

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 1085 of 2006

Arising out of P. S. Case No. - 134 Year - 1987 Thana – Chenari, District - SASARAM (ROHTAS)

Jagdish Singh son of Late Rajendra Singh, Resident of Village – Phulwaria, P.S. Chenari, District - Rohtas

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 1089 of 2006

Arising out of P. S. Case No. - 134 Year - 1987 Thana – Chenari, District - SASARAM (ROHTAS)

Nitar Singh son of Sukhari Singh, Resident of Village – Shahpur, P.S. – Chenari, District - Rohtas

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 1106 of 2006

Arising out of P. S. Case No. - 134 Year - 1987 Thana – Chenari, District - SASARAM (ROHTAS)

- 1. Anil Singh son of Late Ram Janam Singh
- 2. Wakil Singh son of Late Ram Janam Singh
- Both resident of village – Phulwaria, P.S. – Chenari, District - Rohtas

.... Appellants

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 1186 of 2006

Arising out of P. S. Case No. - 134 Year - 1987 Thana – Chenari, District - SASARAM (ROHTAS)

Dashrath Singh, Son of Late Ram Janam Singh, Resident of Village – Phulwaria, P.S. – Chenari, District - Rohtas

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :
(In CR. APP (DB) No. 1085 of 2006)
For the Appellant : Mr.
For the Respondent : Mr.

(In CR. APP (DB) No. 1089 of 2006)

For the Appellant : Smt. Meena Devi, Advocate

For the Respondent : Shri D. K. Sinha, A.P.P.

(In CR. APP (DB) No. 1106 of 2006)

For the Appellants : Smt. Meena Devi, Advocate

For the Respondent : Shri D.K. Sinha, A.P.P.

(In CR. APP (DB) No. 1186 of 2006)

For the Appellant : Mr.

For the Respondent : Mr.

=====

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 12-02-2015

The present batch of four appeals arise out of judgment of conviction dated 12.10.2006 passed by the learned Presiding Officer of Fast Track Court No. II, Rohtas at Sasaram in Sessions Trial No.20 of 1988 by which the five appellants of these appeals were held guilty of committing offences under Sections 302/149, 307 Indian Penal Code and 27 of the Arms Act. The appellants were heard on sentence on 12.10.2006 and they were directed to suffer rigorous imprisonment for life under Sections 302/149 Indian Penal Code, rigorous imprisonment for six years under Section 307 Indian Penal Code and rigorous imprisonment for five years under Section 27 of the Arms Act. The sentences passed upon the appellants were directed to run concurrently.

2. The prosecution story emanates from the *fardbeyan* of

P.W. 5 Anil Kumar Singh which was recorded at 10 P.M. on 21.11.1987.

It was stated by P.W. 5 that a meeting of the villagers had been called at

his *Darwaja* at 8:00 P.M. for discussing the repair of the electric transformer which had gone out of order. The father of the informant, namely, Ghamandi Singh, one of the deceased in the present case, was sitting on a cot facing north, the informant and others comprising 14-15 persons of the village were there and they were awaiting the arrival of other villagers. As per the prosecution story, a lantern was kept burning there.

All of a sudden, 10-12 persons carrying rifles and guns came there and one out of them flashed torch light on the face of the father of the informant, namely, Ghamandi Singh, while others started firing indiscriminately at the father of the informant and the villagers sitting there. People ran to hide and secure themselves. The criminals fired 20-25 rounds of shots and went in the west to move to the south direction.

The informant claimed to have identified the

appellant Dashrath Singh who was allegedly armed with a rifle.

Appellant Jagdish Singh was armed with a single barrel gun both of whom were resident of village Phulwaria. The informant also identified amongst the criminals appellant Nitar Singh, resident of village Shahpur who was armed with a DBBL gun besides identifying Ramashankar

Singh of village Bhagwanpur who was also allegedly armed like appellant Nitar Singh. Parma Singh @ Parmanand Singh, resident of village Derwa as per evidence carrying a rifle, was also identified. However, the informant stated that he could not identify any other persons than the above five.

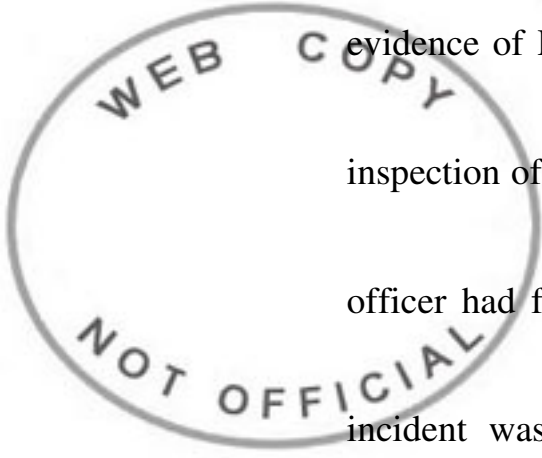
3. After the criminals had left the informant, found that his father was dead on account of having been shot into his chest, on the left side of his throat, near left eye and right hand which was carrying multiple pellet injuries and that Murli Sharma (the other deceased), Chhatradhari Singh (P.W. 6), Gudri Singh (the third deceased), Banarsi

Singh (P.W. 2), Rogi Singh (not examined), Tej Pati Singh (not examined) and Raj Kumar Singh had been seriously injured by gun shots and the people who had arrived at the scene of occurrence had taken them to Sasaram hospital for treatment. The incident was witnessed by Kapil Paswan (not examined), Ramashish Singh (not examined) and Rogi Singh as well.

The reason for the commission of the offence was that one Ramchandra Singh of village Sakri had been murdered one year prior to the present incident in which deceased Ghamandi Singh, the father of the informant, had been impleaded as an accused and he had been to jail also.

4. As may appear from the evidence of P.W. 9 Kumar Rajesh Chandra, the case was initially investigated into by A.S.I. Kabilash Ojha and P.W. 9 Kumar Rajesh Chandra had taken over the investigation from him and had recorded the statements of witnesses and

has also inspected the place of occurrence. What appears from the evidence of P.W. 9 Kumar Rajesh Chandra is that during the course of inspection of the place of occurrence, he as well as the first investigating officer had found that the *Dalan* or *Darwaja* which was the centre of incident was a structure consisting of two rooms, a *Verendah* was running in front of the rooms and there was a cot lying near the exit of the western room. The dead body of Ghamandi Singh was found lying over his cot in a pool of blood. Blood had also fallen under the cot in an area of 1'x1' and there were marks of gun shots on the wall also in the form of spherical entry marks. The gun shots had caused the soil plaster applied on the wall to fall and the investigating officer had found those fallen soil material lying hear and there. There was a *Chauki* also kept in the east of the *Verendah* which was lying north to south and blood was found fallen amply there near the *Chauki*. In front of the *Dalan* there was a raised platform measuring of 12'x6' which was 1-1/2' above the



normal surface level and what appeared from the inspection of this the area was that 13 cartridge cases of different bores as per description in paragraph 5 of P.W. 9 were recovered from around the raised platform they are been seized. The three dead bodies were dispatched to the hospital for holding postmortem examination and P.W. 8 Dr. Naresh Prasad Rai had held postmortem examination on those three dead bodies and had prepared Exts. 3 to 3/2.

5. The Investigating Officer had recorded the statements not only of the witnesses but also of the accused persons and after closing the investigation had sent the appellants for trial which ultimately ended in the impugned judgment.

6. The defence of the appellants was that deceased Ghamandi Singh had murdered Ramchandra Singh of village Sakri and other persons who deposed as witnesses were also accused with Ghamandi Singh in that case and in order to feeding fat their grudge and

animosity, the informant and his witnesses were carrying against the

appellants, a false case was foisted upon them.

7.

The prosecution examined a total number of ten

witnesses, out of whom, P.W. 1 Devendra Kumar Singh, P.W. 2 Banarsi

Singh had, while narrating the prosecution story, identified six persons

including the five appellants. The six persons who were identified by the

two witnesses, P.Ws. 1 and 2 were not put on trial. P.W. 3 Chandrama

Singh, was an injured witness in the case and who happened to be the

nephew of the informant also. P.W. 5 did support the prosecution case

but did not identify all accused persons except appellants Dashrath

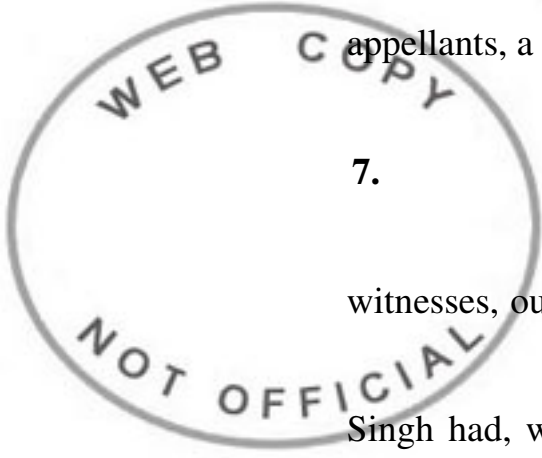
Singh, Anil Singh and Wakil Singh and further stated in paragraph 8 that

he did not really know as to what was the real cause behind the

occurrence. He was declared hostile only because he had not identified

the above named accused persons who had participated in the

commission of the offence. P.W. 4 Raj Kishore Singh had supported the



incident, but had not identified any of the accused persons and, as such,

he had also been declared hostile. Similar was the case with the

informant himself, namely, Anil Kumar Singh as P.W. 5 who, though

supported the incident, did not identify any of the accused persons and

when one had gone through the cross-examination part of his evidence,

one might find that he went on speaking lies which could not be

acceptable to this Court. We shall discuss that part of the evidence

while discussing the medical evidence. P.W. 6 Chhatradhari Singh,

himself an injured, did not identify any one though supported the

prosecution story.

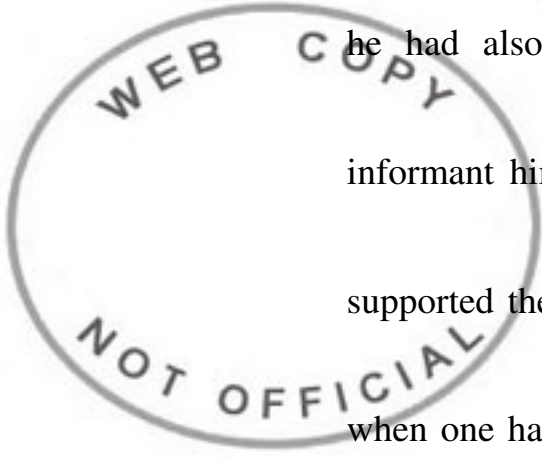
8. It may be useful to point out that after framing of

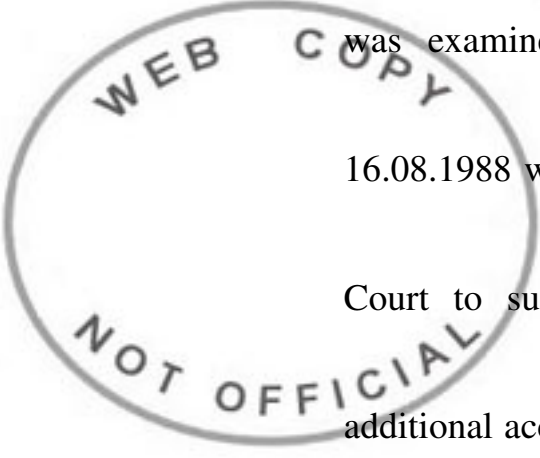
charges P.W. 2 Banarsi Singh was examined initially on 03.08.1988 as

P.W. 1 Devendra Kumar Singh and he was discharged. The other witness

who was examined was Raj Kishore Singh who is now figuring as

P.W. 4 and he was also discharged on 05.08.1988. The third witness





examined after framing of charges was Devendra Kumar Singh and he was examined as P.W. 3 on 12.08.1988 and was discharged on 16.08.1988 whereafter a petition was filed on 17.08.1988 requesting the Court to summon the appellants Anil Singh and Wakil Singh as additional accused under Section 319 Cr.P.C. and accordingly, the Court after hearing the parties passed the order on 20.08.1988 and this is how the appellants Anil Singh and Wakil Singh were put on trial. As usual, the trial proceeded afresh and the witnesses were re-heard in the light of provisions of Section 319 Cr.P.C. after the appellants Anil Singh and Wakil Singh had appeared and they had duly been charged as noted above.

9. The defence had examined a solitary witness, namely, D.W. 1 Manoj Kumar who was the witness of formal character and who had brought on record the First Information Report of the case lodged in respect of the murder of Ramchandra Singh copy of which was marked

as Ext. A/1.

10.

None appeared on behalf of the appellants other than those in Criminal Appeals filed on behalf of Jagdish Singh and Nitar Singh. We have heard Smt. Meena Singh, the learned counsel appearing on behalf of the two appellants as also Sri D. K. Sinha, the learned Additional Public Prosecutor on behalf of the State.

11.

By taking us through the witnesses Smt. Singh was pointing out that the witnesses were inimically disposed towards the appellants and none-else than the informant was himself not identifying any of the accused persons during trial. Not only that the informant P.W. 5 Anil Kumar Singh as also P.Ws. 4 and 6 Raj Kishore Singh and Chhatradhari Singh respectively were stating before the Court that there was no light there and it was all darkness enveloping the place, thus, advising the Court that the identification of the accused persons was not possible. It was also contended that P.W. 5 Anil Kumar Singh in his

cross-examination pointed out that the shots were fired from a distance of

60-70 feet which also could not make the identification possible by

persons sitting at the *Darwaja*. Submission was also that the evidence of

Devendra Kumar Singh and Banarsi Singh, P.Ws. 1 and 2, may not be

safe to act upon in the background of serious enmity between the parties

as it was apparent from the record as appears from the evidence of P.W.

9 Kumar Rajesh Chandra, the second Investigating Officer, that

deceased Ghamandi Singh was an accused in the murder case lodged for

the murder of Ramchandra Singh. Sri D.K. Sinha the learned Additional

P.P. has submitted that even if the witnesses, like, P.W. 3 Chandrama

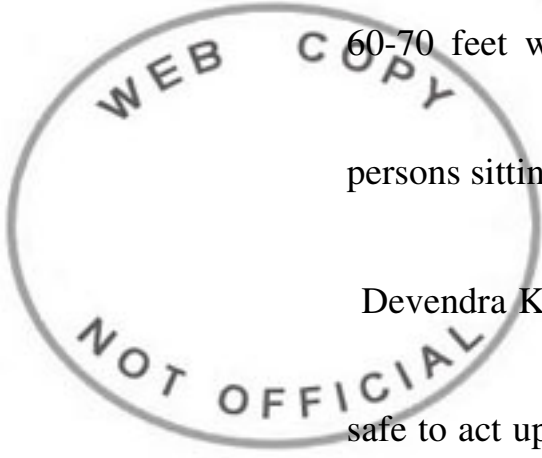
Singh, P.W. 4 Raj Kishore Singh and P.W. 5 Anil Kumar Singh have

been declared hostile and also in spite of the fact that P.W. 6

Chhatradhari Singh might not have identified any of the accused person

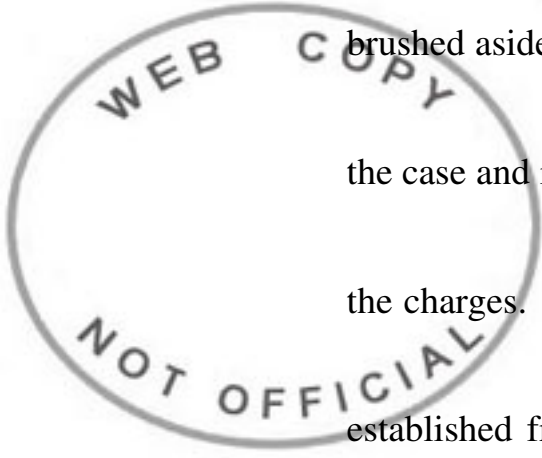
these witnesses have testified to the fact that an incident had taken place

at the time and place of occurrence in which three persons had lost their

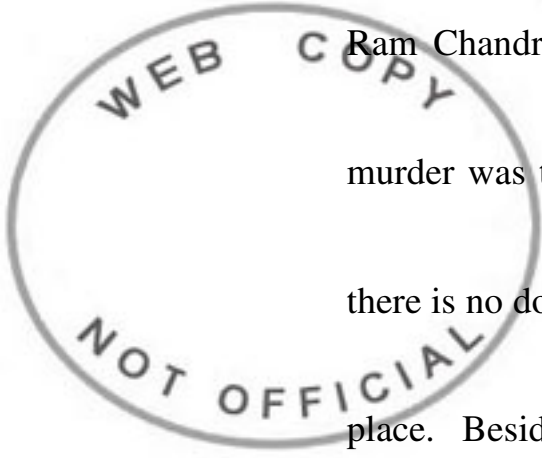


lives. Submission was that evidence of hostile witness could not be brushed aside rather the evidence of such a witness is also an evidence of the case and it has to be considered and utilized for seeking sustenance to the charges. Submission was that the question of identification could be established from the evidence of P. Ws. 1, 2 and 3 and as may appear from evidence, the five appellants before this Court in the batch of appeals, appear duly identified by the three witnesses.

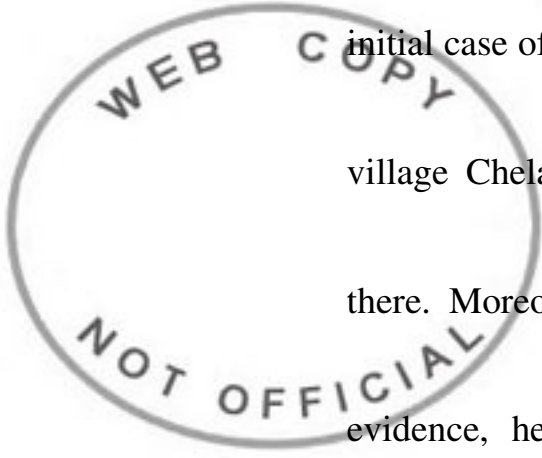
12. It is not much in dispute that there was on enmity between the parties. It is very much mentioned in the First Information Report itself that one Ram Chandra Singh of village Sakri had been murdered one year prior to the incident and the father of the informant, namely, Ghamandi Singh one of the deceased had been to jail also in that connection. P.W. 9 S.I. Kumar Rajesh Chandra had also stated that record of Chenari P.S. Case No. 98 of 1986 under Section 302 of the Indian Penal Code indicated that deceased Ghamandi Singh was one of



the accused persons in the case which was instituted for the murder of Ram Chandra Singh (P.W. 9 paragraph 11) and further that the triple murder was the result of the existing enmity between the parties. Thus, there is no doubt that in the background of enmity, the incident had taken place. Besides, deceased Ghamandi Singh none of the witnesses appeared having been made an accused in the above Chenari P.S. Case No. 98 of 1986 still the inter-se relationship of the witnesses could be gathered from the very description of their names and parentage. P.W. 1 is the son of the deceased Ghamandi Singh and, as such, the full brother of P.W. 5 Anil Kumar Singh. P.W. 3 Chandrama Singh is the nephew of the deceased Ghamandi Singh as per his own evidence whereas Chhatradhari Singh P.W. 6 was the brother of deceased Ghamandi Singh and was the uncle of P.W. 5. Both Ghamandi Singh and P.W. 6 Chhatardhari Singh were sons of Bechu Singh. However, what we find is that Banarsi Singh (P.W. 2) was neither related to the deceased nor he



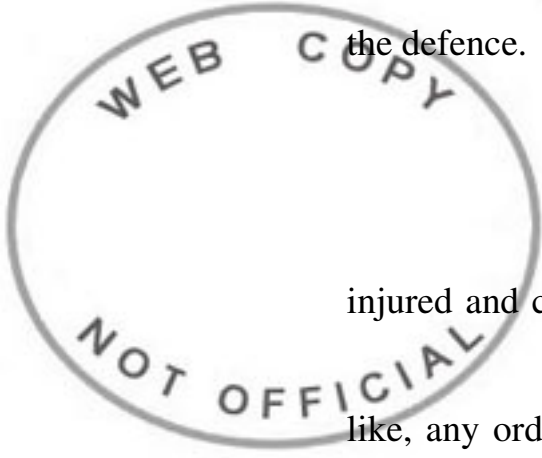
was resident of the village of deceased Ghamandi Singh. It is the very initial case of the prosecution that besides the villagers of his village, i.e., village Chelaharua some villagers of other villages were also present there. Moreover, Banarsi Singh (P.W. 2) was injured and as per his evidence, he had received injury in the same transaction and was examined by P.W. 10 Dr. Devendra Tripathi who stated that on examining Banarsi Singh on 21.11.1987 at 11:45 P.M., he had found one lacerated wound on lateral side of his right arm with inverted margins measuring $\frac{1}{2}$ 'x $\frac{1}{2}$ " cavity deep which was communicating with a lacerated wound with everted margins measuring of 1"x1" x cavity deep. He found yet another lacerated wound on the person of P.W. 2 measuring 1"x1" x cavity deep on the right chest (valve) with inverted margin. The condition of P.W. 2 was very serious and he was referred to higher institutions for better treatment and further that the injuries had been caused by gun shot within 12 hours of the examination of P.W. 2 by P.W.

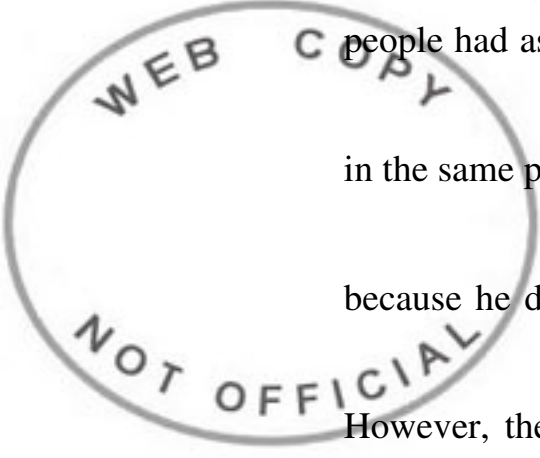


10. He does not appear holding any interest either in the prosecution or in the defence. His evidence, thus, appears not that of an interested witness.

In spite of having found P.W. 2 Banarsi Singh an injured and competent witness, we have still to appreciate his evidence, like, any ordinary witness on the ordinary yardsticks of appreciation of evidence of a witness.

13. So far as the evidence of P.W. 1 Devendra Kumar Singh is concerned, what we find is that he does not figure in the FIR as the person who was present there at the time of the occurrence. However, what we found from perusal of his evidence was that he was aged about 15 years on 28th of July, 1989 and, as such, was aged about 13 years on the day of occurrence. During his cross-examination P.W. 2 was stating as may appear from paragraph-11 of P.W. 1 that he was a student of Class-IX and he claimed himself sitting there for prosecuting his study as his examination was very near. A searching question was put to him as to

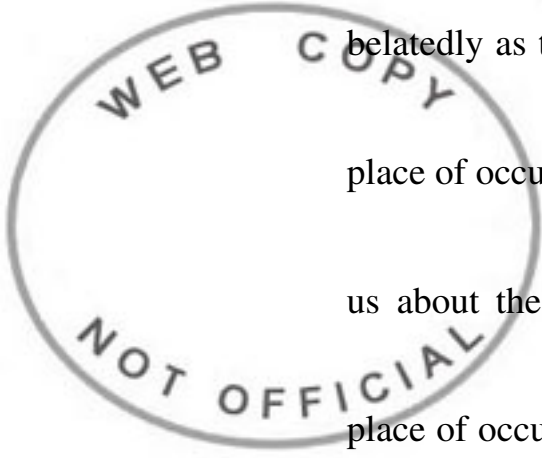




whether had he appropriately prosecuted his study that evening when people had assembled to hold a meeting there. The witness was replying in the same paragraph-11 that he did not face any hindrance in his studies because he did have no concern with the meeting or its subject matter. However, the criticism which applies to this witness is that in spite of being there at the place of occurrence with so many persons out of whom, seven persons were injured, he did not receive even a scratch though a volley of shots somewhere around 20-25 rounds of it, were fired indiscriminately. This criticism on competence of the witnesses, in our opinion could not be holding good inasmuch as out of 14-15 villagers who had assembled there only eight persons had received injuries, out of whom, three had died. Thus, there were a good number of persons also who could not get hurt during the incidence and it might be a chance that they escaped safely.

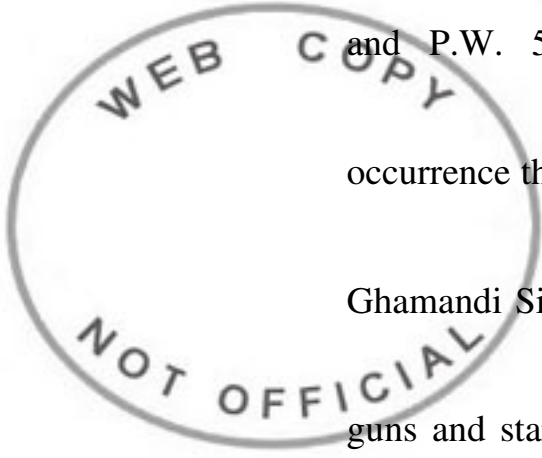
14. While considering the evidence of witnesses what we

found was that the Investigating Officer P.W. 9 had deposed quite belatedly as the last witness of the prosecution and he had described the place of occurrence in detail in paragraphs 3, 4 and 5 and what convinced us about the competence of this witness is that his description of the place of occurrence in paragraph-12 as regards the placing of the *Chauki* or the cot appears completely fitting into the details of the place of occurrence which was given by P.W. 9. Not only that the manner of occurrence which was also stated by him does not appear deviating any bit from the initial prosecution story that as soon as the accused persons came there the torches were flashed and the first shot was fired at deceased Ghamandi Singh, the father of P.W.1 and the informant and further that he had ducked under the *Chauki* so as to seeking safety, like others who had also went inside it. But again, his evidence as regards the personal participation of different appellants has to be considered keeping in view the general principles of appreciation of evidence.



15. P.W. 3 Chandrama Singh, P.W. 4 Raj Kishore Singh

and P.W. 5 Anil Kumar Singh have individually supported the occurrence that while people had assembled at the *Dalan* of the deceased Ghamandi Singh a group of culprits arrived there armed with rifles and guns and started firing. The first shot was fired at deceased Ghamandi Singh and other shots were fired targeting the other members who were sitting there for participating in the meeting. They had also been consistent with P.Ws. 1, 2 and 3 that the meeting had been convened to discuss the issue of the electric transformer having gone out of order and the proceedings had not been taken up only because some more persons were likely to arrive. What appears from the evidence of P.Ws. 3, 4 and 5 is that they were declared hostile only because they were not naming all the accused persons or at all not naming any of them as appears the case with P.W. 4 Raj Kishore Singh and P.W. 5 Anil Kumar Singh respectively along with P.W. 6 Chhatradhari Singh who was also



declared hostile in spite of having divulged the story in its main part as regards the commission of three murders or causing injuries to other four persons.

16.

The submission in the above behalf was that the witnesses, like, P.Ws. 3, 4, 5 and 6 having been declared hostile, their evidence may not be of any use so as to deriving support to the proof of charges. We may refer to the Supreme Court decision of *Sat Paul v. Delhi Administration* reported in *A.I.R. 1976 S.C. 294* in which the principle on cross-examining a witness by the party which had produced it were elaborately laid down. It was initially pointed out that it was always unqualified and untrammelled discretion conferred by Section 154 of the Indian Evidence Act upon the Courts to permit cross-examination of a witness by the party who had produced it in order to testing the witness' demeanour, temper, attitude, bearing or the tenor and tendency of his answers, or from a perusal of his previous inconsistent

statement, or otherwise, so as to judging the hostility of the witness. It

was, as such, advised by the Supreme Court that considering the purpose

for which such permission is sought and granted, the Courts should

generally avoid the word using “declared hostile” for a witness. Finally,

what was the evidentiary value of the evidence of such a witness was

pointed out by the Supreme Court in the following words:-

“Even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto.”

17. The same question of evidentiary value of a hostile

witness was again considered by the Supreme Court of **Rameshbhai**

Mohanbhai Koli and others v. State of Gujarat reported in (2011)11

SCC 111 and after noticing some of the earlier decisions of the Supreme

Court in paragraphs 16, 17 and 18, it was held that the evidence of such a

witness cannot be rejected in toto merely because the prosecution chose

to treat him as hostile and cross-examined him. Likewise, in **Lahu**

Kamlakar Patil and Another v. State of Maharashtra reported in (2013)

6 SCC 417, the Supreme Court again spoke on the credibility of a hostile

witness after noticing some of the leading decisions of the Apex Court in

paragraphs 15 and 17 and the same proposition was laid down as was

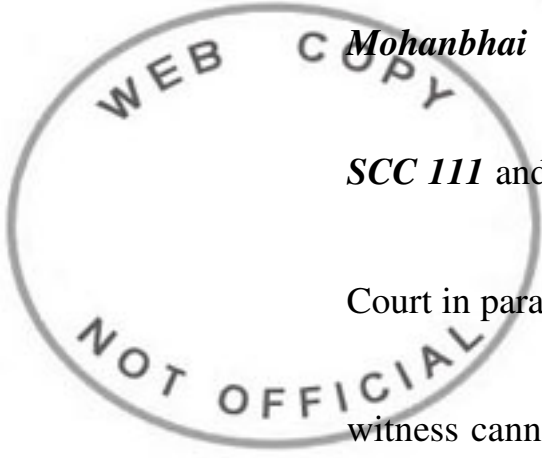
done in **Rameshbhai Mohanbhai Koli** (supra). Thus, even if P.Ws. 3, 4,

5 and 6 had been declared hostile, their evidence does not lose

significance and relevance. It is for us to decide as to to what extent the

evidence of those witnesses could be useful for any purposes as regards

the proof of charges. We do not have any hesitation in noting that P.W.



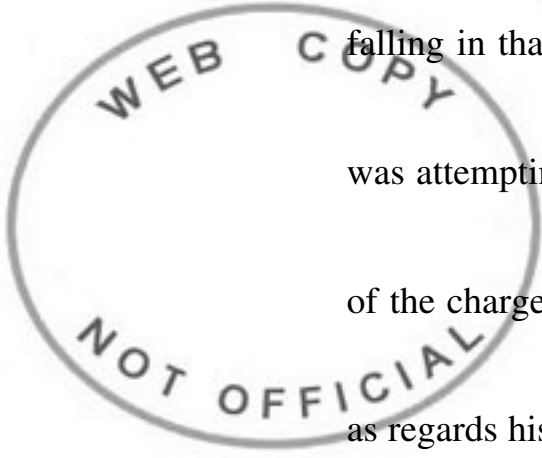
4 Raj Kishore Singh, P.W. 5 Anil Kumar Singh, the informant of the case and P.W. 6 Chhatradhari Singh might not have named any one of the accused persons as one of the culprits who had participated in committing the offence and might have said that none of them identified by any one but that did not diminish the value of their evidence because the three witnesses had very consistently supported the prosecution story on its material parts.

18. As regards P.W. 5, the informant of the case, he stated in paragraph 5 of his deposition that he did not identify any one and he further stated as may appear from paragraph 8 of his cross-examination that the accused persons were standing at a distance of 60-70 feet and were firing the shots. Before that, he stated that the lantern which was kept burning there was placed at a higher place and was hanging from the roof of the *Dalan* and thus, what appeared and what in effect appeared was that he was attempting to tell the Court in paragraphs

8 and 9 that the lighting position could be such as not to facilitate the identification of persons. We do not have any hesitation in pointing out that his evidence in cross-examination as regards the height of the lantern or the distance from which the accused persons had fired the shot is out and out false. This we note by referring to the medical evidence of P.W.

8 Dr. Naresh Prasad Rai who had held postmortem examination on the three dead bodies and had noted in respect of all the three dead bodies that he had found the margins of some of the entry wounds bearing blackend margins which indicated that those shots had been fired from a very, very close range. We did not again have any hesitation to point out that when a witness, like, P.W. 5 who happened to be the son of deceased Ghamandi Singh decided to go hostile, he was already on the side of the defence and if he was there in the witness box then he was made to speak out facts which were completely against some acceptable medical data like a shot which could be fired from a range up to 6 feet would be

causing blackening and charring around the wound. We find P.W. 5 falling in that category of witnesses who was not only going hostile but was attempting quite well to help out the accused persons to wriggle out of the charges which had been framed against him. However, we trust it as regards his evidence in examination-in-chief which came from his lips in support of the fact that the incident in the manner as stated by him had taken place and the three lives were lost in that incident while other persons, like, P.W. 6 Chhatradhari Singh, P.W. 2 Banarsi Singh, Rogi Singh (not examined), Tej Pati Singh (not examined) and P.W. 4 Raj Kishore Singh had received serious gun shot injuries. Thus, what we find is that the evidence of P.Ws. 4, 5 and 6 cannot be discarded merely because they had not identified any one as the person who had participated in the commission of the offence. To that extent, their evidence may not be acceptable to us but the evidence of these witnesses as regards the material part of the prosecution story appears acceptable



and we are satisfied that to that extent those witnesses were also reliable

witnesses.

19.

As regards P.W. 3 Chandrama Singh, he was making

statement in support of the prosecution evidence but had identified only

three appellants Dashrath Singh, Anil Singh and Wakil Singh and, as

such, he was declared hostile by the prosecution but he admitted in

paragraph 11 of his cross-examination that he left out naming other

accused on account of some fault in making the statement. He was again

appearing stating that there was no particular reason for commission of

the offence which part of his evidence also appears false because it is the

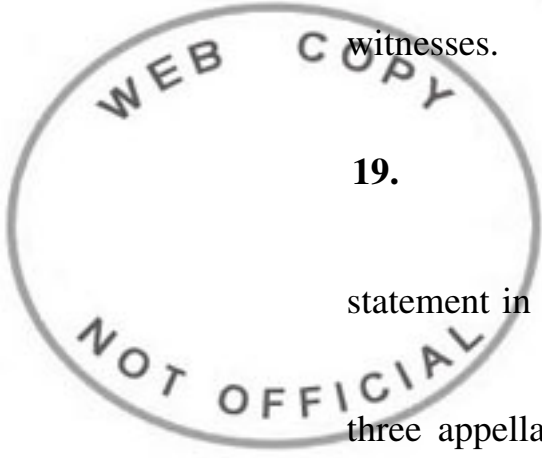
case of both the sides that for the murder of one Ram Chandra Singh and

which murder was, allegedly, committed by deceased Ghamandi Singh.,

the said deceased along with others had been killed and injured and the

incident had occurred. As regards other parts of the evidence of P.W. 3

Chandrama Singh, he appears telling the same story which were told by



P. Ws. 1, 2, 4, 5 and 6. As regards the central theme of the prosecution story, we again accept his evidence to that extent.

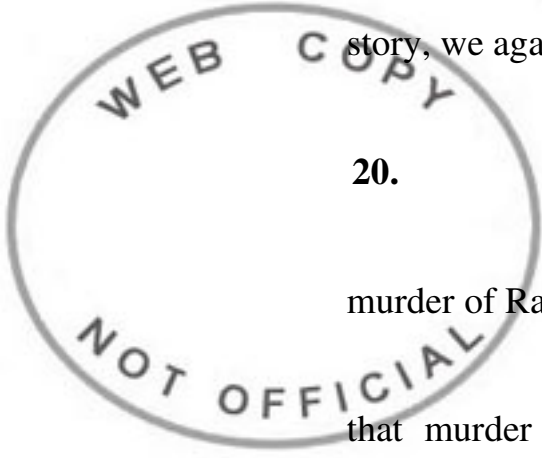
20. The motive for the occurrence was stated to be the murder of Ram Chandra Singh who was the resident of village Sakri and that murder had been committed, allegedly, by deceased Ghamandi

Singh and others, one year prior to the present incident and the present occurrence was a retaliatory action perpetrated by the accused persons.

Witnesses, like, P. Ws. 1 and 2 and even the hostile witnesses have stated the same story for which the present incident had occurred. We again find the motive and reason for the occurrence established from the evidence of witnesses.

21. It is true that some of the injured, like, Rogi Singh and Tej Pati Singh were not , but we find that P.W. 10 Dr. Devendra Tripathi had examined Rogi Singh and had issued the injury certificate.

Likewise, P.W. 7 Dr. Sudhir Kumar Sinha had examined P.W. 4 Raj



Kishore Singh. Other witnesses like Tej Patti Singh and Rogi Singh had not come forward along with Kapil Paswan, Ramashish Singh and Ram Jee Singh but we do not see any infirmity creeping into the prosecution case because of their non-examination. The evidence of witnesses who were examined, like, P.Ws. 1, 2 and 3 as also those witnesses who were declared hostile, like, P.Ws. 4, 5 and 6 appears sufficiently proving the charges as regards the manner of occurrence and we do not have any doubt about their competence as well.

22. However, what we find from the evidence is that appellant Nitar Singh was identified by two witnesses P.W. 1 Devendra Kumar Singh and P.W. 2 Banarsi Singh during cross-examination. P.W. 1 was put certain questions as regards the identification and other details of appellant Nitar Singh in paragraph 16. P.W. 1 stated that he did know as to how many brothers appellant Nitar Singh had and again how many brothers his father had. He did not even know the name of the father of

appellant Nitar Singh in addition to the above what appears stated by

P.W. 1 against Nitar Singh was that appellant Nitar Singh was having a

double barrel gun in his hand while in his examination as P.W. 3 on

12.08.1988 before the order under Section 319 Cr.P.C. was passed, he

appears having n stated before the Court that appellant Nitar Singh was

armed with a single barrel gun. It was the reason that he was suggested

that he had not named appellant Nitar Singh in his statement. The

Investigating Officer who had recorded the statement of appellant Nitar

Singh, i.e., Kabilash Ojha was not examined and we have to accept the

suggestion that P.W. 1 had not named Nitar Singh. Banarsi Singh (P.W.

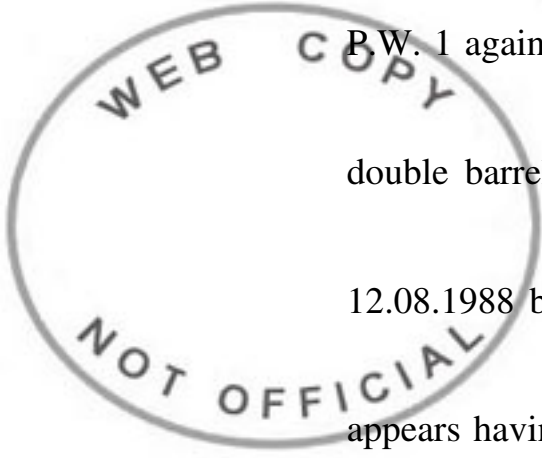
2), during his cross-examination as regards identification of appellant

Nitar Singh as one of the assailants was also put certain questions as

appears in paragraph 9 of P.W. 2. P.W. 2 stated that he was not

acquainted with the father of appellant Nitar Singh and he did not also

know as to how many brothers the appellant was. He only knew Ghura



Singh of village Sahpur and further that he had never seen appellant Nitar

Singh prior to the occurrence. If he had never seen the appellant Nitar

Singh prior to the occurrence then in our opinion, it was important as to

how he identified the appellant Nitar Singh as one of the accused

persons and named him as an accused who had participated in

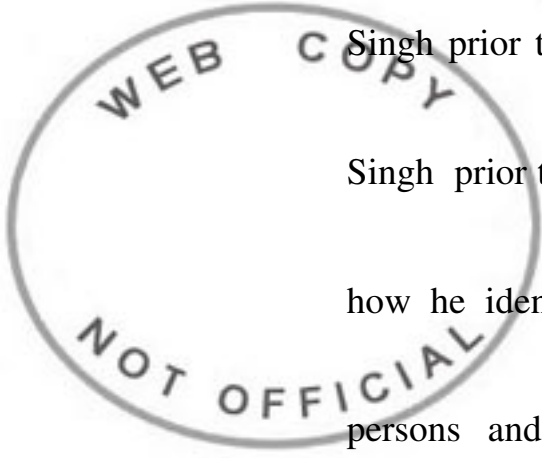
commission of the offence. Thus, we find that there is doubt as regards

the participation of appellant Nitar Singh in commission of the offence

and, as such, we do not have any hesitation in acquitting him of the

charges for which he had been held guilty and was duly punished.

23. This brings us to consider the complicity of appellants Anil Singh and Wakil Singh who had been summoned under Section 319 Cr.P.C. We want firstly to note that the two appellants were not named in the FIR. The two were sons of appellant Dashrath Singh, the staunch enemies of P.W. 1 Devendra Kumar Singh and P.W. 5 Anil Kumar Singh. If they had duly been identified during the course of



occurrence, then we could not see any reason as to why they were not

named in the FIR. In our opinion, the prosecution was implicating the

two appellants Anil Singh and Wakil Singh only because they were sons

of Dashrath Singh and it appears to us a belated attempt by the

prosecution in do so, as a result of which we also find the conviction of

appellants Anil Singh and Wakil Singh not sustainable. We acquit the

two appellants of all the charges they had been held guilty of.

24. The witnesses P.Ws. 1, 2 and 3 had identified appellant Dashrath Singh as one of the persons who had fired the shot at deceased Ghamandi Singh. The evidence regarding his participation is consistent and acceptable. He also appears bearing a motive as Ramchandra Singh and Bageshwari Singh happened to be somehow or the other either in the group of appellants Jagdish Singh and Dashrath Singh or related to him. He had the motive of avenging the killing of the two persons who were suspected to be killed by deceased Ghamandi

Singh and his men. Likewise, appellant Jagdish Singh also appears

consistently named and identified by two witnesses P.Ws. 1 and 2 and

there is no room to doubt his participation as well. In view of the

consistency of evidence and its acceptability, we find that the prosecution

had succeeded in bringing the charges home against appellants Jagdish

Singh and Dashrath Singh as a result of which, we dismiss Cr. Appeal

(DB) Nos. 1085 of 2006 and 1186 of 2006.

25.

In the result, Cr. Appeal (DB) No. 1089 of 2006 on

behalf of appellant Nitar Singh and Cr. Appeal (DB) No. 1106 of 2006

on behalf of appellants Anil Singh and Wakil Singh are hereby allowed

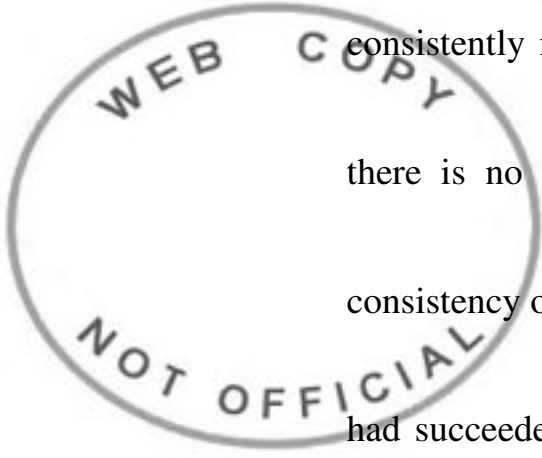
by setting aside the judgment of conviction and order of sentence passed

in their respect. However, we dismiss Cr. Appeal (DB) No. 1085 of 2006

filed by Jagdish Singh and Cr. Appeal (DB) No. 1186 of 2006 filed by

Dashrath Singh. The appellant Jagdish Singh is on bail. His bond is

hereby cancelled, he shall surrender to serve out the sentence awarded by



the court below. Appellant Dashrath Singh appears to be in jail.



Brajesh Kumar/Kundan
N.A.F.R.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

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