

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.425 of 2015

Arising Out of PS.Case No. -234 Year- 2001 Thana -CHAPRA MUFFASIL District- SARAN

1. Anil Sah Son of Banaras Sah resident of Village - Lohra, P.S. - Chapra Muffasil, District - Chapra, Saran.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

with

Criminal Appeal (SJ) No. 522 of 2015

Arising Out of PS.Case No. -234 Year- 2001 Thana -CHAPRA MUFFASIL District- SARAN

1. Madan Singh Son of Ratan Singh resident of Village - Lohra, P.S. - Chapra (Muffasil), District - Chapra, Saran.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

with

Criminal Appeal (SJ) No. 742 of 2015

Arising Out of PS.Case No. -234 Year- 2001 Thana -CHAPRA MUFFASIL District- SARAN

1. Sukhal Rai, Son of Late Bangali Rai, Resident of Village- Rai Pur Bindgawa, P.S.- Doriganj, District- Chapra.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 770 of 2015

Arising Out of PS.Case No. -234 Year- 2001 Thana -CHAPRA MUFFASIL District- SARAN

1. Bindeshwari Rai, Son of Late Acche Lal Rai, Resident of Village- Lohra, P.S.- Chhapra Muffasil, District- Chapra.



..... Appellant/s
Versus
1. The State of Bihar
..... Respondent/s
with

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Criminal Appeal (SJ) No. 85 of 2016

Arising Out of PS.Case No. -234 Year- 2001 Thana -CHAPRA MUFFASIL District- SARAN

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1. Ambika Rai Son of late Ram lakhan Rai Resident of Village Raipur Bindgawa,
P.S. Doriganj district Chapra

..... Appellant/s
Versus
1. The State of Bihar
..... Respondent/s

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Appearance :
(In CR. APP (SJ) No.425 of 2015)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
: Mr. Imteyaz Ahmad, Advocate
Mr. Ravi Ranjan, Advocate
For the Respondent/s : Mr. Bipin Kumar, APP
(In CR. APP (SJ) No.522 of 2015)
For the Appellant/s : Mr. Bam Bahadur Jha, Advocate
For the Respondent/s : Mr. S.A.Ahmad, APP
(In CR. APP (SJ) No.742 of 2015)
For the Appellant/s : Mr. Bam Bahadur Jha, Advocate
For the Respondent/s : Smt. Abha Singh, APP
(In CR. APP (SJ) No.770 of 2015)
For the Appellant/s : Mr. Bam Bahadur Jha, Advocate
For the Respondent/s : Mr. Sujeet Kumar Singh, APP
(In CR. APP (SJ) No.85 of 2016)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
: Mr. Imteyaz Ahmad, Advocate
Mr. Ravi Ranjan, Advocate
For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT
Date: 23-11-2017

1. During course of trial (S. Tr. No. 475 of 2012) while the
case was fixed for defence, and argument, the accused persons



became absent as a result of which vide order dated 03.05.2011 their bail bonds were cancelled. Subsequently, Anil Shah and Madan Singh appeared on 17.06.2015 and were bailed out while Ambika Rai, Sukhal Rai and Bindeshwari Rai remained absent whereupon their trial were directed to be separated vide order dated 09.04.2012 as well as 30.01.2013 whereupon, Session Trial No. 475A of 2002 originated.

2. In original Session Trial No. 475 of 2002 the judgment of conviction was passed on 16.06.2015 as well as order of sentence dated 18.06.2015 by the 9th Additional Sessions Judge, Saran at Chhapra whereby and whereunder Anil Sah as well as Madan Singh have been found guilty for an offence punishable under Section 307/149 of the Indian Penal Code and sentenced to undergo R.I. for seven years as well as to pay fine Rs. 5,000/- in default thereof to undergo S.I. for six months, under Section 380/149 of the Indian Penal Code and sentenced to undergo R.I. for three years as well as to pay fine appertaining to Rs. 5,000/- in default thereof to undergo S.I. for six months, additionally, under Section 458/149 of the Indian Penal Code and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs. 5,000/- in default thereof to undergo S.I. six months, and further, appellant Anil Sah has been found guilty for an offence punishable under Section 27 of the Arms Act and sentenced to undergo R.I. for five years as well as to pay fine



appertaining to Rs. 5,000/- and in default thereof to undergo S.I. for six months additionally, with a further direction to run the sentences concurrently and set off the period remaining in custody during trial in accordance with Section 428 of the Cr.P.C.

3. The remaining appellants that means to say Sukhal Rai (Criminal Appeal (SJ) No. 742 of 2015), Bindeshwari Lal (Criminal Appeal (SJ) No. 770 of 2015 and Ambika Rai (Criminal Appeal (SJ) No. 85 of 2016) were under Sessions Trial No. 475A of 2002, whereunder they have been found guilty under the aforesaid sections having same set of sentence by the same court vide judgment of conviction dated 01.09.2015 as well as order of sentence dated 03.09.2015.

4. That being so, all the appeals have been heard together and are being disposed of by a common judgment.

5. On 23.06.2001 Ram Kishore Rai (P.W. 11) filed written report disclosing therein that during course of last Mukhiya election Asharfi Rai was one of the candidate, who asked for his support but, as he declined, the aforesaid Asharfi Rai withdrew his candidature in favour of Police Rai, who got elected. One week thereafter, Asharfi Rai had disclosed to police to commit murder of informant and in the aforesaid background, in between night of 22 / 23.06.2001, Anil Sah armed with gun, Ambika Rai armed with gun, Sukhal Rai armed with



pistol, Bindeshwari Rai (could not see what he was possessing), Salik Rai armed with pistol, Jamadar Rai (could not see what he was possessing), Munna Ray armed with licensee gun, Madan Singh armed with lathi along with 10-12 unknown persons came at his Darwaja and began to fire. They were indulged in getting informant to be murdered as he posed himself to be a leader. After hearing the aforesaid dictum, he slipped and got himself concealed at some distance and from there, he began to see. During course thereof, he had seen 4-5 persons who climbed over a jeep having parked in front of his house and then got over his roof and then got down inside his house in order to trace him out and on being foiled, they looted away cash, ornaments, clothes etc. Then thereafter, they have gone to the place of Hawaldar Rai, Arun Rai, Chadeshwar Rai, Nand kishore Pandey and Tarkeshwar in search of him but became frustrated on account of his absence. The accused persons also took away their belongings. It had further been disclosed that on account of indiscriminate firing, Vijay Rai, Janak Rai and Ramnath Rai sustained injuries. It had further been disclosed that firing was made by the accused persons with an intention to kill him. It had further been disclosed that so many villagers have seen the occurrence.

6. After registration of Chapra Muffasil P.S. Case No. 234 of 2001, the law was set in motion, whereunder witnesses were



examined, injured were medically examined, respective injury reports were obtained and after concluding the same, charge-sheet was submitted, which happens to be the basis for trial meeting with the ultimate conclusion, the subject matter of instant appeal.

7. Defence case as has been pleaded as well as from their statements recorded under Section 313 of the Cr.P.C. is of complete denial. It has also been pleaded that on the alleged date and time of occurrence, the prosecution party kidnapped Asharfi Rai under deceitful manner in order to kill, but any how he managed to escape and for that, Chapra Mufassil P.S. Case No. 238 of 2001 was registered. Furthermore, the aforesaid F.I.R. has been made an exhibit.

8. In order to substantiate this case. Prosecution has examined altogether 12 P.Ws witnesses, namely, P.W.1 Dr. Vishnu Kant Gupta, P.W.2 Vijai Rai, P.W.3 Arun Kumar Rai, P.W.4 Tarkeshwar Singh, P.W.5 Janak Rai, P.W.6 RamNath Rai, P.W.7 Jaituly Rai, P.W.8 Daroga Ram, P.W.9 Shivjee Ram, P.W.10 Hawaldar Rai, P.W.11 Ram Kishore Rai, P.W.12 Sanjay Kumar Singh as well as had also exhibited Ext- 1 series injury report of the respective injured, Ext- 2 written report, Ext-3 formal F.I.R. As indicated hereinabove. Defence had also exhibited certified copy of F.I.R. of Chapra Muffasil P.S. Case No. 238 of 2001 Ext. A.



9. While challenging the judgment of conviction and sentence, it has been argued on behalf of the learned counsel for the appellants that on account of non examination of I.O., the interest of accused is found highly prejudiced. To substantiate such plea, it has been submitted that from initial version of the prosecution, there happens to be absence as well as ambiguity with regard to the place where so alleged injured Vijai Rai (P.W. 2), Janak Rai (P.W. 5) and Ramnath Rai (P.W.6) have sustained injuries. In likewise manner, there happens to be specific disclosure that the accused persons have gone to the place of Hawaldar Rai, Arun Rai, Chandeshwar Rai, Nand Kishore Pandey and Tarkeshwar Singh where they have searched the informant, Ram Kishore Rai (P.W.11) and as they failed to locate him, they looted away their belongings. Their houses have not been properly identified more particularly, the direction and the distance from the house of informant, P.W. 11. Furthermore, having absence of source of identification would not have enabled the informant and other prosecution witnesses to identify the culprit more particularly the appellants in the background of the fact that the informant as well as other witnesses have clearly stated that the accused persons are not of their village rather they happen to be of different village having their land adjacent to the village, having no earlier occasion for social gathering that means to say, had there been a case in between co-



villager then it might be possible that by voice, gait appearance proper identification even in dark night would have been possible but, being of different village, makes the situation something otherwise and on account thereof, the prosecution would have discharged the burden properly with regard to proper identification of the appellants.

10. It has also been submitted that from the judgment impugned it is evident that at an earlier occasion also it was pointed out that it is not a case under Section 307 I.P.C. along with other allied sections rather from the evidence available on the record, it is evident that this case ought to have been registered, investigated, tried relating to dacoity attracting Section 395 of the Indian Penal Code as well as Section 397 of the Indian Penal Code which, the learned lower court ruled out on the ground that it will require de novo trial though should have that too against unknown. In the aforesaid background, it has been submitted that when the evidence of victim Arun Kumar Rai (P.W. 3), Tarkeshwar Singh (P.W.4), injured Ramnath Rai (P.W. 6), Daroga Rai (P.W. 8), Shivjee Ram (P.W. 9) and Hawaldar Rai (P.W. 10) is taken together, it is apparent that the crime was not at all committed by the appellants rather by the unknown dacoits who looted the house of so many persons during commission of dacoity and during course thereof, they have used firearm and as, the appellants were at strained relationship in the background of political



differences got them implicated in this case, and that is the reason behind change in narration of the occurrence.

11. Furthermore, it has also been submitted that had there been presence of the appellants inside their house, then in that event, the female folk would have been best witness to properly identify the appellants as well as activity having been played at their house. Non-citation of their names as a witness coupled with non-examination thereof, is a major lacuna persisting in the prosecution case, which completely demolish the allegation whatever been attributed at the end of the prosecution.

12. Now, coming to the status of the witnesses, it has been submitted that P.W.3, P.W.4, P.W.6, P.W.8, P.W.9 and P.W. 10 have not claimed identification of these appellants as an accused. When the evidence of remaining witnesses that means to say P.W.2, P.W.5, P.W.7 and P.W. 11 is considered, it is apparent that appellants have fallen victim of personal grudge, vendetta and that being so, their evidences did not justify the finding recorded by the learned lower court whereupon, the judgment impugned is fit to be set aside.

13. On the other hand, the learned Additional P.P. refuting submissions made on behalf of the appellants has submitted that the injuries having perceived by the respective witnesses including PW 6, who did not claim identification of these appellants, support that they



have sustained injuries during course of occurrence. It has also been submitted that for proper adjudication whether this case could be considered to be a case of dacoity, the prime motto of accused is to be considered. If the prime motto happens to be deprivation of property and during course thereof, the accused being more than five used fire arms then in that circumstance, would attract application of Sections 395 and 397 of the I.P.C. as, injuries having been sustained by the witnesses due course thereof but, in the present case, there happens to be conclusive evidence that accused persons came with an intention to commit murder of the informant, and being frustrated on that score, looted away the property, would not attract application of Section 395 as well as Section 397 of the I.P.C. and so, their trial under Section 307 of the Indian Penal Code was legally permissible and rightly been tried with and concluded by way of recording guilt as well as sentence therefor. So submitted that the judgment impugned did not suffer from any kind of infirmity whereupon, is fit to be affirmed.

14. Before coming to ocular evidence, first of all medical evidence is to be seen. P.W. 1 (Dr. Vishnu Kant Gupta) had examined respective injured on 02.06.2001. He had examined P.W. 2 (Vijai Rai) at 11.10 A.M. and found the following injuries:-

1. Abrasion left forehead 1/3" x 1/3". 2. Lacerated wound with charred margin on right upper arm of small pea size. 3. Lacerated



would 1/3" x 1/3" x skin deep on right upper chest with charred margin. 4. Lacerated wound of pea size with charred margin over left lower chest on mid axillary line. 5. Lacerated wound of pea size with charred margin over lower leg and abdomen. One pillet recovered from superficial layer of left lower leg.

He had also examined P.W. 5 (Janak Rai) at 11.30 A.M. and found the following injuries:-

1. Injury No. 1-3 lacerated wound with charred margin on lower abdomen on right side of small pea size. 2. Lacerated wound with charred margin on forehead of pea size advised X-ray.

He had also examined P.W. 6 (Ramnath Rai) at 11.45 A.M. and found the following injuries:-

1. Lacerated wound with charred margin on dorsom of left palm of small pea size. 3. One lacerated wound with charred margin on left lower foot. Advised X-ray in report of injury No. 2.

15. Though, no distance has been disclosed but, presence of charred wound is indicative of the fact that there happens to be firing from close range and that being so, there happens to be an occasion of proximity in between appellants as well as the victim. Furthermore, from cross-examination, it is evident that the nature of injury has not been challenged at the end of the defence and that being so, sustaining of firearm injury by the respective injured goes out of question.



16. P.W.2 (Vijai Rai) had stated that on the alleged date and time of occurrence while he was sleeping at his *Baramda* near door, he awoke hearing commotion. At that very time, lalturn was burning at his darwaja. In the aforesaid circumstances, he had seen Anil Sah armed with gun, Bindeshwari Rai armed with pistol, Ambika Rai armed with gun, Shalig Rai armed with pistol, Jamadar Rai armed with pistol, Munna Rai armed with gun, Sukhlal Rai armed with pistol and Madan Singh armed with lathi. Out of whom, Shalig Rai, Jamadar Rai and Bindeshwari Rai came near him while rest of the accused began to break the main door but, as they failed on account thereof, they have gone over the roof of his house through a jeep, which was parked in front of his Darwaja and then thereafter, they got down inside the courtyard. Thereafter, they opened the main door. They looted away cloths, ornaments and cash. There was uproar whereupon Anil Sah and Ambika Rai began firing, which also caused injury to him at 5-7 locations of the body. Some of the pillets are still inside his body. Ramnath Rai and Janak Rai have also sustained injuries, claimed identification. Also disclosed that Kishore Rai, Jaithuly Rai, Ramnath Rai, Janak Rai, Sitaram Rai and Rameshwar Rai have seen the occurrence. During cross-examination at paragraph-4, he had admitted the informant being his full brother. In paragraph-5, he had further admitted that Anil Sah had also instituted a counter case with



regard to the same occurrence. In paragraph-7, he had stated that he sustained injuries while he was sitting at the same place where he was sleeping since before. In paragraph-8, he had further stated that he came to know that the dacoits have also committed dacoity in the house of different persons after commission of dacoity in his house. In paragraph-12, he had stated that Ram Kishore Rai (informant) had slept inside the house. In paragraph-15, he had stated that first of all he had gone to Police Station where he arrived at 10.00 A.M. and then to the hospital. In paragraph-16, he had stated that first of all his statement was recorded. In paragraph-17, he had stated that other injured had not sustained injuries in his presence rather he came to know later on. In paragraphs-18, 19 and 20, there happens to be contradictions.

17. P.W. 5 had deposed that on the alleged date and time of occurrence while he was sleeping at his house, gone to his roof after hearing commotion and found 15-20 persons at his Darwaja, who were causing fire from their guns. He had sustained injury. Vijai Rai and Amrit Rai have also sustained injuries. Accused persons were in search of Ram Kishore Rai. When they failed to trace him out, then they committed dacoity. He had claimed identification of Salik Rai, Sukhal Rai, Ambika Rai, Bindeshwari Rai, Munna Rai, Jimdar Rai, Anil Sah, Madan Singh amongst them. He had made statement before



the police. In paragraph-3, he had stated that 7-8 persons have got their houses near his house and those are Hawaldar Rai, Arun, Chandeshar, Tarkeshwar Singh and Nand Kishore Pandey. In paragraph-4, he had stated that accused persons are not of his village. In paragraph-5, he had stated that it was a dark night. The accused persons were known to him since before as, their lands lay adjacent to his village where they are engaged in cultivation and for that, occasionally they stayed there. In paragraph-6, he had stated that accused persons have also instituted a case for the same occurrence. Then, there happens to be suggestions with regard to false implication in the background of an institution of counter case.

18. P.W.7 is Jakali Rai, son of P.W.6 (Ram Nath Rai), one of the injured as well as, who had not claimed identification against the appellants. He had deposed that on the alleged date and time of occurrence he was sleeping at his Darwaja. Then, he had said that Anil Sah, Bindeshwari Rai, Ambika Rai, Shalig Rai, Jamadar Rai, Munna Rai, Sukhlal Rai and Madan Singh came at his Darwaja and began to fire. They were in search of Ram Kishore Rai. When they failed to trace him out then, they got over the roof through a jeep which was parked at his darwaza, they got down inside the courtyard, opened the main gate and then, they looted away cloths, ornaments and cash etc. They have also committed loot at the houses of



Hawaladar Rai, Arun Rai and Chandeshwar Rai. Ramnath Rai, Vijai Rai and Janak Rai who also sustained firearm injuries. He had further stated that Munna Rai and Ambika Rai were armed with double barrel gun, Sukhal Rai, Malik Rai and Bindeshwari Rai were armed with pistol. He had again stated that correctly, all were armed with pistol. Only Madan Singh was armed with lathi. He had further disclosed that the occurrence was committed in the background of dispute arose over Mukhiya election. During cross-examination at paragraph-5, he had admitted as an accused relating to counter case. In Paragraph-6, he had stated that when the dacoits entered into his house, he did not enter into his house. When dacoits left his house, then thereafter he had gone inside his house and found lock of VIP and steel boxes broken. It was dark night. He met with Janak Rai, Vijai Rai, Ramnath Rai. When he had gone near them, they talked with regard to dacoity having committed at his house as well as disclosed regarding dacoits. Suggestion is with regard to institution of false case in the background of counter case which was instituted on account of unsuccessful attempt to kidnap Anil Sah by them.

19. P.W. 11 is the informant. He had deposed that on the alleged date and time of occurrence, he was at his house. Anil Sah, Ambika Rai, Sukhal Rai, Bindeshari Rai, Shalig Rai, Jamadar Rai, Munna Rai and Madan Singh armed with gun, pistol, lathi and danda



came at his house and began to fire and were saying that Ram Kishore Rai is to be murdered. After hearing the same, he hide himself. Then thereafter, accused persons came over his roof through a jeep which was parked in front of his darwaja and then, got down inside the house. Then thereafter, the accused persons took away the boxes. The accused persons also gone to the houses of Hawaldar Rai, Chandeshwar Rai, Nand Kishore Pandey, Tarkeshwar Singh, Daroga Singh, Shivji Rai and Arun Rai one by one in order to search him out and as they failed to locate him, they also committed loot at the respective houses. Accused persons began to fire while they were returning as a result of which Janak Rai, Vijai Rai and Ramnath Rai sustained injuries. After departure of the accused persons, he had gone to his house where women of the house had disclosed that the accused persons took away Rs. 20,000/- in cash, ornaments and cloths. Then, motive has been assigned as during course of Mukhiya election, Asharfi Rai was insisting upon to help, which was declined by him. He had filed written report before the police (exhibited). During cross-examination, he had stated that when accused persons came at this house, he hide himself by the side of Darwaja. Whole occurrence was committed within half an hour. None of the villagers came. When the accused persons gone away after committing loot, then he had seen the injuries over the person of Janak Rai, Vijay Rai and Ramnath Rai,



who were over roof. Again, he said that he hide himself at the Darwaja. In paragraph-6, he had stated that 20-25 villagers came after departure of the accused persons but, on account of darkness, he was not in a position to identify all of them. In paragraph-7, he had admitted that P.W. 2 (Vijai Rai) happens to be his younger full brother Janak Rai (P.W.5) and Jithuly Rai (P.W. 7) his nephew. Ramnath Rai (P.W.6) happens to be his brother-in-law. Meera Devi, Marajho Devi, Usha Devi, Lilawati Devi (not examined) are his family members. In paragraph-8, he had admitted presence of a case instituted by Budhan Rai against him as well as other family members wherein brother of Ambika Rai (accused) happens to be witness. He had further admitted case instituted by a Mukhia, who happens to be grandfather of the Bindeshwari Rai. Sukhal Rai is also witnessed in that case. In paragraph-9, he had stated that three persons have sustained injuries. He had also stated that he had named Asharfi Rai to be one of the accused but, the police left him. In paragraph-10, he had shown boundary of his house north house of Hawaldar Rai, south open land, east open land, west house of Ramnath Rai (P.W.6). Then had disclosed that none of the villagers have named the miscreants. Then had denied that on account of presence of counter case, this case has been instituted.

20. The other set of witnesses happens to be P.W. 3 (Arun



Kumar Rai), P.W.4 (Tarkeshwar Singh), P.W. 6 (Ramnath Rai) injured P.W.8 (Daroga Rai), P.W. 9 (Shivjee Ram) and P.W. 10(Hawaladar Rai), the victims at whose houses dacoity was committed. From their evidences, it is apparent that they had supported the case of the prosecution so far commission of dacoity is concerned but, failed to identify the accused and so, their evidences relating to proper identification of the accused is not at all found supportive to the prosecution case. I.O. has not been examined. In the aforesaid background one has to see whether the non examination of I.O. has caused prejudice. There happens to be settled principle of law that in each and every case, the non examination of the I.O. would dent in the prosecution case unless, caused prejudice to the interest of the accused. It depends upon the facts of the each case. From facts of the present case, one has to see whether non examination of I.O. has really caused prejudice to the defence.

21. Before coming to that score, it is evident from the evidence of the witnesses more particularly P.W. 2, who happens to be full brother of the informant that he was sleeping at his Darwaja while the informant was inside the house. The informant (P.W. 11) had not deposed that he was sleeping inside the house. P.W.2 had not disclosed that P.W.11 came out from his house after opening the door before entrance of miscreants and in likewise manner, P.W. 11



(informant) had not stated that he came out from his house after opening the door. There happens to be consistent evidence of the P.W. 2 as well as P.W. 11 along with other witnesses that the dacoits have gone over the roof through a jeep and then got down inside the house and then opened the door. Being frustrated on account of non presence of the informant, they looted away their belongings. If the door was not opened by Ram Kishore Rai (informant) then he was inside the house, and being so, he might have been searched out by the miscreants and would have been done to death. But from the evidence, the situation appears to otherwise. That means to say, the true picture of occurrence had not been flashed. In likewise manner, P.W.2 had stated that there was lalturn burning at the Darwaja and that was only source of identification while P.W. 11 (informant) had not stated that there was lalturn burning at the Darwaja. Apart from this, according to P.W.2, he had sustained injury while he was at his bed which, none of the witnesses had collaborated. Contrary to it, the witnesses have stated that dacoits made incriminate firing whereupon, Janak Rai, Ram Nath Rai and Vijay Rai sustained injuries. Janak Rai had got different place, Ram Nath Rai had got different place and Vijay Rai had got different place they would not have sustained gun shot injury simultaneously as, from the evidence of Janak Rai, it is apparent that while he was at his house he had gone to roof of his



house after hearing commotion, dacoits were present at his Darwaja, who fired as a result of which he sustained injury. While Ramnath Rai (P.W. 6) had deposed that he sustained injury at his house. P.W. 11 (informant) had shown the house of P.W. 6 (Ramnath Rai) adjacent to his house independently.

22. So far identification is concerned, none had disclosed source of the identification. Furthermore, from the evidence available on the record, it transpired that it happens to be a case of dacoity and not of the occurrence in a manner as suggested by the prosecution because of the fact that one by one, the miscreants gone to the house of different persons and committed loot, where they made firing as a result of which they sustained injuries. In the aforesaid background, the non-examination of I.O. has certainly caused prejudice as apart from material development coming out from the evidence of the respective witnesses more particularly P.W.2 and P.W.5, the exact location of houses of different persons could not properly surfaced and further, whether it happens to be a case of dacoity or it happens to be a case as has been flashed by the prosecution.

23. Furthermore, the evidences, as disclosed above, did not inspire confidence with regard to the commission of occurrence in a manner as projected by the prosecution whereupon, the judgment of conviction and sentence recorded on the learned lower court is set



aside. All the appeals are allowed. The appellants are on bail. Hence,
all are discharged from their liabilities.

(Aditya Kumar Trivedi, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.12.2017
Transmission Date	04.12.2017

