

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.974 of 2013**

Arising Out of PS. Case No.-6 Year-1991 Thana- BARBIGHA District- Sheikhpura

Bhuna Singh, S/O Late Hari Singh, resident of Village- Sherpar, P.S-
Barbigaha, Distt- Sheikhpura.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 980 of 2013

Arising Out of PS. Case No.-6 Year-1991 Thana- BARBIGHA District- Sheikhpura

Vijay Kumar Singh, S/O Late Basudev Singh, R/O Village- Sherpar, P.S.
Barbigaha, District- Sheikhpura

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) Nos. 974 and 980 of 2013)

For the Appellant/s	:	Mr. Surendra Kumar Singh, Sr. Adv. Mr; Ashwani Kumar Singh Mr. Himanshu Kumar Akela Mr. Praveen Prakash
For the Respondent/s	:	Mr. Ajay Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**

**JUDGMENT AND ORDER
C.A.V.**

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

Date : 14-05-2019



Criminal Appeal (DB) No. 974 of 2013 has been filed on behalf of the appellant Bhuna Singh, whereas Criminal Appeal (DB) No. 980 of 2013 has been preferred by appellant Vijay Kumar Singh. The appellants, in both these appeals, were tried together, in Sessions Case no. 1094 of 2008/Trial No. 17 of 2011, arising out of Barbigha Police Station Case No. 06 of 1991, and as such, both these appeals have been heard together and are being disposed of by this common judgment.

2. By the judgment, dated 20.09.2013, passed, in Sessions Case No. 1094 of 2008, by Sri Gyan Chandra Gupta, learned 1st Adhoc Additional Sessions Judge, Sheikhpura, the appellants, Bhuna Singh and Vijay Kumar Singh, stood convicted under Section 302 of the Indian Penal Code and Section 27 (i) of the Arms Act. In consequence of their conviction under Section 302 of the Indian Penal Code, the appellants were, by the order, dated 23.09.2013, sentenced to suffer imprisonment for life and fine of Rs. 10,000/- each. In consequence of their conviction under Section 27 (i) of the Arms Act, the appellants were, by the order, dated 23.09.2013, sentenced to suffer rigorous imprisonment for a term of three years and fine of Rs. 1000/- each. In default of payment of fine, the appellants were directed to further undergo simple imprisonment for a period of two years. The sentences were directed to run concurrently.

3. The case of the prosecution, as unfolded by the informant Rajesh Kumar, in the fardbayan, recorded in his thatched hut, on 11.01.1991, at about 05:15 AM by Sub Inspector of Police Sheo Prasad Singh, of Barbigha Police Station, in brief, is that



(i) Naresh Singh, Sunil Kumar Singh (deceased), Neel Kumar, all sons of Alakhdeo Singh, Alakhdeo Singh (deceased), son of Ramdhin Singh, Jata Shankar Singh (PW 1), son of Brahmdeo Singh, Rajendra Singh (PW 6), son of Samnath Singh, Satya Narayan Singh @ Dhala Singh (deceased), son of Late Dhana Singh, Masudan Singh (PW 3), son of Nawal Kishore Singh, Bajrangi Singh (not examined), Chowkidar Mangal Paswan (not examined), Chowkidar Charitar Paswan (not examined) and Vimal Paswan, son of Chowkidar Baleshwar Paswan, were sitting in the thatched hut along with the informant Rajesh Kumar. A lamp was burning in the said thatched hut. At about 04:45 AM, on 11.01.1991, a white-coloured car passed from east to west. At that time, Naresh Singh came out of the thatched hut and proceeded towards the road in the east and Chowkidar Mangal Paswan came out of the thatched hut for easing out. After some time, Vijay Singh, Siddhi Singh, Uday Singh, all sons of Basudeo Singh, Bhuna Singh, son of Late Hari Singh, Mantu Singh, Anil Singh, Sunil Singh and Arun Singh, along with 5-6 unknown persons arrived. All were variously armed with rifles, guns and pistols. Vijay Singh told to kill all the persons by bullets. On saying this, Vijay Singh shot at Sunil Singh. Siddhi Singh fired upon Neel Kumar Singh, Uday Singh fired upon Satya Narayan Singh @ Dhala Singh. Due to the bullet injury, all the three died. Bhuna Singh fired upon Alakhdeo Singh, Mantu Singh fired upon Jata Shankar Singh and Anil Singh fired upon Rajendra Singh. Arun Singh fired upon Bajrangi Singh.



(ii) The informant further stated that Sunil Singh fired upon him, but he hid himself in the heap of straw. Masudan Singh also hid himself with the informant in the straw. Due to the bullet injury, Alakhdeo Singh, Jata Shankar Singh, Rajendra Singh and Bajrangi Singh were injured and were in unconscious state. Chowkidar Charitar Yadav and Vimal Paswan were also present. The brother of the informant, namely, Naresh Singh, came there on hearing the sound of firing.

(iii) The reason behind this occurrence, as disclosed by the informant (PW 7), is the land dispute with Vijay Singh and the informant regarding the land of the place of occurrence and a case is also pending in the Court of S.D.O., Sheikhpura.

(iv) The informant claimed that the occurrence was witnessed by Masudan Singh, Naresh Singh, Alakhdeo Singh (injured), Jata Shankar Singh, Rajendra Singh, Bajrangi Singh, Chowkidar Mangal Paswan, Chowkidar Charitar Yadav, Chowkidar Anil Paswan and the people from the surrounding.

4. On the basis of the said *fardbeyan*, a formal First Information Report has been registered as Barbiga Police Station Case No. 06 of 1991, under Section 302 of the Indian Penal Code read with Section 27 (i) of the Arms Act, on 11.01.1991, against accused Vijay Singh, Siddhi Singh, Uday Singh, Bhuna Singh, Mantu Singh, Anil Singh, Sunil Singh and Arun Singh, along with 5-6 unknown persons.

5. During investigation, inquest was held over the dead bodies of Neel Kumar Singh, Sunil Kumar Singh, Satya Narayan Singh @ Dhala Singh and Alakhdeo Singh, who were also subjected to post



mortem examination, and, on completion of investigation, a charge sheet was submitted, under Section 302/307/149 of the Indian Penal Code and Section 27 (i) of the Arms Act, against the appellants. The charge sheet (charge sheet no. 101 of 2008) was submitted by the police against 6 persons, namely, Vijay Kumar Singh, Bhuna Singh, Anil Singh, Sunil Singh, Vidaya Singh and Mantu Singh, but except Vijay Kumar Singh, all other accused were shown as absconder and only after arrest of accused Bhuna Singh, both the appellants have faced trial. Cognizance of the offence punishable under Sections 302, 307, 324, 452 and 120B/34 of the Indian Penal Code and Section 27 of the Arms Act was taken on 20.07.1991/27.07.1991 by learned Sub Divisional Judicial Magistrate, Munger. The case was committed to the Court of Sessions on 15.11.2008 and by order of the learned Sessions Judge, dated 22.12.2008, the case was transferred to the Court of learned Additional Sessions Judge, Fast Track Court No. 4, Sheikhpura, for disposal.

6. Initially, only the appellant Vijay Kumar Singh was tried in Sessions Case No. 1094 of 2008, but by order, dated 07.04.2009, passed by learned Additional Sessions Judge, Fast Track Court No. 4, Sheikhpura, Sessions Trial No. 197 of 2009, which related to the appellant Bhuna Singh, was amalgamated in Sessions Case No. 1094 of 2008.

7. At the trial, when charges, under Section 302 of the Indian Penal Code and Section 27 (i) of the Arms Act, were framed on 19.01.2009 against the appellant, Vijay Kumar Singh, he pleaded not guilty thereto. Charges, under Section 307/149 of the Indian Penal



Code and Section 27 (i) of the Arms Act, were framed on 07.03.2009 against the accused-appellant, Bhuna Singh, he pleaded not guilty thereto. Again, on 24.09.2012, a charge, under Section 302 of the Indian Penal Code, was framed against the appellant, Bhuna Singh, he pleaded not guilty thereto and claimed to be tried.

8. In support of its case, prosecution examined altogether 11 (eleven witnesses), namely, P.W. 1 Jata Shankar Singh, P.W. 2 Rajesh Kumar, P.W. 3 Masudan Singh, P.W. 4 Surendra Singh, P.W. 5 Bharat Singh, P.W. 6 Rajendra Singh, P.W. 7 Rajesh Kumar @ Karu Singh, P.W. 8 Sudhir Kumar @ Bhola Singh, P.W. 9 Arun Singh, P.W. 10 Dr. Rabindra Kumar Gupta and P.W. 11 Jai Ram Singh. The accused were, then, examined under Section 313 of the Code of Criminal Procedure, 1973, wherein the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial and false implication.

9. The defence has also examined four witnesses, namely, D.W. 1 Ramashish Singh, D.W. 2 Bishundeo Prasad Arya, D.W. 3 Durga Sao and D.W. 4 Ajay Kumar Sao.

10. Having, however, found the accused guilty of the offences, convicted under Section 302 of the Indian Penal Code and Section 27 (i) of the Arms Act, learned trial Court convicted them accordingly and passed sentences against them, as mentioned above.

11. Aggrieved by their conviction and the sentences, which has been passed against them, the accused have preferred these two appeals.



12. We have heard Mr. Surendra Kumar Singh, learned Senior Counsel, appearing on behalf of the appellants, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

13. Mr. Surendra Kumar Singh, learned Senior Counsel, after placing the entire evidence in his argument, has submitted that PW 1 has not seen the occurrence and actually none of the prosecution witnesses have witnessed the occurrence. He has further submitted that the prosecution has failed to bring on record the factum regarding the statement of PW 1, Jata Shankar Singh, who claimed himself to be an eye-witness to the entire occurrence, under Section 161 of the Code of Criminal Procedure, 1973, was recorded belatedly on 23.01.1991, as such appears to be doubtful. Learned Senior Counsel has further submitted that PW 1, in paragraph 31, has deposed that 10-15 persons can sit in the thatched hut, but in paragraph 10 of his evidence, he has deposed that more than 10 persons were sleeping in the thatched hut and cattle were also tied in the thatched hut, as stated in paragraph 31 of his evidence. Learned Senior Counsel has further submitted that PW 1 is the most interested witness inasmuch as Sunil Singh is his brother and there was previous enmity also. This witness, in paragraph 9, has deposed that a case, under Section 144 of the Code of Criminal Procedure, 1973, was pending for the land on which murder took place. Learned Senior Counsel has submitted that source of identification has not been brought on record by the prosecution. Further submission on behalf of the appellants is that PW 7, the informant is also an



interested witness, being cousin of PW 1 (Jata Shankar Singh). Learned Senior Counsel has further submitted there is no likelihood of presence of PW 1 as none of the prosecution witness has deposed that PW 1 used to stay in the said thatched hut for studying. He next submitted that some of the injured have not come for their deposition, which cast serious doubt over the prosecution case.

14. On the other hand, Mr. Ajay Mishra, learned Additional Public Prosecutor, has submitted that quantity of evidence is immaterial; rather, the quality of evidence is important and PW 1 and PW 7 have narrated the entire occurrence vividly and the prosecution has been able to prove the guilt of the appellants beyond the shadow of all reasonable doubts.

15. After having minutely scrutinizing the evidence, both oral and documentary, available on record and the arguments advanced on behalf of the parties, I am, prima facie, of the opinion that the prosecution has failed to establish its case beyond the shadow of all reasonable doubts and the judgment of conviction, dated 20.09.2013, and order of sentence, dated 23.09.2013, passed, in Sessions Case No. 1094 of 2008, are not sustainable.

16. In order to give my conclusive finding, it is necessary to analyze and discuss the evidence of prosecution witnesses.

17. In order to appreciate the evidence adduced by the prosecution against the appellants, I would like to first take note of the evidence of Dr. Rabindra Kumar Gupta (PW 10), who had conducted, on 12.01.1991, *post mortem* examination on Sunil Kumar Singh's dead body and found the following *ante mortem* injuries:



“(i) Fire arm wound on mid axillary line in left side of chest size 1½” over shape X. Chest cavity at the level of fourth interpostal space with multiple pillets, wounds around the main wound margins inverted and ragged with blackening of edge of margins that is wound of entry.

On dissection-

Blood and blood clots were present in thoracic cavity. Multiple perforations were present in left lung pericardial and heart. To perforation was in right lung. Eleven pillets found lodged in different places inside the heart and lungs. Pillets were sealed in a glass container, signed and handed over to Constable.”

18. In the opinion of the doctor (PW 10), death was caused due to shock and haemorrhage, resulting from the injuries sustained on heart and lungs by the deceased, the injuries have been caused by fire arm.

19. This witness has identified his hand-writing and signature on the post mortem report of deceased Sunil Kumar Singh, which has been marked as Exhibit-5. So far as the post mortem report of deceased Alakhdeo Singh is concerned, this witness has stated that the post mortem on the dead body of Alakhdeo Singh was conducted by his colleague, Dr. S. P. Jha, who has died, and he identified the hand writing of Dr. S. P. Jha (dead) on the post mortem report of deceased Alakhdeo Singh, which has been marked as Exhibit-6. This witness has further stated that deceased Sunil Kumar Singh had been shot at by a close distance.



20. The finding of the doctor and his opinion with regard to the cause of death of the said deceased and his opinion with regard to the weapon used for causing the death of the said deceased, were not disputed either by the prosecution or by the defence and I also do not notice anything improbable in the evidence given by the doctor (PW 10). From the evidence of PW 10, it becomes clear that Sunil Kumar Singh's death was homicidal in nature.

21. Now the question which remains is as to whether the appellants were the persons responsible for the deaths of the persons from the prosecution side and, thus, they have committed the offences punishable under Section 302 of the Indian Penal Code and Section 27 (I) of the Arms Act?

22. Coming to rest of the witnesses (ten in number) examined on behalf of the prosecution, I would like to mention that PW 2, Rajesh Kumar, is a formal witness, who has proved the hand writing and signature of Sheo Prasad Singh, the then Officer-in-Charge of Barbiga Police Station, on the form First Information Report of Brbiga Police Station Case No. 6 of 1991, which has been marked as Exhibit-1.

23. PW 4, Surendra Singh, in his evidence, has deposed that while he was at his home, at about 6-7 AM, he heard about the murder, which had taken place at Mahuatal and claimed that he had seen the dead bodies of three persons, namely, Sunil, Neel Kamal and Jhingur Singh. He further deposed that how these persons were killed, he had not seen. This witness is a hear-say witness and from



whom he had heard about the murder, he did not disclose anything, as such, no reliance can be placed upon the testimony of this witness.

24. PW 9, Arun Singh, is also a hearsay witness, who, in his evidence, has deposed that this witness had heard about the murder, but he did not go to the place of occurrence where the dead bodies were lying. He further deposed that in the carnage, which had taken place at Barbigha, 3-4 persons had been killed. He claimed that he heard from others about the occurrence, but he did not disclose the identity of the persons from whom he had heard about the occurrence. Though, this witness is a hear-say witness, he had not disclosed the source of his information about the occurrence, as such, no reliance can be placed upon the testimony of this witness.

25. PW 5, Bharat Singh, is a witness to the seizure list in connection with Sessions Trial No. 54 of 1993, and has identified his signature on the said seizure list, marked as Exhibit-3.

26. PW 8, Sudhir Kumar @ Bhola Singh, has deposed that the occurrence had taken place on 01.11.1991 at about 04:45 AM, when he was at bus stand, where he used to work as an Agent. He has claimed that after the occurrence, the seizure list was prepared by the police and this witness has put his signature over the said seizure list. This witness has identified his signature over the seizure list, which has been marked as Exhibit-3/1, but this witness (PW 8) has deposed that his signature was obtained by the police in the police station and he is not aware of the contents of the seizure list.

27. PW 7 (Rajesh Kumar @ Karu Singh) is the informant of this case, who, in his examination-in-chief, has deposed that on the



fateful day, i.e. on 11.01.1991, at about 04:45 AM, he was in his thatched hut, made of straw, along with Sunil Kumar Singh (deceased), Neel Kumar (deceased), Dhala Singh (deceased), Alakhdeo Singh (deceased), Rajendra Singh (PW 6), Jata Shankar Singh (PW 1, injured), Bajrangi Singh (not examined), Masudan Singh (PW 3), and Arun Singh, were sitting and a lamp was burning there. This witness has further deposed that a white-coloured car came and stopped near the thatched hut, from which Vijay Singh, Siddhi Singh, Uday Singh, Anil Singh, Mantu Singh and Arun Singh, alighted and 5-7 other persons also arrived there, separately. All the persons were holding guns, rifles and pistols in their hands. This witness has further deposed that after coming out of the car, Vijay Singh told to shoot all the persons and immediately Vijay Singh shot at Sunil Singh, Siddhi Singh shot at Neel Singh, Uday Singh shot at Dhala Singh, Bhuna Singh shot at Alakhdeo Singh, Anil Singh shot at Rajendra Singh, Mantu Singh shot at Jata Shankar Singh, Arun Singh shot at Bajrangi Singh, Anil Singh fired upon him, but he hid himself in the heap of straw and due to the bullet injuries, three persons died at the place of occurrence; whereas Alakhdeo Singh died on the way to Patna, while he was being taken for his treatment. Among the injured persons, the treatment of Bajrangi Singh (not examined) was held at Barbiga and the treatment of Rajendra Singh and Jata Shankar Singh were held at Patna. The reason behind the occurrence, as disclosed by this witness, is the land dispute between the prosecution and defence side, for the land on which the said hut was



situated. This witness has identified his signature on the fardbeyan, which has been marked as Exhibit-4.

28. In his cross-examination, this witness (PW 7), in paragraph 17, has deposed that he had identified the accused persons at the time when they were coming out of the car, which was about 10-15 hands away from the thatched hut. He deposed that in the month of January, the sun rises after 6 AM and it is a little dark at 04:45 AM in the month of January. This witness has further deposed that police did not take away the bed and lamp lying at the place of occurrence and this witness did not give the lamp to the police. When a question was put to this witness, in paragraph 22, this witness has replied that Masudan Singh, Bhola Singh and Arun Singh were not injured at the time of occurrence. In paragraph 23 of his evidence, this witness has deposed that the bullet, shot by Vijay Singh, hit Sunil Singh on chest, was fired from a distance of 10-12 steps and the police had collected the blood stain from the place of occurrence. This witness has claimed that he had seen the bullets being fired by the accused persons one by one hitting the prosecution side. Sunil Singh, after receiving bullet injury, sat by the side of straw, which was about 5 feet high and was kept outside the said thatched hut. Jata Shankar Singh reached police station running and when this witness reached the police station, Jata Shankar Singh had left that place for his treatment. In paragraph 31 of his deposition, this witness has deposed that his date of birth is 02.04.1975 and at the time of the occurrence, he was about 15-16 years of age and was studying in High School. This witness has



claimed that he used to stay in the thatched hut for the purpose of studying and used to have his meals in the thatched hut itself. This witness has denied the suggestions offered on behalf of the appellants that he was not present at the place of occurrence when the occurrence had taken place and has falsely implicated Vijay Singh and Bhuna Singh, and has deposed that he had hid himself in the straw and that is why he survived.

29. PW 1, Jata Shankar Singh (claimed to be an eye-witness to the occurrence), has deposed that on 11.01.1991, at about 04:45 AM, he was talking in his thatched hut with Rajesh Kumar (PW 7, the informant), Masudan Singh (PW 3), Naresh Singh (not examined), Rajendra Singh (PW 6), Bajrang Singh, Bajrangi Singh (not examined), Satya Narayan Singh (deceased), Alakhdeo Singh (deceased), Neel Kumar Singh (deceased), Sunil Kumar Singh (deceased), and at that time, a white-coloured car came from east, stopped in front of his thatched hut and from that car 5-6 persons alighted and 6-7 unknown persons also came there, holding gun, rifle and pistol. Vijay Singh told to shoot. The persons, who alighted from the car, were Vijay Singh, Uday Singh, Siddhi Singh, Bhuna Singh, Mantu Singh and Anil Singh, Vijay Singh shot at Sunil Singh which hit him in the left side of his chest, Siddhi Singh shot at Neel Singh which hit him in his stomach, Uday Singh shot at Satya Narayan Singh, and due to the gun shot injuries, all the three persons died there. Bhuna Singh shot at Alakhdeo Singh, Anil Singh shot at Rajendra Singh, Mantu Singh shot at him (PW 1), Arun Singh shot at Bajrangi Singh, and the said four persons got injured and they were sent to Patna, but injured



Alakhdeo Singh died on the way to Patna near Fatuha. This witness has disclosed the reason for the alleged occurrence as the land dispute between him and Vijay Singh.

30. In the cross-examination, this witness (PW 1) has deposed that he received bullet injury after six persons were shot at and it was merely a coincidence. This witness has claimed that Masudan Singh (PW 3) was also present and was talking with him. In paragraph 10, this witness has deposed that in the previous night of the occurrence, he was sleeping in the thatched hut along with Rajesh Kumar, Rajendra Kumar, Alakhdeo Singh, Satya Narayan Singh, Neel Kumar Singh, Sunil Kumar, Bajrangi Singh, Naresh Singh, Masudan Singh, Chowkidar Mangal Paswan and some other persons. He further deposed that the said land was standing in the name of Alakhdeo Singh, Brahmdeo Singh and Madan Singh through sale deed. In paragraph 12 of his deposition, this witness has deposed that Chowkidar was not present at the time of occurrence at 04:45 AM and in the month of January, light comes after 6 AM. In paragraph 16, this witness has deposed that Darogaji had recorded his statement, but he did not remember after how many days, the said statement was recorded. This witness, in paragraph 24, has denied the suggestions offered on behalf of the appellants that the deceased were persons of criminal nature and that they were killed in the commission of offence and further that he falsely implicated Vijay Singh due to the land dispute. In paragraph 29, this witness has deposed that besides him, Rajesh Kumar, Rajendra Kumar, Masudan Singh, Bhola Singh, Arun Singh, Bajrangi Singh and Surendra Singh



have witnessed the occurrence. In paragraph 31, this witness has deposed that the thatched hut was opened from all sides and only roof was there at the top of the thatched hut, the height of which was 5-6 feet. The cattle were also tied inside the thatched hut, but none of the cattle received any bullet injury and to the north-east of the thatched hut, 2000-3000 bundles of straw were kept. There were sign of firing in the straw and roof of the thatched hut. In paragraph 33, this witness had disclosed that Uday Singh had lodged a case against him and in connection with the said case, he remained in jail for one day.

31. PW 3, Masudan Singh, has deposed in his evidence that he was present near the place of occurrence, but he did not witness the occurrence in question. He further deposed that 3-4 persons have received bullet injuries and among them, Sunil Singh and Neel Kumar Singh were dead and another two persons, Alakhdeo Singh and Dhala Singh died on the way and he was not accompanying them. In paragraph 3, this witness has deposed that he did not sign on the inquest report at the place of occurrence and has proved his signatures on the inquest reports of Dhala Singh @ Satya Narayan Singh and Sunil Kumar Singh, which have been marked as Exhibits 2 and 2/1.

32. PW 6, Rajendra Singh, one of the injured, has deposed that he was sleeping in the thatched hut and on hearing the sound of firing, when he got up, a bullet hit his left leg, he fell down and became unconscious. He regain his consciousness in the Patna Medical College and Hospital, Patna. Thereafter, he came to know



that Sunil Singh, Alakhdeo Singh, Neelkamal and Dhala Singh died due to bullet injury. He further deposed that who shot at him, he did not know. This witness was declared hostile by the prosecution.

33. PW 11, Jairam Singh, was Sub Inspector of Police, posted, at the time of his evidence, at Sheikhpura Police Station. In his deposition, this witness has claimed to have identified the hand writings of the two Investigation Officers, namely, Sheo Prasad Singh and Ramadhar Singh of this case, as this witness had the opportunity to work with them. This witness has further deposed that paragraph 1 to 27 of the case diary was written by the first Investigating Officer, namely, Sheo Prasad Singh, and paragraph 28 to 121 of the case diary was written by the second Investigating Officer, namely, Ramadhar Singh. He has further deposed that both the Investigating Officers, namely, Sheo Prasad Singh and Ramadhar Singh, have expired. Though this witness was cross-examined, nothing important could be fetched out.

34. After carefully scrutinizing the evidence, both oral and documentary, adduced on behalf of the parties and after having heard learned Counsel for the parties, I have come to the conclusion that the prosecution has miserably failed to prove the charges levelled against the appellants, beyond all reasonable doubt. Not only this, the oral evidence adduced on behalf of the prosecution is not corroborating with the medical evidence inasmuch as the witnesses have deposed that gun shot was fired upon the deceased from a distance of 10-12 yards and this theory is being disbelieved by the medical evidence where the doctor (PW 10) has found, while



conducting post mortem examination on the dead body of deceased Sunil Kumar, blackening of edge of margins which was wound of entry and has opined that the said gun shot was fired from a close distance.

35. PW 1 (Jata Shankar Singh), in his evidence, has deposed that he also received a gun shot injury and was sent to Patna for treatment. In his cross-examination, this witness has stated that there was a case appertaining to the land on which the thatched hut was standing, under Section 144 of the Code of Criminal Procedure, 1973, and the said land was very costly. No material has been brought on record by the prosecution regarding the injury received by PW 1 in course of the alleged occurrence. Further, the statement of this witness, who claimed to be an eye-witness to the entire occurrence, under Section 161 of the Code of Criminal Procedure, 1973, was recorded by the police much after the date of occurrence, i.e. on 23.01.1991, where the occurrence has taken place on 11.01.1991. The belated recording of statement of a witness, who was an eye-witness and was present at the place of occurrence, creates doubts. Apart from the above, this witness has deposed in his cross-examination, at paragraph 29, that Arun Singh (PW 9), Masudan Singh (PW 3), Rajendra Singh (PW 6), Rajesh Kumar (PW 7, the informant), Bhola Singh (PW 8), Bajrangi Singh (not examined) and Surendra Singh, have also witnessed the occurrence. Out of the above mentioned persons, Rajendra Singh (PW 6) has become hostile, Masudan Singh (PW 3) has not seen the occurrence, as claimed by him in his deposition, Bhola Singh (PW 8) has also not



seen the occurrence, as claimed by him in his deposition, Bajrangi Singh and Surendra Singh were not examined during the trial. As such, no credence can be given to the evidence of PW 1 inasmuch as the statement of this witness that other persons named above have witnessed the occurrence has not been corroborated by the said persons.

36. The witnesses have consistently deposed that the occurrence had taken place at about 04:45 AM on 11.01.1991 and it has also been deposed by the witnesses that in the month of January, the sun rises at about 6 AM and at 04:45 AM, there used to be darkness, but the prosecution has failed to bring on record any source of identification of the accused persons, by means of which the witnesses have identified the accused persons, about whom it is claimed that they fired from a distance of 10-12 yards and even if it is assumed that a lamp was burning in the thatched hut, it is impracticable; rather impossible to see someone coming from the dark side to light by a person who is sitting in the light. In view of the above, it is difficult to give credence to the witnesses of the prosecution, who claimed to have identified the appellants without any source of identification disclosed by the prosecution.

37. PW 7, in his deposition, has claimed that he has identified the accused persons while he was sitting in his thatched hut, from a distance of 10-15 yards while they were alighting from the car at about 04:45 AM in the month of January, when there used to be darkness. Further, he claimed that Vijay Singh fired on Sunil Singh from a distance of 10-12 yards. On a query being put to him, in



paragraph 22 of his cross-examination, as to who else have received injury apart from this witness, PW 7 has replied that Masudan Singh (PW 3), Bhola Singh (PW 8) and Arun Singh (PW 9) had received gun shot injury, but from the testimonies of Masudan Singh (PW 3), Bhola Singh (PW 8) and Arun Singh (PW 9), it is clear that they have not witnessed the entire occurrence. From the above, this witness could also not be given credence as from his evidence, his presence at the place of occurrence is itself doubtful.

38. Thus, it is clear that merely because some persons, claiming themselves to be eye-witnesses, have given evidence describing the occurrence in tune with each other, their evidence cannot be made basis for holding them truthful witnesses, when their evidence is belied by the medical evidence on record as well as the prosecution witnesses themselves unless their evidence is found to have been corroborated by credible independent evidence, direct or circumstantial.

39. In the backdrop of what have been discussed and pointed out above, I am firmly of the view that the prosecution has failed, in the present case, to bring home the charges against the appellants beyond reasonable doubt and that the appellants were entitled to be given benefit of doubt.

40. In the result, these appeals are allowed. The impugned conviction of the appellants and the sentences passed against them by the judgment and order, under appeal, stand, accordingly, set aside. Both the appellants are held not guilty of the offences, which



they were charged with, and they are acquitted of the same under benefit of doubt.

41. Since both the appellants are in jail custody, they are directed to be set at liberty forthwith unless they are required to be detained in connection with any other case.

(Anil Kumar Sinha, J.)

Rakesh Kumar, J.- I agree.

(Rakesh Kumar, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
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