

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.398 of 1994

1. Prem Singh, son of Sri Bindeshwari Singh.

2. Manoj Singh, son of Sri Prem Singh.

3. Jhariman Singh @ Sanjiv Kumar Singh, son of Sri Prem Singh.

All R/o Village Dawath, Police Station Dawath, District Rohtas.

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Appellants

Versus

State of Bihar

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Respondent/s

with

CRIMINAL APPEAL (DB) No. 423 of 1994

Navin Kumar Singh, son of Sri Raghav Singh @ Raghav Jee Singh, R/o Village Dawath, P.S. Dawath, District Rohtas.

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Appellant/s

Versus

State of Bihar.

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Respondent/s

with

CRIMINAL APPEAL (DB) No. 485 of 1994

Sanoj Singh @ Kesho Singh, son of Shri Prem Singh, R/o Village Dawath, Police Statio Dawath, District Rohtas.

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Appellant/s

Versus

State of Bihar

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Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 398 of 1994)

For the Appellant/s : Mr. Vishwanath Prasad Sinha, Senior Advocate

For the Respondent/s : Mr. Rajiv Roy, Advocate

(In CRIMINAL APPEAL (DB) No. 423 of 1994)

For the Appellant/s : Mr. Manish Kumar, Advocate

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

(In CRIMINAL APPEAL (DB) No. 485 of 1994)

For the Appellant/s : Mr. Mr. Vikram Deo Singh, Advocate

Mr. Binod Bihari Singh, Advocate

For the Respondent/s : Mr. Rajiv Roy, Advocate

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

And

HONOURABLE MR. JUSTICE S. KUMAR

C. A. V. JUDGEMENT

(Per: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA)

Date : 30-9-2019

1. All the above three appeals arise out of the judgment dated 09.08.1994 and order dated 11.08.1994 passed by Shri Madhusudan Singh, Additional Sessions Judge-VI, Rohtas, Sasaram in Sessions Trial No. 62 of 1993, as such, they are being taken up together and being disposed of by this common judgment.

2. Appellants in Criminal Appeal No. 398 of 1994 Jhariman Singh @ Sanjiv Kumar Singh, Manoj Kumar Singh and Prem Singh were convicted under Sections 302/34 of IPC and sentenced to undergo Rigorous Imprisonment for life. Appellant Sanoj Singh in Criminal Appeal No.485 of 1994 was convicted under Section 302 of IPC and sentenced to undergo Rigorous Imprisonment for life. Appellant Navin Kumar Singh in Criminal Appeal No. 423 of 1994 has been convicted under Section 216 of IPC and sentenced to R.I. for five years.

3. The facts giving rise to these appeals in short are that an F.I.R. was lodged by PW-8 Baban Singh father of Ravinder Singh (deceased) on 18.09.1992 at about 9:45 PM at Dawat Police Station stating therein *inter alia* that at about 8:45 A.M. he was going towards eastern 'Badhar' to ease himself, he saw



that his son in *Ganji and Kurta* sleeping at the cemented “*Chabutra*” of Brahma Asthan and when he was returning at about 8:45 A.M and came near Brahma Asthan, he saw appellant Manoj Kumar Singh standing with licensee double barrel gun standing at Brahma Asthan, he tried to go to his village from the south of the Brahma Asthan, he saw appellant Sanoj Singh @ Kesho Singh assaulting his son Ravindra Singh, while his son was sleeping at Brahma Sthan, on his neck by “Dab” and appellant Jhariman Singh @ Sanjiv Singh and his father appellant Prem Singh caught hold the leg and waist of his son Ravinder Singh. Prosecution story is also that he was chased by appellant Manoj Kumar Singh, he fled towards the village and informed about the same to his sons. Further case is that he along with his sons Harendra Singh (PW3), Upendra Singh (PW4), Munna Singh (PW5) and other villagers came near Brahma Asthan, where his son Ravinder Singh was being assaulted and saw his son dead. He had injuries over right chick, ear, neck and head. He has also stated that all the accused persons had already fled away from the spot. As per prosecution story, the reason behind the occurrence is that earlier his son has found the appellant Sanoj Singh @ Kesho Singh in a drunken condition at Brahm Asthan and the same was



objected by his son, for which, there was altercation between Sanoj Singh @ Kesho Singh and his son Ravinder Singh (deceased) and his son slapped Sanoj Singh @ Kesho Singh. At that time Sanoj Singh @ Kesho Singh was coming with a double barrel gun of his grandfather, but Yogendra pacified him, however, he threatened his son to teach him a lesson in future and due to that all the accused persons with common intention killed his son, (deceased).

4. On the basis of above statement, Dawat Police Station Case No. 62 of 1992 was registered against Prem Singh, Jhariman Singh @ Sanjiv Kumar Singh, Sanoj Singh @ Kesho Singh and Manoj Kumar Singh. It further appears from the record that in the evening the police raided the house of Navin Kumar Singh as appellant Sanoj Singh and Manoj Kumar Singh were found loitering around the house of appellant Navin Kumar Singh, appellant Navin Kumar Singh was arrested, and as such, Navin Kumar Singh has also been made accused in this case.

5. Police after investigation submitted charge sheet against the appellants. Cognizance of the offence has been taken and case was committed to the Court of Sessions which ultimately traveled to file of Sri Madhusudan Singh, Additional Sessions



Judge-VI, Rohtas for trial and disposal.

6. During the trial, appellant Sanoj Singh @ Kesho Singh has been charged under Section 302 of IPC. Appellants Prem Singh, Manoj Kumar Singh and Jhariman Singh have been charged under Sections 302/34 of IPC and appellant Navin Kumar Singh has been charged under Section 216 of IPC.

7. During the trial, 10 witnesses have been examined on behalf of the prosecution and they are PW-1 Dr. Rabindra Nath Singh, PW-2 Baijnath Singh, PW-3 Harendra Singh, PW-4 Upendra Singh, PW-5 Munna Kumar Singh, PW-6 Rajendra Singh, PW-7 Nand Bihari Singh, PW-8 Baban Singh, PW-9 Chandreshwar Prasad, PW-10 Mukhtar Prasad. Out of the aforesaid witnesses, PW-3 to PW-5 are brothers of the deceased Ravinder Singh. PW-1 Dr. Ravinder Singh is the Doctor who has conducted the Autopsy on the dead body of the deceased Ravinder Singh. PW-2 & PW-7 are the inquest witnesses and appears to be of same village. PW-6 appears to be a relative of PW8. PW-7 is the Investigating Officer of the case and PW-10 is a Constable who has brought the seized articles, i.e. blood stained earth kept in Mud built pitcher "Hadi" which is marked as Mat. Ex.1.

8. Besides the above following documents have been



brought on record on the behalf of the prosecution i.e. Ex.1 Postmortem Report, Ex.2 Inquest Report, Ex.2/1 signature of Nand Bihari Singh (PW-7) on inquest report, Ex.3 signatures of Upendra Singh (PW-4) on seizure list, Ex.3/1 signatures of Munna Singh (PW-5), on seizure list Ex.4 F.I.R., Ex.5 Seizure list, Ex.6 Certified copy of judgment of Sessions Trial No. 30 of 1991 of Additional District & Sessions Judge, Sasaram.

9. Defence has also adduced oral evidence and got three witnesses examined. They are as follows: DW-1 Moti Kahar, DW-2 Sailesh Kumar Singh and DW-3 Sriman Narayan Singh.

10. Apart from oral evidence, following documents had been brought on record by defence. Ex.A, F.I.R. of Bikramganj P.S. Case No. 29 of 1994, Ex.B FIR of Dawat P.S. Case No. 10 of 1979, Ex.C Deposition of Awadesh Kumar Singh in S.T. No. 30 of 1984 and Ex.D a certificate granted by Block Pramukh.

11. The defence of the appellants which appears from the cross-examination of the witnesses as well as statement under Section 313 of Criminal Procedure Code is that they are innocent and they have falsely been implicated in this case, no such occurrence has taken place in the manner as claimed by prosecution witnesses and deceased might have been killed by someone in some other place and dead body was kept at Brahm



Asthan and appellants have been implicated in this case due to enmity.

12. The learned trial court on conclusion of trial has convicted the appellants in Criminal Appeal No. 398 of 1994 Jhariman Singh, Manoj Kumar Singh and Prem Singh under Sections 302/34 of IPC and sentenced to undergo Rigorous Imprisonment for life. Appellant Sanoj Singh in Criminal Appeal No.485 of 1994 was convicted under Section 302 of IPC and sentenced to undergo Rigorous Imprisonment for life and also appellant Navin Kumar Singh of Criminal Appeal No. 423 of 1994 has been convicted under Section 216(1) of IPC and sentenced to R.I. for five years.

13. Being aggrieved by the above judgment, the three appeals have been filed by the appellants assailing the impugned judgment and order passed by the learned Trial Court on several grounds.

14. Learned senior counsel appearing in Criminal Appeal No. 398 of 1994 as well as counsels appearing in the other appeals has assailed the judgment on various grounds which we will discuss, while considering the evidence of prosecution witnesses.

15. On the other hand, learned counsel appearing for the State



has defended the judgment.

16. In the present case, PW-8 is the informant in this case. His evidence disclosed that while he was going to attend the call of nature near about 8:45 A.M. on east “Badhar” he saw his son Ravinder Singh sleeping at the ‘Chabutra’ at Brahm Asthan wearing Sando Ganji and green & white chekdar *Lungi*. His evidence also disclosed that when he came after half an hour, he saw appellant Sanoj Singh cutting the neck of his son Ravinder Singh (deceased), appellant Prem Singh caught hold of his waist while appellant Jhariman Singh @ Sanjiv Kumar Singh caught hold of his leg and Manoj Kumar Singh was standing at north-east corner of Brahm Asthan with double barrel gun, who chased him (PW8), on which he fled to his house and told his sons Harendra Singh (PW3), Upendra Singh (PW4) and Munna Singh (PW5) about the same. As per this witness, when they returned at Brahm Asthan, Rajendra Singh (PW6), Baijnath Singh (PW2), Nand Bihari Singh (PW7) and Yogendra (not examined) were present there and he disclosed them about the occurrence. His evidence also disclosed that PW6 had told him that he saw accused Sanoj Singh, Manoj Kumar Singh, Prem Singh and Jhariman Singh near the house of Magni Tiwari and Sanoj Singh had a blood stained dab in his hand and Manoj



Kumar Singh was armed with a gun. He (PW8) has also stated that two months ago Sanoj Singh had come near the Brahma Asthan in a drunken condition and deceased Ravinder Singh had objected, due to that there was quarrel between them and deceased Ravinder Singh slapped Sanoj Singh, thereafter, Sanoj Singh threatened the deceased to teach a lesson. Evidence of this witness also disclosed that witness Yogendra was gained over by the accused persons. He has been cross-examined to show that witness Yogendra Singh and deceased Ravinder Singh are accused in a murder case of one Suresh Singh.

17. PW1 Dr. Ravindra Nath Singh conducted Autopsy on the dead body of the deceased and found the following:-

(i) Sharp cut 3-1/2" X 1/2" x bone deep on right post auricular region;

(ii) Sharp cut 4" X 1/2" X bone deep X right cheek below right auricle;

(iii) Sharp cut 6' X 2" X bone deep on upper portion of neck right side;

(iv) Sharp cut 6' X 1 1/2" X Vertebra deep on mid portion of right side neck Trachea, right carotid vessels, muscles and nerves of right side of neck was sharply cut and completely cut. Mandible cut sharply on right side;

(v) Sharp cut 3" X 1/2" X bone deep on right side scalp;

(vi) Sharp cut 4" X 1/2" X bone deep on right



side scalp;

(vii) Cut 1"X 1/4" X bone deep on dorsum of left index finger.

(2) All injuries are caused by sharp edged weapon, may be Dab or Fasuli.

(3) in my opinion death was due to injury no.4 causing hemorrhage and shock and cessation of respiration.

(4) Time elapsed since death 24 hours of postmortem examination.

(5) The Doctor proved the postmortem report which has been marked Ex.1.

(6) Injury No.(iii), (iv), (v) and (vi) are by themselves sufficient in ordinary course of nature to cause death.

His evidence in the cross-examination disclosed that he found semi digested food in the stomach and further disclosed that after 4-6 hours stomach stands empty when vegetarian food is taken and it takes 10-12 hours to completely digest, red meat. He has also stated that he has not found any element of alcohol in undigested elements.

18. Learned senior counsel for the appellants as well as other witnesses have vehemently argued that PW-8 though claims to be the eyewitness of the occurrence, but he has actually not the eyewitness of the occurrence and in that connection drawn our attention towards the para 13 of the cross-examination to show



that the PW8 has not raised any alarm seeing the occurrence, further towards paras 14 and 31 to show that when he ran to his house, he remained there for 15 minutes and it takes 15 minutes to come from his house to Brahm Asthan, which is against the natural conduct in a situation like that. Secondly, on the ground that police station is situated in the village itself and the evidence of I.O. disclosed that it takes 5 minutes to reach from the police station to the place of occurrence but in spite of that F.I.R. has been lodged after one hour of the occurrence and police has no information about the occurrence. Thirdly, on the ground that Doctor has found semi digested food in the stomach of the deceased, whereas evidence of the PW8 disclosed that in the morning at that time food was not cooked in his house. Apart from that, the evidence of PW8 disclosed that the deceased was not trying to save him. (हाथ नहीं चला रहा था बचाव के लिए, वह चिल्ला भी नहीं रहा था, वह छटपटा भी नहीं रहा था). It has been argued that the above evidence rather supports the defence case that he has been killed on some other date and time and in some other manner at some other place, as such, the evidence of PW8 does not appear to be credible and trustworthy and as he is father of deceased, implicated the appellants due to previous enmity.



19. Evidence of PW8, as discussed above disclosed that he has given a detailed description of the occurrence supporting the prosecution case, which found corroboration from the F.I.R. (Ex.4) also. The F.I.R. has also been lodged within one hour of occurrence. The evidence further disclosed that while he was coming from east “Badhar”, he saw the appellant Manoj Kumar Singh with double barren gun, seeing him tried to proceed to his house from south of Brahm Asthan, he saw the occurrence and he was chased by Manoj Kumar Singh. Above evidence disclosed the explanation for his presence at that time and watching the occurrence and he has chased, such a situation, it appears quite natural for the PW8 that he ran towards his house in order to save himself and thereafter, he disclosed about the same to PW3 to PW5, who are sons of the PW-8 and brothers of deceased. In view of the above, there does not appear anything unnatural in his evidence to make the same doubtful on the above ground. So far the submission that he did not raise any alarm, his cross-examination disclosed that he asked from the accused persons as to what they are doing, but he was chased by Manoj Kumar Singh, hence it cannot be said that he has not reacted to his son being assaulted by the appellants. So far his evidence that he remained for 15 minutes at his house and it



takes 15 minutes to him to reach at the place of occurrence again, that are merely a guesswork which at the time of cross-examination he has to answer spontaneously. The aforesaid aspect of the matter has been considered by the Hon'ble Apex Court in the case of *Bharwada Bhoginbhai Hirjibhai Versus State of Gujarat*, reported in *AIR (1983) 3 SCC 273*, in which the Hon'ble Supreme Court in paras 5(2), 5(5) and 5(7) has observed as follows:

“5(2). Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

5(5). In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

5(7). A witness, though wholly truthful,



is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes to operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him – Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.”

20. Considering the discussion made above, much importance cannot be given to the above discrepancies and inconsistencies in the evidence of PW8.

21. So far another contention i.e. the deceased was not trying to save himself and semi digested food was found during the postmortem in order to show that the deceased was killed at some other date, time and place and at some other manner and the dead body was kept at Brahm Asthan, is concerned, on perusal of the evidence of Doctor (PW1), it appears that he has found altogether seven injuries caused by sharp edged weapon



and the Trachea and other vessels found completely cut. The evidence of PW8 also disclosed that while he was going to Brahm Asthan, he found his son sleeping, in such a situation, if the deceased was not trying to defend himself, same cannot be given much weightage as it cannot be ruled out the possibility that the deceased did not get a chance to defend himself. No doubt, the Doctor has found semi digested food in the stomach of the deceased but at the same time, the evidence of Doctor disclosed that it takes 10-12 hours complete digestion of red meat and six hours for complete digestion of vegetarian food. There is absolutely nothing available on the record as to what type of food the deceased has taken on last night. The Doctor has only been cross-examined about alcoholic substance on which he has stated that the same was not found in stomach. So far evidence of PW8 that the food was not prepared at that time, and evidence of PW3 that he had gone to perform *Anant Pooja*. All the above evidence is only suggestive whereas there is no direct cross-examination to any of the witnesses or no suggestion has been given to them as to whether the deceased has taken any food in the morning. In view of the above, the benefits of the same cannot be allowed to the defence. Whereas a suggestion has been given to the PW8 that Ravinder Singh has



been killed on some other date and time and in some other manner and on conspiring that the appellants have falsely been implicated, to which, PW8 has denied the above suggestion.

22. PW3 to PW5 are the sons of PW8 and their evidence disclosed that their father came crying informed that his elder brother has been killed by Kesho Singh and Jhariman Singh caught hold of his leg and Prem Singh caught hold of his waist and Manoj Kumar Singh was armed with double barrel gun, who chased him. Their evidence further disclosed that they had gone to Brahm Asthan and saw dead body of his brother. The evidence of PW3 to PW5 has been doubted by the appellants, drawing our attention towards the evidence of PW8, para 34 in order to show that he has disclosed the police that he has not stated his son that Sanoj Singh has cut his son, Jhariman Singh caught hold of his leg and Prem Singh caught hold of his waist and Manoj Kumar Singh was armed with double barren gun. PW3 to PW5 are sons of PW8 as well as brother of the deceased Ravinder Singh. On the other hand from perusal of F.I.R. (Ex.4) which in the earliest version, lodged after one hour of occurrence disclosed that he has informed about the occurrence to his sons. It appears that during cross-examination by defence he has become nervous and stated that he has not stated so



before police. Moreover, in spite of cross-examination, there appears no other discrepancies in his evidence that on chase he ran to his house informed his sons (PW3 to PW5), which will be quite natural in the circumstances prevailing. There is absolutely nothing on the record to doubt the presence of PW3 to PW5 at that time in the house. Moreover, none of the above witnesses has been confronted with their earlier statement made before the police in order to show contradiction in their evidence with regard to the earlier statements. No suggestion has been given to either of them that they have not been informed by PW8 about the occurrence, name of the appellants and they have not come at the place of occurrence, immediately thereafter saw the dead body of their brother, rather a general suggestion has been given that deceased has been killed at some other place and in some other manner, which they have denied. As such, credibility of evidence of PW3 to 5 cannot be doubted, rather their evidences regarding disclosure by PW8 immediately after the occurrence form part of the same situation.

23. PW-6 who is distant relative of PW8 and according to his evidence for last one day, he has been in village Dawat. On 10.09.1992 at 8:45 A.M. he had gone to market to have tea and from there he has to go to village Sahadat Dera for seeing



buffalo and on way, he saw the accused persons fleeing, Sanoj Singh armed with Dab, Manoj Kumar Singh was armed with double barrel gun and Jhariman Singh and Prem Singh were fleeing away empty handed. It is also his evidence that he reached near the Brahm Asthan he saw Ravinder Singh dead on the *Chabutra* and Nand Bihari Singh (PW7), Baijnath Singh (PW2), Harendra Singh (PW3), Upendra Singh (PW4), Munna Singh (PW5) and PW8 were there. PW8 disclosed the occurrence and named the accused persons also. His cross-examination also disclosed that he has gone to village Sahadat Dera to see buffalo of one Doma Ahir, about which, Moti Kahar (DW1) has told him that Doma Ahir has a buffalo for sale. However, learned senior counsel has drawn our attention towards the evidence of Moti Kahar who has been examined as DW1 to show that evidence of DW1 completely belies the evidence of PW6 as DW1 has categorically stated that he does not know Doma Ahir of Sahadat Dera and he has not met PW6 on 10.09.1992. Secondly, on the ground that PW6 has not been named in the F.I.R. and further on the ground that Ex.D which has been issued by Jagnarayan Singh clearly disclosed that no such person (Doma Ahir) reside at village Sahadat Dera.

24. On close scrutiny of evidence of this witness as well as



the evidence of DW1 and Ex.D, it appears that he has explained his presence at village Dawat that he had come to purchase a buffalo and Moti Kahar informed him that Doma Ahir has a buffalo but Moti Kahar has been examined as DW1, and he has stated that he did not met Rajendra Singh (PW6) on 10.09.1992 and he does not know any Doma Ahir. A suggestion has been given to this witness that he is deposing falsely in collusion with the accused persons. His cross-examination disclosed that he is an accused in theft and dacoity and he denied the suggestion that he was an accused in any case along with Jagnarayan Singh. His evidence also disclosed that he deposed in this case after two years. It further appears that Ex.D is a plain chit of paper purported to be written by one Jagnarain Singh, Block Pramukh and the same has been proved by the DW2 and the above Jagnarain Singh has not come before this Court to depose the same. That document is also not public document, rather issued on a plain paper. No doubt the seal of the Pramukh is there. We find that in absence of examination of author of Ex.D, contents of Ex.D has not been legally proved. So far evidence of DW1 is concerned, he is deposing after three years of occurrence.

25. PW2 Baijnath Singh is the witness of inquest report and his evidence disclosed that he was of village Dawat where the



occurrence took place and his evidence also disclosed that on 10.09.1992 at about 8:45 A.M. Ravinder Singh was killed. His evidence disclosed that he is relative of the informant.

26. PW7 Nand Bihari Singh is also a witness of inquest report and he put his signatures on Ex.2 and Ex.2/1 and in his cross-examination shows that those signatures were not put by him but again he has stated that those signatures are of him and he has volunteered to be a witness of Panchnama.

27. PW-9 Chandeshwar Prasad, who is Investigating Officer of the case. His evidence disclosed that at 9:45 A.M. he recorded the statement of Baban Singh, PW8, read over the same to him and Baban Singh put his signature on the same and the contents were written by Ranjit Thakur. He identified the F.I.R. as Ex.4. His evidence also disclosed that he had taken over the investigation and went to the place of occurrence, prepared the injuries report, inspected the place of occurrence and found there was dead body of deceased Ravinder Singh and were found drops of blood stained at the Brahma Ashthan. He gave the details about the place of occurrence in para 4. He has also seized blood and pieces of flesh from the place of occurrence, taken signature of Munna Singh (PW5) and Upender Singh PW4 over that, prepared the dead body challan,



thereafter, recorded the statements of Baijnath Singh, Nand Bihari Singh, Upender Singh, Munna Singh and Yogender Singh and searched the accused persons but not found. His evidence further disclosed that on the same day, he received information that accused Sanoj Singh, Manoj Kumar Singh were found moving around the house of accused Navin Kumar Singh. On that, he raided the house of Navin Kumar Singh and saw three persons after jumping the wall, fled away from the house of said Navin Kumar Singh and they were chased and Navin Kumar Singh was arrested but other persons succeeded in fleeing away. His evidence further disclosed that Prem Singh was arrested on search of the house of Birender Singh. In the cross-examination, he has stated that he has no knowledge about the occurrence but information was given by Baban Singh and it takes 5-6 minutes to reach the place of occurrence. At that time, several persons were assembled there. He has admitted that he found one Steel Chunauti, which was seized by him and prepared seizure list. He has not deposited them in the Malkhana.

28. PW10 Mukhtar Prasad is the Constable, who has produced the blood stained earth kept in 'Hadi' which has been marked as Mat. Ex.1.

29. Considering the discussions made above, it appears that



PW8 is father of the deceased and an eyewitness of the occurrence and his evidence supports the prosecution case, barring some discrepancies but as discussed above, those discrepancies does not appear to be of such a nature to make his evidence unbelievable and untrustworthy rather he appears to be eyewitness of the occurrence. Apart from that PW3 to PW5 are sons of the informant (PW8) and brothers of the deceased and their evidences disclosed that his father came running and informed his sons about the occurrence and they came to the place of occurrence along with their father and saw the dead body. As discussed above their evidences appear to be credible and that there does not appear to be much time gap in between occurrence and information to them to give scope for manipulation. Moreover, F.I.R. (Ex.4) has been lodged just one hour after occurrence. As such, their evidence is admissible under Section 6 of the Indian Evidence Act.

30. Another argument of learned senior counsel for the appellants is that PW9 as well as PW3 to PW5 are related witnesses, and moreover, there are discrepancies in the evidence of PW3 to PW5 and PW8, whereas prosecution evidence discloses presence of other villagers also, in such a situation non-examination of independent witness also creates a doubt



about the prosecution story. It is well settled that so far related witnesses are concerned, it is not a rule to discard their evidence only because they are related witnesses, rather their evidence requires close scrutiny. Further, there is difference between related witness and interested witnesses, there is nothing on the record to show that they have any motive for implicating the accused persons except that Sanoj Singh has threatened earlier to the deceased but that is against the deceased and not against these witnesses. Moreover, it is well settled that the related witness in the quest of justice will not spare the real culprit. So far non examination of independent witness is concerned, PW7 is also an independent witness, though he is witness on inquest report but no suggestion has been given to this witness that occurrence took place in some other manner or some other place and not as per the prosecution version. Evidence of PW8 disclosed that Yoginder who is also named as witness, has been gained over by accused persons.

31. The Hon'ble Apex Court has also taken note of the fact that generally people are insensitive even if a crime is committed in their presence. They withdraw both from the victim and the vigilant. They keep themselves away from the Court unless it is inevitable. They think crime like civil dispute



is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, town or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused. **(1989 Supplementary SCC 241 Appa Bhai and another Vs. State of Gujarat)** and considering the above prosecution evidence cannot be brushed aside on the ground on non-examination of the independent witness.

32. On the other hand, defence has brought three witnesses, out of which, DW1 Moti Kahar has stated that he does not know Doma Ahir and he has not met PW6 on 10.09.1992. DW2 Shailesh Kumar Singh, who has proved the certificate granted by Block Pramukh Sri Jagarain Singh in his handwriting Ex.D. DW3 Shriman Narain Singh is on the point that on hulla of murder of Ravinder Singh, he went there along with many other villagers, where Baban Singh, Munna Singh, Harendra Singh and other persons were already present and none had named the



persons who has killed the deceased Ravinder Singh. His evidence also disclosed that earlier one Suresh Singh was killed and a case was going on between Shiv Pujan Singh, Mahender Singh and his father and in that case he is a witness and Prem Singh was also a witness. There appears nothing in his evidence to show that he has made any such statement before the police.

33. Moreover, from the evidence of Investigating Officer (PW9), it appears that he has found fresh blood at the place of occurrence and seized blood stained soil as well as pieces of flesh from the place of occurrence i.e. the Chabutra of Brahm Asthan and blood stained cloth was produced in the Court also, which was marked as Mat. Ex.1, but it appears that the seized articles have not been sent for chemical examination that is a latches on the part of the Investigating Officer (PW9). Evidence of PW8 also disclosed that he has filed a protest petition before the Chief Judicial Magistrate against the Investigating Officer (PW9). As such, throwing whole prosecution evidence available on the record on the ground of non-examination of the seized articles will tantamount to playing into the hands of the Investigating Officer for his latches.

34. Defence has come with a story that the deceased was killed in some other manner, at some other date, time and place



and place of occurrence as appeared from the prosecution evidence and in support of his contention that they have examined DW3 in order to disclose that no names were disclosed at that time but it appears from the examination of this witness that the appellant Prem Singh and Manoj Kumar Singh are witnesses in a case in favour of his father. His evidence also did not disclose that the deceased was not killed at any other place or at any other time. We have already discussed the evidence of DW1 & DW2. Evidence of DW1 at best doubt the claim of PW6 that he has come to purchase buffalo and DW1 informed him that Dom Ahir has one buffalo to sale. Even if his evidence is believed, it may be best casts some doubt about presence of PW6. We also find that evidence of DW3 is also not of much help to the appellants, considering the evidence of PW3 to PW5 and PW8. Evidence of the Investigating Officer (PW9) para 29 also disclosed that PW6 has not stated before him that he disclosed PW8, Harendra Singh (PW3), Baijnath Singh (PW4) and Munna Singh (PW5) about the accused persons fleeing away and Sanoj Singh has blood stained dab, Manoj Kumar Singh has double barrel gun and Jhariman Singh and Prem Singh were seeing fleeing away empty handed. However, the evidence of I.O. para 28 shows that he has recorded the



statement of PW6 but his evidence is not clear as to when he has recorded the statement of PW6 Rajendra Singh.

35. So far as Ex.A, Ex.B and Ex.C, which have been produced by the defence, is concerned, it appears that Ex.A is a copy of F.I.R. lodged by one Gudiya Devi against one Avdesh Kumar Singh. It appears from the *fard beyan* that Gudiya Devi is the granddaughter of Kesho Singh, however that document also does not disclose any enmity with the informant and his family members. Further, Ex. B is also a certified copy of the F.I.R., which has been lodged by one Ram Suresh Singh against the informant and other under Sections 324, 307, 323, 34 of IPC and Section 27 of the Arms Act. Ex.C is the certified copy of the deposition of one Avdesh Kumar Singh in Sessions Trial No. 30 of 1984, who has named in the informant and other in his evidence, which shows that in a case lodged by Ram Suresh Singh, informant and others are also the accused. However, none of those document disclosed any enmity between the informant and his family members with the appellants as such, they are not of any help to the appellants.

36. In view of discussion made above, we find that PW8 is the eyewitness of the occurrence and PW3 to PW5 are his sons, who reached at the place of occurrence on being informed by



Pw8 and saw the dead body of deceased. Evidence of PW8 is free from any inconsistencies and disclosed that appellant Sanoj Singh assaulted by dab to the deceased and appellants Prem Singh and Sanjeev Singh caught hold of deceased and appellant Manoj Kumar Singh was standing with double barren gun. His evidence has been corroborated by evidence of Doctor (PW1) who found several incised wound over the dead body of the deceased. The above evidence found corroboration from evidence of PW3 to PW5 whose evidence is also admissible as *res gestae* under Section 6 of the Indian Evidence Act. As such, even though the evidence of PW6 found to be suffering from some discrepancies, still there are ample reliable and trustworthy evidence available in support of prosecution case. Apart from that prosecution has also been able to prove motive behind the occurrence, whereas the defence has not brought any motive for their false implication except the motive taken by the prosecution, which shows that the appellant Sanoj Singh earlier threatened the deceased, there is nothing to show any enmity between appellants and PW3 to PW5 and PW8 for false implication. Above evidence, supports the prosecution case with regard to date and time of occurrence, manner of occurrence and place of occurrence, nothing contrary has been brought on the



record to doubt the same.

37. Apart from appellants Prem Singh, Manoj Kumar Singh, Jhariman Singh have been convicted under Section 302/34 of IPC and appellant Sanoj Singh who has been convicted under Section 302 of IPC and appellant Navin Kumar Singh is also convicted under Section 216(I) of IPC for knowingly providing shelter to the accused of a case under Section 302 of IPC and allowing the accused persons to escape. In this connection, the evidence of the I.O. disclosed that he received an information that on the date of occurrence itself at 7:00 P.M. that accused Sanoj Singh @ Kesho and Manoj Singh were loitering around the house of Navin Kumar Singh and on that, he raided the house of Navin Kumar Singh, saw three persons fleeing after jumping from the roof and on chase Navin Kumar Singh was arrested and other two persons succeeded in fleeing away and he identified those persons also, who succeeded in fleeing away, again he has stated that he has not identified them. On cross-examined by the appellant Navin Kumar Singh, he has stated that he has not mentioned in the diary as to how many rooms and door were there in the house of Navin Kumar Singh and he also does not know as to how many rooms in the house of Virendra and diary also does not disclose that at the time of



raiding at the house of Navin Kumar Singh, Upendra Singh (PW4) and Munna Singh (PW5) were also present. His evidence also disclosed that no chart was prepared for raid and he has no search warrant for conducting search and nothing has been mentioned in the diary with respect to arrest of Navin Kumar Singh. PW3 and PW4 have also stated about the raid being conducted in the house of Navin Kumar Singh and the accused succeeded in fleeing away by jumping from the roof and Navin Kumar Singh was arrested. PW-4 claims that he was present at the time of search.

38. Learned counsel for the appellant Navin Kumar Singh has argued that except the oral evidence of I.O. and witness Upendra Singh (PW4), no document was brought on record by the Investigating Officer to show any chart was prepared with respect to raid in the house of Navin Kumar Singh and to show as to whether any search warrant has been issued with respect to arrest of appellant Navin Kumar Singh. Further there is no connecting evidence available on the record to show that appellant Navin Kumar Singh provided shelter to the appellant Manoj Kumar Singh and Sanoj Singh, as such, the conviction of appellant Navin Kumar Singh under Section 216(I) of IPC are not free from reasonable doubt, but the learned Trial Court,



without considering the same convicted the appellant Navin Kumar Singh under Section 216 IPC. From the evidence of the Investigating Officer and evidence of PW3 & PW4 as discussed above, it clearly appears that Investigating Officer (PW9) has admitted that he has not stated in his diary in para 34 about the search or search warrant as well as arrest of appellant Navin Kumar Singh, apart from that other evidences are also not sufficient to point out that appellant Navin Kumar Singh has provided shelter to the other appellants.

39. In view of the entire discussions made above, I find that the impugned judgment passed by Shri Madhusudan Singh-VI, Additional Sessions Judge, Rohtas, Sasaram in Sessions Trial No. 62 of 1993, so far conviction of appellants Prem Singh, Monoj Kumar Singh and Jhariman Singh @ Sanjiv Singh under Section 302/34 of IPC and of appellant Sanoj Singh @ Kesho Singh are concerned that does not suffer from any infirmities. However, so far conviction of appellant Navin Kumar Singh under Section 216 (I) of IPC are concerned, prosecution evidence does not appear free from reasonable doubt.

40. Accordingly, Criminal Appeal No. 398 of 1994 and Criminal Appeal No.485 of 1994 are dismissed. As appellants Prem Singh, Monoj Kumar Singh, Jhariman Singh @ Sanjiv



Singh as well as Sanoj Singh @ Kesho Singh are on bail, their bail bonds are cancelled. They are directed to surrender before the Trial Court forthwith.

41. So, Criminal Appeal No. 423 of 1994 is concerned, the same is allowed, impugned judgment and order so far conviction and sentence of appellant Navin Kumar Singh is concerned, the same is set aside and since, he is on bail, he is discharged from liability of bail bonds.

(Vinod Kumar Sinha, J)

sunil shukla/-

I. Agree.

(S. Kumar, J)

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