

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.447 of 2015

Arising Out of PS. Case No.-1 Year-1993 Thana- BELA District- Sitamarhi

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1. Ram Chandra Rai, Son of Late Palat Rai
 2. Lal Baboo Rai, Son of Ram Chandra Rai
 3. Ram Preet Rai, Son of Late Fakira Rai
 4. Ram Rai, Son of Late Hari Nandan Rai
 5. Sogindra Rai @ Sogendra Rai, Son of Late Lakhan Rai
 6. Kusheshwar Rai, Son of Late Ram Deo Rai

All resident of Village - Malahi, P.S. - Bela, District - Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 450 of 2015

Arising Out of PS. Case No.-1 Year-1993 Thana- BELA District- Sitamarhi

Nawal Rai, Son of Late Shiv Dayal Rai, resident of Village - Malahi, P.S. -
Bela, District - Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 545 of 2015



Arising Out of PS. Case No.-1 Year-1993 Thana- BELA District- Sitamarhi

Dukha Rai, S/o Late Atar Rai, resident of Village - Malahi, P.S. - Bela,
District - Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 580 of 2015

Arising Out of PS. Case No.-1 Year-1993 Thana- BELA District- Sitamarhi

1. Nagendra Rai, Son of Late Sita Ram Rai
 2. Raj Bahadur Rai @ Ram Bahadur Rai, Son of Late Lakhan Rai
 3. Kapileshwar Rai @ Kapleshwar Rai, Son of Baran Rai
 4. Juri Rai, Son of Maheshi Rai
 5. Raj Kishore Rai, Son of Late Sita Ram Rai
- All resident of Village - Malahi, P.S. - Bela, Distt. - Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 727 of 2015

Arising Out of PS. Case No.-1 Year-1993 Thana- BELA District- Sitamarhi

1. Ram Nagina Rai @ Ram Nagin Rai, Son of Late Ram Sewak Rai



2. Rajgir Rai, Son of Sita Ram Rai
Both resident of Village - Malahi, P.S. - Bela District - Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 741 of 2015

Arising Out of PS. Case No.-1 Year-1993 Thana- BELA District- Sitamarhi

1. Sita Ram Rai, Son of Late Janki Rai
2. Baldeo Rai, Son of Late Janki Rai
Both resident of Village - Malahi, P.S. - Bela District - Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 842 of 2015

Arising Out of PS. Case No.-1 Year-1993 Thana- BELA District- Sitamarhi

Rajdeo Rai, Son of Sita Ram Rai, resident of Village - Malahi, P.S. - Bela,
District - Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar



... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1225 of 2016

Arising Out of PS. Case No.-1 Year-1993 Thana- BELA District- Sitamarhi

Mahendra Singh Yadav, Son of Dukha Rai, resident of Village - Malahi, P.S. -
Bela, District - Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 447 of 2015)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Ms. Vaishnavi Singh, Adv.
Mr. Ashok Kumar Jha, Adv.
Mr. Ritwik Thakur, Adv.
Ms. Kiran Kumari, Adv.

For the State : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 450 of 2015)

For the Appellant/s : Mr. Madhubala Verma, Adv.
Mr. Ajay Kumar Verma, Adv.

For the State : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 545 of 2015)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Ms. Vaishnavi Singh, Adv.
Mr. Ashok Kumar Jha, Adv.
Mr. Ritwik Thakur, Adv.
Ms. Kiran Kumari, Adv.

For the State : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 580 of 2015)



For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Ms. Vaishnavi Singh, Adv.
Mr. Ashok Kumar Jha, Adv.
Mr. Ritwik Thakur, Adv.
Ms. Kiran Kumari, Adv.

For the State : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 727 of 2015)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Ms. Vaishnavi Singh, Adv.
Mr. Ashok Kumar Jha, Adv.
Mr. Ritwik Thakur, Adv.
Ms. Kiran Kumari, Adv.

For the State : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 741 of 2015)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Ms. Vaishnavi Singh, Adv.
Mr. Ashok Kumar Jha, Adv.
Mr. Ritwik Thakur, Adv.
Ms. Kiran Kumari, Adv.

For the State : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 842 of 2015)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Ms. Vaishnavi Singh, Adv.
Mr. Ashok Kumar Jha, Adv.
Mr. Ritwik Thakur, Adv.
Ms. Kiran Kumari, Adv.

For the State : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 1225 of 2016)

For the Appellant/s : Mr. Ramakant Sharma, Sr. Adv.
Mr. Lakshmi Kant Sharma, Adv.

For the State : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)



Date : 31-08-2024

All the appeals, eight in number, have been taken up together and are being disposed of by this common judgment.

2. Heard the learned counsel for the parties.

3. There have been three sets of trials in which the appellants herein have been convicted, viz., Sessions Trial Nos. 223 of 1993; 154 of 1999 and 183 of 2015, all arising out of Bela P.S. Case No. 01 of 1993.

4. Initially, three accused persons were put on trial for the murder of one Ram Talewar Rai on 01.01.1993, viz., Ram Lakhan; Nawal Rai and Sogarath Rai. However, during the trial, Ram Lakhan and Sogarath Rai died. Thus, only Nawal Rai was convicted in the afore-noted trial, who is the appellant in Cr. Appeal (DB) No. 450 of 2015. Thereafter, the other accused persons were charge-sheeted and their trial



began under Sessions Trial No. 154 of 1999.

5. Out of the persons sent up for trial, proceedings were dropped against Sita Ram, S/o Parmeshwar Rai and Ramdeo Rai some times in the March of 2013. One of the accused, viz., Ravindra Rai was found to be a juvenile and his case was sent to the concerned Juvenile Justice Board for determination of his guilt.

6. In this trial, thirteen prosecution witnesses and three defense witnesses were examined. In the earlier sessions trial, viz., Sessions Trial No. 223 of 1993, only ten prosecution witnesses were examined, all of whom were examined in the subsequent trials.

7. However, later, on the date of the judgment, appellant/Mahendra Singh [Cr. Appeal (DB) No. 1225 of 2016] failed to present himself in the Court and therefore his case was split up and a separate trial later was held under Sessions Trial No. 183 of 2015. In that case also, same thirteen prosecution witnesses and



same three defense witnesses were examined.

8. Finally, seventeen of the accused persons were convicted and they preferred appeals before this Court.

9. During the pendency of the appeals, two of the co-convicts/appellants *viz.*, Sita Ram Rai, Son of Late Janki Rai [Cr. Appeal (DB) No. 741 of 2015] and Ram Rai, Son of Late Hari Nandan Rai [Cr. Appeal (DB) No. 447 of 2015] died and, hence, their appeals were directed to be abated.

10. Thus, for all practical purposes, the witnesses in all the three trials, referred to above, are same and they have made similar disclosures while deposing. Three more witnesses were examined in two subsequent trials, who are common for Sessions Trial Nos. 154 of 1999 and 183 of 2015.

11. Precisely for this reason, we have referred to the evidence of Sessions Trial No. 154 of 1999 for convenience.



12. The appellants in Cr. Appeal (DB) Nos. 447 of 2015; 545 of 2015; 580 of 2015; 727 of 2015; 741 of 2015 and 842 of 2015 have been convicted for the offences under Sections 302 and 307/34 of the Indian Penal Code (*in short the IPC*) by the learned 2nd Addl. Sessions Judge, Sitamarhi on 13.05.2015 in connection with Sessions Trial No. 154 of 1999, arising out of Bela P.S. case No. 01 of 1993. By order dated 19.05.2015, they have been sentenced to undergo R.I. for life, to pay a fine of Rs. 10,000/- each for the offence under Section 302/34 of the IPC and in default of payment fine, to further suffer R.I. for one year; to undergo R.I. for five year, to pay a fine of Rs. 20,000/- for the offence under Section 307/34 of the IPC and in default of payment of fine, to further suffer R.I. for one year. Appellants/Rajdeo Rai, Nagendra Rai, Sogindra Rai, Ram Preet Rai and Lal Baboo Rai were also convicted for the offence under Section 27 of the Arms Act and have been sentenced to undergo R.I. for three



years, to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further suffer R.I. for six months.

13. The appellant/Nawal Rai in Cr. Appeal (DB) No. 450 of 2015 has been convicted for the offences under Sections 302 and 307/34 of the IPC *vide* judgment dated 13.05.2015 passed by the learned 2nd Addl. Sessions Judge, Sitamarhi in connection with Sessions Trial No. 223 of 1993, arising out of Bela P.S. Case No. 01 of 1993. By order dated 19.05.2015, he has been sentenced to undergo R.I. for life, to pay a fine of Rs. 10,000/- for the offence under Section 302/34 of the IPC and in default of payment of fine, to further suffer R.I. for one year and to undergo R.I. five years, to pay a fine of Rs. 20,000/- for the offence under Section 307/34 of the IPC and in default of payment of fine, to further suffer R.I. for one year.

14. The appellant/Mahendra Singh in Cr. Appeal (DB) No. 1225 of 2016 has been convicted for the offences under Sections 302 and 307/34 of the IPC



and Section 27 of the Arms Act *vide* judgment dated 25.10.2016 by the learned 2nd Addl. District and Sessions Judge, Sitamarhi in connection with Sessions Trial No. 183 of 2015, arising out of Bela P.S. Case No. 01 of 1993. By order dated 29.10.2016, he has been sentenced to undergo R.I for life, to pay a fine of Rs. 10,000/- for the offence under Section 302/34 of the IPC and in default of payment of fine, to further suffer R.I. for six months; to undergo R.I. for five years, to pay a fine of Rs. 10,000/- for the offence under Section 307/34 of the IPC and in default of payment of fine, to further suffer R.I. for six months and to undergo R.I. for three years, to pay a fine of Rs. 5,000/- for the offence under Section 27 of the Arms Act and in default of payment of fine, to further suffer R.I. for three months.

15. All the sentences have been directed to run concurrently.

16. Bir Bahadur Rai (informant/P.W. 6) is the author of the *fardbeyan*, lodged by him in the



morning at 04:00 A.M. on 02.01.1993 at Village-Malahi. He has alleged that on 01.01.1993, he had invited Ram Talewar Rai (deceased) to his home to celebrate New Year. He along with his brother/Raj Kumar Rai (P.W. 5) had also gone to the village of the deceased at Naranga and had brought him back to his village on the same motorcycle. At around 06:00 P.M., while on way to his home, all three of them, namely, he himself, his brother/Raj Kumar Rai and Ram Talewar Rai (deceased) were asked by the villagers to celebrate the New Year with them. All the three were made to sit inside the courtyard of appellant/Ram Preet Rai. The other appellants also were present. They were to be fed with chicken. While all this was going on, some of the accused persons/appellants surreptitiously came out of the courtyard on the asking of appellant/Rajdeo Rai. Later, at 08:00 P.M., all the accused persons, out of whom twenty four were named including the appellants, and forty to forty-five unknown, came to the house of



appellant/Ram Preet Rai variously armed with weapons. In his presence, Nagendra Rai and Rajdeo Rai pointed their guns at the deceased. Sita Ram Rai and Baldeo Rai exhorted the others to kill the deceased. Rajdeo Rai is said to have fired from his weapon, which hit the deceased in his stomach and he fell down. The other accused persons/appellants assaulted the deceased by *gandasa* and they also fired at him. When he (P.W. 6) went to the rescue of the deceased, appellant/Sogindra Rai hit him on his lips and one tooth of P.W. 6 was broken. He was also assaulted on his waist. When he tried to flee away from the place of occurrence, appellant/Mahendra Singh fired at him from behind, which hit him in his ankle.

17. On the sound of firing and on his cries in distress, many persons including his father, uncles and his cousins rushed to the P.O. Seeing them, the accused persons/appellants started firing and also lobbing bombs. Later, the accused persons/appellants



fled away towards eastern direction. The assailants/marauders could be identified in the moon light as also in the torch light flashed by the accused persons and the relatives of P.W. 6, who had come to the place of assault on the sound of firing.

18. P.W. 6 then claims to have brought the deceased, while he was still alive, with the help of other persons to his house. Because of the gunshot in his stomach, his intestines had come out. However, he was alive by that time. He also named his assailants before the witnesses. An attempt was made to take him to hospital by tyre cart, but on the way, the tyre cart was held back by the accused persons. The injured, by that time, had died and he had to be brought back to the house of P.W. 6. When this was protested, the accused persons started throwing bombs in front of the house of P.W. 6.

19. Along with the deceased, the local *Chawkidar*, namely, Sonfi Rai was also present on the



tyre cart. He has claimed enmity with the accused persons. However, recently, there was a mediation amongst the accused persons and his family because of the intervention of village elders. It was because of the mediation that the informant and his family members were taken by surprise and the accused persons conspired in the meanwhile to execute the murder of Ram Talewar Rai.

20. On the basis of the afore-noted fardbeyan statement, a case *vide* Bela P.S. Case No. 1 of 1993, dated 02.01.1993, was registered for investigation under Sections 302, 201, 379, 320 and 34 of the Indian Penal Code.

21. As noted above, ultimately seventeen of the accused persons (appellants) were put on trial and they have been convicted and sentenced.

22. One of the primary grounds raised on behalf of the appellants is that the deceased died in some other transaction and deliberately, with concert



and prior planning, the appellants have been named by P.W. 6. Apart from this, it has been urged that neither P.W. 6 nor any one of the witnesses have made correct statement before the Trial Court. Even if it is assumed that P.W. 6 had seen every part of the occurrence, his deposition would make the presence of other witnesses, who claim to have seen the assault, doubtful.

23. In order to buttress the afore-noted contentions, Mr. Ajay Kumar Thakur, the learned Advocate, who led the arguments, has drawn the attention of this Court to the fact that the *fardbeyan* was recorded at 04:00 A.M. on 02.01.1993. The inquest was held at 07:30 A.M. on the same day, *i.e.*, 02.01.1993. However, the case in which the inquest was held was for a different occurrence altogether as it appears to have been done for the offences under Sections 302 and 364 of the IPC. The plain reading of the *fardbeyan*, Mr. Thakur has argued, makes it very clear that there was no incident of kidnapping. The



deceased was ushered in the courtyard of Ram Preet on the pretext of dining and later the accused persons came in hoards and assaulted the deceased. If this were so, there would not have been any case under Section 364 IPC.

24. The afore-noted point is further taken forward by the learned Advocates by referring to deposition of the Investigator, namely, Bashistha Narayan Singh (P.W. 7). He has deposed before the Trial Court that he, in his capacity as Officer-in-Charge of Bela Police Station, had received information at about 3 O'Clock on 02.01.1993 that a serious crime has been committed in the Village-Malahi. He does not talk about any information as regards murder of a person. Thus, an entry was made by him in the Station Diary *vide* SDE No. 17 of 02.01.1993, which has not been brought on record and no details also have been provided by P.W. 7 about the contents of such entry. All that P.W. 7 has thereafter declared that he proceeded to Village-Malahi,



where he recorded the statement of P.W. 6, which was counter signed by Dukha Rai and Brijnandan Rai, none of whom had been examined at the trial. He took up the investigation and prepared the inquest.

25. With respect to the P.O., P.W. 7 has deposed that it was the house of appellant/Ram Preet Rai, a thatched house, with some space enclosed as a courtyard. He found one makeshift arrangement for preparing food. There were blood spots at all places. Some part of the courtyard was also found to have been cleaned. There was some evidence of trampling by footfalls. He had also collected the evidence of bomb blast in front of the house of the deceased. Those seized articles/substances were sent for forensic examination on 16.04.1993.

26. At this stage, we find it very difficult to believe the statement of P.W. 7 that those seized articles/substances were worth being sent for forensic examination after about three and half months, without



there being any disclosure about the safe-keeping of those articles.

27. In his cross-examination, P.W. 7 but had admitted that the place from where he collected the leftover articles/detritus of the bomb blast, he had found no sign of damage. He had also not found any person having been injured by such lobbing of bombs. He had reached the P.O. on 02.01.1993 at about 07:00 P.M.

28. It is really surprising that there is no seizure list available in the case diary, but then P.W. 7 had sent those seized items for forensic examination. None of the witnesses told him during investigation that when they had met the deceased, he was still alive and was taking the names of the assailants and that appellant/Rajdeo Rai had got him killed by practicing deceit on him. It was only Birendra Kumar (P.W. 2), one of the nephews of the deceased, who had told the Investigator that the deceased, while dying, had said that Rajdeo Rai had got him killed.



29. Analyzing the evidence of P.W. 7/Investigator, the learned Advocates have pointed out that it appears to be rather surprising that information about the occurrence was received by him some times after the noon of 02.01.1993, but the F.I.R. was registered early in the morning of 02.01.1993. Even otherwise, P.W. 7 claims to have reached the P.O. by around 08:00 P.M. in the night of 02.01.1993.

30. This appears to be rather asynchronous, so far as timings are concerned. This, therefore explains that perhaps, there would have been some other occurrence in which the deceased was killed or else the inquest would not have been held under an FIR which was registered for offence under Section 364 along with Section 302 of the IPC.

31. Could that have been a slip of pen?

32. No, it does not appear to be so because from the original inquest report, there does not appear to be any interpolation.



33. That apart, the timings given by P.W. 7/Investigator completely belies the claim of the prosecution that most of the witnesses including P.W. 6 had seen the occurrence taking place before them and the FIR was registered overnight.

34. This gives the suspicion that, perhaps, the written information/*fardbeyan* was replaced by another with separate set of facts.

35. The learned Advocates for the appellants further draw strength in support of the afore-noted proposition on the basis of suggestions given to the witnesses as also certain strands of facts brought to the fore during Trial, viz., the wife of Ram Preet, in whose house the occurrence had taken place, had lodged a case against the deceased and one Ram Pratap for an attempt to outrage her modesty.

36. Was that the cause of assault is the poser, which, in the estimation of the learned Advocates for the appellants, difficult to answer.



37. This gets further confounded by the sequence of events narrated by P.W. 6. The deceased was invited by P.W. 6 and his brother for dining at his house in the night of the new year. Where was the reason for P.W. 6 and the deceased, who were proceeding to the house of P.W. 6, to avoid that and instead accept the invitation of Ram Preet and others for dining together?

38. This was completely adventitious and, therefore, raises eyebrows whether the reason for the deceased to be found inside the courtyard of Ram Preet was correctly described by P.W. 6 and other witnesses. One can smell the rat that perhaps the deceased had made some overtures towards the wife of Ram Preet, leading to severe assault on him by the irate villagers.

39. If this were not so, then, perhaps, P.W. 6 would not have been spared. Though, P.W. 6 has received the injuries and those injuries have been opined to be grievous, but it has been argued that those do not



appear to have been caused in the same transaction.

40. Some of the other witnesses have narrated a different version, *viz.*, of P.W. 6 having rushed out of the house of Ram Preet and sought help of his own uncles and cousins.

41. Why was P.W. 6 not chased or not stopped from going out? All the accused persons are co-villagers and not outsiders. There was no information to the witnesses/members of the family of the deceased and the informant about any preparation for avenging the enmity. There is absolute silence with respect to any *casus belli* which would have lead to such conflagration for avenging any enmity.

42. Was that pre-planned?

43. Evidence reflects that it was not and that it was on the spur of the moment.

44. There would have been, therefore, some flash-point for the accused persons to have assembled and resorted to the targeted attack on the



deceased. P.W. 6 was assaulted only when he came to the rescue of the deceased.

45. In this context, the evidence of other witnesses also have been referred to.

46. Arun Kumar (P.W. 1) though has made a general statement about the occurrence giving impression that he had seen some part of the assault but in his cross-examination, he has been very specific in denying that he saw anybody firing from his weapon. He had reached the P.O. only after everything was over. He is the nephew of the deceased.

47. Similarly, Birendra Kumar (P.W. 2) has confirmed that while he and others were sitting at the fire place, P.W. 6 came running and informed that the deceased is being assaulted in the courtyard of Ram Preet. He is surrounded by about 30 - 35 persons including the appellants. On such information, he (P.W. 2) along with others came to the house of Ram Preet Rai where, in an injured condition, the deceased was



speaking that he has been killed by appellant/Rajdeo Rai by practicing fraud upon him.

48. What does this utterance?

49. Mr. Thakur and Mr. Ramakant Sharma have pointed out that this is a clear indication of the fact that none of the witnesses had seen any part of the assault. They all were making guess-work because of the last of the delphic utterances of the deceased. Where was the justification for the deceased to disclose that he has been killed by deceit practiced upon him by Rajdeo Rai. This makes even the presence of Rajdeo Rai at that place doubtful.

50. One other factor, lest we miss to state this in our judgment, has been pointed out by the learned Advocates for the appellants that all the witnesses were confronted with their earlier statement made before the Magistrate under Section 164 of the Cr.P.C. and none of them admitted of having told the names of the appellants in their statements before the



learned Magistrate. Almost all the witnesses are related to the deceased and the informant.

51. Similar statements were made by Rajendra Rai (P.W. 3), Yogendra Rai (P.W. 4) and Raj Kumar Rai (P.W. 5).

52. It would be appropriate for us to deal with the deposition of P.W. 4 in some detail. He is the own brother of the deceased. Another brother of P.W. 4 and the deceased, *viz.*, Jangi Lal Rai had earlier filed a criminal case against Sita Ram Rai, Baldeo Rai, Rajdeo Rai, Ram Rai, Ram Nagina Rai, Kuseshwar Rai and Ram Preet Rai (all appellants) *vide* Bela P.S. Case No. 152 of 1981.

53. There was also Section 145 of the Cr.P.C. proceeding pending against Baldeo Rai and P.W. 4 and his family.

54. However, with respect to the case lodged by the wife of Ram Preet Rai for an attempt at outraging her modesty against Ram Talewar Rai



(deceased), P.W. 4 has expressed complete ignorance.

55. The *post-mortem* was conducted by Dr. Om Prakash Chaurasiya (P.W. 8), who found an oval shaped lacerated wound with charring margin over the right side of abdomen. The intestines had come out. Apart from this gunshot wound, there were five other wounds, *viz.*, a sharp cut wound over the dorsum of the left ankle joint; two sharp cut wounds above the dorsum of the left foot and bruises on the side of the chest and near right eyebrow. The cranium was intact. So were the lungs. Heart chamber was empty. On opening the abdominal cavity, liver, spleen and kidney were found to be intact. The abdominal cavity was full of blood. The small and large intestines were found to be lacerated. Multiple pellets were recovered from the wound. The time fixed for death was 24 hours from the *post-mortem* examination.

56. This only proves that the deceased was assaulted by means of sharp weapon, hard and blunt



substance and was also fired at.

57. The pellets do not appear to have been sent for any forensic examination. The weapon of assault also has not been recovered.

58. Another factor which has raised some doubts in our mind is that if P.W. 6 is to be believed, the deceased was carried in a precarious condition from the house of Ram Preet to his own house. He had been bleeding profusely. That would have left blood trails between the two houses. No blood trail was found by the Investigator, which he has clearly mentioned in his deposition.

59. All these doubts would have been set at rest if, perhaps, Sonfi Rai, the local *Chowkidar*, would have been examined at the trial. He was present on the tyre cart when the deceased, while he was still surviving, was being taken to hospital. The cart was prevented from being taken to hospital and there was further incident of bombing in front of the house of P.W. 6.



This was witnessed by Sonfi Rai. He was the local *Chowkidar*, who ought to have been brought to the witness-stand by the prosecution.

60. Looking at the entire facts of the case, it appears to be rather strange that the murder took place in the night of 01.01.1993 and the *fardbeyan* was recorded in the morning of 02.01.1993 by P.W. 7 (Investigator), when he first learnt about the occurrence in the afternoon of 02.01.1993 and reached to the P.O. sometimes in the evening. Who then was that Police Officer who had conducted the inquest at 07:30 A.M. in the morning of 02.01.1993? This goes to the root of the matter because of the Station Diary Entry No. 17 of 1993 not having been brought in evidence by the prosecution.

61. The other aspect which has sent us doubting about the correctness of the entire case is the inquest under an FIR, which was registered under Section 364 of the IPC.



62. This fact coupled with the suggestion about the wife of Ram Preet Rai having filed a case against the deceased, though eight days later, makes the doubt further grave.

63. Mr. Abhimanyu Sharma, the learned APP, while defending the impugned judgment has argued that there are so many eye-witnesses whose deposition cannot be sidelined only because of some error, perhaps typographical, in recording the sections in the case in which the inquest was held. There was no other murder in the village except that of Ram Talewar Rai, the deceased of this case and that inquest proceedings and the *post-mortem* examination of the deceased, make such minor lapse not worth reckoning.

64. He has further argued that P.W. 6 was present along with the deceased, which explains for the injuries on his person. True it is that most of the witnesses claimed to have reached the P.O. after the real assault was over, but it cannot be doubted that they



had not seen the appellants, for the appellants being the villagers. The evidence of the I.O. further confirms that the shooting was done in the courtyard of Ram Preet Rai. There were drops of blood all around. The blood stains were never seized. Had that been done by the Investigator; perhaps the doubts would not have crept in. Nonetheless, for the incompetence and inaction of the Investigator, the prosecution cannot be discarded entirely.

65. Mr. Sharma has further argued that the timeline is completely in sync with the accusation levelled against the appellants.

66. However, in the totality of the circumstances noted above, we find it very unsafe to confirm the conviction of the appellants.

67. Giving benefit of doubt to the appellants, we set aside their conviction and sentence, referred to above, and acquit them of all the charges levelled against them.



68. All the appeals stand allowed.

69. All the appellants [except appellant No. 1/Sita Ram Rai in Cr. Appeal (DB) No. 741 of 2015 and appellant No. 4/Ram Rai in Cr. Appeal (DB) No. 447 of 2015 who are dead] are on bail.

70. They are discharged of the liabilities of their bail-bonds.

71. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

72. The records of these appeals be returned to the Trial Court forthwith.

73. Interlocutory application/s, if any, in all the appeals, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

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