instead she had said that after the accused ran towards north she asked, she has not stated that Father has stated that it was Gyan Das who was asking for money. He used to come often, wanted to open a fictitious N.G.O. and was asking for his signature and he had declined. Sister Suza in her statement had not



stated that at the time of recording of police statement of Father Thomas she and Brother Shila Nand were present. In Paragraph 54 P.W. 9 stated that Joseph Rajendra in his police statement did not say that Father Thomas, Sister Suza and Brother Shila Nand were present there. He also did not say that from there he went to Father's office, instead he said that he was returning from the church. In the same paragraph P.W. 9 further stated that Joseph Rajendra also did not say that he heard that because Gyan Das was asking for money, the incident took place. In Paragraph 55 P.W. 9 stated that Father Thomas in his re-statement did not state that he was returning "towards his residence" "with the students", instead he has said that he along with Sister Suza was returning. He did not say that his residence and Father Mathew's office is in the same building. He also did not say that the person came towards us and we went towards Father Mathew, instead he said that he scared us with his knife and ran away. He also did not say that the person ran towards the door, looked back at them and then ran away. He also did not say that he ran and tried to stop the blood oozing from the chest with his hand. He also did not say that blood was still oozing and that he asked Father about



any other wound, instead he had stated that on asking Father told him that near the neck there is an injury and blood is oozing from that. In Paragraph 56 P.W. 9 stated that Father Thomas in his police statement did not say that Father Mathew said with much difficulty that he had one injury on his neck and the other injury was on the other side of the neck, instead he said that Father Mathew told him that knife injury was near the neck. In the same paragraph P.W. 9 further stated that Father Thomas did not state in his police statement that he told Sister Suza to get a bed-sheet to stop the blood. In the same paragraph P.W. 9 further stated that Father Thomas did not tell him that Father Mathew told him that Gyan Das did this because he did not give the money Gyan Das was asking for, instead Father Thomas told him that Father Mathew in the hospital told people that Gyan Das was asking for money and since he did not do that, Gyan Das did this. In Paragraph 57 P.W. 9 stated that Father Thomas did not say that he asked Sadhu Shila Nand to call up the hospital or that when the hospital phone was not picked up, asked him to send someone to the hospital. Father Thomas also did not say that he asked Sadhu Shila Nand to inform the other Father who had gone to the village. He also did not say



that after 10 minutes he got to know that Father is out of danger and he would be operated soon and police also reached the hospital. In Paragraph 58 P.W. 9 stated that Father Thomas in his police statement did not mention that after half an hour police arrived at the place of occurrence and he pointed out the place of occurrence room to them. In Paragraph 59 P.W. 9 stated that he has not stated in the case diary the distance between the room of Father Mathew and Father Thomas. He also stated in the same paragraph that he has not mentioned in the case diary that anyone pointed out to him the place where Sadhu Shila Nand, Ajay were talking. In the same paragraph P.W. 9 declined the suggestion that he did not investigate the case properly and he has falsely implicated an innocent.

7 (x). P.W. 10 Sub-Inspector Shrawan Kumar Rajak was posted in the Mokama Police Station from prior to 20.01.2007 on which date he was handed over charge of Mokama P.S. Case No. 47/05 and having taken over the investigation he arrested the accused of the said case from his residence in Village- Doghara within Bihta Police Station on 01.11.2007 and produced him before the Superintendent of Police and then took him to Mokama Police Station and recorded his



statement and forwarded him for production in court. On 14.11.2007 charge-sheet was submitted against the accused in the light of the oral instruction of the Senior Superintendent of Police, Patna. In Paragraph 3 P.W. 10 stated that before he took over the investigation of the case, the case had already been investigated for one year and nine months and the earlier Investigating Officer had recorded the statement of the witnesses, as such, he did not record the statement of any of the witnesses. In the same paragraph he stated that he also did not record the police statement of Ajay Kumar and Maso. In the same paragraph he further stated that it is necessary to record the statement of those whose name is mentioned in the First Information Report. He further stated in the same paragraph that he acted in the light of the instruction of the superior officer. In Paragraphs 4 to 9 of his evidence second Investigating Officer has given the manner in which raid was conducted to arrest the accused as also the manner in which he was produced before the Superintendent of Police and then taken to Mokama Police Station. In these paragraphs second Investigating Officer has also declined the suggestion that accused was ever detained in Gandhi Maidan Police Station or assaulted either by personnel of Gandhi

Maidan Police Station or Mokama Police Station.

8. Having considered the prosecution witnesses now we proceed to appraise the evidence of the two defence witnesses. D.W. 1 Sujeet Kumar has identified the accused Gyan Das and stated that Gyan Das used to study with him in Church school and that he is a Christian and Gyan Das is a Hindu. In Paragraph 2 D.W. 1 stated that in October, 2009 he was appointed in the Mokama Church as a Cook by Father Mathew. He had to prepare food for him as also for the other guests coming to the Church. In Paragraph 3 D.W. 1 stated that the incident took place on 11.04.2005 at 7:00 P.M. At that time he was in the kitchen with Surti Devi. Father Thomas, Sadhu Shila Nand, his staff, Sister Suza and five girls were in Father Mathew's office room. All were talking in loud voice and were involved in heated conversation in English. Father Mathew was on the one side and all the others were on the other side. D.W. 1 was coming and going out of the room serving tea, water. All of a sudden electric connection was snapped and then he heard Father Mathew's scream and went to the office room with his Assistant and saw Father Mathew in an injured condition. The articles on the table were strewn around and almirah glass was broken. There was



assault between them. In Paragraph 4 D.W. 1 stated that he along with Church guard Vasudeo went to the hospital to get the stretcher and when he was coming from the hospital, met Sister and then went to the Father's room and brought Father Mathew to Nazareth hospital who was conscious and was saying that his own people have done it and was reciting the name of Jesus. In Paragraph 5 D.W. 1 stated that the persons who were there in Father's room did not go to the hospital. Staff of Sadhu Shila Nand ran away from there. In Paragraph 6 D.W. 1 stated that police came to Nazareth hospital and recorded his (Father Mathew's) statement before him over which Father Mathew put his signature. In Paragraph 7 D.W. 1 stated that he used to go to the Father's room in the hospital in between. In the same paragraph he also stated that in the year 1999 he did not see Gyan Das in the church. In Paragraph 8 D.W. 1 stated that Sadhu Shila Nand used to run an Institution in Magahi and he used to come to Father Mathew to take money. Father Mathew did not like Magahi music and did not want to give money and because of this there was some altercation between the two. The other Fathers of the church also used to oppose Father Mathew and because of that reason they caused injury to him. In



Paragraph 9 D.W. 1 stated that accused Gyan Das never established any N.G.O. In Paragraph 10 D.W. 1 stated that Gyan Das is educated up to Class-VII. In Paragraph 11 D.W. 1 stated that he is not aware whether Gyan Das pursued his further studies after Class-VII and that D.W. 1 is acquainted with accused since the time he was in school and that he is literate. In Paragraph 12 D.W. 1 stated that he served as a Cook in Mokama church until 12.02.2008. In Paragraph 13 D.W. 1 stated that when police was recording the statement of Father Mathew in the hospital there were seven police personnel but he is not in a position to categorically state that those present at the time of recording of the statement of Father Mathew were officers or Constable but D.W. 1 categorically stated that he was present there along with Dr. Pawan and Sister Ansila. Police, however, did not obtain their signature over the statement of Father Mathew. Police, however, asked D.W. 1 and others their name, address but did not take any statement and stated that their statement will be recorded later. There were 20-25 persons present there but he cannot name them. In Paragraph 14 D.W. 1 stated that he is not aware whether police is inimical towards Gyan Das and that he was serving with a notice for appearing on behalf



of the prosecution but the police party had not served the copy of the notice to him rather gave verbal instruction for appearing in court. In the same paragraph D.W. 1 further stated that when he came to the Police Station for obtaining the copy of the notice, he was informed that notice has been returned. In Paragraph 15 D.W. 1 further stated that earlier in 2008 he was implicated by his uncle Sunil Kumar Das in a case registered for the offence under Section 328 of the Penal Code in which D.W. 1 had gone to jail and remained in Barh jail custody for 20-25 days but during that period he was not in the company of Gyan Das. In repeat Paragraph 12 D.W. 1 further stated that in connection with Mokama P.S. Case No. 26/08 he was taken in custody on 15.02.2008 and released on bail in the said case on 12-13.03.2008. In repeat Paragraph 13 D.W. 1 further stated that after he was released from jail custody in connection with Mokama P.S. Case No. 26/08 on 12-13.03.2008 when he approached the church authorities then they refused to reengage him and then volunteered that the church authorities further asked that as and when prosecution against Gyan Das will be taken up in court, what shall be his evidence and on that basis they will only reengage him. In the same



paragraph he further declined the suggestion that the church authorities did not reengage him on account of seriousness of the allegation in Mokama P.S. Case No. 26/08. In repeat Paragraph 14 D.W. 1 declined the suggestion that the version which he has narrated in the court about the occurrence dated 11.04.2005 is imaginary and has been deposed only with a view to feed fat his grudge against the church authorities and in connivance with the accused and that he has deposed falsely. He also declined the suggestion that while recording his evidence he has concealed the true occurrence.

8 (i). D.W. 2 Durga Prasad Yadav is an acquaintance of the accused as he knows his father, appellant and other members of their family from 1990-92, when they were tenant in the house of his neighbour Sukhnandan Rai. D.W. 2 has stated that accused has been falsely implicated in the case and that he has neither any connection with Mokama nor he ever visits Mokama.

9. In the light of the prosecution, defence evidence, learned counsel for the appellant submitted that the circumstance which is found against the appellant is that the chance witnesses P.Ws. 1, 3 and 5



saw the appellant at the place of occurrence soon after the incident with a blood stained knife in his hand and when they reached in the room, the appellant with an angry expression on his face scaring them came out of the room and ran away. It is submitted that P.Ws. 1, 3 and 5 are wholly unreliable as the *fardbeyan* is said to have been recorded by P.W. 5 in Father's room, Nazareth Hospital over which P.Ws. 1, 3 also put their signature. P.W. 1 in Paragraph 20, however, stated that he did not go to the hospital on the date of occurrence nor did he depose that he signed on the *fardbeyan*. In this background, it is submitted that reason for the presence of P.W. 1 on the date of occurrence is also doubtful as on that day there was no occasion for him to teach music to those present in the campus. In this background, it is also to be appreciated that P.W. 1 also did not point out to the Investigating Officer the place where he was speaking to Ajay, informant and Sister Suza joined him and thereafter he and others heard scream coming from Father's room. It is submitted that there has been material improvement in the deposition of P.W. 1 from his police statement as regards the noting of the occurrence and other material aspects, as such, according to learned counsel his evidence does not

inspire confidence.

10. Learned counsel for the appellant next submitted that the evidence of chance witnesses needs corroboration. In the instant case there is none to corroborate the evidence of P.Ws. 1, 3 and 5, as such, their evidence should be treated with circumspection. In this connection learned counsel for the appellant relied on the judgment in the case of **Guli Chand and others Vs. State of Rajasthan A.I.R. 1974 Supreme Court 276 paragraph 11.**

11. Learned counsel for the appellant next submitted that informant (P.W. 5) in Paragraph 32 of his deposition has stated that when the police came to the place of occurrence room, he was there with P.W. 1, 3. He has further stated in Paragraph 5 that his *fardbeyan* was recorded at the place of occurrence. In Paragraph 27 P.W. 5 stated that he lifted Father Mathew in his arms and that his clothes were stained with blood but Investigating Officer (P.W. 9) in Paragraph 44 has stated that he did not state in the case diary that any witness had blood on his clothes or body. P.W. 9 further stated that if any witness had blood on his cloths or body, the same is mentioned in the case diary. P.W. 5 has also materially improved upon his police statement with



regard to motive of the occurrence and other material aspects. P.W. 5 also did not point out to the Investigating Officer the place where he and Sister Suza joined P.W. 1 and Ajay while returning from church after prayer just before the occurrence and heard scream coming from Father Mathew's office room. Learned counsel also assailed the evidence of P.W. 3 Sister Suza as she has stated in Paragraph 4 of her evidence that they all went to the hospital and police came there and recorded her statement which is contrary to the statement of the informant and Investigation Officer who stated that the statement was recorded in the place of occurrence room where P.W. 3 Sister Suza also put her signature. P.W. 3 in Paragraphs, 19, 20 of her statement has contradicted her own statement as she has stated that she stayed at the place of occurrence for twenty minutes after Father was taken to the hospital because she was told that police will come to record her statement and police came after 10-15 minutes. She has further deposed that when police came P.W. 5, Father Thomas, Shila Nand (P.W. 1) and staff were present. She has further deposed in Paragraph 29 that she went to meet Father in the hospital on 13th. P.W. 3, according to learned counsel for the appellant, has also materially improved upon her



police statement with regard to motive of the occurrence and other material aspects. In this connection, it is submitted that Sister Suza was a guest at the church and did not know the appellant and referred to Paragraph 2 of her deposition that she later got to know the assailant's name. Assailant's name was Gyan Das. It is submitted that appellant was arrested on 01.11.2007 more than one and half years after the occurrence but no Test Identification Parade has been conducted and P.W. 3 has identified him for the first time in court and for this reason also her identification of the appellant is not to be relied upon. Learned counsel for the appellant further submitted that a witness of the charge-sheet Sujeet (D.W. 1) who served as Cook of the deceased deposed on behalf of the defence and has stated that the deceased was last seen in the company of P.Ws. 1, 3 and 5 and staff of P.W. 1 having conversation in heated, angry, bitter circumstances in which the deceased was on one side and the four were on the other. While the conversation was on, there was sudden power failure, in the mean time, Father screamed, whereafter D.W. 1 went to the office room and found Father Mathew in injured condition and P.Ws. 1, 3, 5 and one staff of P.W. 1 in the room and according to counsel as D.W. 1 has not been



cross-examined on any material point, his evidence remaining unchallenged, there is no material to disbelieve him and prosecution has perhaps withheld D.W. 1 from examining on behalf of the prosecution only with a view to suppress the true description of the occurrence. Learned counsel for the appellant next submitted that in a case of circumstantial evidence, motive is of great significance, which in the present case has been subsequently developed during trial. According to learned counsel none of the prosecution witnesses in his police statement stated that Father Mathew told them that appellant wanted to establish a fictitious N.G.O. and that he refused to recommend and that he was demanding money for which offence was committed. The evidence of the prosecution witnesses on the point of motive adduced for the first time in court cannot be relied upon. Learned counsel next pointed out that Investigating Officer (P.W. 9) has stated that upon reaching hospital he saw that Father was not in a position to speak. The story that Father was not in a position to speak stands belied by the evidence of P.W. 2 Dr. and P.W. 4. P.W. 2, the doctor, who examined the deceased initially in Paragraph 5 has stated that the patient was conscious and cooperative. Further in



Paragraph 10 P.W. 2 states that the patient was responding to verbal command. P.W. 4, a clerk in Nazareth Hospital, who accompanied the deceased to the hospital, has stated in Paragraph 8 that Sub-Inspector interrogated Father Mathew for 10 minutes. In the light of the aforesaid evidence of P.W. 2, 4 it is submitted that the statement of Father Mathew has been intentionally withheld by the prosecution, which is indicative of the fact that Investigating Officer has not conducted the investigation properly and perhaps has implicated the appellant. Learned counsel for the appellant also submitted that *fardbeyan* of the instant case is not the first version of the occurrence. In this connection, he referred to the evidence of the Investigating Officer (P.W. 9) in Paragraph 1 that having received information about the occurrence he proceeded to the place of occurrence to verify the same and pointed out that the evidence on record does not disclose as to what and when information was received at the Police Station which brought the police to the place of occurrence. The copy of Sanha entry which was made as per the evidence of Investigating Officer himself in Paragraph 18 has not been brought on record. In this connection, it is pointed out that if the police arrived at the place of occurrence



after receiving information about the offence or offences, which were cognizable, then the information which was so received by the police and set the law into motion ought to be treated as the First Information Report. According to learned counsel for the appellant it was imperative on the part of the prosecution to bring on record as to what information brought the police from Police Station to the place of occurrence. When and where the information with regard to alleged occurrence had been received by the police and whether the information so received constitutes in law First Information Report or not. In this background, learned counsel for the appellant submitted that the statement of Father Thomas was perhaps the statement under Section 161 of the Cr.P.C. Learned counsel for the appellant next submitted that the place at which *fardbeyan* is said to have been recorded is the Father's room, Nazareth Hospital. In his Examination-in-Chief the Investigating Officer has stated that *fardbeyan* has been recorded at the place of occurrence. In Paragraph 19 of his cross-examination, however, Investigating Officer says that he recorded the *fardbeyan* at Nazareth Hospital, Father's room but the informant P.W. 5 has stated that the *fardbeyan* has been recorded at the place



of occurrence room, as such, it is difficult to ascertain from the evidence on record the place where *fardbeyan* was recorded and the *fardbeyan* available on the record is the only *fardbeyan* which was recorded in the Father's room, Nazareth Hospital or in the place of occurrence room and that that is the only *fardbeyan* which was recorded in the present case or the other *fardbeyan* which was recorded at the other place was the *fardbeyan* which has been suppressed. Aforesaid aspects becomes very relevant when one considers the same in the light of evidence of P.W. 4 who categorically stated that Father's statement was recorded in the hospital which was intentionally withheld by the prosecution. Learned counsel next submitted that seizure-list in the instant case is said to have been prepared at 8:15 P.M. at office room of Father Mathew situate in Mokama church campus. In this connection he refers the evidence of P.W. 9 who in Paragraph 21 stated that he sent the *fardbeyan* along with the seizure-list to the Police Station for registration of the case and submits that it is difficult to accept that if the First Information Report is said to have been registered at 9:00 P.M. how could the seizure-list be prepared earlier in point of time that too with case number, especially when Investigating Officer



says that he had sent the *fardbeyan* and seizure-list for registration of First Information Report. According to learned counsel aforesaid discrepancy casts further doubt on the *fardbeyan* and strengthens the argument that First Information Report is concocted. Learned counsel for the appellant finally submitted that it is important to note that the victim died after 21 days of the occurrence. The doctor conducting *post mortem* on his dead body has stated that the cause of death is septicaemia on account of the injuries. According to learned counsel doctor has not expressed any opinion about the nature of injuries as he has stated that the operating surgeon may be consulted. In this connection, learned counsel further submitted that *post mortem* report does not state that the *ante mortem* injuries were sufficient in the ordinary course of nature to cause death. On account of this aspect alone the conviction of the appellant under Section 302 of the Penal Code should not be sustained. The prosecution having failed to prove that the appellant had any intention to kill or to cause the aforementioned injuries and the occurrence having been preceded by a sudden quarrel/fight the injured having not been examined although survived for more than 3 weeks and died on account of septicaemia,

this Court may consider to acquit him for the offence under Section 302 of the Penal Code and allow the appeal or in any case to modify his conviction, sentence accordingly.

12. In support of the aforesaid submission learned counsel for the appellant relied on the judgment of Supreme Court in the case of **Guli Chand and others Vs. State of Rajasthan A.I.R. 1974 Supreme Court 276 paragraph 11, State of Maharashtra, Complainant Vs. Sukhdeo Singh and another 1992 Cri. L.J. 3454 SC Paragraphs 17, 25, Balbir Vs. Vazir & Ors. 2014 Cri.L.J. 3697 Paragraphs 12, 14, 15, 16, 18 to 20, 21, 22, 23.**

13. Learned counsel for the appellant finally placed reliance on the judgment of the Supreme Court in the case of **State of Punjab Vs. Surja Ram 1995 Cri.L.J. 4161** and submitted that when the evidence of any witness is rejected in part then other part of the evidence is relied only if the same is intrinsically trustworthy.

14. Learned counsel for the State and the informant supported the findings recorded by the trial court in the light of the evidence on record and submitted that the time of recording of the *fardbeyan* as



7:30 is clearly a clerical error which unfortunately has not been corrected, which does not materially affect the outcome of this case. In this connection reference is made to the judgment of the Supreme Court in the case of **Sumer Vs. State of U.P. (2005) 7 SCC 220**

Paragraph 8. Learned counsel next pointed out that P.Ws. 1, 3 and 5 are eye-witnesses of the occurrence. Time of occurrence is about 7:00 P.M. on 11.04.2005 which is the consistent case of the three eye-witnesses. P.W. 1 and P.W. 5 named the assailant by his name Gyan Das. P.W. 3 deposed that she came to know the name of the assailant later. Sadhu Shila Nand (P.W. 1) in Paragraphs 12, 13 has deposed that he was music teacher and used to visit Mokama church for teaching music and also on account of friendship. Informant (P.W. 5) in Paragraphs 2, 16 and 19 has stated that he was posted at Nazareth Hospital since 2001 for arranging religious worship in the hospital and resided with Father Mathew and also assisted Father Mathew at the church. The three eye-witnesses reached the place of occurrence immediately on hearing the cry of Father Mathew from his office room, have stated that on entering the room they saw Father Mathew fallen from his chair to the west side and bleeding. The appellant was also standing with



a blood stained knife in his right hand with a threatening demeanour before he rushed to the door and went out of the room and ran away. The three eye-witnesses have named the appellant as assailant and identified him in court, as such, there cannot be any difficulty in maintaining his conviction. Learned counsel further submitted that the three injuries inflicted on the victim were grievous and two of them, Injury Nos. 1, 2 were dangerous to life. As such, from the injury as caused by the appellant there cannot be any difficulty that he inflicted those injuries with clear intention of causing death which resulted due to septicaemia arising from the injuries inflicted, as such, according to learned counsel for the State and the informant present case is covered by Explanation (2) of Section 299 of the Penal Code. In support of the aforesaid submission reliance is placed on the judgment of the Supreme Court in the case of **Sudershan Kumar Vs. State of Delhi (1975) 3 SCC 831 Paragraphs 12, 13, Veerla Satyanarayana Vs. State of Andhra Pradesh (2009) 16 SCC 316 Paragraphs 3-5, Munnawar and others Vs. State of Uttar Pradesh and Others (2010) 5 SCC 451 Paragraph 24, State of U.P. Vs. Jagdeo and others (2003) 1 SCC 456 Paragraph 8.**



15. Having appraised the contents of *fardbeyan*, First Information Report and the evidence of material prosecution, defence witnesses, I proceed to consider the merit of the prosecution case in the light of the written, verbal submissions made by the counsel for the parties. The occurrence, according to the *fardbeyan*, recorded in Father Mathew's room, Nazareth Hospital, Mokama, is said to have taken place on 11.04.2005 at 07:05 P.M. in the office room of Father Mathew when informant Father Thomas (P.W. 5) and Sister Suza (P.W. 3) were returning from the old church and had just reached near/in front of the office-cum-residence of Father Mathew where Sadhu Shila Nand (P.W. 1) and one Ajay (not examined) were talking to each other from before. No sooner informant and Sister Suza joined P.W. 1 and Ajay Kumar (not examined) in front of the office-cum-residence of Father Mathew, they heard Father Mathew screaming from inside the office room, rushed into the office room and saw Father Mathew fallen on the ground west of his chair near the almirah and blood was oozing from his body. Appellant armed with blood stained knife was also found standing in the office room in front of injured Father. He also scared the informant and others with the knife and ran away towards north.



Perusal of the *fardbeyan* further indicates that injured Father disclosed to the informant that injury has been caused by the knife over his throat and blood is oozing therefrom. Information was given to the hospital wherefrom staff came and carried the Father to the hospital on stretcher for his treatment. Personal staff of Father Mathew Maso (not examined), whose name Father was calling, also assisted in carrying Father Mathew to the hospital on the stretcher. *Fardbeyan* further recites that after reaching the hospital Father Mathew informed those present in the hospital that appellant was asking for money but on Father Mathew's refusal to pay, he inflicted the injury. Besides the informant (P.W. 5), P.W. 1 Sadhu Shila Nand and P.W. 3 Sister Mery Suza have also put their signature over the *fardbeyan*.

16. In the light of the contents of the *fardbeyan*, I proceed to consider the evidence of informant (P.W. 5) and the two eye-witnesses P.Ws. 1, 3 as also the evidence of P.W. 4 who also assisted the hospital staff in carrying Father Mathew to the hospital on the stretcher as also the evidence of the doctor (P.W. 2) who first examined Father Mathew in the evening of the occurrence itself. In court informant (P.W. 5) has



deposed that on the date of occurrence around 6:00 P.M. he along with P.W. 3 had gone to the old church for offering prayer and remained in the prayer for about one hour. After prayer at about 7:00 P.M. informant, five students and Sister Suza (P.W. 3) came out of the church and walked towards his residence, reached near the portico and met P.W. 1 who was speaking to Ajay Kumar (not examined), a sudden loud cry was heard from the office room of Father Mathew. Informant and others present near the portico rushed towards the office room and found Father Mathew fallen on the ground, groaning. A young man was also standing with a blood stained knife in his right hand. The young man rushed towards the informant but he moved towards injured Father Mathew. The young man reached the door and then looked back at the informant and others present and fled away. Informant picked up the injured Father Mathew and tried to block his bleeding by putting his hand on the chest wound. The blood kept coming out. P.W. 5 also asked the injured about any other wound, who informed, with much difficulty, that there is one more wound on the neck and another on the other side of the neck. Informant (P.W. 5) thereafter asked P.W. 3 to take a bed-sheet and block the bleeding. Father Mathew



also informed P.W. 5 that appellant inflicted injury on him because he did not give him money which he was asking for. P.W. 5 further deposed that he asked P.W. 1 to ring up the hospital but the call did not materialise and then he asked P.W. 1 to send someone personally to the hospital. The hospital people came with stretcher and 2-3 paramedics and then rushed Father Mathew to the hospital. After about 10 minutes, word came from the hospital that Father Mathew is out of danger and soon he will be operated upon and police has already arrived in the hospital. P.W. 5 further deposed that after about half an hour of the occurrence i.e. at 7:30 P.M. police came to the place of occurrence room, informant pointed out the blood on the floor of the room to the police party. Police party also asked him to record his statement, which he recorded at 7:30 P.M. Seizure of the incriminating articles like, blood stained envelope, registered letter was made from the office table as also blood stained glass piece from the floor was also seized vide seizure-list at 8:15 P.M. over which informant and P.W. 4 put their signature. Informant also identified the young man present in the dock as the one whom he had seen in the office room of Father Mathew with blood stained knife in his hand at the time of occurrence.



17. Before proceeding to consider the embellishment, contradiction made by the informant in his deposition in court, it is necessary to take into account the evidence of P.Ws. 1, 3. P.W. 1 Sadhu Shila Nand has claimed in his evidence that between 6:30-7:00 P.M. he was in the campus of Mokama church and while standing in front of the office-cum-residence of Father Mathew, was speaking to Ajay Kumar. Informant (P.W. 5) and P.W. 3 talking to each other also joined them. Cook Sujeet (not examined) was also around as he was coming, going. In the meantime, scream was heard from the office room of Father Mathew. P.Ws. 1 and others rushed to the office room and saw Father Mathew fallen and screaming. Blood also kept oozing from his neck. Appellant Gyan Das was by the side of Father armed with blood stained knife and he appeared angry with menacing look and extending threat by his gesture, went out of the office room. P.W. 1 also followed him and saw that he having come out of the office room ran away. In Paragraph 2 P.W. 1 deposed that injured Father Mathew was saying that Gyan Das wanted to establish a fictitious N.G.O. and that he refused to put his signature. He also stated that he was asking for money which request was refused by Father Mathew and that



he is forgiving him. In Paragraph 3 P.W. 1 stated that he telephonically informed all concerned about the occurrence. Telephone call to the hospital, however, could not materialise then he asked someone to call the doctor from the hospital. Father Mathew was taken to the church hospital for treatment and after few days shifted to Kurji Holy Family Hospital, Patna where he passed away during treatment. P.W. 1 also identified the appellant in dock. In Paragraph 5 P.W. 1 accepted that earlier Father Martin was also killed at the same place but declined the suggestion that Father Martin was killed because of rivalry between the priests to become Head Priest.

18. Before proceeding to consider the embellishment, contradiction in the evidence of P.W. 1, it is necessary to consider the evidence of P.W. 3 Sister Mery Suza. She has deposed in court that on the date of occurrence she was at Mokama. The occurrence took place around 7:05 P.M. and at that time she along with P.W. 5 was coming from Nazareth old church towards the office of the victim Father Mathew, which is his office-cum-residence. Outside the office P.W. 1 and one Ajay (not examined) were speaking to each other. P.W. 3 having come near the two also joined the conversation.



A loud scream was heard coming from the office room of Father Mathew. P.W. 3 rushed towards his office and saw Father Mathew fallen on the ground west of his almirah and blood was oozing from his neck. There was copious blood on the floor of the room as well. In Paragraph 2 P.W. 3 deposed that she also saw one man standing in the room armed with a knife in his right hand and volunteered that later she learnt that his name is Gyan Das. P.W. 3 also deposed that the man was armed with blood stained knife and showing the knife he went out of the room. P.W. 3 also identified the appellant in dock. She also deposed that *fardbeyan* concerning the occurrence was recorded by P.W. 5 over which she also put her signature along with P.W. 1. In Paragraph 4 P.W. 3 deposed that after the accused ran away she went near Father Mathew and asked him what happened then Father Mathew informed her that assailant was Gyan Das who was repeatedly asking for money for establishing a fictitious N.G.O. and wanted his signature, which he refused. In Paragraph 5 P.W. 3 deposed that hospital was informed about the occurrence wherefrom stretcher was brought and Father Mathew was carried to the hospital. She also stated in the same paragraph that P.W. 3 and others



also went to the hospital where police came and recorded their statement. In Paragraph 13 P.W. 3 stated that it took her and Father Thomas 5-7 minutes to complete the prayer and reach near P.W. 1. The girls, however, went to dining hall for dinner. P.W. 3 did not go to the dining hall. In Paragraph 15 P.W. 3 deposed that she and others having heard the scream ran about 10-12 ft. and that it took less than two seconds to reach the office room. In Paragraph 17 P.W. 3 further stated that she does not remember if any bandage/cover was put on the wound to stop oozing of blood because she was nervous. In the same paragraph P.W. 3 also stated that she went near the injured, looked at his neck, saw the wound for 10-15 minutes and consoled him. P.W. 5 was also with P.W. 3 and both consoled Father Mathew. In Paragraph 19 P.W. 3 further stated that even after Father was taken to hospital, she continued to remain at the place of occurrence for 20 minutes because she was told that police will come there to record her statement. In Paragraph 20 P.W. 3 has further stated that until the time police came to the place of occurrence room, Father Thomas, Shila Nand, church staff and one hospital staff remained in office room of Father Mathew. P.W. 3 also stated that after accused

ran away she went to the Father and asked him what happened and where was he hurt. Father told her that it was Gyan Das who was asking for money, used to come often and wanted to establish a fictitious N.G.O., was asking for his signature, which was refused by him.

19. From reading of the evidence of P.Ws. 5, 1 and 3 it is evident that after the incident, before arrival of the police they remained at the place of occurrence room, saw the victim in injured condition, appellant armed with blood stained knife leaving the place of occurrence room in their presence, whereafter the three went near the victim and learnt from him that it was Gyan Das who wanted to establish a fictitious N.G.O., was asking for money which was refused by the victim, in retaliation he inflicted the wound on the person of the victim. The fact that P.Ws. 5, 1 and 3 learnt from the victim himself in the place of occurrence room that Gyan Das wanted to establish a fictitious N.G.O., was asking for money, which was refused by the victim, has been stated in the *fardbeyan* but such fact has been disclosed by the victim not in the place of occurrence room but in the hospital, as per the contents of the *fardbeyan*. In court, however, the three witnesses have claimed to have learnt about the said fact from the

victim in the place of occurrence room itself.

20. Now, coming to the evidence of P.W. 2 Dr. Dilip Kumar who served as a Consultant Surgeon in the Nazareth Hospital, Mokama on 11.04.2005 has deposed in his evidence that Father Mathew was brought to the hospital at 8:05 P.M. and he examined him, found three injuries, namely, incised wound over anterior, posterior surface of neck about 8, 10 cm. long, penetrating wound of size $\frac{1}{2}$ "x $\frac{1}{2}$ " below left nipple. X-ray of chest was taken which indicated mild contusion of left lung. Nature, age of injury was grievous, within six hours. Injury Nos. 1, 2 were caused by sharp cutting object, Injury No. 3 was caused by pointed object. P.W. 2 also stated that the patient was conscious, co-operative.

21. P.W. 4 Joseph Rajendra, Clerk in Nazareth Hospital deposed in his evidence that on 11.04.2005 around 7:00 P.M. after offering prayer in the church while he was on his way home, learnt that Gyan Das inflicted injury on the person of Father Mathew with a knife, came back to the place of occurrence i.e. office room of Father Mathew and saw Father Mathew fallen on the ground in injured condition. Blood was oozing from his neck. P.W. 5, P.W. 1, P.W. 3 and many others were present. In Paragraph 2 P.W. 4 stated that hospital staff



came with the stretcher and carried Father Mathew to hospital. In the same paragraph P.W. 4 further stated that he also accompanied him to the hospital wherefrom he came back to the place of occurrence and became witness on the seizure-list. He also identified the appellant in dock. In Paragraph 8 P.W. 4 stated that in the Father's I.C.U. room police came around 8:00 P.M. and at that time 15-20 men were present in the room. Sub-Inspector interrogated the Father for about 10 minutes. Aforesaid evidence of P.W. 4 that Sub-Inspector interrogated Father Mathew in the I.C.U. room for about 10 minutes is to be considered in the light of the statement of the informant made in the *fardbeyan* that Father Mathew informed those present in the hospital that Gyan Das was asking for money but on his refusal to pay he inflicted the injuries.

22. It is, therefore, quite evident that Father Mathew, according to the informant as stated in *fardbeyan* disclosed to those present in hospital that Gyan Das was asking for money but on his refusal to pay, inflicted the injuries on him. Likewise P.W. 4 also stated in Paragraphs 2, 8 of his evidence that he accompanied Father while he was being taken to the hospital on stretcher in the evening of occurrence where



he was also interrogated by P.W. 9 Sub-Inspector in the I.C.U. room for about 10 minutes. Information solicited by the Sub-Inspector from Father during interrogation of about 10 minutes has been concealed by the prosecution on the pretext that Investigating Officer (P.W. 9) having come to the hospital found Father Mathew seriously injured, not in a position to speak, whereafter police party came to the place of occurrence office room of Father Mathew and P.W.9 recorded the *fardbeyan* of informant (P.W. 5) in presence of P.Ws. 1, 3 who also put their signature over the same and proceeded with the investigation. Seizure of incriminating articles was made at 8:15 P.M. Treatment of the victim continued in the Nazareth Hospital, Mokama until 16.04.2005 on which date he was shifted to Kurji Holy Family Hospital, Patna for better treatment where he passed away on 01.05.2005 because of septicaemia. Had the Investigating Officer found the victim unable to speak in the evening of occurrence, he should have approached the victim in the succeeding 21 days until his death to record his police statement but from the evidence of Investigating Officer in repeat Paragraph 32 and Paragraph 33 it is quite evident that he has not mentioned in the case diary that he went again to record



the statement of Father Mathew till the time Father was at Nazareth Hospital. In the same paragraph P.W. 9 further stated that it is not mentioned in the case diary when Father was sent from Nazareth Hospital to Kurji Holy Family Hospital, Patna. In Paragraph 33 P.W. 9 candidly admitted that he never visited Kurji Holy Family Hospital, Patna during the entire investigation of the case.

23. In the aforesaid background evidence of D.W. 1 Cook Sujeet whose name appears in the *fardbeyan* and the fact that he is a charge-sheet witness but was withheld by the prosecution and examined by the defence also becomes relevant, as he has given an entirely different story about the manner of occurrence and the person who inflicted the injury on the person of Father Mathew. In this background it further becomes intriguing for the prosecution not to have examined Ajay Kumar, the staff of P.W. 1 with whom P.W. 1 was speaking in front of the office-cum-residence of Father Mathew just before the occurrence and who also rushed to the place of occurrence room along with P.Ws. 5, 1 and 3 and saw Father Mathew lying on the office floor inflicted with injuries and bleeding as also Maso, the personal attendant of Father Mathew, whose name

Father was calling and he assisted the hospital staff along with P.W. 4 in removing the Father from the office room to the hospital on the stretcher.

24. From the evidence of informant (P.W. 5), it is also evident that when appellant moved out of the room, he went to Father Mathew and picked him up in his lap and tried to prevent oozing of the blood with his hand but the bleeding continued then P.W. 5 asked P.W. 3 to get the bed-sheet and to bandage the wound but P.W. 3 has stated in her evidence that she does not remember that she ever bandaged the wound with the bed-sheet. Investigating Officer has neither seized the blood stained clothes of the informant nor the bed-sheet, in the circumstances, there does not appear to be any material on record to corroborate the assertion of the informant that he held Father Mathew and tried to prevent oozing of the blood with his hand and the bed-sheet.

25. Now, coming to the question of applicability of Section 302 of the Penal Code in view of the three injuries caused to Father Mathew and the cause of his death, septicaemia, that too, after 21 days of the occurrence, I am of the view that the offender having inflicted the three grievous injuries on vital part of the



body, neck both sides and chest near left nipple, there cannot be any two opinion that the assailant wanted to commit culpable homicide, it is only because of the surgical intervention that Father Mathew survived for 21 days, but in the meanwhile suffered septicaemia, which proved fatal, as such, the offender, whoever inflicted injury on the person of Father Mathew, has to suffer conviction for culpable homicide and the submission of the counsel that applicability of Section 302 of the Penal Code to the facts of this case is not well founded, is perhaps misconceived.

26. The question, however, remains whether appellant herein is the person who inflicted the injuries on the person of Father Mathew! In view of my discussion in Paragraphs 15 to 24 above, I am of the view that prosecution has failed to produce the police statement of Father Mathew, which must have been recorded after his interrogation by P.W. 9 for about 10 minutes in the I.C.U. room in the evening of occurrence itself as has been deposed by P.W. 4 in Paragraph 8 of his evidence, has been concealed, perhaps for the reason that Father Mathew may have furnished another version of the occurrence on the lines of his Cook Sujeet (D.W.1), in the circumstances, we are of the view that appellant

be given benefit of doubt.

27. In the result, the appeal is allowed, impugned judgment and order of sentence is set aside, the appellant is directed to be released from jail custody forthwith, if not wanted in any other case.

(V.N. Sinha, J)

I agree.
Prabhat Kumar Jha, J

(Prabhat Kumar Jha, J)

P.K.P./A.F.R.

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