

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.749 of 2011

(Against the Judgment of conviction dated 06.06.2011 and Order of sentence dated 08.06.2011 passed by the Additional Sessions Judge, Fast Track Court-4th, Samastipur, in Sessions Trial No.03 of 2010).

Abhayanker Singh @ Panna Singh, son of Jawahar Prasad Singh @ Mukesh Singh, resident of village- Singhia, P.S. Singhia, District – Samastipur.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 821 of 2011

Niranjan Singh, son of Heera Prasad Singh, resident of village and P.S. Singhia, District- Samastipur.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

Appearance :

(In CR. APP (DB) No. 749 of 2011):

For the Appellant : Mr. Manoj Priyadarsi, Advocate.

For the State : M/s. Ashwani Kumar Sinha, A. Sharma and S.B. Verma, A.P.Ps.

For the Informant : Mr. Diwakar Prasad Singh, Advocate.

(In CR. APP (DB) No. 821 of 2011):

For the Appellant : M/s. Rajesh Kumar Singh & Rana Pratap Singh, Advocates.

For the State : M/s. Ashwani Kumar Sinha, A. Sharma and S.B. Verma, A.P.Ps.

For the Informant : Mr. Diwakar Prasad Singh, Advocate.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 10-03-2016

The Appellants have been convicted under Sections

302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life as also under Section 27 of the Arms Act and sentenced to rigorous imprisonment for seven years vide Judgment of conviction dated 06.06.2011 and Order of sentence dated 08.06.2011 passed by the Additional Sessions Judge, Fast Track Court-4th, Samastipur, in Sessions Trial No.03 of 2010.

2. The Case of the prosecution, according to the Fardbeyan of the Informant Sushil Kumar Singh (P.W.14), is that on 26.04.2009 at about 05.00 P.M., his father the deceased Amrendra Perasad Singh had gone to the market and was returning at around 10.00 P.M. on his Herohonda Motorcycle, however, near the P.W.D. Main Road at Dharhi Bandh, seven miscreants holding sophisticated firearms caught hold of his motorcycle and by pointing their arms on his chest surrounded him and then the present Appellants are said to have fired from the left and the right on the chest on account of which he fell down. The Informant and Birendra Kumar Singh (P.W.1) saw the occurrence from about 20 yards away in the light of the headlight of the motorcycle. One of the accused Heera Prasad Singh also fired at him but it did not hit him. He immediately turned his motorcycle and taking the route through Siwaiya Dhala Road reached home and told his uncle Amarnath Singh (P.W.3), Rajeev Kumar Singh (P.W.2) and Surendra Baitha (P.W.4) and returned to the place of occurrence

and found his father dead. His motorcycle had fallen next to him. He alleged that Heera Prasad Singh and Niranjana Singh had lost in the elections on account of which they used to threaten the deceased. This information was immediately given to the Officer Incharge of Sindhiya Police Station at which it came with the entire force and then he gave the written statement.

3. We find from the evidence of the witnesses, which is being placed before us, that 15 witnesses have been examined on behalf of the prosecution whereas 7 witnesses have been examined on behalf of the defence.

4. There are three categories of material witnesses adduced on behalf of the prosecution. P.W.1 Birendra Kumar Singh and P.W.14 Sushil Kumar Singh have deposed as eye witnesses. P.W.2 Rajeev Kumar Singh, P.W.3 Amar Nath Singh and P.W.4, Surendra Baitha as hearsay witness. P.W.5 Arun Kumar Singh, P.W.6 Braj Mohan Singh, P.W.8 Sanjay Singh and P.W.9 Ramo Rai on the circumstance of having seen the accused persons variously armed crossing them on their motorcycles around the time of occurrence and also as hearsay witnesses.

P.W.10 Dr. Uday Kumar Udhayan, P.W.11 Dr. H.K. Singh and P.W.12 Dr. Satish Kumar have testified to the post-mortem report being members of the Board of the Doctors who had conducted the

post-mortem. P.W.15 Jagdanand Thakur is the Investigating Officer.

5. To deal with the circumstantial evidence, first we would like to refer to the evidence of P.W.5 Arun Kumar Singh. He stated that on 26.04.2009 he had gone to Kusheshwar Asthan alongwith Braj Mohan Singh (P.W.6) and was returning in the evening on a motorcycle which was being driven by P.W.6. At around 10.00 P.M. they reached Singhia and then reached Salepur, where they saw from the opposite direction three motorcycles on which the present Appellants and others who he names were sitting with arms. He and P.W.6 identified them in the light of the motorcycle head light. Soon thereafter, when they reached Dharhi Bandh, near the road they heard screaming and saw the Informant Sushil Kumar Singh (P.W.14), Birendra Kumar Singh (P.W.1), Amar Nath Singh (P.W.3), Rajeev Kumar Singh (P.W.2) and Surendra Baitha (P.W.4) and several others saying that the present Appellants and some others who they named had killed the deceased. Then they saw the dead body of the deceased.

P.W.1 Birendra Kumar Singh and P.W.14 Sushil Kumar Singh (probably wrongly mentioned as Surendra Singh) disclosed that Heera Prasad Singh, Manoranjan Singh, Rakesh Singh and the present Appellants had shot dead the deceased. He also disclosed to them that he had seen Heera Prasad Singh, the present Appellants and others on the motorcycles near Salepur bridge. He stated that after the

Panchayat election in which the wife of Heera Prasad Singh had lost whereas the sister-in-law of the deceased had won in 2006, there was tension between the parties.

In cross examination, he stated that he was examined three days later and that he stopped his motorcycle when they had seen the armed motorcyclists from a distance of about 10-15 meters. However, he could not disclose about the colour of the motorcycles and added that every minute a motorcycle was crossing them.

His attention was drawn to the earlier statement recorded under Section 161 of the Code of Criminal Procedure that he had not stated of having seen Heera Prasad Singh on one motorcycle and the Appellant Niranjana Singh and one Manoranjan Singh on another motorcycle as also about accused Rakesh Kumar Singh being with them.

His attention was also drawn to the fact that he had not stated that the witnesses had disclosed the names to him which he denied. However, his evidence as a hearsay witness is not admissible since neither P.W.1 nor P.W.14 confirm the factum of disclosure.

6. P.W.6 Braj Mohan Singh is the brother of the deceased who had accompanied the abovementioned witness Arun Kumar Singh (P.W.5) has given more or less similar statement of returning on the motorcycle when P.W.5 had given him lift on the way. He stated

that on the way he had seen the accused persons near Dharhi Bandh and stopped his motorcycle. Also that on cries they went to the place of occurrence and saw P.W.1 Birendra Kumar Singh, P.W.2 Rajeev Kumar Singh, P.W.3 Amar Nath Singh, Ganeshi Pandit and P.W.14 Sushil Kumar Singh and other villagers gathered there disclosing the names of the Appellants and other accused as perpetrators of the crime. He also reiterated the cause of the occurrence was Panchayat election that had taken place in the year 2006 in which his wife had won the election whereas the wife of Heera Prasad Singh had lost. He stated that earlier the Appellant Niranjana Singh had threatened of dire consequences.

He was a witness to the blood-stained earth, motorcycle of deceased.

In cross examination he stated that his wife had contested the Mukhiya elections against the wife of Heera Singh and had one. There had never been any friction between Heera Singh and the deceased.

Importantly to a Court query, he denies having stopped his motorcycle for identifying anyone else on the way.

His evidence as a hearsay witness is inadmissible since none of the witnesses from whom he learnt the names of the Appellants have supported the factum of disclosure.

7. P.W.8 Sanjay Singh, who is the brother of P.W.1, stated that on 26.04.2009 he alongwith Ganeshi Pandit (not examined) and Ramo Rai had gone to buy bullocks. At around quarter past twelve, when they were returning and had reached Salepur School, they heard the sounds of firing. They stayed there because of fear and then saw three motorcycles crossing them on which the present Appellants and some other accused persons, whose names were seated. They then reached Dharhi Bandh and heard sounds of cries and saw the deceased fallen dead. He had learnt from P.W.14 Sushil Kumar Singh, P.W.1 Birendra Kumar Singh and P.W.3 Amar Nath Singh that his father had died. The reason for the occurrence was the earlier election dispute.

We find that that this witness has not stated about disclosure of names of any of the accused persons by P.W.1 Birendra Kumar Singh, P.W.14 Sushil Kumar Singh the Informant and P.W.3 Amar Nath Singh. In cross examination, he stated that he was the brother of P.W.1 and there is nothing else which is of any importance in his evidence.

8. P.W.9 Ramo Rai, who is named by P.W.8, as traveling together has given a similar statement. However, he stated that when they reached the place of occurrence a crowd had gathered and Birendra Kumar Singh (P.W.1) and Sushil Kumar Singh (P.W.14)

were also present there. On asking them, they disclosed that Heera Prasad Singh, the present Appellants, one another person and Ghutan Mian had shot the deceased. He stated that he was sitting in the middle of the motorcycle driven by P.W.8.

In cross examination, he also stated that Mukhiya Election had taken place about four years ago and in between him and the accused there was no conversation. He also stated that he had not seen P.W.6 Braj Mohan Singh and P.W.4 Surendra Baitha on the way who had given the similar statement of having seen the accused persons crossing their way.

We, thus, find that this witness has stated the names of the Appellants and some other accused persons were disclosed by the persons who had gathered there but none of them have supported this fact.

The reason why we are inclined to reject the evidence of the aforesaid witnesses on the factum of seeing the Appellants with arms while crossing them is because it does not fit in with the prosecution case. As per the Informant after he saw his father being assaulted he turned his motorcycle and went to the village through what appears a circuitous route and, thereafter, raised 'hullah', gathered P.Ws.2, 3 and 4 and returned to the place of occurrence, where he found his father lying dead. In such circumstances, the

evidence of P.Ws.5, 6, 8 and 9 that soon after having crossed the accused on the way they heard cries and on reaching the place of occurrence they found P.Ws.1, 2, 3, 4 and 14 already present there is not believable. Evidently, these witnesses appear to have been foisted to further nail the complicity of the Appellants and have to be rejected.

9. Now, to deal with the hearsay evidence.

10. We find that P.W.2 Rajeev Kumar Singh is the nephew of the deceased, who stated that on 26.04.2009, P.W.14 and P.W.1 came on the motorcycle and stated that seven persons including the present Appellants had killed the deceased at which he alongwith others went to the place of occurrence where he saw the dead body of the deceased. He has stated the reasons for the occurrence was Mukhiya Election.

In cross examination, he asserted that he had given evidence as per the versions of P.W.14 but there is no support from him and, therefore, his evidence to this extent is inadmissible.

11. Next witness, P.W.3 Amar Nath Singh, who is the uncle of the Informant, has stated that on 26.04.2009 suddenly, the Informant and Birendra Kumar Singh (P.W.1) came on the motorcycle screaming that his father had been shot dead on which he alongwith Surendra Baitha (P.W.4) and Rajeev Kumar Singh (P.W.2) started to

get ready to go there and the Informant narrated to them about the occurrence in detail. He further stated that the police came to the place of occurrence on information and recorded the statement of the Informant as also prepared the inquest on which he had signed which he proves as Ext.2.

In cross examination, he asserted that he had been informed about the occurrence by the Informant. He explained that the place of occurrence was about one kilometer from his house. He alongwith Rajeev Kumar Singh (P.W.2), Surendra Baitha (P.W.4) , Sushil Kumar Singh (P.W.14) and Birendra Kumar Singh (P.W.1) had reached the place of occurrence simultaneously.

From the evidence of P.W.14, we find that he had not stated about the disclosure of the occurrence to this witness, even though, he stated that he had returned to the place of occurrence where his father was lying dead with P.W.2 Rajeev Kumar Singh, P.W.3 Amar Nath Singh, P.W.4 Surendra Baitha and several other villagers. Hence, the evidence of this witness on the point of being hearsay is not admissible in law.

12. P.W.4 Surendra Baitha has stated that while he was sleeping in the house of the deceased, suddenly, P.W.1 and P.W.14 came screaming saying that the Appellants had murdered his father. Rajeev Kumar Singh (P.W.2) and Amar Nath Singh (P.W.3) then went

to the place of occurrence on a motorcycle where the dead body of Amrendra Kumar Singh was lying and a little later, Police Officers reached there.

Importantly to a Court query, he stated that he did not know as to who had informed Pintu Singh (P.W.14) the Informant and Biru Singh (P.W.1) about the murder of the deceased. He did not know as to whether they were at home or outside.

In cross examination, he clarified that he had not seen the occurrence. Where this witness is concerned, there is no support from P.W.14 that he had disclosed about the occurrence to him and, hence, this part of the evidence is evidently not admissible in law.

No doubt, P.W.1 has stated that he had given information about the occurrence to P.W.2, P.W.3 and P.W.4 but when he has not given the exact details of disclosure, it would be merely an assumption that he had given the same version which they are presently giving before the Court. It was incumbent upon the prosecution to give exact details of disclosure and its failure would entail its rejection.

13. Now, to deal with the direct evidence of P.W.1 and P.W.14.

P.W.1 stated that on 26.04.2009 at about 10.00 A.M. when he was returning alongwith the Informant P.W.14 and had reached near Singhia Bazar and turned to Dharhi Bandh, he saw seven persons



including the present Appellants having surrounded the motorcycle of the deceased. In the headlight of the motorcycle, he saw the accused Heera Prasad Singh (now acquitted) holding the handle of the motorcycle with arms whereas Appellant Niranjana Singh had pointed the pistol on the left of the chest of the deceased and Appellant Panna Singh had also pointed a pistol on his chest. Thereafter, Manoranjan Singh and Rakesh Singh (now both acquitted) stood in front of the motorcycle whereas Md. Islam stood below in the 'Bandh'. There were also some unknown accused persons. Heera Prasad Singh ordered, whereafter, the present Appellants fired at the deceased due to which he fell down. Heera Prasad Singh also fired at them but it did not hit them. The Informant P.W.14, Sushil Kumar Singh immediately turned his motorcycle and screaming reached his house and gave information about the occurrence to P.W.3 Amar Nath Singh, P.W.2 Rajeev Kumar Singh and P.W.4 Surendra Baitha. Number of villagers screaming reached the place of occurrence. The police also reached the place of occurrence and prepared the seizure list of blood stained earth, a cartridge and the motorcycle, on which he also signed. He proves the seizure list as Ext.9.

In cross examination, he explained that he had gone to Darbhanga in the day time and while he was returning by foot, on the way near Singhia, he met P.W.14 who gave him a lift. There is

nothing else of note in his cross examination.

14. P.W.14 Sushil Kumar Singh stated that on the date of occurrence at about 10.00 A.M. while he was returning from Singhia Market, his father was returning on his motorcycle bearing certain number from Singhia and he and P.W.1 were following him at close distance. Then he saw near Dharhi Bandh seven accused persons with sophisticated arms having caught hold of his father. He saw this occurrence from about 20 meters, i.e., about 66 feet and in the headlight of motorcycle, he identified Heera Prasad Singh having caught hold of the motorcycle and from the left Appellant Niranjana had pointed a pistol on his father and Appellant Panna Singh had pointed from the right. On the orders of Heera Prasad Singh, Appellants fired, whereas two accused persons, namely, Rakesh Kumar Singh and Manoranjan Singh had surrounded the deceased alongwith some unknown persons. He has stated that, thereafter, Heera Prasad Singh fired at them but it passed over their heads and it did not hit them and so he turned his motorcycle and taking the main road reached his home after which he came back with his uncle (P.W.3), P.W.2 and P.W.4 and several other villagers. By then, the accused persons had fled away. He saw his father in a pool of blood fallen dead. He explained that the reason for the occurrence was previous Panchayat election. He also stated that he gave information

to the Singhia Police Station and on its arrival he gave similar statement. He added that a large number of villagers had gathered near the dead body and the people were sloganeering against the police party and protesting at the occurrence.

At around 12.00 O'clock the police had reached but the people were demanding senior police officials should come and that his statement which was scripted by Balbir Singh (not examined) was not given till such time as the senior police officials came in the morning. He identified his signature on the written report as Ext.5. He also stated about filing of protest petition.

He stated that several persons had contracted over Chimney with accused Heera Prasad Manjhi, i.e., Jagdish Ram, Mahendra Ram (D.W.6), Jeaul Haque (D.W.3), Md. Sarwar Hussain (D.W.7), Md. Shaukat Ali (D.W.2), Sajjan Kumar Singh (D.W.1) and P.W.7 Sudhir Kumar Singh. He proves the protest petition (Ext.6) and the Inquest Report (Ext.2/1). He also stated that he informed D.W.1 Sajjan Kumar Singh, J.D.(U). Leader that the crowd was gathering and they were required to be controlled. He once again stated about their past election in the year 2006 in which his aunt had won whereas the wife of Heera Prasad Singh had lost due to which there was tension between the parties.

In cross examination, he was asked about the number of



his motorcycle but he did not remember it accurately and that he had no mobile. He also stated that at 05.30 P.M. his brother's father-in-law who used reside at Patna had come and the Written Report was scripted by him and, thereafter, was given to the police at 06.00 A.M. He also stated that his village is about 1½ kilometer away from the place of occurrence which would not take more than one minute to reach. He also denied having given any information to the police and it was the villagers who had done so at 11.00 P.M. but what information was given he did not know. Thereafter, the police party had come at 12.00 P.M. He also stated that between 2006 and 2010 he had gone to Singhia market several times but could not know whether there was any aggression by the accused persons nor had he given any 'Sanaha' about threat by the accused persons to the police. He also stated that now-acquitted Heera Prasad Manjhi was Pramukh between 2000 and 2006.

15. P.W.12 Tribhuwan is a formal witness, who proves the First Information Report.

16. P.W.10 is Dr. Uday Kumar Udhayan, who proves the Post-Mortem stated that he found the following injuries on the person of the deceased.

- (I) Lacerated wound on left lateral chest wall about 10 inches below left posterior auxiliary fold. Size ½" diameter, oval in shape margin

inverted, charred. Tattooing present around the wound covering area about 5" x 6" (wound entry).

(II) Lacerated wound on left side of back about 3" below angle of scapula. Size 1/2" diameter, oval in shape margin inverted, charring present (wound of entry).

(III) Lacerated wound in right bypocondrial region of anterior abdominal wall. Size 1" in diameter. shape irregular, Margin inverted (wound of exit).

(IV) Lacerated wound on anterior chest wall near the sternum at the level of left IInd rib. Size about 3/4 in diameter shape irregular. Margin inverted (Wound of exit).

17. Interestingly, we find that the prosecution in support of its case has also examined one Sudhir Singh as P.W.7. No doubt, he has been declared hostile but it seems it is not on any relevant point. He does not support the story given by the Informant inasmuch he has stated that on 26.04.2009 at about 12.30 P.M. an information was received from P.W.1 through his nephew that the deceased Amrendra Kumar Singh had not returned. He was then woken up on this information. He then called up the son of the deceased, the Informant P.W.14 who suggested that he should look for him and he would also do the same. Then he alongwith Sajjan Kumar Singh (D.W.1) left on

the motorcycle to look for the deceased and when they reached near Bahla Chowk they found the motorcycle where P.W.14, the Informant and P.W.1 purported to be eye witnesses also reached there. P.W.14 stated that it appeared to him that a vehicle had fallen near the 'Bandh' at which he went to look closely and found the deceased lying dead. He immediately informed the Singhia Police Station. At this stage, he was declared hostile.

However, his attention which was drawn is only to the extent that he had not stated before the police that he had earlier stated that the Informant P.W.14 had informed him that the family members of Heera Prasad Singh had shot at his father at which he had gone to the place of occurrence with D.W.1 Sajjan Kumar Singh. His attention was also drawn to the fact that he had stated to the police that the deceased used to say there is no reason for anyone to have enmity with him and, if at all, something happened, it would be at the hands of Heera Prasad and his family members.

We, thus, find that this witness has merely stated that the Informant had, if it all informed him that the deceased had been shot at by the family members of Heera Singh. In cross examination, he conceded that the Appellant Niranjana was an accused alongwith him.

18. On going through the evidence of the defence witnesses, we find that D.W.1, is the nephew of P.W.7. In support of

the evidence of P.W.7, he stated that on 26.04.2009 at about 0.500 P.M. the deceased who was a J.D.U. leader came to the Party Office and sat discussing with various persons. Later at 08.15 P.M., he alongwith the deceased left on the motorcycle of the deceased and he himself was dropped off near his house. He went to sleep on reaching home. At around mid night, the Informant called him up to say that his father had not returned. So he tried to inform P.W.7 but his phone was switched off so he called up his nephew and told him to inform P.W.7 about this. He also reached the house of Sudhir Singh P.W.7 where he saw him calling up the Informant and heard him telling Informant that both of them were coming to him and they reached at the place of occurrence and both of them saw motorcycle as well as the deceased fallen and dead. Soon thereafter P.Ws.1 and 14 also arrived.

P.W.7 informed the Officer Incharge of Singhia Police Station. On this information, the Officer Incharge came at 12.30 P.M. who enquired from the Informant but he stated that he did not know about the accused persons. The Informant also did not disclose any names to him and P.W.7. When the Officer Incharge requested the Informant to give statement he refused to do so. The Officer Incharge then called up Dy.S.P. who came around 01.30 A.M. alongwith rest of the police force but yet P.W.14 did not give any statement. It was

only at 05.00 A.M. on 27.04.2009 the written statement was given and it was then he learnt the names of the accused persons.

In cross examination, he admitted that P.W.7 Sudhir Singh and Appellant Niranjan Singh were accused in one case which is going on. He also stated that he had come to Court on the same day as P.W.7 to give his evidence but his statement was not recorded and he had been examined during investigation.

His attention was drawn to the earlier statement that he had stated earlier that at mid night the Informant had called him and told him to come at Dharhi Bandh because his father had been killed at which he stated that he did not have a vehicle. He had informed the nephew of P.W.7 about it. His attention was also drawn to the fact that he had stated that P.W.14 had told him that the family of Heera Prasad Singh had killed the deceased as also that the deceased used to say if at all he apprehended danger, it was at the hands of Heera Singh and his family. Nothing else of importance has been stated by this witness which would turn the fate of the case.

19. D.W.2 Md. Saukat Ali stated that on 26.04.2009 at about 10.00 P.M. he heard the sounds of firing and when he came out of the house, he learnt that Amrendra Singh had been killed and his dead body was found where several persons were gathered. He stated that his house was 200-250 yards away from the place of occurrence

where the deceased had been murdered.

20. D.W.3 Jeaul Haque has also stated that he had heard some noise at mid night and on the next morning at 05.00 A.M. he learnt that the deceased had been killed and when he went there he found several persons gathered there. However, no one disclosed any names.

21. D.W.4 Ganga Prasad Singh is on the point of alibi of Appellant Panna Singh so also D.W.5 Pannalal Chanpal.

22. D.W.6 Mahendra Ram stated that on 27.04.2009 at 05.00 A.M. he saw a big crowd and found Amrendra Singh dead. No one disclosed any names to him.

23. D.W.7 Md. Sarbar Hussain stated that in the night of occurrence, he heard some noise and later learnt that Amrendra Singh had been shot dead. The villagers had seen some persons fleeing away from the place of occurrence around 10.00 P.M. However, he does not mention any names.

24. Having discussed the evidence of both the sides, it would be important to deal with the evidence of Investigating Officer P.W.15 Jagdanand Thakur. He stated that on 26.04.2009 at around 11.00 P.M. he received information that a person had been shot dead at village Belaha at which he alongwith the rest of the police force proceeded to the place of occurrence and reached there on 27.04.2009



at 12.45 P.M. A number of persons had gathered there who were shouting slogans and were agitated. He saw the dead body of Amrendra Kumar Singh. He left the dead body near the rest of the police personnel and asked the family members to give a statement but they were not ready. In the meanwhile, crowd started to create a law and order problem so he informed the senior police officials who reached at 05.30 A.M. When they pacified the crowd, P.W.14 gave his written statement to him which is proved as Ext.7. He stated that formal First Information Report was instituted by Ram Chandra Paswan (not examined) and that he prepared the Inquest Report and the list of the seized articles which was marked as Ext.9. He sent the dead body for post-mortem examination and searched for the accused persons but did not find them. On inspection of the place of occurrence, it was found to be within Singhia Police Station, and village Belaha was to the west of the main road about 100 yards from there. On going to Singhia, which is known as Dharhi Bandh, near the Kachcha Road, there was the dead body of the deceased and the motorcycle. This place was lonely and 1½ kilometers from Sewaiya Gaon.

He recorded the statements of the witnesses and arrested the accused persons but nothing incriminating was recovered from their houses. He stated that he recorded the statement of P.W.1, P.W.2

and it was only at 03.00 P.M. on 27.04.2009 that the First Information Report was instituted. The attention of P.W.7 was drawn to the earlier statement that, in fact, it had been disclosed to him by the Informant that the family of Heera Prasad Singh had killed his father.

In cross examination, he stated that he had reached the place of occurrence at 12.30 P.M. on 27.04.2009 after receiving information about the occurrence which was received on the mobile from Sudhir Singh (P.W.7) who did not disclose the names of any of the assailants. He once again reiterated that despite entreaties P.W.14 refused to give any statement and between the time of his arrival till 05.50 P.M., i.e., the time when the written report was given, the names of accused persons was not disclosed by any one. He stated that he had recorded the statements of Mahendra Singh (D.W.6), Jealul Haque (D.W.3), Md. Sarbar Hussain (D.W.7) and Md. Saukat Ali (D.W.2). He had recorded the statement of D.W.1 Sajjan Kumar Singh and P.W.7 Sudhir Singh.

25. It has been submitted by the counsel for the Informant that P.W.7 has given false evidence to the extent that even though it was disclosed to him by the Informant that the family of Heera Prasad Singh had killed his father, he conceals this fact. Similar is the position of D.W.1 Sajjan Kumar Singh, who has tried to save the Appellants because all the three belonged to the same coterie.

However, even if we do not place reliance on their evidence, fact remains that evidence of independent witnesses of the area, i.e., D.Ws.2, 3, 6 and 7 together with the Investigating Officer say that no names were disclosed till 06.00 A.M. which raises a reasonable doubt as to whether any one had witnessed the occurrence.

It is interesting to note how the Informant in his evidence has tried to discredit the evidence of these witnesses by saying that P.W.7, D.W.1, D.W.2, D.W.2, D.W.3, D.W.6 and D.W.7 all had interest in the Chimney of accused Heera Singh. Thus, trying to say they all belonged to the same group hence their non-support.

26. Now, we proceed to deal with the direct evidence of P.W.1 and P.W.14 and to discuss as to why we are not inclined to place reliance on their evidence. P.W.1 and P.W.14 both have stated that they were going on the same road as the deceased and they had seen the accused persons with specific overt act from a distance of about 60 feet in the headlight of their motorcycles. Even though, both P.Ws.1 and 14 have given specific number of motorcycle of the deceased, none of these witnesses, despite opportunities afforded to Informant has not done so with regard to his own which may be a minor omission but in the facts and circumstances of the case, it assumes importance since only such detail could have conclusively

proved the fact of their traveling on the same road as the deceased. The non disclosure has left us with doubt as to whether the Informant indeed was on his motorcycle, if at all he had one, with P.W.1 and was traveling on the same road and had witnessed the occurrence.

Secondly, it is highly improbable that a person would be able to see from a distance of 60 feet with such accuracy and details which the witnesses have disclosed in a state when they themselves were under threat and allegedly moving on a 'Kacha' road trying to dodge the bullets.

Further, we find from the evidence of D.W.2 Md. Saukat Ali and D.W.3 Jeaul Haque, D.W.6 Mahendra Ram and D.W.7 Md. Sarbar Hussain who live within the vicinity of the place of occurrence and also examined by the Investigating Officer that no names were disclosed by anyone when they reached the place of occurrence to see the dead body. This fact is corroborated by the Investigating Officer who also stated that between 12.45 A.M. to 06.00 A.M., he could not learn the names of the assailants and the family members of the deceased were not ready to give any evidence. This leads us to the conclusion that, in fact, P.W.1 and P.W.14 were not eye-witnesses and the assailants were unknown and it is only subsequently for reasons of the election dispute, which has been mentioned above, Appellants have been roped in. Neither of the eye witnesses have explained

satisfactorily as to why they had withheld the information to the Police for 6 hours and gave the written report only on arrival of Balbir Singh (not examined) who happened to be the father-in-law of his brother who was in the C.R.P.F.

27. The other point which has given rise to suspicion in our minds is the fact that even though the police had arrived at 12.45 A.M., the written report was purportedly given at 06.00 P.M. but it was received at the police station which was only five kilometers away only at 03.00 P.M.

No doubt, he has generally stated that he was busy on account of routine matters, such as, handling law and order situation but does not specifically explain the delay in sending the written report to the Police Station. We also note that he had sent the dead body, after preparing the Inquest Report immediately to the hospital where the post-mortem was performed at around 09.00 A.M in the morning much before the written report was received at the Police Station. So why the written report was not sent immediately to the police station raises a doubt as to whether it was purposely delayed so as to match it with the Post-Mortem Examination Report. In all probability, even the time which is now being given about submission of the written report appears incorrect and it could be any time before 28.06.2009, i.e., the next day, when the First Information Report was received in

the court.

28. As for motive, we find that the prosecution has alleged that it was on account of the election dispute of year 2006 whereas the occurrence had taken place in 2009 which is quite remote. Also in this intervening three years period there was never any complaint by the prosecution party about threat having been meted out by the accused persons or occurrence of any other incident.

29. In the facts and circumstances of the case, for reasons discussed above, these Appeals are allowed. The Judgment of conviction and Order of sentence passed against the Appellants, above named, are set aside. They are acquitted of the charges. The Appellants are in jail custody, therefore, they are directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**Pradeep Srivastava/A.B.Bhardwaj/
A.F.R.**

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