

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.73 of 2016

Arising Out of PS.Case No. -131 Year- 2004 Thana -SIWAN MUFFASIL District- SIWAN

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Md. Shahabuddin @ Md. Sahabuddin son of S.M. Hasibullah Resident of village-
Pratapour, P.S.- Hussainganj, District- Siwan

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

with

=====

Criminal Appeal (DB) No. 112 of 2016

Arising Out of PS.Case No. -131 Year- 2004 Thana -SIWAN MUFFASIL District- SIWAN

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Raj Kumar Sah, Son of Sri Triloki Nath Prasad, Resident of Sonar Toli, Police
Station- Siwan (Nagar), District- Siwan.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

with

=====

Criminal Appeal (DB) No. 63 of 2016

Arising Out of PS.Case No. -131 Year- 2004 Thana -SIWAN MUFFASIL District- SIWAN

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Munna Mian @ Sonu @ Arif Hussain son of resident of Village- Tetriya, P.S.-
Hussainganj, Dist- Saran.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

with

=====

Criminal Appeal (DB) No. 95 of 2016

Arising Out of PS.Case No. -131 Year- 2004 Thana -SIWAN MUFFASIL District- SIWAN

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Sheikh Aslam @ Aslam Mian Son of Sheikh Khalil R/o Pratappur, P.S.
Hussainganj, District - Siwan

..... Appellant/s



Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.73 of 2016)

For the Appellant/s : Mr. Surender Singh, Mr. Y.V. Giri, Sr.
Advocates & Ms. Fauzia Shakil Advocate
For the State : Mr. K.T.S. Tulsi Sr. Advocate
Mr. Kesav Mohan Advocate , Mr. Yogendra
Prasad Sinha AAG-7& Mr. D.K.Sinha APP

(In CR. APP (DB) No.112 of 2016)

For the Appellant/s : Mr. Kanhaiya Pd Singh, Sr. Advocate
For the State : Mr. K.T.S. Tulsi Sr. Advocate
Mr. Kesav Mohan Advocate, Mr. Yogendra
Prasad Sinha AAG-7 & Mr. Abhimanyu
Sharma APP

(In CR. APP (DB) No.63 of 2016)

For the Appellant/s : Mr. Yogesh Chandra Verma, Sr. Advocate
For the Respondent/s : Mr. K.T.S. Tulsi, Sr. Advocate
Mr. Kesav Mohan Advocate , Mr. Yogendra
Prasad Sinha AAG-7 & Mr. Mayanand Jha
APP

(In CR. APP (DB) No.95 of 2016)

For the Appellant/s : Mr. Naresh Dikshit, Advocate
For the Respondent/s : Mr. K.T.S. Tulsi Sr. Advocate
Mr. Kesav Mohan Advocate , Mr. Yogendra
Prasad Sinha AAG-7 & Mr. S. N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and
HONOURABLE MR. JUSTICE SANJAY KUMAR
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 30 -08-2017

All the appellants of these appeals were held guilty under
Sections 364A, of the IPC. They (except appellant Md.
Shahabuddin) were also held guilty under Section 323 of the I.P.C.
Appellant of Cr. Appeal No. (DB) No. 73 of 2016 was also found



guilty under Sections 302, 201 read with Section 120B of the IPC. The judgment of conviction and order of sentence were passed by the learned Additional Sessions Judge IV-cum-Special Judge (Jail Court) in Sessions Trial No. 158 of 2010. Appellant of Cr. Appeal (DB) No. 73 of 2016, Cr. Appeal (DB) No. 112 of 2016, Cr. Appeal (DB) No. 63 of 2016 and Cr. Appeal (DB) No. 95 of 2016 shall hereinafter referred as A1, A2, A3 and A4 respectively.

- (2) 16th of August 2004 proved a horrific day for the informant (PW1) and her family. Her husband PW-4 on that day was not present in the town. PW-4 had two shops in the township of Siwan. One shop was at Mohalla- Churrahatti whereas another general store was located near the bus stand. She was then living at the Yadav market on rent. Informant's one son Satish @ Sonu (hereinafter referred as D1) was at the Churrahatti Kirana shop whereas her another son Girish Kumar @ Nikku (hereinafter referred as D2) was at the bus stand general store. At about 01 pm her servant Vishal (CW-1) who was at the churrahatti shop came running and informed her that her son Satish @ Sonu was attacked, assaulted and kidnapped by unknown accused persons. At about the same time her another servant Barrister Yadav (PW3) who was at bus stand shop came and narrated that her shop at bus stand was also attacked and ransacked. The unknown accused



persons grievously assaulted her son and kidnapped him. Later, it revealed to her that the shop at the bus stand was looted and torched. On the basis of whatever information gathered, she lodged the '*Fardbeyan*' (Ext.1) on 16.08.2004 at 7 P.M against accused(s) Nagendra Tiwari and Madan Sharma and some unknown accused persons. Her statement was recorded when the police visited her residence in the evening and, accordingly, Siwan (Muffasil) P.S. Case No. 131 of 2004 under Sections 341, 323, 380, 435, 364 and 34 of the IPC was registered. It may be noted that the police had earlier in the afternoon of the same day had registered Siwan (Muffasil) P.S. case no. 130 of 2004 (Ext. B-1) under Section 307 of the IPC against her another son Rajiv Roshan (PW6) on the statement of co-accused Madan Sharma for having caused injury to him and two others by throwing acid on them.

- (3) It all started with an ordinary civil dispute. PW-4 had purchased the land with shops at the bus stand for his business and residential purposes. Co-accused Nagendra Tiwari was running his business in one of the shops. He was not vacating the shop. Chandrakeshwar Prasad (PW-4) got himself impleaded as the plaintiff in an ongoing eviction suit for evicting Nagendra Tiwari from the shop. During the pendency of the suit, co-accused Nagendra Tiwari with an oblique motive transferred portion of the



subject land to accused(s) Madan Sharma and Chhotey Lal Sharma and also surreptitiously inducted them into the shop. PW-4, however, claimed continued title and possession over the land inasmuch as he had started construction of his residential cum business premises on the purchased land/plot which apparently aggravated the situation. The informant (PW1), in her '*Fardbeyan*' in a meek voice has also alleged that she tried to lodge the case but the officers at the police station had refused to register the case. The police, it appears, first registered a case against PW 6 under Section 307 of the IPC and thereafter in the evening recorded the '*Fardbeyan*' (Ext1) of the informant (PW1). Even after registering the FIR the police was tardy in the investigation. The family of PW-1 continued to reel under constant threat and fear which prompted PW-4 to file a criminal Writ Petition in the Patna High Court for a direction on the State respondents to proceed with the investigation in a fair and transparent manner. Ultimately, the charge sheet was laid in 2009 under Sections 341, 323, 380, 436, 364 and 120B of the IPC whereon cognizance was taken against the appellants on 10.11.2009. On commitment, the case came on the file of the learned trial Judge. In spite of material available on record for framing of charge under Sections 302, 201, 120B of the IPC, the Court declined to frame those charges. The prosecution



moved an application before the High Court wherein an order was passed on 18.04.2014 and only thereafter the Court added charges under Sections 302/201 read with Section 120B of the IPC on 01.05.2014 against all the accused(s) facing the trial. It is further pertinent to note that A1 was a political heavy weight who had successfully been able to blend his notoriety with political influence/power. The Patna High Court at the initiative of the State Government, by diverse notifications issued in May, 2006 constituted special Court to try all pending cases against A1 in jail. The constitution of special Bench to try pending cases in jail was challenged by A1 before the Hon'ble Supreme Court of India. A Bench of the Supreme Court under order dated 25.3.2010 since reported in (2010)4 SCC 653 upheld those notifications. It would be pertinent to note the circumstances which prompted the State to get the special Court constituted to try the said appellant in jail. They are appropriately delineated in the reply affidavit of the State filed before the Supreme Court which was taken note of by the Supreme Court in paragraph nos. 28,117 and 139 of the report which read as under:-

28. *Mr. Ranjit Kumar has drawn our attention to the counter-affidavit filed by the State in extenso. In the said counter-affidavit filed by the State it is mentioned that the reign of terror created by the appellant and his "private army" in the last two decades is beyond imagination. Some of the*



notorious crimes committed by the appellant and his gang of criminals and the extent to which he has been interfering with the administration of justice has been enumerated in the counter-affidavit. It would be pertinent to recapitulate the same as under:

“(a) That on 3.5.1996 the petitioner along with his associates fired upon the then superintendent of Police, Shri S.K. Singhal, IPS with sophisticated arms. In this case, bearing ST No. 320 of 2001, the petitioner and his two associates have been found guilty and sentenced to undergo rigorous imprisonment for 10 years.

(b) That during a raid conducted on 16.3.2001 in the house of the petitioner, the accused-petitioner and his private army fired upon the raiding party and burnt the vehicles of the Deputy Inspector General of Police, Saran Range; District Magistrate, Siwan and Superintendent of Police, Siwan. These criminals fired more than 100 rounds of ammunition from arms including AK-47 and AK-56, etc. In that firing, one constable was killed and several constables were injured. In this raid, huge quantity of ammunitions were recovered from the house of the accused. An FIR bearing Case No. 32 of 2001 was registered in Hussainganj Police Station.

(c) That in another raid conducted in 2005 on the order of Bihar Military Force-I, a large number of arms and ammunition and other articles were recovered from the house of the accused. Pursuant to this raid, an FIR bearing Cases Nos. 41 to 44 of 2005 was registered in Hussainganj Police Station.

(d) That when the petitioner was being shifted from Siwan Jail to Beur Jail, Patna pursuant to his arrest on 10.2.2005, the petitioner did not sit in the vehicle of the jail administration and forcibly sat in a private vehicle. He first visited his village home at Pratapur in flagrant violation of the directions of the jail administration and the police escort party. All along the way he did as he chose and before finally arriving at Beur Jail, Patna,



he even visited his relative and minister, Sh. Izazul Haq at the government quarter. Resistance of the escorting police party were brushed aside by threatening them with dire consequences and use of brute force to carry out the above illegal acts.

(e) That in Sessions Trial No. 63 of 2002 the accused and his gang fired upon Munna Choudhary. He was kidnapped in injured condition and was thereafter killed and his body was disposed of. Such was the terror of the accused person that when the case was tried in the general court, 21 prosecution witnesses including the parents and sisters of the deceased as well as the investigating officers turned hostile due to fear created by the petitioner. Presently, this case is being tried in the Court at Siwan jail, where the father and mother of the deceased have filed their affidavits stating that they were coerced and threatened by the petitioner and his gang, therefore, they could not depose against him.

(f) That the distance between District Court, Siwan and the court at Siwan Jail is about one kilometre. From the jail gate to the District Court there is one way which passes through a narrow bridge over a river. This area is densely populated and is a market area of the town. Whenever the accused was produced in the District Court in the past, there used to be large gathering of criminals. It was always very difficult for the District Administration to control the situation. During the trial, thousands of criminals and armed men used to enter the District Court premises and also inside the courtroom in support of the accused and created an atmosphere of terror in the minds of the prosecution witnesses. Consequently, no one dared to depose truthfully against the accused which led to his acquittal in more than 16 cases, one after the other.

(g) That prior to the constitution of the court in the jail premises, when the petitioner was remanded to Siwan Jail in various criminal cases from time to time, he never cooperated and got himself produced in the court concerned, situated about



one kilometre away from Siwan jail, on the dates fixed for his appearance. Perusal of the order-sheet of 9 cases which are undergoing trial in the court shows that on only 24% occasions the petitioner cooperated and got himself produced in the trial court situated in court campus, Siwan. On 76% occasions, he did not cooperate and consequently could not be produced from the jail before the various trial courts. It is apparent that in most of them, the petitioner appeared before the trial court only once, at the time of remand or when he surrendered before the court for getting himself remanded in the case. On several subsequent occasions, on one pretext or the other, he did not appear before the court concerned despite being in Siwan Jail.”

117. In the present case, the letters exchanged between the police authorities and the request made to the High Court clearly show that there was serious danger in producing the appellant in open court. The police authorities had shown that the large crowds were making a fair trial impossible and creating delays in deciding the cases. “The relevant part of the letter dated 8.5. 2006 written by the Superintendent of Police, Siwan reads:

“With reference to the above, I have to respectfully inform you that more than forty cases are pending against the Hon’ble Member of Parliament Md. Shahabuddin. Directions have been received from the Hon’ble Patna High Court to dispose of cases as soon as possible. There is serious danger to public peace during the presence of the Hon’ble Member of Parliament Md. Shahabuddin, in the court premises. His supporters and other co-criminals can attack the witnesses. Even the possibility of threat and attack on the Public Prosecutor/District Prosecuting Officer, cannot be ruled out. Besides this, since he is wanted in many cases, therefore, other criminal groups can also attack him. Since he is a sitting MP and looking to the number of his supporters, it will impair the working of other courts in the Civil Court, Siwan. His supporters can create disturbance during hearing after seeing that his defence gets weak and there is



possibility that his supporters may disturb public peace in the court premises and nearby areas and can commit murder and other serious law and order problems... ”

139. It is alleged by the learned counsel appearing for the State that the appellant is involved in more than forty criminal cases. In the counter-affidavit filed by the State it is mentioned that a reign of terror has been created by the appellant and his “private army” in the last two decades is beyond imagination. Some of the notorious crimes committed by the appellant and his gang of criminals and the extent to which he has been interfering with the administration of justice, has been enumerated in detail in the counter-affidavit.”

- (4) The appellants having abjured the guilt the Court below had proceeded with the trial with the original charges wherein the prosecution, in order to substantiate the charge, examined altogether 12 witnesses besides proving a host of documents referred to in the judgment of the learned trial Court. After addition of charge(s) under Sections 302/201/120B of the Indian Penal Code on 01.05.2014 some of the witnesses were re-summoned by the court for evidence. PW6 was scheduled to appear for deposition on 19.06.2014. He was, however, shot dead on 16.06.2014. Other witnesses so summoned appeared and were cross-examined by the defence.
- (5) The defence of the appellants is complete denial of the charges. However, from the statements made under Section 313 of the Code of Criminal Procedure (for short ‘the Code’) of the accused(s), it



appears the A1 took the plea of his alibi whereas appellant A2 took the plea of false implication due to land dispute. 04 police officers had undertaken investigation. PW-7 Dharmdeo Ram had registered the FIR and investigated the case up to 23.01.2005. PW-10 Arun Rajak took over the charge of investigation from PW-7 and remained the I.O. till October 2005 when PW-9 Vijayant Kumar Sahi took over the investigation and continued with it till March, 2009 .Ultimately, PW-8 Amar Kant Jha became the I. O. who investigated from 01.03.2009 and submitted charge sheets in stages.

- (6) PW1 informant narrated the case as she heard from her servants at the two shops. PW-2 Rajesh Kumar is one of the servants of the informant at the Churrhatti shop when unknown accused(s) had attacked the shop and kidnapped his son (D1) who was then looking after the business at the shop. PW-3 Barrister Yadav is another servant of the informant who was present at the bus stand shop on the date of occurrence when the shop was attacked and one of her sons (D2) was kidnapped. CW-1 Vishal Kumar Soni was then present at the bus stand shop. He also came and narrated the incident that had occurred at the said shop in which another son D1 was kidnapped. It may be noted at the outset that the dead bodies of the two deceased(s) were not recovered. However, no



serious dispute has been raised by the defence on the factum of their homicidal death.

- (7) PW-1 is the mother of D1 and D2 whereas PW-5 is the handicapped brother of the two deceased(s). They have narrated first part of the prosecution case wherein the two shops were attacked and D1 & D2 were kidnapped. PW-4 is father of the two deceased(s) and the husband of the informant (PW1). PW-6 is the crucial witness who has narrated the entire sequence of events as an eye witness including the homicidal death of his two brothers at village Pratappur ordered by A1 and executed by other accused(s) including the appellants. *Fardbeyan* (Ext.1), as noted above, only gives out the outline of the incidence at the two shops of the informant which was conveyed to her by the servants. Considering the importance of the evidence of PW-6 the defence has chiefly criticized his evidence on several counts which shall be adverted to in the later part of the judgment. To put the record straight it may again be noted that after addition of charge under Sections 302/201/120B of the IPC the witnesses were re-summoned for their cross-examination on 16.06.2014. 19.06.2014 was the date fixed for appearance and cross examination of PW-6. As the ill luck would have been, the star witness (PW6) who had only mustered the courage to depose as an eye witness directly



implicating A1 in the crime was shot dead on 16.6.2014. The investigation, as noticed above, continued at a snail's speed in which PWs 7,10, 9 and 8 participated as the Investigating Officer(s). The investigation noticeably continued for 05 years whereafter charge sheets were filed in stages.

- (8) On an appraisal of the evidence adduced by the prosecution, the learned Trial court, found the solitary evidence of PW-6 cogent and reliable which found support from the other evidence on record and convicted the appellants.
- (9) Heard Mr. Surender Singh, Senior Advocate, who appeared on behalf of the A1, and the learned counsel(s) representing the other appellants. We have also heard Mr. K.T.S. Tulsi, Sr. Advocate, assisted by learned APP for the State. The leading submissions on behalf of the appellant(s) were advanced by Mr. Surender Singh.
- (10) Before considering the rival contentions of the parties it is apposite to first examine in detail the evidence of PW-6 as, considering the importance of his evidence, severe criticisms have been made by the defence. In his examination-in-chief, PW-6 has stated that on 16.08.2004, at about 10.30 A.M. he was present at his rented house. He received a phone call of his younger brother (D2) that Nagendra Tiwari, Rashid Miyan, Chhotey Lal Sharma were unloading sand and stone chips in front of the house and when the



same was objected they started abusing him and altercated with him. Prior to this incidence, on the previous date i.e. 15th August at 9 P.M. in the night his Nana (Kanhaiya Lal Gupta) had made a phone call to him that a sum of Rs. Two lacs was demanded by Saheb (A1) for which co-accused Tunna Miyan, Rashid Miyan, Maqsood Miyan and others will come. When he expressed some excuses his 'Nana' told him that if he wants to construct the house he will have to pay two lacs otherwise he would face the consequences. He then hanged off the phone. On 16th August (i.e. the date of occurrence) at about 9 A.M. he received a phone call on his mobile from the Mobile No. 9431216786 which belonged to A1. The caller (A1) had instructed him to send Rs. 2 lacs. After receiving the phone call of his brother D2, he immediately rushed to the house of his Nana Kanhaiya Lal but he was not present. The family members present in the house disclosed that he had gone along with Tunna Miyan, Maqsood Miyan, Madan Sharma and others. He then proceeded to the shop at the bus stand from where D2 had called him. He enquired with those accused persons who were engaged in unloading sand and stone chips. They started altercating with him. Those people demanded from him Rs. two lacs. PW-6, however, avoided awkward scene and agreed to pay the cost of the sand and the stone chips saying that his father was



not in the town whereafter those accused persons left the shop. Within ten minutes thereafter few accused persons riding on a motorcycle whereas few in a green colour Bolero including the co-accused(s) Madan Sharma, Chhotey Lal Sharma, Nagendra Tiwari, Maqsood Miyan, Tunna Miyan, Jhabbu Miyan, Ajmer Miyan, A4, A3, Aftab Miyan, A2 and other accused(s) arrived there. They all started beating him out of whom co-accused (s) Jhabbu Miyan, Ajmer Miyan were armed with pistols, Aftab Miyan armed with SLR and Tunna Miyan was armed with rifle. At this time his younger brother Girish Kumar (D2) made a phone call to police station on which co accused Tunna Miyan, Madan Sharma, Aslam Khan rushed towards him and caught hold of him. Girish (D2), however, managed to free himself and ran inside the shop. The accused persons had by then started destructing and looting the shop. Seeing all the atrocities of the accused(s), D2 came out with a bottle of acid and threw on those accused(s) in order to save himself and PW-6 from their clutches which injured co accused(s) Jhabbu Miyan ,Ajmer Miyan and Aftab Miyan. Few drops of acid, however, also fell on PW6 which injured his face, right arm and part of his body. The acid injury caused to the accused(s) provided an opportunity to PW-6 to escape from the place. He, however, could see, in the meanwhile, these accused persons forced entry



into the house by breaking open the door and caught hold of his brother (D2) and abducted him in the Bolero car on which they had arrived. Some of the accused(s) also chased him but he managed to escape on motorcycle. He then went to the Mahadeva O.P. from the back side of the road and informed the police. The Officer-in-charge of the O.P., instead of registering the case, gave an excuse that all accused(s) were henchmen of A1. He was advised to go to the nearby Mufassil P.S. PW-6 rushed to the Mufassil P.S. and attempted to report the matter which was also refused. A desperate PW6 then rushed to the town police station but there also the Officer-in-charge of the police station refused to register the case on an excuse that the alleged occurrence was not committed within the jurisdiction of the P.S. He was advised to meet the S.P. of the District. He went there but the S.P. was not available in the office. While returning from the office of the S.P., Kanhaiya Lal Gupta, Bhrignath Gupta and two others met him on the way. He narrated the entire incidence. Kanhaiya Lal Gupta (Nana of PW-6) said that he would call Tunna Miyan and A1. He consoled him that once his father (PW4) comes and pays off the demand his two brothers would be released. . He was advised to go to his shop at Churrahatti. PW-6 then went to his shop at Churrahatti and found that his another brother Satish Raj (D1)



being assaulted by co-accused Tunna Miyan, Aftab Miyan, Disco, Maqsood Miyan and others. These accused persons abducted him on one of the motorcycles by whom they had come by covering the face of his brother. He again rushed to the town police station situated 100 yards from the shop and requested to provide protection but nothing was done. At this point of time he received another phone call on his mobile and the caller informed him that his entire good /merchandise kept in the shop at bus stand had been looted and loaded on the tractor and the shop was set ablaze. PW-6 again started for his shop at the bus stand. However, as he was nearing the shop a firing was made at him whereafter he rushed towards his house. He again went to the house of his Nana Kanhaiya Lal and narrated the entire episode. His Nana advised him to stay inside the house as A1 had issued order to kill all the family members of PW-4. PW-6 kept on calling his father who was then in Patna but was unable to contact him. His uncle Kanhaiya Lal Prasad was then posted as DGM, R.B.I who, when contacted, repeatedly asked him to go from his house. At this time, his younger brother Nitish Raj (PW5) was also accompanying him. As no help from any corner was forthcoming to him either by his relatives or by the administration he wrote down on a paper the entire episode witnessed by him and gave it to his brother PW-5 to



be given to his father when he arrives home from Patna. Kanhaiya Lal Gupta (Nana) also instructed him to leave his house as the goons of A1 were putting surveillance on him. Both PW-6 and his brother PW-5 left the house of Kanhaiya Lal Gupta and proceeded towards the house taking two different routes. As soon as PW-6 reached near Ramraj More the gang men of A1 intercepted him and after giving him a beating kidnapped him. He was then taken to the ancestral house of A1 in the village Pratappur where his two brothers namely, Satish (D1) and Girish (D2) were being tortured brutally. In the night at about 8 P.M. A1 who was then confined in Siwan jail arrived at his village home in a white colour Scorpio vehicle bearing no. 0786 and at his order the accused persons present there, namely, Maqsood Miyan, Tunna Miyan, Aftab Miyan, Madan Sharma and others gave acid bath to both of his brothers. A1 ordered those accused(s) to pack the bodies of D1 & D2 in gunny bags and to bury them after putting salt so that no evidence of their killing remain. His further evidence disclosed the manner in which he was taken from one place to another when ultimately he managed to escape the captivity of the accused persons and out of fear left the State.

- (11) On 16.8.2004 at 10.30 A.M. D2, CW1 and PW5 were at the bus stand shop when the tractor with trolley had come laden with sand



and stone chips. 02 of the co-accused(s) were present. An objection was raised by PW-5 whereafter abuses and assault was hurled. PW6 also arrived there. The accused persons after getting the cost of the building material paid by PW-6 returned. Second part of the prosecution case starts when the accused(s)/appellants again reverted to the place of occurrence along with few other accused(s). In relation to the occurrence which occurred on 16.8.2004 at 10.30 A.M. at the bus stand shop the defence has another version to narrate. Co-accused Madan Sharma lodged an F.I.R. (B-1) on the same day at 1 O'clock alleging *inter alia* that in the morning at about 11 A.M. he had gone to his bus stand shop at Barharia to unload building material (sand). The same was objected by PW-6. The informant was claiming right and title over the land. He further alleged that he had gone together with four persons for panchayati. In the meantime, PW-6 rushed inside the shop and came out with acid and sprinkled on them which caused severe injuries to him and other persons present there. The informant imputed a dispute relating to one of the shops at the Barharia bus stand as the motive. He was claiming 1 and ½ dhurs of land with shop which he had taken from co-accused Nagendra Tiwari 07 years ago. PW-6 had also purchased the land from the plaintiff of Title Suit No. 209 of 1993. PW-6 was engaged in



constructing the shop/residential building. He was also running a shop at the Barhariya bus stand. We thus find that part of the prosecution case which provided the genesis of the occurrence and the presence of PW-6 at the Barhariya Bus stand shop is somewhat admitted by the defence. The F.I.R. (Ext. B-1) also establishes presence of co-accused Madan Sharma and his four associates at the place of occurrence on the relevant date and time of occurrence. The deposition(s) of injured witnesses of Siwan (Muffasil) P.S. Case no. 130 of 2004 (Ext. B-1) are on record. Ext. B-2 is the deposition of Ajmer Ahmad, resident of Tetariya within Hussainganj P.S. Ext.B-3 is the deposition of co-accused Jhabbu @ Sah Alam(also injured). He is also resident of village Pratappur under Hussainganj P.S. Ext. B-4 is the evidence of co accused Monu S/o Abdul Hassan, resident of village Tetariya within Hussainganj P.S. They all had deposed that Madan Sharma had called them for Panchayati at the place of occurrence. Abuses and altercation were exchanged between co accused Madan Sharma and PW-6 whereafter acid was brought by PW-6 and sprinkled on them causing injuries.

- (12) The disclosure of the prosecution case narrated by PW-6 and to some extent by his brother (PW5) can be broadly classified into two parts. On 15.8.2014 at 9 A.M. Kanhaiya Lal Prasad (Nana)



had called PW-6 about the demand of Rs. two lacs made by A1. On the date of occurrence in the morning at 9 A.M. PW-6 himself received a call from A1 demanding money. On 16.8.2004 at 10.30 A.M. D2, CW1 and PW-5 were at the bus stand shop when the tractor with trolley came filled with sand and stone chips to which an objection was made whereafter abuses and assault were hurled. The matter was promptly reported to PW-6 by D2 who went to the said shop and also objected to their high handedness whereafter they all started altercating with them. Out of fear of assault to him and his brother (PW6) and witnessing the looting of the shop, D2 ran inside the shop and came out with bottle of acid and sprinkled on the assaulters. The First Information Report (Ext. B-1) lodged by Madan Sharma on the same day on 16.8.2004 at 3.15 hours against PW-6 only also allege, *inter alia*, that in the morning of 16.8.2004 at about 11 AM when he was unloading building material at his Badhariya bus stand shop it was objected by PW-6 who claimed title over the land. At that time four persons were also accompanying him who had come for Panchayati. In the meantime, PW-6 went inside the shop and appeared with a bottle of acid and sprinkled on them which caused severe injuries to him and other persons present there. Adverting to the evidence of PW-6 at para 1 and PW-5 at para 2 it is seen that the prosecution



witnesses have also narrated the first part of the incidence in the manner stated in Ext. B-1 albeit with minor change. This part of the prosecution case as unfurled at the trial has clearly been proved. The rest part of the prosecution case as narrated by the prosecution is now to be examined in the light of the evidence on record and the submissions made by the rival parties.

- (13) The Senior Counsel appearing in support of A1 has contended *inter alia* that the uncorroborated evidence of PW-6 is fit to be rejected outright as he appeared before PW-8 (the last I.O.) for his C.D. statement 62 months after the occurrence. PWs 1 and 4, in their respective depositions, have stated that they had occasions to meet and interact with PW6 but they have not stated in their respective deposition about the cruel death by acid bath of D1 & D2 in presence and at the orders of A1. None of the PWs have stated about the abduction of PW6. A1 is a well known political figure. After the occurrence a change in the political leadership in the State had taken place. PW-6 was lurking for an appropriate opportunity during these 62 long months to implicate the A1. Highlighting the prosecution case, it is submitted that it was grossly improbable for PW-6 to get away from the clutches of accused(s). It is also highly unnatural and inconceivable that the death having been caused to D1 and D2 in presence of PW-6 he



would have been spared. PW-6, as deposed, was wandering from one place to another but was also engaged in business. He could have presented himself for his C.D. statement soon after the situation normalized. He did not do so. He would also urge that A1 was then lodged in jail as deposed by I.O., PW-4 and PW-6 himself. He has a cast-iron alibi which has not been dispelled by the prosecution. The prosecution has not been able to prove how he could come out of jail and travel to Pratappur on the relevant evening as deposed by PW 6. Referring to the evidence of PWs 2 and 3, it has been urged that PW-6 was present at the house of PW-2 in Siwan for at least few days. They having not been declared hostile their evidence would be binding on the prosecution. To support the said contention he has relied on **AIR 2010 SC 979**. Neither PW-1 (mother) nor PW-4 (father) in their evidence have stated about the complicity of A1 in the crime as deposed by PW-6. Drawing our attention to the evidence of the I.O., particularly, PW-7 at para 51, it is submitted that no material against A1 had then emerged requiring any step or investigation against A1. On the plea of alibi of A1 he also placed the evidence of PW-10 at paragraph nos. 16 and 22 wherein it was stated that A1 was in Siwan jail on the date of occurrence. It is further pointed out that the last I.O.(PW8) in his deposition (at para 59)



has clearly stated that he recorded the C.D. statement of PW-6 on 24.10.2009. Pyramiding his submission, it is further contended that actually PW-6 was an absconder in the Siwan Town (Muffasil) P.S. case No. 130 of 2004 against whom processes under Sections 82 and 83 of the Code were already issued. The I.O. has stated that attempts were also made to arrest PW-6 in connection with the said case (Ext. B-1). The learned Senior Counsel referred to the evidence of PW-6 (at para 38) to highlight his antecedents and argued that the story put up by PW-6 that he went to the police station after police station for reporting the case should not be accepted as no plausible explanation has been offered by him. Reliance has been placed to support the said contention on paragraph nos. 8 and 9 of **AIR 2007 SC 3234**. He would also argue that, in fact, PW-6 had filed an anticipatory bail petition before the learned Sessions Judge which was dismissed on 16.09.2004 (Ext. C/1). Exts. C/2, C-2/1 are the signatures of one Shri Parshuram Singh on the anticipatory bail petition and the 'vakalatnama'. Having detailed the short comings in the evidence of PW-6 who only narrated the ocular version showing the complicity of A1 along with other appellants in the crime, it is submitted that a duty is cast on the Court to apply strict scrutiny. In this connection, he placed reliance on **AIR 2011 SC 200** (para -



7) wherein it has been held that more serious a offence the more strict scrutiny is called for. Quite vehemently, he argued that the prosecution has miserably failed to prove the criminal conspiracy between the appellant and other co-convicts. There is no reliable evidence on record to prove that A1 had conspired with other co-accused(s) in furtherance whereof the crime was committed. In this regard, he further stressed that the bone of contention was land dispute between co accused Madan Sharma and the prosecution which has distinctly appeared in the prosecution evidence. The conviction of the appellant A1 under Section 364A, 302/120 B of the IPC on the basis of the evidence on record is wholly unsustainable. PWs 2 and 3 were present at the two shops but they have not stated the men who attacked and kidnapped the D1 and D2 from the two shops were the goons of A1.

(14) Mr. Kanhaiya Pd. Singh, learned Senior Advocate, appearing in support of A2 has submitted that PWs-1 and 4 are the hearsay witness. PW-5 Nitish Raj has also professed in Court that he got the information of the incident from PW-6. He too is hearsay. The Trial Court has not placed reliance on PW-5. He contended, as argued by Mr. Surender Singh, that PW-6 is a solitary witness to have stated about the occurrence both the preceding part and the later part. PW-6 has claimed to have disclosed the trauma he



suffered on the date of occurrence to Kanhaiya Lal Gupta (Nana) who has not been examined. PW-4 has not named appellant A1 in his C.D. statement. He relied on paragraph no. 66 of the evidence of PW-7 (first I.O.).

- (15) Mr. Dixit appearing in support of A4, while adopting the submissions advanced by two Senior Advocates, has also highlighted that PW-6 was available in the city as deposed by him but he never appeared for his C.D. statement before the I.O. for a pretty long time. His evidence does not inspire confidence. Mr. Verma also highlighted the discrepancies in the prosecution evidence as argued by the Surender Singh.
- (16) Mr. K.T.S. Tulsi, learned Senior Counsel appearing for the prosecution has refuted these contentions. He submits that there are several circumstances proved by the prosecution which when culled out and connected shall conclusively prove the guilty of the appellants. The first circumstance which shows the complicity of A1 in the crime is the evidence of PWs 1 and 6 who have stated that on 15.08.2004, at 9 P.M. Kanhaiya Lal Prasad called them to convey that a demand of Rs. two lacs was made by A1. The prosecution story that A1 was in conspiracy with co-accused(s) since inception gets a confirmation. Again on the date of occurrence PW-6 received a call from A1 demanding money as



spoken by PW-5 and PW-6 himself (at paragraph nos.79 and 80). A conspiracy was hatched on 15.08.2004 itself. The following day on 16.08.2004 at 10.30A.M. co-accused Madan Sharma with tractor and trolley filled with sand came at the bus stand shop along with other co -accused(s) whereafter the objection was raised by PW-5 as well as PW-6 which ensued an altercation between them and hurling of abuses followed by assault and looting of the shop . He pointed out that the tractor and trolley part of the prosecution case and presence of PW-6 at the bus stand shop is proved by the documentary evidence (Ext. B-1, B-2 and B-3) of the defence. In consequence of the conspiracy D2 was abducted from the bus stand shop whereas D1 was abducted from the Chhurhatti shop of the informant. PW-5 as well as PW-6 have clearly spoken about coming of A2, A3 and A4 along with others armed with fire arms. Pistol was pointed at PW-6 and the accused started assaulting D2. They also started breaking the door and looting the shop. D2 having seen the atrocious acts of the accused threw acid on the assaulters-attackers. The accused persons overpowered and abducted D2 in the Bolero. PWs-6 and 5 have distinctly spoken this part of the incident. The shop was looted and burnt by the accused persons on the relevant day has also been stated by PWs 1, 3, 4 and 5. Their evidence would also



demonstrate that PW6 was also assaulted by A2, A3 and A4 besides other. Their evidence unerringly establishes the abduction of D2 by the accused(s) including some of the appellants herein in the commission of crime in conspiracy with A1. The abduction of D1 from the Chhurahatti shop is established from the evidence of PW2, PW-3, CW1 and PW-6. What happened thereafter has been narrated by PWs 5 and 6 (the two brothers). Both of them reached the house of his Nana in relation who admonished them not to go out as they would also be killed since A1 had issued instructions for wiping out the family. PW-6, in his examination-in-chief, has narrated as to how after abduction of D2 the accused(s) had also chased him but he managed to escape from the bus stand shop and then went to the police out post Mahadeva and attempted to inform about the incident.

- (17) Referring to the further evidence of PW-6 (at para 26) and PW-1 (mother) (at para 6), it is pointed out to us that PW 6 was kept in confinement by the goons of A1 at several places when he escaped their tentacles and fled to the adjoining State of Uttar Pradesh. The terror unleashed by A1 was so deep and pervasive that PW1 (mother) with her daughter fled the town. If the evidence of PWs 4, 5 and 6 are examined meticulously, it is urged, it shall reveal that PW 4 after the incident could meet with PW 5 only after two



months whereas PW 5 met PW 6 after a year. PW 6 met PW 4 (father) after six months at a different place. The delay in the appearance of PW 6 before the police for his C.D. statement should be considered/examined in the fact situation that prevailed in the District of Siwan. The substantive evidence, in this regard, has come when PW 5 and PW 6 have stated that D2 who was present at the bus stand shop tried to call the police but there was no response. PW1(mother) has also stated in her examination-in-chief that on receiving the information from her servants about the kidnapping of her two sons she immediately ran to the police station to report the case but the police officer turned a deaf ear to her repeated requests. The ineptness of the police investigation and the fear psychosis they were suffering with is also evident from the fact that the police readily first registered a case (Ext. B-1) against PW 6 and later in the evening went to the house of the informant (PW1) to register her case. The tardy and guided manner in which the investigation proceeded in the case would be a relevant aspect kept in mind while appreciating the evidence. The investigation continued for 05 years. PW6, who was a witness to the loot, arson, assault and kidnapping of his two brothers by the accused persons, had to run pillar to post but no case was registered by the police. It has also come in his evidence that for



recording his C.D. statement, out of fear to his life, he chose late night to reach the police station directly from the railway station and immediately left the town in the wee hours. No one was there to help him out. His 'Nana' had also refused to allow him to stay in his house. His uncle also shut door of his house for him. The father (PW4), however, mustered courage and appeared before the I.O. for his statement. The I.O. got his statement recorded by the Magistrate on 07.04.2005 (Ext.3) under Section 164 of the Code. Ext. 3 eloquently narrates the entire sequence of events, the complicity of A-1 in the crime and the apathy and hostility of the police in not taking any action against A1. His evidence in Court is that he had gone to the police station to provide him shelter in the P.S. for the night which too was refused out of the terror of A1. Even after the recording of statement of PW 4 under Section 164 of the Code (Ext. 3) the police did nothing against the A1 who was only got remanded in the case after 05 years in 2009. Mr. Tulsi would further argue that indeed PW 6 was a foolish to have mustered courage to appear before the police and later in the Court to depose against A1. It may be due to the sleepless nights he must have spent after having witnessed the barbarity of the appellants, in killing his two brothers in a most cruel manner in his presence. Unrelenting PW 6 dared first to appear before the police for his



statement in the cover of darkness and then again in Court to narrate the case in a hope to get justice to his two brothers. The fear of PWs, 1, 4 and 5 who had deposed on first part of the incident but not whispering anything about the kidnapping of PW-6 and murder of D1 & D2 at the orders of A-1 in presence of PW6 was ostensibly in a bid to save the life of PW-6. Their fear came true when PW-6 was killed in the broad day light on the main street of the town on 16.06.2014 when PW6 was scheduled to appear in Court for further evidence on 19.06.2014. The mother (PW1), in course of her cross-examination, has stated so in para 24. The prosecution has, thus, argued the evidence of PW-6 assumes greater significance. He relied on Section 33 of the Evidence Act (for short 'the Act') which reads as under:-

“33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.- Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided- that the proceeding was between the same parties or their representatives in interest;

That the adverse party in the first proceeding had the right and opportunity to cross-examine;



That the questions in issue were substantially the same in the first as in the second proceeding.”

- (18) The criticism of PW 6 of having appeared before the Investigating Agency after 62 months has been countered by him contending that an unexceptional situation had prevailed in the District of Siwan. The reign of terror unleashed by A1 was of such a magnitude that even the police administration was not willing to record the F.I.R. and to provide shelter to the witness (PW4). In a situation like this, PW6 cannot be condemned for the undue delay in recording his C.D. statement. In support of the contention, he has relied on the following judgments

- (i) (2014)12 SCC 473 Baldeo Singh vs. State of Punjab
- (ii) (2013)7SCC 278 (para17) (Ganga Singh Vs. State of Madhya Pradesh)

- (19) The contention of the appellants that Section 10 the Act shall have no application in the case has been countered by him and it is urged that there is convincing evidence on record which satisfy the ingredients of Section 10 of the Act. The law only requires a *prima facie* evidence of existence of the conspiracy before applying the mischief of Section 10 of the Act. It is also stated that Ext.6 written by PW-6 clearly proves the enmeshment of the appellants including A1 in the ghastly crime.
- (20) On a careful scrutiny of the relevant evidence of PWs 1,4,5 and 6 it is manifest that PW 1 (mother),PW 4(father)and PW 5 (brother)



have stated about the story of kidnapping of D1 and D2 by the accused persons. None of them, however, has made any statement enmeshing A1 in the crime or the story of how PW6 was kidnapped, brought to village home of A-1 where D1 and D2 were given hair raising form of death at the orders of A1. It is only PW6 who has stated about the incident at village Pratappur. It is not difficult for us to comprehend their mental condition. They had seen the conduct of the police and the administration. Protectors of law had become mute spectators. The reign of terror of A1 was such the entire family, after the incident, had left the town. The police and the relatives were not even prepared to give shelter to PW-4 and PW-6. We also find from the evidence that another uncle of PW-6 who was holding a senior position in RBI at Siwan after the present incident got himself transferred to Mumbai. Obviously, the prime concern of the surviving family members (PWs 1,4 and 5) was to ensure the life and safety of PW-6. We also find from the evidence of PW-4 (para 12) that the administration later provided him a slew of police constables which remained with him until his deposition. PW6, however, only mustered courage first to appear for his CD statement in the cover of darkness and then in Court to depose whatever he had seen. His evidence implicate the A1 directly in the crime along



with other appellants. The contention of the appellants that the evidence of PW6 does not get full corroboration from the evidence of PWs 1 and 4 is reasonably explained. Mr. Tulsi has argued that PW6 was probably a fool who dared to open mouth against A1 running a risk to his life. The apprehension of PWs 1,4 and 5 came true when PW6 was again re-summoned after addition of charge to appear in Court for cross-examination on 19.06.2014 and two days before he was shot down in broad day light in the heart of the town (D.A.V. chowk) on 16.06.2014. The evidence on record establish an extraordinary situation had prevailed in the township of Siwan. The scourge of terror unleashed by A1 using his notoriety and political power/influence had left a discernible impact on every limb of the District administration. If an unexceptional situation is shown to be present the Court of justice is expected to apply an unconventional test. It is because the hands of the Court are not scuttled in doing justice between the parties. The legal principle that extraordinary situation demands extraordinary remedies has been enunciated in **Prithipal Singh & Ors vs. State of Punjab & Anr. since report in (2012) 1 SCC 10**. The Hon'ble Apex Court in para 50 observed as under:-

“50. Extraordinary situations demand extraordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass an unconventional order keeping in mind that an



extraordinary fact situation requires extraordinary measures. In B.P. Achala Anand v. S. Appi Reddy this Court observed (SCC p. 318, para 1).

“1 unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by Courts, transforms into justice.”

Thus, it is evident that while deciding the case, the court has to bear in mind the peculiar facts, if so exist, in a given case.”

- (21) We may reiterate here, at the cost of repetition, that the police officers knew the involvement of the goons of A1 in the crime from very inception. Out of fear, they refused to register the case when reported and to even grant shelter to PW4 at the police station. Even after recording the statement of PW-4 (Ext.3) the police maintained a questionable go slow attitude. On the contrary, the I.Os showed greater interest in the investigation of case (Ext. B1) lodged by one of the accused(s) of the present case. Incidentally, we may also notice the evidence of 4th I.O. (PW8), who, in para 106, has stated that PW6 in his C.D. statement had stated about the presence of A1 at village Pratappur in the night of 16.8.2004 where in his presence and at his instigation his two brothers were given the acid bath and packed in gunny bags after deforming their limbs. He accepts of having not taken any steps to investigate and verify from the concerned jail authority and the independent witness at village Pratappur. The I.O. has further



admitted that immediately after the recording of the statement of PW-4 no step was taken to obtain the call details report (CDR) of the mobile phones from which call was received by PW-6. The informant (PW1) and thereafter PW-6 run to the police station after police station to lodge the case which was refused. PW-4 has also elaborated on this point. The 164 Cr. P.C. statement of PW-4 (Ext.3) was recorded at the behest of the I.O. On going through Ext. 3, it is found that the allegation was directly attributed to A1 and the goons of A1 (other appellants) in the crime in furtherance of the conspiracy hatched by them. Such statement was recorded at an early stage of investigation on 07.04.2005. PW-4, in his such statement, had also stated about the writing on the paper by PW-6 detailing the entire sequence of events while leaving the town fearing his life which was handed over to his brother PW-5. The police authority even thereafter did not take any step against A1. We have minutely gone through Ext. 3 which depicts the plight of PW-4. Neither the administration nor any advocate was prepared to come to his rescue openly. In **Karan Singh vs. State of Haryana & Anr. [(2013)12 SCC 529]**, the Apex Court has held that if the circumstances proved at the trial depicts a dishonest or guided investigation the omissions made on the part of the investigating officer would not be fatal to the case of the



prosecution. The legal principle behind is that the justice shall not reward inept or dishonest investigation. We shall again notice here PW-6 claimed to have received a phone call from A1 from his mobile number allotted to him as Member of the Parliament. Had the investigation been taken up in right earnest and with due diligence, the call details record of the said mobile phone would have been obtained which could have conclusively proved the chain of the circumstances. The evidence of PW11 on record is that due to long lapse of time no such call details is retained and was made available, on request, to the investigating officer. Ext. 10 is the ownership report filed by the BSNL to prove that the said mobile number was allotted to A1 as the Member of Parliament. According to PW6, he received the phone call from the said mobile number on his mobile number 9431218278. Ext. 10 again clarifies that the said mobile was allotted in the name of father of PW6. Ext. 10 proved by PW-11 the Sub Divisional Engineer in the office of General Manager Telecommunication Department throws much light on the case. It has not been denied that the mobile no. 9431216786 was not in the use of A1 during the relevant period. The defence has not given any suggestion to PW-6 or PW10 to this effect that no call was made by A1 through the said mobile no. 9431216786. To conclude on the point it is



held that the investigation of the case from its inception was grossly dishonest and guided. It was apparently due to the terror of A1 who was wielding unprecedented political clout besides his notoriety.

- (22) The counsel for the prosecution has relied on **(2014)12 SCC page 457 (Sukhwinder Singh vs. State of Punjab)** wherein the Hon'ble Apex Court at para 18 observed as under:-

“.... If such mistakes or lapses are given undue importance every criminal case will end in acquittal . While it is true that the police should not involve innocent persons, fabricate evidence and obtain convictions, it is equally true that cases in which substratum of the prosecution case is strong and substantiated by reliable evidence, lapses in investigation should not persuade the court to reject the prosecution case. The Court with its vast experience should be quick to notice mischief if there is any. Incompetent prosecuting agencies or prosecuting agencies which are driven by extraneous considerations should not be allowed to take the Court for a ride.”

- (23) Situated thus, the defence would not be entitled to take the benefit of the omissions of the I.Os. resulting from faulty or biased investigation. We may, on this point, also refer the case of **Babu and Anr. vs. State represented by Inspector of Police, Chennai [(2013) 4 SCC 448]**, wherein it was ruled that a defect in the investigation if does not create a reasonable doubt on the guilt of the accused the Court is not obliged to discard the prosecution case on the ground that there was some defect in the



investigation.

- (24) Criticizing the evidence of PW6, the counsel for the defence has argued that there is no plausible explanation offered by PW6 for his delayed appearance before the police. We have appropriately dwell upon the relevant evidence on this point in previous discussions. PW6 was the next target. He was given a pardon by A1 while his two brothers were killed saying that the disputed shop/plot stood in his name as well as in the name of his mother (PW1). He would be eliminated only after getting the sale-deed executed by them. PW4, in his deposition, has also stated that the disputed plot/shop was purchased in the name of his wife (PW1) and his son (PW6). After having witnessed the murder of his two brothers in a most ghastly manner he was so fearful that after his release from the captivity of the accused(s) he fled outside the State of Bihar. It was, in the attending facts of the case, a natural conduct. His father, in the meanwhile, was examined by the police wherein he had narrated the entire incident as disclosed to him by PW5 and also perhaps by PW6 but still the police was not displaying required courage and willingness to proceed with the investigation in fair manner and take action against A1. Finding the situation not conducive to a fair investigation he remained elusive. Only in 2009 the police got A1 remanded in this case.



PW6 then returned to the town under the cover of darkness for recording his C.D. statement and left the town straightway from the police station before dawn. In the light of the prevailing situation painted through the prosecution evidence, we are prepared to accept that more than plausible explanation has been offered by the prosecution for the delayed C. D. statement of PW-6. In the case of **Dilawar Singh v. State of Delhi (AIR 2007 SC 3234)** the Apex Court considering the particular facts of the case held delay sometimes affords opportunity to the complainant to make deliberations upon the complaint and to make embellishment. The delay has the capability to defeat the chance of unsoiled and untarnished version of the case presented before the Court. Such delay in not filing the complaint or coming before the police is viewed with suspicion and the Court looks for satisfactory explanation. If there is none the delay shall be treated as fatal to the prosecution. . However, in the same judgment, it has been held that prompt filing of the report is not an unmistakable guarantee of the truthfulness or authenticity of the version of the prosecution . What is found on appreciation of evidence on record on this point is that the present one is not a case where a normal situation had then prevailed. What is important is whether there is acceptable explanation offered by the



prosecution. In the case at hand it is yes.

- (25) The Apex Court in **Baldeo Singh (supra)** appreciating the extraordinary situation that gripped the State of Punjab due to terrorists activities held that even delay of 02 months in lodging the FIR would not be fatal to the prosecution case. The Apex Court even after noticing that the C.D. statement of the relevant witness was recorded after a considerable delay of more than 02 years, in the peculiar facts of the case, held it shall not render their evidence unacceptable. Relevant legal principle enunciated in the said case culled out in para 25 of the report is reproduced hereinbelow:

“25. In the facts of the present case, the investigation was against the Deputy Superintendent of Police and several other police persons and the investigation was being conducted by the investigating officer of the Crime Branch of the State Police. There was, therefore, resistance within the police against the investigation and it was only on account of intervention of this Court in Inder Singh v. State of Punjab that there was progress in the investigation and the statements of the witnesses came to be recorded by the investigating officer. This being explanation for the delay in examining the witnesses under Section 161 CrPC, we are not inclined to accept the statement on behalf of the appellants that the prosecution witnesses should not be relied on because of delay in recording the statements under Section 161 CrPC.”

- (26) This takes us to the next criticism of Mr. Surender Singh of the evidentiary value of PW-6. It has been stated that he was present



in town and was taking steps to get anticipatory bail in the case (Ext. B-1) lodged against him inasmuch as an anticipatory bail petition was filed by him. We find from Ext. C-2/1 the 'Vakalatnama' was not signed by PW-6. The Power of Attorney was signed by one Parsuram Singh, Advocate. Although the anticipatory bail petition was presented but in spite of indulgence granted by the Court the defects in the application were not removed. The anticipatory bail petition filed on 13.09.2004 was rejected on 16.09.2004 for non-prosecution. It may again be under a plan that the anticipatory bail on his behalf was filed and got dismissed for non-prosecution. The said circumstance indicated by the counsel for the defence does not alter our view on this point.

- (27) At this stage, we consider the relevancy of Ext. 6 which is the narration of the episode authored by PW-6 on 16.8.2004 on a plain paper and handed over to his brother PW-5 to be given to PW-4 (father) on his arrival in town. The document was written by PW-6 in presence of PW-5 who has testified to this effect. PW-4, in his 164 statement (Ext. 3), stated about the said paper handed over to him by PW-5 which he intended to present before the authority or the Court. It has been urged before us by the defence that it was a manufactured document brought in existence later to implicate A1 in the crime. However, we find that no such suggestion was given



to the witness with respect to the genuineness of Ext.6 by the defence . Ext. 6 was written by desperate PW-6 when he failed in his every attempt to get justice from the police administration and even from his relatives. He was then reeling under immediate threat of being abducted and killed. He penned down entire episode with a view to use it as his written complaint or to inform his father about the incidence(s) that happened in quick succession leaving the family high and dry. The veracity of Ext. 6 having not been challenged by the defence, in our view, gives credence to the testimony of PW-6. It has not been debated much before us that the Court can convict the accused on the evidence of the solitary witness if the testimony of such witness inspires the confidence of the Court and bears ring of truth. We are, therefore, not dwelling further upon on this aspect.

- (28) The Senior Counsel for the defence has stressed that there is no iota of evidence to firmly establish the conspiracy and the participation of A1 therein. Law on this point is well crystallized by a catena of decisions. It can be inferred or proved by circumstantial evidence. Generally conspiracy is hatched in secrecy. Very recently the Apex Court in Mukesh v. State (NCT of Delhi) since reported in **(2017) 6 SCC 1** held that it is not always possible to prove this by direct evidence. The conspiracy and its



object can be inferred from the surrounding circumstances and the conduct of accused(s). Case present in hand has several such proved circumstances, as detailed above, which infallibly infer the conspiracy of A1 with other appellants in the commission of the crime.

- (29) Learned counsel for the defence has also argued that PW2 has stated that on 16 August 2004 PW-6 and PW-5 had gone to his house and stayed from 16.08.2004 to 20.08.2004. PW-3 has supported the aforesaid fact. Relying on their statements, it has been argued that PW-6 remained in the town for few days but did not appear before the I.O. for his C.D. statement. The prosecution cannot escape their evidence as they have not been declared hostile. PWs-6 and 5 have, however, not stated so. The prosecution has not given them any suggestion on this aspect during the entire cross-examination of PW-5 Nitish Raj and PW-6 Rajiv Roshan regarding their stay at the house of Rajesh Kumar. Apparently, the defence was not much relying on the fact of stay of PW-5 and PW-6 at the house of PW-2 as their solid defence. Even otherwise, the circumstances that prevailed before and after the incident, as discussed above, do not shake the testimony of PW-6 even if we accept that he remained hidden in town for few days.



- (30) Mr. Tulsi has argued that in considering the evidence of PW-6 the defence is at double disadvantage. In addition to what PW-6 deposed in the prevailing circumstance his evidence assumes greater significance in view of the fact that this crucial witness was killed only 02 days before he was scheduled to appear before Court for his further examination/cross-examination, after addition of charge(s). Such submission has been made in the light of Section 33 of the Act. In the same proceeding and between the same parties PW-6 had earlier deposed. Owing to his murder he was not available for his further cross-examination. The requirement of Section 33, in our view, is complete. The Court is inclined to accept his narration of facts of the case undermining the minor flaws in his evidence shown to us by the defence. Even otherwise on an independent appreciation of his evidence we have found him cogent and unmaligned.
- (31) Lastly, it has been argued that A1 has a cast iron alibi which has not been dispelled by convincing prosecution evidence. If A1 was in jail how could he go out of jail confinement and visit Pratappur in the evening of 16.08.2004. To appreciate the said contention, we would first refer to the background facts taken note by the Hon'ble Supreme Court regarding the anarchic conduct of A1 in para 28 of the judgment reported in **(2010) 4 SCC 653**. It also



details the criminal background of A1. The evidence discussed above also indicates how the local administration was completely yielded to scourge of terror of A1. They too were afraid of taking any action against A1 inasmuch as the police officers at different police stations were not prepared to lodge the case even against the henchmen of Saheb (A1). We would not repeat the evidence presented on this aspect by the prosecution. The appellant was involved in more 40 criminal cases. Many of whom were heinous crimes. The reign of terror created by A1 and his 'private army' was unexpected. The Hon'ble Supreme Court has noted his anarchic attitude when he had blatantly violated the command of law. The extreme fear created by him on the people at large and, in particular, the administration of the district including the jail staff was such that none of them was able to contain and stop him from doing an act of his choice although lodged in jail. Exts. 7,8,9 12 and 13 are the documents produced by the prosecution which, *prima facie*, indicate that the A1 although lodged in jail had access to many electronic devices otherwise prohibited by the rules of the jail. All the aforesaid Exts. 7,8,9,12 and 13 were marked on 7.5.2015 and 21.5.2015 in presence of A1 without any objection from the side of defence. The District Administration on three occasions conducted raid in



Siwan jail on 16.5.2007 (Ext. 12 and 13), 3.8.2008 (Ext.9) and 1.6.2013(Ext. 7 and 8), and seized large number of mobile phones, SIMS, charger, ear phones etc. from the ward of A1 for which cases were registered against the A-1 and other accused. Learned Senior Counsel for the defence has submitted that by merely exhibiting the document, the contents thereof are not proved. He relied on paragraph nos. 16 and 17 of **(2000) 8 SCC 745**. We do not dwell upon the said contention as we are only referring to the fact that those cases were registered against A1 while he was in jail custody. By exhibiting those documents, the prosecution has also presumably intended to demonstrate that the cases were lodged against A1 even while he was lodged in jail custody. Further, as noted above, such contention has no leg to stand as these documents were exhibited without objection. On a consideration of the aforesaid circumstances manifesting from the record, it is not difficult for us to treat the A1 as an anarchic for whom law meant nothing. Noticeably, he had also acquired political power. His reign of terror on the administration is well reflected and perceived from the evidence. He was unstoppable. In the setting of the aforesaid facts, we have carefully perused the evidence of PW-6 and found him trustworthy in narration of the prosecution case. We have already held that the contradictions



shown in the evidence of PW-6 are not such to discredit his evidence. The relevant contradictions in the evidence of PW-6 shown on this point by the defence do not fulfill the requirements of Sections 162 and 145 of the Act. In the statement, made under Section 313 of the Code, A-1 merely denied the charges saying that he was in jail. The prosecution also admits that during the relevant time A-1 was in jail. However, in view of the eye witness account given by PW-6 implicating him in the crime from the very inception, the burden was on A1 to prove by reliable evidence that he actually remained during the relevant date and time in jail custody. Fruitfully, the evidence of the I.O. can be referred where he has stated that he did not verify from the jail records as to the continuance of A-1 in jail during the relevant date and time of occurrence. On the other hand, the prosecution has succeeded in establishing the presence of A-1 at village Pratappur on the evening of 16.08.2004 and that he was a party to the conspiracy hatched between him and other appellants under which 02 shops of the informant were looted and 02 sons of the informant (D1 and D2) were abducted by the goons of A-1 and later brought to the village home of A-1 where, in presence of A-1, they were given acid bath by other appellants and then buried. We hold that the appellants in a pre-hatched conspiracy executed the crime in which



two brothers of PW-6 were kidnapped, brought to the village home of A-1 where they were killed by drenching them in acid and the dead bodies were packed in gunny bags and buried with a view to disappear the evidence of offence.

- (32) The impugned judgment of conviction and order of sentence passed against the appellants do not warrant any interference.
- (33) Resultantly, all the appeals fail and are dismissed.

(Kishore Kumar Mandal, J)

I agree.

(Sanjay Kumar, J)

Shyam/-

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