

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No.33 of 1995

.....

{Against the Judgment of acquittal dated 05.08.1995 passed in Sessions Trial
No.37 of 1988 by the Additional Sessions Judge-II, Darbhanga}.

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The State of Bihar

... .. Appellant.

Versus

1. Abhay Nath Kunwar @ Barabu, son of Vijay Kumar.
 2. Vijay Chandra Kunwar, son of Bhaj Govind Kunwar.
 3. Ramakant Narain Kunwar, son of Bhaj Govind Kunwar.
 4. Pratap Narain Kunwar, son of Bhaj Govind Kunwar.
 5. Jagta Nand Kunwar, son of Bhaj Govind Kunwar.
 6. Sri Prakash Kunwar (wrongly typed in heading Judgment in the name of
accused no.6 as (Srinand Kunwar), son of Sri Harischandra Kunwar.
 7. Rajendra Kunwar, son of Sri Govind Kunwar.
 8. Rama Nand Jha, son of Deo Chandra Jha.
 9. Udan Jha, son of Nitya Nand Jha.
 10. Maharudra Jha, son of Subansh Jha.
- All resident of village-Katka, Police Station-Singhwara, District-Darbhangha.

... .. Accused..... Respondents.

with

Criminal Revision No. 492 of 1995

=====

Shiv Shankar Jha, son of Nokhe Jha, resident of village-Katka, Police Station-
Singhwara, District-Darbhangha.

... .. Informant-Petitioner.

Versus

1. The State of Bihar.
- Opposite 1st Party.
2. Abhay Nath Kunwar alias Bara Babu, son of Vijay Kunwar.
 3. Vijay Chandra Kunwar, son of Bhaj Govind Kunwar.
 4. Ramakant Kunwar, son of Bhaj Govind Kunwar.
 5. Pratap Narain Kunwar, son of Bhaj Govind Kunwar.
 6. Jagta Nand Kunwar, son of Bhaj Govind Kunwar.
 7. Sri Prakash Kunwar (wrongly typed in heading of the Judgment in the
name of accused no.6 as (Srinand Kunwar), son of Sri Harish Chandra
Kunwar.
 8. Rajendra Kunwar, son of Sri Govind Kunwar.
 9. Rama Nand Jha, son of Deo Chandra Jha.
 10. Udan Jha, son of Nitya Nand Jha.
 11. Maharudra Jha, son of Subhash Jha.
- All resident of village-Katka, Police Station-Singhwara, District-Darbhangha.

... Accused... ..Opposite 2nd party



... .. Opposite Parties.

Appearance :

(In Govt. Appeal (DB) No. 33 of 1995):

For the Appellant : Mr. Dilip Kumar Sinha, A.P.P.
For the Respondents : Mr. Ajay Kumar Thakur, Advocate.
Mr. Md. Imteyaz Ahmad, Advocate.
Mr. Nilesh Kumar, Advocate.

(In Criminal Revision No. 492 of 1995):

For the Petitioner : Mr. Gajendra Kr. Jha No.2, Advocate.
For the State : Mr. S.C. Mishra, A.P.P.
For the Opposite Party : Mr. Ajay Kumar Thakur, Advocate.
Nos.2 to 11 Mr. Md. Imteyaz Ahmad, Advocate.
Mr. Nilesh Kumar, Advocate.

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA)

Date : 27-03-2019

The aforesaid Government Appeal (DB) No.33 of 1995 and Criminal Revision No.492 of 1995 are directed against the Judgment of acquittal dated 05.08.1995 passed in Sessions Trial No.37 of 1988, arising out of Singhwara P.S. Case No.10 of 1987, whereby and whereunder the Additional Sessions Judge-II, Darbhanga, acquitted the respondent nos.1 to 10 of Government Appeal (DB) No.33 of 1995, who are opposite party nos. 2 to 11 in Criminal Revision No.492 of 1995, of the charges under Sections 302/149 of the Indian Penal Code and, further, the respondent no.1 of the charges under Sections 302 and 148 of the Indian Penal and Section 27 of the Arms Act, the respondent no.3, 4, 6, 7, 8, 9 and 10 of the charge under Section



147 of the Indian Penal Code, respondent no.5 of the charges under Sections 307 and 149 of the Indian Penal Code and Section 27 of the Arms Act and the respondent no.2 of the charges under Sections under Section 307 and 149 of the Indian Penal Code and Section 27 of the Arms Act.

Since both the aforesaid Government Appeal (DB) No.33 of 1995 and Criminal Revision No.492 of 1995 have been preferred against the common Judgment of acquittal, therefore, they have been heard together and are being disposed of by this common Judgment.

2. In brief, the prosecution case is that Shiv Shankar Jha (P.W.6) gave his fardbeyan (Ext.5) on 18.03.1987 at about 08.30 A.M. before Ratneshwar Prasad Sinha (P.W.12), the Officer Incharge of Singhwara Police Station, to the effect that on the same day in the morning at about 07.30 A.M., he engaged the labourers to lay the foundation and called Bhimesh Thakur (deceased) for seeing as to whether the foundation is in straight line or not, upon which Bhimesh Thakur (deceased) raised suspicion about the construction of the house. In the meantime, the respondent no.3 Ramakant Kunwar came from his door and told in abusive language, making query for the calling of Bhimesh Thakur, then he requested Bhimesh Thakur to move



from there, whereupon Bhimesh Thakur went at his door. Thereafter, Bhaj Govind Kunwar (since dead), respondent no.3 Ramakant Kunwar, respondent no.4 Pratap Narain Kunwar, respondent no.5 Jagta Nand Kunwar, respondent no.1 Abhay Nath Kunwar alias Barabu, respondent no.6 Sri Prakash Kunwar, respondent no.7 Rajendra Kunwar, respondent no.8 Rama Nand Jha, respondent no.9 Udan Jha and respondent no.10 Maharudra Jha along with 20-25 others having Lathi, Bhala, Garasa, pistol and bomb in their hands came at the door of Bhimesh Thakur (deceased) and dragged him from his door and started to commit "Maar-Peet". At that time, the respondent no.1 Abhay Nath Kunwar alias Barabu fired through pistol at Bhimesh Thakur, due to which he fell down sustaining injury. Bhaj Govind Kunwar (since dead) started to cause injury to Bhimesh Thakur through Garasa. Thereafter, the respondent no.5 Jagta Nand Kunwar fired through pistol in which Krishnanand Thakur (P.W.3) and Dayanand Thakur (P.W.4) sustained injury and they fell down there, the respondent no.2 Vijay Chandra Kunwar also opened fire, which hit to Dayanand Thakur (P.W.4). Thereafter, all the respondents and Bhaj Govind Kunwar (since dead) put fire on the paddy straw, which was stored in south-west corner of his house. At that time, all



the respondents and others came at his door and the respondent no.2 Vijay Chandra Kunwar put fire at his door. On the alarm being raised by him, his villagers Amar Nath Thakur (P.W.9), Tarakant Thakur (P.W.7), Sukhdeo Mishra, Bhangesh Thakur, Shrawan Thakur, Sheenandan Thakur and others rushed and saw the occurrence. The villagers took the injured to Singhwara Hospital, where treatment of the injured started. Bhimesh Thakur (deceased) on reaching at Singhwara Hospital died.

3. On the basis of the aforesaid fardbeyan (Ext.5) of Shiv Shankar Jha (P.W.6), Singhwara P.S. Case No.10 of 1987 was instituted on 18.03.1987 under Sections 147, 148, 149, 447, 342, 324, 326, 307 and 302 of the Indian Penal Code and Section 27 of the Arms Act against the respondent nos.1 to 10 and one Bhaj Govind Kunwar. On investigation, police submitted the charge-sheet against the respondent nos.1 to 10 and Bhaj Govind Kunwar under Sections 147, 148, 149, 307, 302, 324 and 326 of the Indian Penal Code and Section 27 of the Arms Act.

4. After submission of the charge-sheet, cognizance of the offence was taken and the case was committed to the court of sessions, numbered as Sessions Trial No.37 of 1988.

During trial, the prosecution examined, altogether,



13 witnesses and also got exhibited several documents, whereas the defence also examined 11 witnesses and got exhibited several documents in support of their defence. It is also pertinent to mention here that during trial, the accused Bhaj Govind Kunwar died, hence, his name was expunged on 11.11.1992.

5. From the trends of cross-examination of the prosecution witnesses and the defence evidence, it appears that the defence has denied the manner of the occurrence, as alleged in the F.I.R. According to the defence, the land dispute was going on in between the respondent no.10 Maharudra Jha and the informant Shiv Shankar Jha (P.W.6) regarding which Panchayat was arranged. After Panchayat, the respondent no.10 Maharudra Jha started digging the foundation on 18.03.1987 at about 09.00 A.M., then Shiv Shankar Jha (P.W.6) came there and stopped to dig the foundation, due to that reason, hot talk started. On 'Hullah', respondent no.4 Pratap Narain Kunwar and other Panches rushed there and tried to pacify the matter. In the meantime, Satya Narain Thakur and Ghanshyam Thakur having pistols in their hands, Gangesh Thakur (P.W.1), Bhimesh Thakur (deceased), Dayanand Thakur (P.W.4), Krishnanand Thakur (P.W.3), Tarakant Thakur (P.W.7), Sukhdeo Jha, Lalu



Thakur, Shyamanand Thakur, Ajay Nath Thakur, Jagta Nand Thakur, Krishnanand Thakur (P.W.3), Sarb Narayan Thakur (P.W.2), Shreenandan Thakur and others having Lathi, Bhala, Farsa, bricks in their hands came there and on the order of Shiv Shanker Jha (P.W.6), Satya Narain Thakur and Ghanshyam Thakur started firing through their pistols in which Pratap Narain Kunwar (respondent no.4) sustained injury at his left flank. Bhimesh Thakur and others also rushed to save Pratap Narain Kunwar (respondent no.4) but Bhimesh Thakur also sustained firearm injury in that firing. At that time, pelting of stone was also started in which Pratap Narain Kunwar (respondent no.4) sustained injury on his legs. Thereafter, Pratap Narain Kunwar (respondent no.4) was rushed for treatment at D.M.C.H.

6. The learned trial court after evaluating the evidence, available on the record, acquitted the respondent nos.1 to 10 of the Government Appeal (DB) No.33 of 1995 (opposite party nos.2 to 11 of Criminal Revision No.492 of 1995 from the charges, as indicate above.

7. Learned A.P.P. appearing for the appellant-State {in Government Appeal (DB) No.33 of 1995) assisted by the learned counsel appearing for the petitioner (in Criminal



Revision No.492 of 1995) challenged the impugned Judgment of acquittal, arguing that the learned trial court failed to appreciate the evidence led by the prosecution in its right perspective, as a result whereof the learned trial court came to wrong conclusion. He further submitted that P.W.1 Gangesh Thakur, P.W.2 Sarb Narayan Thakur, P.W.3 Krishnanand Thakur, P.W.4 Dayanand Thakur, P.W.6 Shiv Shankar Jha, P.W.7 Tarakant Thakur, P.W.8 Shreenandan Thakur and P.W.9 Amar Nath Thakur, who are eye witnesses of the occurrence, have fully supported the prosecution case but the learned trial court disbelieved the prosecution case due to non-disclosing of the motive of the occurrence, while P.W.4 Dayanand Thakur has, specifically, stated that the motive of occurrence is of decision of social boycott of the accused-respondents in the leadership of the deceased Bhimesh Thakur. He further argued that the learned trial court has also illegally considered the minor contradictions in the evidence in respect of the manner of occurrence and place of occurrence.

8. On the other hand, learned counsel appearing for the respondent nos.1 to 10 in Government Appeal (DB) No.33 of 1995 (opposite party nos.2 to 11 in Criminal Revision No.492 of 1995) argued that the learned trial court has discussed



the prosecution evidence and the evidence led by the defence in detail and rightly acquitted the respondent nos.1 to 10 in Government Appeal (DB) No.33 of 1995 (opposite party nos.2 to 11 in Criminal Revision No.492 of 1995), arriving at the conclusion that the prosecution has not come with clean hand and suppressed the real facts and also failed to prove the place of the occurrence. As such, there is no infirmity or illegality in the impugned Judgment of acquittal.

9. I have gone through the evidence, available on the record, to appreciate the arguments, as advanced on behalf of both the sides.

10. Out of the 13 witnesses examined on behalf of the prosecution, P.W.1 Gangesh Thakur, P.W.2 Sarb Narayan Thakur, P.W.6 Shiv Shankar Jha (informant), P.W.7 Tarakant Thakur, P.W.8 Shreenandan Thakur and P.W.9 Amar Nath Thakur are the eye witnesses of the occurrence. P.W.3 Krishnanand Thakur and P.W.4 Dayanand Thakur are the injured witnesses. P.W.10 Dr. Dhanesh Mishra was Medical Officer at the Primary Health Centre, Singhwara on the date of the occurrence and he referred the injured Dayanand Thakur (P.W.4) and Krishnanand Thakur (P.W.3) for treatment at D.M.C.H. and informed the police through two letters, i.e.,



Ext.3 and Ext.3/1. P.W.11 Dr. V.C.S. Verma held the post-mortem examination over the dead body of the deceased Bhimesh Thakur and has proved the post-mortem report as Ext.4. P.W.5 Kali Chandra Jha and P.W.13 Gajendra Prasad Mishra are the formal witnesses, who have proved the F.I.R. and the protest petition as Ext.2 and Ext.8, respectively. P.W.12 Ratneshwar Prasad Sinha is the Investigating Officer of the case.

11. P.W.1 Gangesh Thakur, who is the brother of the deceased Bhimesh Thakur, has deposed in his evidence that his brother Bhimesh Thakur was killed in the morning of 18.03.1987. At that time, he was at his Khaliyan, situated at 4-5 Laghas in east-south direction to his house. On hearing 'Hullah', he reached at his door and saw the respondent nos.1 to 10 {in Government Appeal (DB) No.33 of 1995 (opposite party nos.2 to 11 in Criminal Revision No.492 of 1995)} along with Bhaj Govind Kunwar (since dead), Uday Chandra, Om Prakash Kunwar and Mahanand Jha. Out of them, Vijay Chandra Kunwar (respondent no.2), Jagta Nand Kunwar (respondent no.5) and Abhay Nath Kunwar (respondent no.1) were armed with pistols. Bhaj Govind Kunwar (since dead) and Sri Prakash Kunwar (respondent no.6) were armed with Garasa. Mahanand



Jha and Ramakant Kunwar (respondent no.3) were armed with Bhala, whereas Pratap Narain Kunwar (repondent no.4) was armed with Bhala and bomb and others were armed with Lathi. They were carrying to Bhimesh Thakur from his door. At that time, Abhay Nath Kunwar (respondent no.1) fired through pistol causing injury at the temporal region of Bhimesh Thakur, then he fell down. Thereafter, Bhaj Govind Kunwar (since dead) gave Garasa blow at the forehead of Bhimesh Thakur and Pratap Narain Kunwar (respondent no.4) also gave Bhala blow at his chin. Vijay Chandra Kunwar (respondent no.2) opened fire, which hit at the left forearm of Dayanand Thakur (P.W.4) and Jagta Nand Kunwar (respondent no.5) also caused injury at the left side of the chest of Krishnanand Thakur (P.W.3). Thereafter, all went near the bamboo clumps of Bhimesh Thakur and put fire in the paddy straw. Thereafter, all reached at the cattle shed of Shiv Shankar Jha (P.W.6) and also put fire in it. When the villagers rushed there, then all fled away from there. The villagers took Bhimesh Thakur and the injured to Singhwara Hospital, where Bhimesh Thakur was declared brought dead. He further stated in his cross-examination at paragraph-10 that he has no knowledge that regarding the same date of the occurrence, a criminal case was lodged by Pratap



Narain Kunwar (respondent no.4), in which he was accused. He has further stated that in the said case, he had not been arrested. This witness has further stated in paragraph-12 of his cross-examination that he is own brother of Bhimesh Thakur and Dayanand Thakur (P.W.4) is his son, whereas Krishnanand Thakur (P.W.3) is the son of deceased Bhimesh Thakur. This witness has further stated that Dayanand Thakur (P.W.4) and Krishnanand Thakur (P.W.3) were admitted at Darbhanga Medical College but he had not gone there to see them. He has also stated that his house and the house of Bhimesh Thakur is joint but their Verandah (Baithka) are separate. While this witness has stated in paragraph-14 of his cross-examination that he had stated before Darogaji that he had seen the members of unlawful assembly at the door of Bhimesh Thakur but P.W.12 Ratneshwar Prasad Sinha, who is the Investigating Officer of the case, has stated in paragraph-43 of his cross-examination that Gangesh Thakur (P.W.1) had not stated in his statement that he had seen the members of unlawful assembly at the door of Bhimesh Thakur. This witness has further stated in paragraph-19 of his cross-examination that the deceased Bhimesh Thakur fell down at his 'Sahan' and after the occurrence, he was carried at the door of Tarakant Thakur (P.W.7). He had not seen



whether the blood had fallen on the ground, where the deceased Bhimesh Thakur fell down on sustaining injury but he had seen the blood stain on the ground where the deceased Bhimesh Thakur was taken after the occurrence. The deceased Bhimesh Thakur was taken from his 'Sahan' to the 'Sahan' of Tarakant Thakur (P.W.7) after 8-10 minutes.

From the evidence of this witness, it is apparent that the occurrence took place at the 'Sahan' of the deceased Bhimesh Thakur and he had not seen the blood stain, where Bhimesh Thakur fell down on sustaining injury, rather he had seen the blood stain at the door of Tarakant Thakur (P.W.7), where he was brought by the villagers after 8-10 minutes of the occurrence.

12. P.W.2 Sarb Narayan Thakur has deposed in his evidence that Bhimesh Thakur was killed in the morning of 18.03.1987. At that time, he was going to the shop of barber for shaving and when he reached near the door of Bhimesh Thakur, he saw the respondent nos.1 to 10 (opposite party nos.2/11) along with Bhaj Govind (since dead), Uday Chandra, Om Prakash Kunwar and Mahanand Jha. Out of them, Vijay Chandra Kunwar (respondent no.2), Jagta Nand Kunwar (respondent no.5) and Amar Nath Kunwar (respondent no.1)



were armed with pistols. Bhaj Govind Kunwar (since dead) and Sri Prakash Kunwar (respondent no.6) were armed with Garasa, whereas Ramakant Kunwar (respondent no.3) and Mahanand Jha were armed with Bhala and Pratap Narain Kunwar (respondent no.4) was armed with Bhala and bomb and others were armed with Lathi. All the members of unlawful assembly had surrounded the deceased Bhimesh Thakur. At that time, Abhay Nath Thakur (respondent no.1) fired through pistol causing injury at the left temporal region of Bhimesh Thakur, then he fell down. Thereafter, Bhaj Govind Kunwar (since dead) gave Garasa blow, Pratap Narain Kunwar (respondent no.4) gave Bhala blow at his chin. Vijay Chandra Kunwar (respondent no.2) made firing causing injury at the left arm of Dayanand Thakur (P.W.4), whereas Jagta Nand Kunwar (respondent no.5) fired through pistol at the left side of the chest of Krishnanand Thakur (P.W.3). Thereafter, all the member of unlawful assembly moved to bamboo clumps of Bhimesh Thakur and put the fire in the paddy straw, they further moved at the door of Shiv Shankar Jha (P.W.6) and put fire at his cattle hut. In cross-examination, this witness showed his ignorance about lodging of a criminal case regarding the same day of the occurrence by Pratap Narain Kunwar (respondent no.4) and



also showed his ignorance about filing of a protest petition and criminal revision by Pratap Narain Kunwar (respondent no.4) after submitting the final form by the police. This witness further stated in his cross-examination that he had not seen as to who had put fire in the paddy straw of Bhimesh Thakur and at the cattle hut of Shiv Shankar Jha (P.W.6). This witness has further stated in paragraphs-23, 24, 25 and 26 that at about 5 Laghhies in the east of cattle house of Bhimesh Thakur, there is pitch road towards north and south direction. In the east of pitch road, there is 'Sahan' and the house of Tarakant Thakur (P.W.7). This witness further stated that in the north of the 'Sahan' of Bhimesh Thakur and west of pitch road, there is 'Pagdandi', moving towards west. In the north of the said 'Pagdandi', at the distance of 5 cubic , there is verandah (Baithka) of Shiv Shankar Jha (P.W.6) and the cattle house of Shiv Shankar Jha (P.W.6) is situated in the north of his (Baithka). In the west of verandah (Baithka) of Shiv Shankar Jha (P.W.6), verandah (Baithka) of the respondent no.9 Udan Jha is situated. This witness further stated in his cross-examination at paragraph-30 that he has no knowledge that regarding the same day of the occurrence, a counter case was lodged by Pratap Narain Kunwar (respondent no.4) in which he



is an accused and after submission of the final form by the police, Pratap Narain Kunwar (respondent no.4) had filed criminal revision in which he had appeared. This witness further stated in paragraph-39 of his cross-examination that he had seen the occurrence from the road. He has further stated in paragraph-44 of his cross-examination that where Bhimesh Thakur had fell down on sustaining injury, the blood had fallen on the ground but he had not cared the area of blood on the ground. This witness has denied the suggestion of the defence that he had not stated before the police that he had seen Uday Chandra Jha, Om Prakash Kunwar and Mahanand Jha in the unlawful assembly. This witness further stated that it is not true that he had not stated before the police that Sri Prakash Kunwar was armed with Garasa whereas Ramakant Kunwar and Mahanand Jha were armed with Bhala and Pratap Narain Kunwar was armed with Bhala and bomb and others were armed with Lathi but P.W.12 Ratneshwar Prasad Sinha, who is the Investigating Officer of the case, has stated in paragraphs-43, 44 and 45 of his cross-examination that this witness had not stated before him the name of Uday Chandra Kunwar, Om Prakash Kunwar and Mahanand Jha as the members of unlawful assembly and he had also not stated that Sri Prakash Kunwar



was armed with Garasa, Ramakant Kunwar and Mahanand Jha were armed with Bhala and Pratap Narain Kunwar was armed with bomb and Bhala. This witness has also denied the suggestion of the defence in paragraph-46 of his cross-examination that it is not true that he had not stated before the police that when the deceased Bhimesh Thakur sustained firearm injury at his left temporal region, Pratap Narain Kunwar gave Bhala blow to the deceased Bhimesh Thakur and it is also not true that he had not stated before the police that Dayanand Thakur (P.W.4) had sustained firearm injury at his left arm and Krishnanand Thakur (P.W.3) sustained injury on his left chest but P.W.12 Ratneshwar Prasad Sinha, who is the Investigating Officer of the case, in paragraph-46 of his cross-examination has stated that this witness had stated the aforesaid facts in his statement before him.

From the evidence of P.W.2 Sarb Narayan Thakur, it is apparent that the deceased Bhimesh Thakur was surrounded by the respondent nos.1 to 10 (opposite party nos.2 to 11) and others at his 'Sahan', where he fell down on sustaining injury and the blood had also fallen there. It is also apparent from the evidence of this witness that, for the first time, he has given the nature of the arms, possessed by the respondent nos.1 to 10



(opposite party nos.2 to 11) in their hands at the time of the occurrence and also the specific portion of the body on which the deceased Bhimesh Thakur and the injured Krishnanand Thakur (P.W.3) and Dayanand Thakur had sustained injuries.

13. P.W.3 Krishnanand Thakur, who is the son of the deceased Bhimesh Thakur, has stated in his evidence that on 18.03.1987 at about 07.30 A.M.. he was cleaning his door. At that time, the respondent nos.1 to 10 (opposite party nos.2 to 11) along with Bhaj Govind Kunwar (since dead) came at his door, forming unlawful assembly and pulled his father Bhimesh Thakur in 'Sahan' from door. Abhay Nath Kunwar fired through his pistol causing injury at the left temporal region of his father, on which he fell down, then Bhaj Govind Kunwar gave Garasa blow at the forehead and Pratap Narain Kunwar gave Bhala blow at his chin. At that time, Abhay Nath Thakur, Vijay Chandra Kunwar and Jagta Nand Kunwar were armed with pistols, Bhaj Govind Kunwar (since dead) and Sri Prakash Kunwar were armed with Garasa, Ramakant Kuwar was armed with Bhala, whereas Pratap Narain Kunwar was armed with Bhala and bomb. When he along with his cousin Dayanand Thakur (P.W.4) tried to save his father, then Vijay Chandra Kunwar (respondent no.2) opened fire, which hit on the left arm



of Dayanand Thakur (P.W.4), and Jagta Nand Kunwar also fired which hit on the left side of his chest. After sustaining injury, he became unconscious and when he regained consciousness, he found himself at Darbhanga Hospital. This witness has further stated at paragraph-15 of his cross-examination that he had no knowledge whether first aid was given to him at his house before proceeding to Singhwara Hospital or not. He was admitted at Darbhanga Hospital in the unit of Dr. H.N. Dwivedi but he had no knowledge that his bed number was 22 and he had no knowledge that Dayanand Thakur (P.W.4) was also admitted in the same unit and his bed was adjacent to his bed. He also showed his ignorance that in the said Surgical Ward, Pratap Narain Kunwar (respondent no.4) was also admitted. This witness has denied the suggestion of the defence that the fardbeyan of Pratap Narain Kunwar (respondent no.4) was recorded in the same ward on which basis case was lodged regarding the same day of the occurrence and in that occurrence, Pratap Narain Kunwar (respondent no.4) had sustained injuries. This witness has further stated in paragraph-29 of his cross-examination that he had stated before Darogaji in his statement at Darbhanga Medical College and Hospital that his father was killed at his door/ 'Sahan'. This witness has further stated in his



cross-examination at paragraph-29 that his cattle house is situated in his 'Sahan' and his father had fell down on sustaining injury at about 2-2½ Laghhies in east-south to the cattle house in the 'Sahan'.

From the evidence of this witness, it is apparent that he is the son of the deceased Bhimesh Thakur and the occurrence took place in his 'Sahan', where his father, his cousin and he himself on sustaining injury fell down and he became unconscious on sustaining injury.

14. P.W.4 Dayanand Takur is the nephew of the deceased Bhimesh Thakur and the son of P.W.1 Gangesh Thakur. He has deposed in his evidence that at the time of the occurrence at about 07.30 A.M. before 2½ years, he along with P.W.3 Krishnanand Thakur was at his door. At that time, the respondent nos.1 to 10 (opposite party nos.2 to 11) and Bhaj Govind Kunwar (since dead) came at the door, forming an unlawful assembly. Out of them, Vijay Chandra Kunwar (respondent no.2), Jagta Nand Kunwar (respondent no.5) and Abhay Nath Kunwar (respondent no.1) were armed with pistols, whereas Bhaj Govind Kunwar (since dead) and Sri Prakash Kunwar (respondent no.6) were armed with Garasa. Ramakant Kunwar (respondent no.3) was armed with Bhala, whereas



Pratap Narain Kunwar (respondent no.4) was armed with Bhala and bomb and rests were armed with Lathi. The members of unlawful assembly pulled Bhimesh Thakur from his door and carried him to his 'Sahan'. Abhay Nath Thakur (respondent no.1) opened fire through pistol causing injury at the left temporal region of Bhimesh Thakur, then he fell down. Thereafter, Bhaj Govind Kunwar (since dead) gave Garasa blow at his forehead and Pratap Narain Kunwar (respondent no.4) gave Bhala blow at the chin of Bhimesh Thakur. When he and Krishnanandan Thakur (P.W.3) rushed to save Bhimesh Thakur, then Vijay Chandra Kunwar (respondent no.2) opened fire, which hit at his left arm and the firing of Jagta Nand Kunwar (respondent no.5) hit at the left side of the chest of Krishnanandan Thakur (P.W.3). After sustaining injury, he became unconscious and he regained consciousness at Singhwara Hospital. He has further stated in his evidence that since the accused (respondents) were socially boycotted by his family in the leadership of Bhimesh Thakur, due to that reason accused (respondents) committed the occurrence. He has further stated in his cross-examination that the deceased Bhimesh Thakur was aged about 70 years at the time of the occurrence, and he had performed two marriages,



Krishnanandan Thakur (P.W.3) is the son from his first wife whereas four issues are from his second wife. He has further stated that Krishnanandan Thakur (P.W.3) was not separate to his father Bhimesh Thakur. This witness has further stated in his cross-examination at paragraph-21 that he does not know that Pratap Narain Kunwar (respondent no.4) had lodged a counter case in which he is an accused. He has further stated in paragraph-22 of his cross-examination that he knows to Shiv Shankar Jha (P.W.6), who is the informant in the present case. The house of Shiv Shankar Jha (PW.6) and the house of Maharudra Jha (respondent no.10) is situated at one place. He further stated that the house of Shiv Shanka Jha (P.W.6) is situated in the east-north of his house and the house of Maharudra Jha (respondent no.10) is in north to the house of Shiv Shankar Jha (P.W.6). He has further stated in paragraph-23 of his cross-examination that there was no litigating term in his family and the family of Pratap Narain Kunwar (respondent no.4). Before 15 days of the occurrence, respondent nos.1 to 10 (opposite party nos.2 to 11) were socially boycotted by his family but he could not say the exact date. No Panchayat was arranged for socially boycotting the respondent nos.1 to 10 (opposite party nos.2 to 11). This witness denied the suggestion



of the defence in his cross-examination at paragraph-47 that he had not stated before the police in his statement that his family in the leadership of Bhimesh Thakur boycotted the accused, due to that reason accused committed the occurrence but P.W.12, who is the Investigating Officer, has stated in his cross-examination in paragraph-50 that the said fact was not stated by this witness in his statement before him.

From the evidence of this witness, it is apparent that he is the nephew of the deceased Bhimesh Thakur and according to him, the deceased Bhimesh Thakur was killed in his 'Sahan', where he and his nephew Krishnanandan Thakur (P.W.3) also sustained injuries and became unconscious and he regained consciousness at Singhwara Hospital. It is also apparent from his evidence that he has disclosed the motive of occurrence, for the first time, before the trial court in his evidence.

15. P.W.6 Shiv Shankar Jha, who is the informant of this case, has deposed in his evidence that before 2¼ years at about 07.30 P.M., he was engaged in laying the foundation of his house. In that connection, he called Bhimesh Thakur to see whether the foundation is in straight line or not, then Bhimesh Thakur came and raised suspicion about the completion of the



construction work of the house. In the meantime, Ramakant Kunwar (respondent no.3) came and asked to Bhimesh Thakur in abusive language as to why he has come there. Thereafter, he asked to Bhimesh Thakur to move from there, then Bhimesh Thakur went to his Baithka. After sometime, he saw that the respondents along with one Bhaj Govind Kumar (since dead) and others, forming an unlawful assembly reached at the door of Bhimesh Thakur. At that time, the respondents Vijay Chandra Kunwar, Jagta Nand Kunwar and Abhay Nath Kunwar were armed with pistols, whereas Bhaj Govind Kunwar (since dead) and respondent Sri Prakash Kunwar were armed with Garasa, respondent Ramakant Kunwar was armed with Bhala, respondent Pratap Narain Kunwar was armed with Bhala and bomb and others were armed with Lathi. They pulled Bhimesh Thakur to his 'Sahan', where Abhay Nath Kunwar (respondent no.1) fired through his pistol, causing injury at the left temporal region of Bhimesh Thakur, then he fell down. Thereafter, Bhaj Govind Kunwar (since dead) gave Garasa blow at his forehead and Pratap Narain Kunwar (respondent no.4) gave Bhala blow causing injury at the chin of Bhimesh Thakur. When Krishnanand Thakur (P.W.3) and Dayanand Thakur (P.W.4) rushed to save Bhimesh Thakur, then Vijay Chandra Kunwar



(respondent no.2) fired through pistol, causing injury at the left forearm of Dayanand Thakur (P.W.4) and Jagta Nand Kunwar (respondent no.5) fired through pistol, causing injury at the left side of the chest of Krishnanand Thakur (P.W.3). After sustaining injuries, Dayanand Thakur (P.W.4) and Krishnanand Thakur (P.W.3) became unconscious. Thereafter, the members of unlawful assembly put fire at the paddy straw of Bhimesh Thakur, as stored near the bamboo clumps and from there, all reached at his door and put the fire at his cattle hut. Bhimesh Thakur (deceased) and the injured Krishnanand Kunwar and Dayanand Kunwar were rushed to Singhwara Hospital, where Bhimesh Thakur was declared brought dead. This witness has further stated that he gave his fardbeyan at Singhwara Police Station before Darogaji and after reading over the same, he put his signature and he proved his signature on the fardbeyan as Ext.1/1. This witness has further stated in his cross-examination that after giving his fardbeyan at Singhwara Police Station, he returned to his house boarding on the vehicle of Darogaji. He has further stated in paragraph-19 of his cross-examination that during the admission of Krishnanand Thakur (P.W.3) and Dayanand Thakur (P.W.4) in the hospital, he had not gone there to see them, nor he talked to them. This witness has further



stated in paragraph-20 of his cross-examination that he had shown the place of the occurrence to Darogaji on the date of the occurrence at about 11.00/11.30 A.M. At that time, no witness was present there. This witness has further stated that Gaurishankar Jha and Jaishankar Jha are own brothers. Subansh Jha and Hazari Jha are the brothers of his father. Maharudra Jha (respondent no.10) is the son of Subansh Jha, who is the accused in the case and Jairudra Jha, another son of Subansh Jha, has died. Balbodh Jha is the son of Jairudra Jha. Harikant Jha was the son of Hazari Jha, whereas Saligram Jha is the son of Harikant Jha but he is not witness in the case. This witness in paragraph-26 of his cross-examination denied the suggestion of the defence that regarding the same day of the occurrence, the accused Pratap Narain Kunwar (respondent no.4) had lodged a case in which police submitted the final form but Pratap Narain Kunwar (respondent no.4) filed criminal revision before the District Judge, but he admitted that he had executed the vakalatnama and handed over the same to Tarakant Thakur (P.W.7) for making pairvi in the case, who is witness in the present case. This witness in paragraph-28 of his cross-examination showed his ignorance that in the counter case lodged by Pratap Narain Kunwar (respondent no.4), the Chief



Judicial Magistrate, Darbhanga, has taken cognizance against him and others. This witness has further stated in his cross-examination at paragraph-29 that he had filed the protest petition in the court of the Chief Judicial Magistrate against the police in the present case and this witness has proved his signature on the protest petition as Ext.A/2. He had also given an application in the court of Sri J.P. Yadav, Judicial Magistrate, Darbhanga, in respect of the present case and he proved his signature on the said application as Ext.A/3. This witness has further stated in paragraph-33 of his cross-examination that Udan Jha (respondent no.9) and Subansh Jha, who are his Pattidars, had filed title suit against him and his two brothers, which is pending, in which Plot No.1179 is in dispute. This witness has further stated that the foundation was not laid on the aforesaid plot but this witness has showed his ignorance about the plot number of the land upon which the foundation was being laid. This witness has further stated that at the distance of about 1-1½ Lagghi in the east-north of the land on which the foundation was laid, Plot No.1179 is situated but he has no concern with the same. This witness has further stated that Rama Nand Jha (respondent no.8) had lodged the case regarding the murder but he showed his ignorance whether he is accused



in that case or not. In paragraph-37 of his cross-examination, this witness has stated that at the time of the occurrence, foundation was not being laid rather on old foundation, the bricks were being erected since before 2-3 days of the occurrence. Munni Lal and Mangal Mian were engaged as masons and both are alive. This witness has further stated that before laying the foundation, the land was not measured. This witness has further stated in his cross-examination at paragraph-38 that Bhimesh Thakur (deceased) had come alone at the place of foundation and stayed about 2-3 minutes, during that time, none of the accused reached there armed with weapons. During the movement of Bhimesh Thakur (deceased) from foundation to his Baithka, none of the accused had chased him. This witness has further stated that when Bhimesh Thakur had come, both the masons, Munni Lal and Mangal Mian were present. After 3-4 minutes of reaching of Bhimesh Thakur at his Baithka, he saw unlawful assembly of 10-11 persons moving there, crossing near the foundation land. At the time of the occurrence, the men of the camp of Bhimesh Thakur (deceased) tried to set free to him. This witness has further stated that where Bhimesh Thakur (deceased) had sustained Garasa injury, at that place, blood had fallen. He has further stated in paragraph-58 of his



cross-examination that it is not true that he had not stated in his restatement before the police that the members of unlawful assembly put fire at his cattle hut but P.W.12 Ratneshwar Prasad Sinha, who is the Investigating Officer of the case, has specifically stated in paragraph-51 of his cross-examination that this witness had not stated before him in his restatement that the members of unlawful assembly put the fire in his cattle house.

According to this witness, the occurrence took place at the 'Sahan' of the Bhimesh Thakur, where Bhimesh Thakur (deceased) Krishnanand Thakur (P.W.3) Dayanand Thakur (P.W.4) after sustaining injuries fell down and became unconscious and blood had also fallen there.

16. P.W.7 Tarakant Thakur has deposed in his evidence that on 18.03.1987 at about 07.30 A.M., he was at his door and saw that the accused (respondents) along with one Bhaj Govind Kunwa (since dead), forming an unlawful assembly, raising "Hullah", came at the door of Bhimesh Thakur and pulled him from his door to his 'Sahan', where Abhay Nath Kunwar (respondent no.1) fired through pistol, causing injury at the left temporal region of Bhimesh Thakur, then he fell down. Thereafter, Bhaj Govind Kunwar (since dead) gave Garasa blow at his forehead, Pratap Narain Kunwar (respondent no.4) gave



Bhala blow at his chin. When Dayanand Thakur (P.W.4) and Krishnanand Thakur (P.W.3) rushed there to save Bhimesh Thakur, then respondent Vijay Chandra Kunwar (respondent no.2) fired through pistol, causing injury at the left forearm of Dayanand Thakur (P.W.4) and Jagta Nand Kunwar (respondent no.5) fired through pistol causing injury at the left side of the chest of Krishnanand Thakur (P.W.3). Thereafter, members of unlawful assembly moved from there and put the fire in the paddy straw of Bhimesh Thakur and they also put fire at the cattle hut of Shiv Shankar Jha (P.W.6). This witness has further stated in his cross-examination that he had seen the entire occurrence from his door. Before reaching the members of unlawful assembly at the door of Bhimesh Thakur, 'Hullah' was not raised. The occurrence took place at about 7-8 minutes. He has further stated that where he was present at the time of occurrence, no villager was present there and after moving of the unlawful assembly from the place of the occurrence, he reached near Bhimesh Thakur, who was lying at his 'Sahan'. At that time, no lady of his family had come and Bhimesh Thakur was alive at the place of the occurrence. This witness had showed his ignorance about moving with Bhimesh Thakur and injured at the hospital but he admitted that he had gone to



the hospital to see the injured. When the injured were being taken to the hospital, ladies of their family had not come. This witness has further stated that Bhimesh Thakur was not carried after the occurrence to his 'Sahan', rather he was carried near the road, where the blood had fallen. Darogaji had come in the village on the date of the occurrence at about 11.00 A.M.. At that time, he was in his 'Angan' and after an hour, he gave his statement to Darogaji. Till that time, he was not aware about the death of Bhimesh Thakur. He has further stated that he had given his statement before Darogaji at his 'Sahan' but he had not seen Shiv Shankar Jha (P.W.6) there. He has further stated in paragraph-24 of his cross-examination that the accused Pratap Narain Kunwar (respondent no.4) had lodged a case regarding the same day of the occurrence, in which he is accused but the summon had not been issued to him from the court of the Chief Judicial Magistrate.

From the evidence of this witness, it is apparent that the occurrence took place at the 'Sahan' of the deceased Bhimesh Thakur and he had seen the occurrence from his door and the deceased Bhimesh Thakur was not carried to his door after the occurrence from his 'Sahan', rather he was carried near the road. This witness has also admitted about the counter case,



regarding the same day of the occurrence, lodged by Pratap Narain Kunwar (respondent no.4).

17. P.W.8 Shreenandan Thakur has deposed in his evidence that at the time of the occurrence, he was going to his field, then he saw that Bhimesh Thakur was being carried from his Baithka to his 'Sahan' by the accused (respondents and one Bhaj Govind Kunwar). At that time, Abhay Nath Kunwar alias Bara Babu (respondent no.1), Vijay Chandra Kunwar (respondent no.2) and Jagta Nand Kunwar (respondent no.5) were armed with pistols. Sri Prakash Kunwar (respondent no.6) and Bhaj Govind Kunwar (since dead) were armed with Garasa, whereas Ramakant Kunwar (respondent no.3) was armed with Lathi and Pratap Narain Kunwar (respondent no.4) was armed with Bhala and bomb. All the members of unlawful assembly pulled to Bhimesh Thakur at his 'Sahan' and, thereafter, Abhay Nath Kunwar (respondent no.1) fired through pistol causing injury at his temporal region, then he fell down. Thereafter, Bhaj Govind Kunwar (since dead) gave Garasa blow at the forehead and Pratap Narain Kunwar (respondent no.4) gave Bhala blow at the chin of Bhimesh Thakur. At that time, Vijay Chandra Kunwar (respondent no.2) fired through pistol, causing injury at the left arm of Dayanand Thakur (P.W.4) and



Jagta Nand Kunwar (respondent no.5) fired through pistol, causing injury at the left side of the chest of Krishnanand Thakur (P.W.3). Thereafter, the members of unlawful assembly put fire in the paddy straw of Bhimesh Thakur, which was kept near bamboo clumps and they also put fire in the cattle hut (Mohali) of Shiv Shankar Jha (P.W.6). After reaching the villagers, all fled away. This witness has further stated in his cross-examination that the witness Amar Nath Thakur (P.W.9) had lodged a criminal case against the accused Rajendra Thakur (respondent no.7) and others, in which he is witness. He is also witness in other criminal cases. This witness has further stated in his cross-examination at paragraph-14 that he had seen the occurrence from the road. This witness has further stated in paragraph-26 of his cross-examination that he had not seen the ladies of the family of Bhimesh Thakur, Dayanand Thakur (P.W.4) and Krishnanand Thakur (P.W.3), where they had fallen, after sustaining the injuries. This witness has further stated in paragraph-34 of his cross-examination that regarding the same day of the occurrence, accused Pratap Narain Kunwar (respondent no.4) had lodged a criminal case, in which he is accused. This witness has denied the suggestion of the defence in paragraph-35 that the occurrence had not taken place in the



manner, as stated by him, and it is not true that the occurrence had not taken place in the 'Sahan' of the deceased Bhimesh Thakur.

18. P.W.9 Amar Nath Thakur has deposed in his evidence that at the time of the occurrence at about 07.30 A.M., he was at his door, then he heard 'Hullah' at the door of the deceased Bhimesh Babu. His door and the door of the deceased Bhimesh Babu is adjacent to each other. On hearing 'Hullah', he went to the door of Bhimesh Babu, then saw that the respondents along with Bhaj Govind Kunwar (since dead), forming unlawful assembly, were pulling to Bhimesh Babu to his 'Sahan'. At that time, Abhay Nath Kunwar (respondent no.1) fired through pistol, causing injury at the temporal region of Bhimesh Thakur, then he fell down. Thereafter, Bhaj Govind Kunwar (since dead) gave Garasa blow at his forehead and Pratap Narain Kunwar (respondent no.4) gave Bhala blow at his chin. At that time, Vijay Chandra Kunwar (respondent no.2) fired through pistol, causing injury at the left forearm of Dayanand Thakur (P.W.4) and Jagta Nand Kunwar (respondent no.5) fired through pistol, causing injury at the left side of the chest of Krishnanand Thakur (P.W.3). Thereafter, all the members of unlawful assembly proceeded ahead and put fire in



the paddy straw of Bhimesh Thakur, kept near the bamboo clumps and, further, they reached at the door of Shiv Shankar Jha (P.W.6) and put fire in his cattle hut. This witness has further stated in his cross-examination that Jaiveer Thakur is the cousin of his father, Satya Narain Thakur is the son of Jaiveer Kunwar. Satya Narain Thakur had lodged the criminal case in the year 1986 against the accused Bhaj Govind Kumar (since dead) and Rajendra Kunwar, Vijay Chandra Kunwar, Abhay Nath Kunwar and others. This witness has showed his ignorance that in the said case, he was the witness. He has further stated in his cross-examination that Jai Mangal Kunwar is the cousin of Pratap Narain Kunwar (respondent no.4). Before the present occurrence, he had lodged a case against Jai Mangal Kunwar, Rajendra Kunwar (respondent no.7) and others, which is pending and in that case, Shreenandan Thakur (P.W.8) is a witness. This witness has further admitted in paragraph-12 of his cross-examination that regarding the same day of the occurrence, counter case had been lodged by Pratap Narain Kunwar (respondent no.4) in which he is also one of the accused. He has further stated that in between his door and the door of Bhimesh Thakur, the houses of Shyamanand Thakur and Raghuvansh Thakur are situated but it is not in his memory that



whether the family members of Shyamanand Thakur and Raghuvansh Thakur were present near the place of the occurrence or not, at the time of the occurrence. This witness has further stated that he was present at the pitch road till carrying the injured to the hospital. Till that time, 8-9 villagers had come but he had not disclosed about the occurrence to anyone nor they had told him about the occurrence. Raghuvansh Thakur, Shreenandan Thakur, Sarb Narayan Thakur and Raghav Thakur had come at that time. Out of them, Raghav Thakur had gone to the hospital with the injured. He has further stated that after reaching at the hospital, he went to the police station and saw that Shiv Shankar Jha (P.W.6) was giving his fardbeyan to Darogaji. He had gone to the police station only to give information. After recording the statement of Shiv Shankar Jha (P.W.6), Darogaji went to the hospital but he did not disclose to Darogaji that he had come at the police station to give information of the occurrence. He has further stated that he also put his signature on the fardbeyan as witness. He and Shiv Shankar Jha (P.W.6) went to the hospital with Darogaji. He did not ask to Darogaji at the hospital to record his statement.

19. P.W.10 Dr. Dhanesh Mishra has deposed in his evidence that on 18.03.1987, he was posted as Incharge Medical



Officer, Primary Health Centre, Singhwara. On that date, two injured Dayanand Thakur (P.W.4), son of Gangesh Thakur and Krishnanand Thakur (P.W.3), son of Bhimesh Thakur, both resident of village-Kataka, P.S. Singhwara, District-Darbhanga were brought to Primary Health Centre. Since their condition was precarious, he referred them to D.M.C.H. for their treatment and he informed the police through two letters and this witness has proved two letters as Ext.3 and Ext.3/1. In cross-examination, this witness has stated that the time of giving the information to the police is not mentioned in both the letters. He has further stated in his cross-examination that he did not prepare any injury report of the injured. The name of two injured were mentioned in the Outdoor Register of the Hospital only with the nature of injury. On recall, this witness has further stated that the Outdoor Register of 1987 of the Primary Health Centre is maintained for the persons, who come for treatment or who are referred by the police to the Centre. On 18.03.1987, Krishnanand Thakur (P.W.3), Dayanand Thakur (P.W.4) and Bhimesh Thakur had come to the Centre for treatment vide serial nos.894, 895 and 897 of the Outdoor Register of the Centre. According to the entry of the Register, Bhimesh Thakur was already dead. He found the conditions of Krishnanand



Thakur (P.W.3) and Dayanand Thakur (P.W.4) precarious and he injected some life saving drugs to them and referred them to D.M.C.H. for investigation and proper treatment. He proved the entries of serial nos.894, 895 and 897 as Exts.10, 10/1 and 10/2, respectively of the above outdoor register. This witness has further stated in his cross-examination that it is not a fact that the entry “died of gun shot injuries” made against serial no.897 in the register is subsequent interpolation by him. He has further stated in his cross-examination that the injection, which he had injected to the injured are not mentioned in the register.

20. P.W.11 Dr. V.C.S. Verma has stated in his evidence that on 18.03.1987, he was posted as Professor and the head of the Forensic Medicine Department, D.M.C.H., Darbhanga. On that day, at about 02.30 P.M., he held the post-mortem examination over the dead body of Bhimesh Thakur, son of Late Baldeo Thakur of village-Kataka, Police Station-Singhwara, District-Darbhanga and found the following injuries on his person:

(i). One rounded half inch diameter wound of entry of a bullet over left temporal region on the outer side of left eye. The margins of the wound were found bruised and blackened, irregular and inverted. On dissection, the course of the bullet



was traced through left cranial fossa to posterior side of the head. The left temporal and occipital bones were found broken. A deformed metal bullet was found lodged under the broken portion of the occipital bone. The meninges, vessels and the brain tissues, in course of the track of the bullet were found grossly lacerated and torn with extensive damages to the brain tissues on the left and posterior sides. Extensive infiltration of blood was found in and around the area. The metal bullet was sent to the I.O. under and separate sealed cover through constable.

(ii). One incised wound $2\frac{1}{2}$ " x $\frac{3}{4}$ " up-to bone on right side of the forehead extending obliquely upward and medially towards head from the outer side of right eye brow. Right black eye was seen with swollen upper eyelid due to collection of blood. A hair line cut was found in the underlying portion of the frontal bone.

(iii). One incised punctured wound $\frac{1}{2}$ " x $\frac{1}{4}$ " x $1\frac{1}{2}$ " on left side of the chin along left border of mandible.

In his opinion, all the injuries were antermortem. Injury no.(i) above was grievous and dangerous to life in ordinary course of nature and was caused by a firearm, may be by revolver, and was sufficient to cause death. Injury no.(ii)



above was grievous in nature and was caused by a heavy sharp cutting weapon, may be by a Garasa, and injury no.(iii) above individually was simple in nature and was caused by a sharp cutting weapon, may be by Bhala. The cause of death was due to haemorrhage and shock and the time of death was within six to twelve hours from the time of the post-mortem examination. This witness has stated that the post-mortem examination report is in his pen and bears his signature. He proved the post-mortem examination report as Ext.4.

21. P.W.12 Ratneshwar Prasad Sinha has deposed in his evidence that on 18.03.1987, he was posted as Officer Incharge of Police Station-Singhwara. On that day at about 08.30 A.M., Shiv Shankar Jha (P.W.6) came at the police station and gave his fardbeyan and the same was read over to him. Thereafter, Shiv Shankar Jha (P.W.6) put his signature on the fardbeyan and he proved the fardbeyan of Shiv Shankar Jha (P.W.6) as Ext.5. He has further stated that after recording the fardbeyan of Shiv Shankar Jha (P.W.6), formal F.I.R. was drawn up and on seeing the formal F.I.R., this witness stated that the formal F.I.R. has already been marked as Ext.6. He has further stated that he took the charge of investigation of the case and, firstly, went to Singhwara Hospital, where he found Bhimesh



Thakur dead. The injured Krishnanand Thakur (P.W.3) and Dayanand Thakur (P.W.4) were unconscious, due to that reason, he could not record their statements. After seeing both the injured, he prepared the requisition slip in respect of their injuries and both were sent for treatment at D.M.C.H. He prepared the inquest report of the dead body of the deceased Bhimesh Thakur in carbon process and sent the dead body at D.M.C.H. for post-mortem examination. He proved the carbon copy of the inquest report of the dead body of Bhimesh Thakur as Ext.6. He further stated that on the same day, he inspected the place of the occurrence, as disclosed by the informant Shiv Shankar Jha (P.W.6) and the witnesses. The place of the occurrence is south-east part of the courtyard, situated in front of the residential house of the informant Shiv Shankar Jha (P.W.6) in village-Katka, situated near the road connecting to village-Marwara and Kamtaul, where foundation was laid for construction of the house. In the foundation, one layer of the bricks from north to south was found. No sign of scuffle was found on soil stored near the foundation. In the west of foundation, there was open land of the accused Udan Jha and in south, there was Baithka of Udan Jha. In front of Baithka of Udan Jha, there was village path, connecting to the pitch road,



running towards west towards the house of the deceased Bhimesh Thakur. Blood stained was found on the path near the pitch road. Blood stained was also found adjacent to pitch road, in front of the house of Tarakant Thakur (P.W.7). A live bomb was also found on the path, connected to pitch road, near the house of the accused Udan Jha. In the east of the place from where bomb was recovered, the village road is situated and in the east of the village road, the house of Tarakant Thakur is situated. In the north of the house of Tarakant Thakur, there is bamboo clumps, where paddy straw was found burnt. Adjacent to the east of the house of Shiv Shankar Jha (P.W.6), thatched('Phoosh') hut, covered with 'Taat', was found partially burnt. He seized the blood stained soil and the bomb. This witness has further stated that he recorded the statement of the witnesses, obtained the post-mortem report of the deceased Bhimesh Thakur and the injury reports of the injured. He also obtained the bullet, which was in sealed cover, and the clothes of the deceased from the doctor, who conducted the post-mortem examination over the dead body of the deceased. He has further deposed that he seized the blood stained sandow Ganji and Lungi of the injured Dayanand Thakur (P.W.4) from the D.M.C.H. and also seized the blood stained cotton Ganji and



Lungi of the injured Krishnanand Thakur (P.W.3) from D.M.C.H and after completion of investigation, he submitted the charge-sheet. He has stated in paragraph-18 of his cross-examination that he had not detailed the width, length and depth of the foundation in the case diary and he has not detailed the location, where the soil of the foundation was stored. He has stated in paragraph-20 of his cross-examination that the 'Sahan' land, situated in front of the house of the deceased Bhimesh Thakur, was not shown to him as the place of the occurrence, nor he had visited there. He has further stated in paragraph-21 of his cross-examination that he had not sent the seized bomb for examination. He has further stated in his cross-examination that he recorded the re-statement of Shiv Shankar Jha (P.W.6) just after the inspection of place of occurrence but the time of recording his restatement is not detailed in the case diary. He has further stated at paragraph-26 of his cross-examination that on the day of the occurrence, he searched the house of the accused but no any objectionable material was recovered from their houses and he arrested Vijay Chandra Kunwar and Bhaj Govind Kunwar (since dead) on the same day, on chase, in which both sustained injuries, hence, they were sent to Singhwara Hospital for treatment in custody. He has further



stated in paragraph-28 of his cross-examination that on 19.03.1987 at about 08.30 A.M., he had gone to Darbhanga Hospital on receiving the information that one accused Pratap Narain Kunwar is injured and he is under treatment at Darbhanga Hospital. On query at D.M.C.H., he came to know that the accused Pratap Narain Kunwar (respondent no.4) is admitted in the unit of Dr. H.N. Dwivedi at Bed No.10 and in that course, he met to Sub-Inspector B.N. Thakur, S.I. of Beta O.P., who handed over the fardbeyan of Pratap Narain Kunwar and also the requisition slip regarding the injuries of Pratap Narain Kunwar. This witness has further stated in paragraph-30 of his cross-examination that he reached at Bed No.10 of the unit of Dr. H.N. Dwivedi, where he found the accused Pratap Narain Kunwar (respondent no.4) in injured condition and he recorded his statement, as detailed in paragraph-33 of the case diary. He seized the blood stained Ganji of the accused Pratap Narain Kunwar (respondent no.4), in which several small holes were found, and he arrested him there and deputed the constable for watch as he was under treatment in the hospital. He further stated in paragraph-34 of his cross-examination that in the evening of 20.03.1987, Havildar Rajeshwar Singh of Beta O.P. came to Singhwara police station and handed over the fardbeyan



of Krishnanand Thakur (P.W.3), the extract of which is detailed in paragraph-48 of the case diary.

22. D.W.5 Binoda Nand Thakur has deposed in his evidence that on 19.03.1987, he was posted as Sub Inspector at Beta O.P. of Police Station-Laheriasarai. On the same day at about 10.00 A.M., he recorded the fardbeyan of Pratap Narain Kunwar (respondent no.4) at Bed No.10 of the unit of Dr. H.N. Dwivedi in D.M.C.H. Fardbeyan was read over to Pratap Narain Kunwar (respondent no.4), then he put his signature on the same. This witness, on seeing the fardbeyan of Pratap Narain Kunwar (respondent no.4), stated that the same has already been marked as Ext.E. He has further stated that he also inspected the injuries on the person of Pratap Narain Kunwar (respondent no.4) and prepared the requisition slip of injuries and proved the same as Ext.G.

23. D.W.7 Krishna Kumar Mallick has deposed in his evidence that on 18.03.1987, he was posted at D.M.C.H., Darbhanga as R.S.O. under Prof. H.N. Dwivedi, On the said date, he examined Pratap Narain Kunwar (respondent no.4) and found the following injuries on his person:

(I). Multiple abrasions with surrounding blackish margin, size varying from peanut to 1½” x 1/4” on left side of



thorax axilla and abdomen.

(II). Abrasion 3" x 2" on upper part of right leg.

(III). Abrasion 1" x 1/4" on left medial malleolus.

According to him, the nature of injuries was simple. Probable weapon used injury no.(I) was caused by some explosive device and injury nos.(II) and (III) were caused by hard and blunt substance. He has proved the injury report of Pratap Narain Kunwar (respondent no.4) as Ext.H.

24. Ext.E, the F.I.R. of Singhwara P.S. Case No.11 of 1987, indicates that the said case was instituted on the basis of the fardbeyan of Pratap Narain Kunwar (respondent no.4) as recorded by Binoda Nand Thakur (D.W.5), Sub Inspector of Beta O.P. of Laheriasarai Police Station, in which he claimed that the land dispute was going on in between his villager Maharudra Jha (respondent no.10) with Shankar Jha (P.W.6) regarding which Panchayat was arranged. Thereafter, on 18.03.1987, Maharundra Jha (respondent no.10) at about 09.00 A.M. started digging the soil for laying the foundation, then Shankar Jha came there and stopped the work, due to that reason, hot exchanged of words started. On hearing "Hullah", he and other villagers reached there and tried to pacify them. In the meantime, Satya Narain Thakur and Ghanshyam Thakur



having pistol in their hands, Gangesh Thakur (P.W.1), Bhimesh Thakur (deceased), Dayanand Thakur (P.W.4), Krishnanand Thakur (P.W.3), Tarakant Thakur (P.W.7), Sukhdeo Jha, Lalu Thakur, Shyamnandan Thakur, Amar Nath Thakur (P.W.9), Sarb Narayan Thakur (P.W.2), Shreenandan Thakur (P.W.8) and others having Lathi, Bhala, Farsa and stones reached there and on the order of Shankar Jha (P.W.6), Satya Narain Thakur and Ghanshyam Thakur started firing through pistol in which he sustained injuries on his left flank. When Bhimesh Thakur (deceased) came forward in his rescue, then he also sustained injury in the said firing. He could not visualize as to who had also sustained injury, later on. At that time, stones were also being pelted, in which he sustained injury at his both legs.

According to Ext.E, occurrence took place in front of the house of the informant Shiv Shankar Jha (P.W.6), where foundation was being laid in which Pratap Narain Kunwar (respondent no.4) sustained firearm injury and the injury caused by pelting of stones. At that time, Bhimesh Thakur (deceased) also sustained firearm injury.

25. From the evidence of P.W.1 Gangesh Thakur, P.W.2 Sarb Narayan Thakur, P.W.6 Shiv Shankar Jha, P.W.7 Tarakant Thakur, P.W.8 Shreenandan Thakur and P.W.9 Amar



Nath Thakur, as discussed above, it is apparent that the occurrence took place at the 'Sahan' of the deceased Bhimesh Thakur. On sustaining firearm injury, caused by Abhay Nath Kunwar (respondent no.1), Bhimesh Thakur (deceased) fell down on the ground. Thereafter, Bhaj Govind Kunwar (since dead) caused injury at his head through Garasa and Pratap Narain Kunwar (respondent no.4) caused injury through Bhala at the chin. When Krishnanand Thakur (P.W.3) and Dayanand Thakur (P.W.4) rushed there in rescue of Bhimesh Thakur (deceased), Vijay Chandra Kunwar (respondent no.2) and Jagta Nand Kunwar (respondent no.5) also fired causing firearm injury to Krishnanand Thakur (P.W.3) and Dayanad Thakur (P.W.4) and both became unconscious. After 8-10 minutes, Bhimesh Thakur (deceased) was rushed to the 'Sahan' of Tarakant Thakur (P.W.7). But according to the evidence of Ratneshwar Prasad Sinha (P.W.12), the Investigating Officer of the case, the place of occurrence, as shown to him, was situated in front of the house of the informant Shiv Shankar Jha (P.W.6), where the foundation was being laid and the soil was also collected nearby the foundation and he found the blood stained on the path, near the pitch road, and the blood stained was also found adjacent to pith road, in front of the house of Tarakant



Thakur (P.W.7). He also found a live bomb on the path, connected with the pitch road near the house of Udan Jha (respondent no.9). From the evidence of P.W.12, it is also apparent that he had not visited at the 'Sahan' of Bhimesh Thakur (deceased). While P.W.1 Gangesh Thakur and P.W.2 Sarb Narayan Thakur have showed their ignorance in their evidence about lodging of the case by Pratap Narain Kunwar (respondent no.4) for the same day of the occurrence but P.W.6 Shiv Shankar Jha, P.W.7 Tarakant Thakur, P.W.8 Shreenandan Thakur and P.W.9 Amar Nath Thakur have admitted in their evidence about lodging of the case regarding the same day of the occurrence by Pratap Narain Kunwar (respondent no.4), in which the place of occurrence is shown as 'Sahan' of the informant Shiv Shankar Jha (P.W.6), which is also found as place of the occurrence by P.W.12 Ratneshwar Prasad Sinha, Investigating Officer of the case. As such, the prosecution has miserably been failed to prove the place of occurrence and manner of occurrence. It is also pertinent to note here that Shiv Shankar Jha (P.W.6), who is the informant of the case, has not disclosed the motive of the occurrence in his fardbeyan, nor in his evidence. P.W.1, Gangesh Thakur, P.W.2 Sarb Narayan Thakur, P.W.3 Krishnanand Thakur, P.W.4 Dayanand Thakur,



P.W.7 Tarakant Thakur, P.W.8 Shreenandan Thakur and P.W.9 Amar Nath Thakur have also not disclosed the motive of the occurrence. While P.W.4 Dayanand Thakur has stated the motive of the occurrence, for the first time, in court that since his family members in the leadership of Bhimesh Thakur (deceased) had boycotted the accused (respondent nos.1 to 10) before 10-15 days of the occurrence but no Panchayat was arranged, due to that reason, the occurrence took place, which appears to be not convincing.

26. The learned trial court has discussed the evidence, available on the record, in the impugned Judgment and finding the major contradiction in the evidence of the prosecution witnesses regarding the place of occurrence, manner of occurrence etc., as detailed in paragraph-32, acquitted the respondent nos.1 to 10 from the charges.

It is well settled that if on the same set of facts and evidence, two views are possible, the view taken by the trial court cannot be discarded unless the view taken by the trial court is absurd and perverse.

27. On the basis of the aforesaid facts and the circumstances of the case and the discussions, as made above, I find no infirmity and illegality in the impugned Judgment of



acquittal. Accordingly, the aforesaid Government Appeal as well as Criminal Revision stands dismissed. Since the respondent nos.1 to 10 of Government Appeal (DB) No.33 of 1995, who are also the opposite party nos.2 to 11 in Criminal Revision No.492 of 1995, are on bail, hence, they are discharged from the liabilities of their respective bail bonds.

(Rajendra Kumar Mishra, J)

Hemant Kumar Srivastava, J:- I agree.

(Hemant Kumar Srivastava, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	02.11.2018.
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