

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction, dated 30.03.2009, and order of sentence, dated, 04.04.2009, passed by Shri Ved Prakash, learned Additional District & Sessions Judge, F.T.C.-V, Siwan in Sessions Trial No. 89 of 1992 / 25 of 2004, arising out of Raghunathpur P.S. case No. 51 of 1989)

Criminal Appeal (DB) No.410 of 2009

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1. Om Prakash Singh, Son of Late Mahatam Singh, At + P.O.- Narhan, P.S.- Raghunathpur, District- Siwan.
 2. Anil Kumar Singh @ Anil Singh, Son of Bacha Singh, At + P.O.- Narhan, P.S.- Raghunathpur, District- Siwan.

.... Appellants

Versus

The State of Bihar

.... Respondent

With

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Criminal Appeal (DB) No. 450 of 2009

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Lal Babu Singh, Son of Late Kedar Singh, Resident of Village- Narhan, P.S.- Raghunathpur, District- Siwan

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (DB) No. 410 of 2009)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate
Mr. Bindhyachal Singh, Advocate
Mr. Ranjan Kumar Dubey, Advocate

For the Respondent/s : Mr. A. K. Sinha, A.P.P

For the Informant : Mr. Janardan Singh, Sr. Advocate
Mr. Arbind Kumar, Sinha, Advocate

(In CR. APP (DB) No. 450 of 2009)

For the Appellant/s : Mr. Bindhyachal Singh, Advocate
Mr. Bipin Kumar Singh, Advocate
Mr. Rakesh Chawra, Advocate

For the Respondent/s : Mr. S. C. Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 20-09-2016

Both the appeals arise out of the common judgment



dated 30.03.2009, passed by learned Additional District & Sessions Judge, F.T.C.-V, Siwan in Sessions Trial No. 89 of 1992 / 25 of 2004, arising out of Raghunathpur P.S. case No. 51 of 1989, whereby all the appellants have been convicted under Sections 302/34 of the Indian Penal Code and Section 27 (1) of the Arms Act. The appellants Om Prakash Singh and Anil Singh [Cr. Appeal (DB) No. 410 of 2009] have been further convicted under Sections 307/34 and 326 of the Indian Penal Code. All the appellants have been sentenced to under go Rigorous Imprisonment for life under Section 302/34 of the Indian Penal Code and a fine of Rs.15,000/- each and in default to undergo Rigorous Imprisonment for 2 years. They have been further sentenced to under go Rigorous Imprisonment for five years under Section 27(1) of the Arms Act. The appellants, namely, Om Prakash Singh and Anil Singh [Cr. Appeal (DB) No. 410 of 2009] have further been sentenced to undergo Rigorous Imprisonment for 7 years and 5 years respectively under Sections 307/34 and 326 of the Indian Penal Code. However, all the sentences have been directed to run concurrently.

2. The prosecution case, as set out in the Fardbeyan (Ext-2) of Sudheshwar Singh (P.W.5), son of late Rajballabh Singh of village Narhan, P.S.- Raghunathpur, district Siwan, recorded by Sub-inspector N. Rahman of Town police station on 22.06.1989 at 10.45



P.M. in Sadar Hospital, Siwan is that on 22.06.1989, at 6.30 P.M., he was sitting at his door near Pakar tree along with Jagdish Singh (not examined) and Vishwanath Singh (not examined) and were talking about farming. The informant's son Manoranjan Singh (P.W.1) and his cousin Manoj Kumar Singh (deceased) were sitting on the Chowki, near Dochara (Dalan) just south to his door. In the meantime, co-villager Ram Nath Singh (not appellant), and appellants, namely, Lal Babu Singh, Anil Singh and Om Prakash Singh came armed with double barrel gun. Furthermore, from the window of Bhushaghar, he saw and heard the accused hurling abuses and enquiring from his son Manoranjan Singh and cousin Manoj Kumar Singh as to where about of Raj Mangal Singh, to which his cousin Manoj Kumar Singh (deceased) asked as to why they are looking for his father with gun. In the meantime, Lal Babu Singh exhorted that his father is not here, let us kill him instead. Taking the lead, Lal Babu Singh himself fired at his cousin, namely, Manoj Kumar Singh, which hit his stomach, on account of which he fell. In the meantime, Ram Nath Singh, Anil Singh and Om Prakash Singh fired from their double barrel guns causing injuries on the shoulder, face and chest of his son Manoranjan Singh. Thereafter he ran towards west, raising halla. The cause of occurrence is that on the day of last Holi festival, accused Lal Babu



Singh and Ram Nath Singh came to his door and shot at his family members. They were taken into custody and their bail applications were rejected by the Court. The accused pressurized the prosecution side to compromise or face the consequences. As they did not relent, the accused persons have committed the occurrence. On hearing hulla, a number of villagers arrived at the place of occurrence, who witnessed the occurrence. With the help of villagers, he carried his cousin Manoj Kumar Singh and his son Manoranjan Singh, who were in serious conditions, for treatment at hospital, but his cousin Manoj Kumar Singh died on the way to hospital.

3. On the basis of the Fardbeyan of the informant, formal F.I.R., bearing Raghunathpur P.S. case no. 51 of 1989, dated 23.06.1989 under Sections 302, 324, 307/34 of the Indian Penal Code and Section 27 of the Arms Act, was drawn against the accused persons. The police after investigation submitted charge-sheet against the appellants under Sections 302, 324, 307/34 of the Indian Penal Code and Section 27 of the Arms Act. The learned Magistrate after taking cognizance committed the case to the Court of Sessions. Thereafter Charges were framed under Sections 302, 324, 307/34 of the Indian Penal Code and Section 27 of the Arms Act against all the appellants to which they pleaded not guilty. In their statement made



under Section 313 of the Code of Criminal Procedure, there is complete denial of the commission of the offences by the accused-appellants.

4. The prosecution examined altogether 8 (eight) witnesses in support of its case. Out of these 8 witnesses, P.W. 3 Dinan Nath Singh and P.W. 4, Akhileshwar Singh, are hearsay witnesses. P.W. 2 Nathuni Singh is the witness of inquest and has put his signature on the Fardbeyan. P.W. 8 Ram Pravesh Ram is a formal witness, who has proved F.I.R. as Ext.6/1. P.W.6 Dr. Ram Naresh Singh conducted post-mortem on the dead body of the deceased Manoj Kumar Singh and also examined the injured Manoranjan Singh (P.W.1). P.W. 7 Mithilesh Kumar Singh is the investigating officer of the case. P.W. 1 Manoranjan Singh, an injured and P.W.5 Sudheshwar Singh, who is informant of the case, are eye witnesses of the occurrence.

5. The informant, who is P.W.5, stated that on 22.06.1989, at about 6.00 – 6.30 PM, he was sitting at his door near Pakar tree along with Vihswanath Singh and Jagdish Singh (both not examined) and were talking about farming. At that time, his son Manoranjan and his cousin Manoj Singh were also sitting on the Chowki, north of Dochara (Varanda), just south to his door. In the



meantime, Lal Babu Singh, Anil Singh, Om Prakash Singh and Ram Nath Singh armed with double barrel gun entered into his Sahan. As soon as they arrived at, in his Sahan, Lal Babu Singh hurled abuses and enquired about Raj Mangal, whereupon his cousin Manoj Kumar Singh stated that as to why he is looking for Raj Mangal Singh with gun. Thereupon, Lal Babu Singh said that as Raj Mangal is not around, let us kill both of them. Thereafter Lal Babu Singh fired at Manoj Kumar Singh, which hit his left chest and consequently he fell on the ground. At that time Anil Singh, Om Prakash Singh and Ram Nath Singh also fired on Manoranjan Singh, on account of which he sustained injuries on left knee, chest, shoulder and face. Thereafter he ran towards west raising hulla. On hearing his hulla, some persons arrived, who saw the occurrence. Thereafter, on the Jeep of Chandrama Sah, he carried his son and nephew to the Sadar hospital for treatment with the help of villagers. While he was carrying the injured to Sadar Hospital for treatment, Manoj Kumar Singh died on the way. When they reached Sadar Hospital, the doctor also declared Manoj Kumar Singh as dead and admitted only Manoranjan Singh for treatment. He reiterated the cause of occurrence stating that in the preceding Holi festival, Lal Babu Singh, Jitendra Singh, Ashok Singh, Ramjit Singh along with other persons came and fired at his family



members. Thereafter they pressed for compromise, to which Raj Mangal Singh was not agreeable. Due to aforesaid reasons, the accused committed the instant crime. He further stated that the witness Vishwanath Singh has died, whereas Jagdish Singh, Kamal Singh, Manna Singh have connived with the accused. He further stated that Darojajee of town P.S. Siwan came and recorded his Fardbeyan and finding the same to be correct, he put his signature. He proved the Fardyeen as Ext.2. He also proved the signature of Nathuni Singh and Kamta Singh as Ext.1 and 1/1.

6. This witness in his cross-examination stated that Raj Mangal Singh had three sons, namely, Dineshwar Singh, Akhileshwar Singh and Banke Singh. Rajmangal Singh is alive and his age would be 87-88 years. His eye sights have become weak and he lives in his ancestral house. His Sahan is east to west in length and north to south in width. The ancestral house is spread in 9-10 Kathas. He stated that west to his house, at a distance of 600-700 yards, house of Kalika Singh is situated, who is a witness. The house of Shiv Kumar Singh and Balram Singh are situated near the house of Kalika Singh. The Bhusaghar is situated east to Pakari tree. He stated that Bhusaghar is in the share of Dochara and it is 20-21 cubits in length and 8 cubits in width. The Pakari tree is situated in this Sahan. The Bhusaghar is at a



distance of 1 feet from his Sahan. He further stated that the Bhusaghar opens in west and the walls are made of bricks and the roof of Dochara is tiled. The wall of Dochara is just adjacent to the road, going towards west. Eastern wall of Dochara is adjacent to the road. The exit of Bhusaghar is on the west and a window is situated on the eastern wall, 3 cubits from the south. He stated that it is not correct that there are three windows on the eastern wall of Bhusaghar.

7. It would appear from the evidence of this witness that Pakari tree is situated east to the house of the informant and the Bhusaghar is situated further east to Pakari tree and further adjacent east to Bhusaghar, is the village road, which is running north to south. The door of Bhusaghar is on the west and the window is on the eastern wall, 3 cubits from south. It further appears from the evidence of this witness that he has seen the entire occurrence from the window of Bhusaghar.

8. P.W. 1 Manoranjan Singh, who is the son of the informant and also an injured, has claimed to be an eye witness of the occurrence. He stated that on 22.06.1989 at about 6.00 - 6.30 P.M., he was sitting on a Chowki along with his uncle Manoj Kumar Singh in his southern Sahan, just in front of the southern Baithka. His father (P.W.5) was also sitting under Pakari tree along with Jagdish (not



examined), Bishwanath Singh (not examined). In the meantime, appellant Lal Babu Singh, Anil Singh and Om Prakash came at his house armed with double barrel gun. As soon as they came, Lal Babu Singh abusively asked about Raj Mangal Singh, whereupon his uncle Manoj Kumar Singh enquired as to what is the matter. Instead of replying, Lal Babu Singh exhorted the others to kill, opened fire from his double barrel gun on Manoj Kumar Singh, which caused injury, on account of which he fell on the ground. Thereafter, Anil Singh and Om Prakash Singh also fired by their double barrel gun at him. He sustained injury on left side of his chest and on account of which he became unconscious and fell on Chowki. After 3-4 days, he found himself in Sadar Hospital, Siwan, and came to learn that his uncle Manoj Kumar Singh died on account of fire injury caused by appellant Lal Babu Singh. He was in hospital for about 12 days.

9. In cross-examination, he stated that Ram Nath Singh is of his village and he does not know whether he is an accused in the present case or not. The police has taken his statement in hospital. He stated that he did not tell the police that Ram Nath Singh had come with double barrel gun and opened fire, on account of which he became injured. In para 7, he stated that Gopal Singh has three sons, namely, Nagina Singh, Gaya Singh and Kedar Singh. Lal Babu Singh,



son of Kedar Singh is an accused in the case and Anil Singh is maternal grandson of Gaya Singh. Om Prakash Singh is maternal grandson of Nagina Singh. Ram Nath Singh is son of Mahatam Singh. He further stated that on 26.06.1988, Raghunathpur P.S. case no. 43 of 1988 was lodged, in which Vijay Singh @ Prabhu Nath Singh, son of Mahatam Singh was the informant and he and his uncle were accused, in which they were acquitted. He further stated that he is accused in Raghunathpur P.S. case no. 65 of 1988 under Section 307 Indian Penal Code and 4/5 of the Explosive Substance Act lodged by co-villager Jitendra Singh, in which his father is also an accused and in that case Ashok Singh nephew of Lal Babu Singh is a witness. He further stated that his house is situated by the side of concrete road running north to south towards river side. The door of his house is in the east. He further stated that at a distance of 30-35 feet from east to the door of his house, there is a Pakari tree. The aforesaid Pakari tree is 20-25 feet from the concrete road. He further stated that at the time of occurrence, there were two Chowki in the Baithka. He stated that his residential house has entrance on the east and just south to the residential house is Baithka, which spread out up to the road side. The wall of the Baithka is built of bricks. He stated that he along with his deceased uncle was sitting on the one Chowki in his Sahan. He and



his uncle sustained fire arm injuries in standing condition. He stated that on account of fire arm injury, his uncle fell down on the ground, whereas he fell on the Chowki, which is situated nearby. On account of injuries, he (P.W.1) became unconscious, as such he could not see whether blood had fallen there or not. He further stated that just adjacent north of his residential house, there is house of Vishwanath Singh. North to the house of Vishwanath Singh, is his land. The house of Subedar Singh is just next to his land and the house of Lal Babu Singh is situated in the north. He further stated that he regained consciousness after 3-4 days of the occurrence in the hospital and thereafter Darogajee came and recorded his statement. He had no knowledge as to what his father has stated in the Fardbeyan. However, at the time of occurrence, about 20-25 persons including the females and children were present in the house. He denied the suggestion that the occurrence did not take place at the given place of occurrence, rather the same has taken place near Saryug river on 22.06.1989 in the night at about 8.00-9.00 P.M., in which his uncle was killed and he too was injured.

10. It would appear from the evidence of this witness that he became unconscious soon after receiving gun shot injury and regained consciousness only after 3-4 days in the hospital, whereafter



his statement was recorded by the police. He denied the suggestion of the defence that he has stated before the police that he had named Ram Nath Singh, as one of the assailants.

11. P.W.6 is Dr. Ram Naresh Singh. On 23.06.1989, he was posted as Civil Assistant Surgeon in Siwan Sadar Hospital. On that day, he conducted the post-mortem examination on the dead body of Manoj Kumar Singh, aged about 20 years, son of Raj Mangal Singh of village Narhan, P.S. Raghunathpur, District Siwan and found the following ante-mortem injuries:

(i) A lacerated wound on left side of chest 1" medial to mid auxiliary line, 4" below from left nipple (size 1 ½" x 1" x cavity abdominal) muscles protruded from the wound, inverted and charred margin. A wad (plastic and malleable) was recovered from the wound.

(ii) A lacerated wound on back size 1" x ½" with everted margin at the level of T12 vertebra 1 ½" lateral to mid line.

On opening of abdominal cavity:

(iii) Blood and clots were present.

(iv) Multiple lacerated wound of spleen is seen.

(v) Omentum is lacerated.

(vi) Stomach and loop of small intestine is lacerated at many place.



(vii) Stomach contained undigested food materials mixed with blood and clots.

(viii) Left lung is charred and lacerated.

(ix) Blood and blood clots present.

(x) Fracture of 6th ribs in left side is present.

12. According to him, the cause of death is due to shock and haemorrhage on account of above injuries. He further stated that time elapsed since death is within 24 hours and all the injuries have been caused by fire arm, may be by gun shot. The post-mortem report is marked as Ext.3.

13. He further stated that on 22.06.1989, at about 8.30 P.M., he examined Manoranjan Singh (P.W.1), son of Sudheshwar Nath Singh of village Narhan, P.S. Raghunathpur, District Siwan and found the following injuries on his person:

(i) Multiple, round, lacerated with charred margin wound, scattered on left side of chest, in front of neck, chin and left side of cheek. Size ¼” x ¼” in diameter, the depth was not proved as the injuries were on vital part of body.

(ii) Surgical emphysema present on left side of chest. 29 such wounds could be counted.

X-ray of chest showed indistinct. Opacities in sixth left



enter costal space and plural interior in left side was noticed, 3 small round radio opaque shadows were seen in the chest X-ray.

X-ray of survival region shows two small round radio opaque found in soft tissue.

X-ray of left ulna showed eight round small raids opaque shows.

14. According to him, all the injuries were grievous and cause by firearm, may be by gun shot. He proved the injury report of P.W.1 as Ext-4.

15. He also stated that Bed Head Ticket of Manoranjan is in two pages only. He also proved the Bed Head Ticket as Ext.-5.

16. P.W. 7 Mithilesh Kumar Pandey is the investigating officer of the case. On 23.06.1989, he was posted in the Raghunathpur police station as Sub-inspector. On the same day at about 10.30 A.M., he received the Fardbeyan of Sudheshwar Nath Singh (P.W.5) from Town Police Station, Siwan, which is already marked as Ext.-2. On the basis of Fardbeyan of P.W.5, he registered Raghunathpur P.S. Case No. 51 of 1989 and drew the formal F.I.R. (Ext.6). He also proved the inquest report of deceased Manoj Kumar Singh as Ext.7. He also proved the requisition of injury report of Manoranjan Kumar Singh as Ext.8. He stated that on 23.06.1989, he visited Narhan



village and again took the statement of informant, namely, Sudheshwar Singh (P.W.5). He inspected the place of occurrence, as shown by the informant Sudheshwar Singh. He stated that the place of occurrence is the Sahan situated in front of the house of Sudheshwar Singh in the middle of village Narhan. There is a road running north to south, east of Sahan. A Gohar Ghar stands north to Sahan and south to the Dalan and Baithka. He found a Chowki lying in the Sahan on which there was some blood stains. A Pakar tree is located just north to the place of occurrence. Just east to the Pakar tree is Bhusaghar. The Bhusaghar is situated just west to the pitch road running north to south. He did not find any pellet at the place of occurrence. He further stated that just south to the place of occurrence is house of Kamta Singh (not examined). Just west to the house of the informant, there is house of Ram Pravesh Singh (not examined) and there is a concrete road, east of the house at a distance of 13 yards, running north to south. He scratched blood mark present on the Chowki and prepared a seizure list in presence of Dina Nath Singh (P.W. 3) and Akhilesh Singh (not examined), who put their signatures on it. He proved the seizure list as Ext.-9. He stated that in course of investigation, he queried Dinanath Singh (P.W.3), Kalika Singh (not examined), and Nathuni Singh (P.W.2). He also recorded the statement of Jagdish



Singh (not examined) and Vishwanath Singh (not examined) in para.18 and 19 of the case diary. He stated that he queried the injured Manoranjan Singh (P.W.1) in Sadar Hospital, Siwan on 26.06.1989 and also obtained the post-mortem report of the deceased.

17. He stated in his cross-examination that after receiving the information about the occurrence, he visited the place and learnt that Manoranjan Singh and Manoj Kumar Singh, who are members of family of Raj Mangal Singh, received gun shot injuries and are being treated at Sadar Hospital. He further stated that on 22.06.1989, none of the family members of the informant revealed the name of the persons, who caused injuries to the two injured persons. He stated that he received the Fardbeyan at 10.30 P.M. on 23.06.1989 and on going through it, he came to learn that the informant is Sudheshwar Nath Singh and from the Fardbeyan, he also came to learn the name of four accused persons. Earlier he had no knowledge either about the name of the informant or the accused of the case. He stated that he had scratched blood from the Chowki and sent the same to Forensic Science Laboratory for its testing. However, he stated that he has not mentioned the details in the case diary as to where he kept the scratched blood extracted from the Chowki.

18. It appears from the evidence of this witness that



though he had gone to the place of occurrence in the night of 22.06.1989, but none of the family members of the victim disclosed the name of the accused, who caused injuries to the injured and the deceased. He stated that for the first time on receiving the Fardbeyan on 23.06.1989 at 10.30 P.M., he could learn the name of the informant and the four accused persons.

29. Mr. Kanhaiya Prasad Singh, learned Senior Counsel appearing on behalf of the appellants submits that as per the prosecution case, there are two eye witnesses of the occurrence, namely, the informant (P.W.5) and his son P.W.1. He submits that in view of their evidence, it can be safely stated that they have not seen the occurrence and they are not eye witness of the occurrence. He submits that P.W. 5 in his evidence stated that he saw the occurrence from a window of the Bhusaghar, which is on the eastern wall of Bhusaghar. According to him, the door of the Bhusaghar opens on the west towards the Sahan and the window on the eastern wall, which is 3 cubits from the south, as such it is not possible for him to have seen the occurrence from the eastern window, as the place of occurrence is situated in south-west of the Sahan.

30. He next submits that the other eye witness, namely, P.W.1, Manoranjan Singh, as per his own evidence, became



unconscious soon after receiving fire-arm injuries and regained consciousness only after 3-4 days of the occurrence in the hospital, where his statement was recorded by the police after 4-5 days. Learned counsel submits that P.W.1 has only named three persons, as the assailants, whereas the informant (P.W.5) has named 4 persons, as assailants. He submits that this witness (P.W.1) has deliberately dropped the name of Ram Nath Singh, as one of the three persons, who opened fire at him after coming to learn that he has sustained only two injuries. He further submits that while P.W.1 has stated in his evidence that he became unconscious at the place of occurrence and he regained consciousness after 3-4 days in the hospital, where his statement was recorded by the investigating officer, but the fact that P.W.1 is conscious has not been even whispered in Fardbeyan of informant (P.W.5) at 10.45 P.M. in Sadar Hospital, Siwan. More so, the Bed Head Ticket (Ext.5) relating to injured does not show that he was unconscious. He submits that occurrence did not take place in the Sahan of the informant, rather it took place at a distant place near river Saryug where no one has seen the occurrence and this is the reason when the investigating officer visited the place of occurrence on the date of occurrence, i.e. 22.06.1989, on hearing about the occurrence, none of the family members disclosed the name of the accused, who



has caused injury to Manoj Kumar Singh and Manoranjan Singh, though 20-25 persons were present at the place of occurrence.

31. Mr. Janardan Prasad Singh, learned counsel appearing on behalf of the informant as well as Mr. Ashwini Kumar Sinha, learned Additional Public Prosecutor, appearing for the State has supported the conviction and sentence passed against the appellants.

32. They submit that both P.W.1 and P.W.5 have consistently stated that Lal Babu Singh along with others entered into the Sahan and shot at Manoj Kumar Singh, who fell and subsequently died.

33. Learned counsel for the informant submits that the trial court has rightly convicted and sentenced the accused persons. He submits that informant (P.W. 5) stated that Lal Babu Singh along with Ram Nath Singh, Om Prakash Singh and Anil Singh entered his Sahan, whereupon Lal Babu Singh opened fire and shot at deceased Manoj Kumar Singh, who fell and subsequently died. Furthermore, Anil Singh, Ram Nath Singh and Om Prakash Singh opened fire at his son Manoranjan Singh, who sustained injury on his person. He stated that Manoranjan Singh (P.W.1) has also supported the prosecution case, however, he has not stated the name of Ram Nath Singh as an



accused in the Court, whereas he has stated his name in the statement under Section 161 of the Cr.P.C. and only on that very basis the evidence of witness could not be thrown. He further submits that the informant (P.W. 5) has only stated that he saw the occurrence from window of Bhusaghar and nowhere stated that he saw the occurrence from the window of the eastern wall of the Sahan. He further stated that there was no cross-examination by the defence that there was no window on the southern side of Bhusaghar, from where he saw the occurrence.

34. On going through the evidence, as discussed above, and the submissions of the parties, we are of the considered view that it was for the informant to have established that there was a window on the southern side of Bhusaghar from which he saw the occurrence. It was not for the defence to prove to the contrary that there was no window on southern side of Bhusaghar. So far P.W. 1 is concerned, his statement was recorded belatedly after 3-4 days of the occurrence, after the preparation of the injury report, though neither the injury report, dated 23.06.1989, nor the Bed Head Ticket (Ext.5) suggest that he was unconscious at the time of admission in the hospital. Similarly, there is no whisper in the Fardbeyan of P.W.5 about unconsciousness of P.W.1, though the same was recorded after admission of P.W.1. As



such, it is difficult to believe that because P.W.1 was unconscious or unable to make his statement to the police because of it. All this creates a doubt that P.W.1 has also seen the occurrence.

35. In view of the forgoing discussions, we are of the considered view that prosecution has failed to bring home the charge beyond all reasonable doubt.

36. In the result, both the appeals are allowed and the judgment and order of sentence passed by the learned trial court are set aside and the appellants are acquitted from the charges levelled against them. The appellants, namely, Om Prakash Singh and Anil Kumar Singh @ Anil Singh (Cr Appeal (DB) No.410 of 2009) are already on bail, so they are discharged from the liabilities of their bails bonds. The appellant, namely, Lal Babu Singh (Cr Appeal (DB) No.450 of 2009) is in judicial custody, he is directed to be set at liberty forthwith, if not wanted in any other case.

37. Let the Lower Court Records, along with a copy of this order, be sent back to the learned trial Court

(Samarendra Pratap Singh, J.)

(Rajendra Kumar Mishra, J.)

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