

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.678 of 2017

Arising Out of PS. Case No.-3 Year-2006 Thana- KARAHGAR District- Rohtas

1. Parshuram Pandey, S/o Late Ganga Sagar Pandey, R/o vill - Kargahar, P.S.- Kargahar, Distt.- Rohtas
2. Ramashankar Pandey, S/o Late Ganga Sagar Pandey, R/o vill - Kargahar, P.S.- Kargahar, Distt.- Rohtas
3. Pawan Pandey, S/o Parsuram Pandey, R/o vill - Kargahar, P.S.- Kargahar, Distt.- Rohtas
4. Arvind Pandey, S/o Ramashankar Pandey, R/o vill - Kargahar, P.S.- Kargahar, Distt.- Rohtas

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 703 of 2017

Arising Out of PS. Case No.-3 Year-2006 Thana- KARAHGAR District- Rohtas

1. Ram Pravesh Pandey
2. Harishankar Pandey

Both son of Late Sanmukh Pandey, Resident of village- Kargahar, P.S.- Kargahar, District- Rohtas

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 709 of 2017

Arising Out of PS. Case No.-3 Year-2006 Thana- KARAHGAR District- Rohtas

Amrendra Pandey, S/o late Ram Chandra Pandey, R/o Village- Kargahar, P.S. Kargahar, District- Rohtas at Sasaram.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 757 of 2017

Arising Out of PS. Case No.-3 Year-2006 Thana- KARAHGAR District- Rohtas

Dharmendra Pandey, S/o Late Ram Chandra Pandey, R/o Village-Kargahar, P.S.-Kargahar, District-Rohtas at Sasaram

... .. Appellant/s



Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 772 of 2017

Arising Out of PS. Case No.-3 Year-2006 Thana- KARAHGAR District- Rohtas

Anil Dubey, S/o Janardan Dubey, R/o Village- Loknathpur, P.S.- Karagahar, District- Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 986 of 2017

Arising Out of PS. Case No.-3 Year-2006 Thana- KARAHGAR District- Rohtas

Ashutosh Pandey, S/o Late Ram Chandra Pandey, Resident of Village- Kargahar, P.S.- Kargahar, District- Rohtas at Sasaram.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1016 of 2017

Arising Out of PS. Case No.-3 Year-2006 Thana- KARAHGAR District- Rohtas

Dhananjay Pandey, Son of Parashuram Pandey, resident of Village- Karaghar, P.S.- Karaghar, District- Rohtas, Bihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1036 of 2017

Arising Out of PS. Case No.-3 Year-2006 Thana- KARAHGAR District- Rohtas

Mithlesh Pandey, Son of Ramashankar Pandey, Resident of Village- Karagahar, P.S.-Kargahar, District-Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1161 of 2017

Arising Out of PS. Case No.-3 Year-2006 Thana- KARAHGAR District- Rohtas

Daya Shankar Pandey, S/o Late Ram Chandra Pandey, Resident of Village- Kargahar, P.S. - Kargahar, District – Rohtas (Sasaram).



... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :	
(In CRIMINAL APPEAL (DB) No. 678 of 2017)	
For the Appellant/s	: Mr. Rajesh Kumar Singh, Sr. Adv. Mr. Viveka Nand Singh, Adv.
For the Respondent/s	: Mr. Dilip Kumar Sinha, APP
(In CRIMINAL APPEAL (DB) No. 703 of 2017)	
For the Appellant/s	: Mr. Vindhayachal Singh, Sr. Adv. Mr. Brij Bihari Tiwary, Adv.
For the Respondent/s	: Mr. Dilip Kumar Sinha, APP
(In CRIMINAL APPEAL (DB) No. 709 of 2017)	
For the Appellant/s	: Mr. Pratik Mishra, Adv. Mr. Kamla Kant Tiwary, Adv.
For the Respondent/s	: Ms. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 757 of 2017)	
For the Appellant/s	: Ms. Surya Nilambari, Adv. Mr. Vatsal Vishal, Adv. Mr. Kamla Kant Tiwary, Adv.
For the Respondent/s	: Mr. A. Sharma, APP
(In CRIMINAL APPEAL (DB) No. 772 of 2017)	
For the Appellant/s	: Mr. Dineshwar Mishra, Adv. Ms. Ruchi Arya, Adv.
For the Respondent/s	: Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 986 of 2017)	
For the Appellant/s	: Mr. Pratik Mishra, Adv. Mr. Kamla Kant Tiwary, Adv.
For the Respondent/s	: Ms. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 1016 of 2017)	
For the Appellant/s	: Mr. Rajesh Kumar Singh, Sr. Adv. Mr. Viveka Nand Singh, Adv.
For the Respondent/s	: Ms. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 1036 of 2017)	
For the Appellant/s	: Mr. Rajesh Kumar Singh, Sr. Adv. Mr. Viveka Nand Singh, Adv.
For the Respondent/s	: Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 1161 of 2017)	
For the Appellant/s	: Mr. Pratik Mishra, Adv. Mr. Kamla Kant Tiwary, Adv. Mr. Raushan Kumar, Adv.
For the Respondent/s	: Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 17-07-2025

1. The aforesaid appeals have been filed against the



same judgment of conviction dated 19.05.2017 and the orders of sentence dated 26.05.2017 and 29.06.2017 respectively by the learned court of Sessions Judge, Rohtas at Sasaram in Sessions Trial Case No. 360 of 2007, hence these appeals have been heard together and are being disposed off by the present common judgment and order.

It may be pointed out that the name of the appellant, namely Sriram Pandey (in Cr.APP (DB) No. 678 of 2017), who has died, has been directed to be expunged from the array of parties of Cr.APP (DB) No. 678 of 2017, vide order dated 01.05.2025. However, for the purpose of discussion, he will be referred to as the deceased appellant/convict wherever necessary.

The appellant, namely, Deepak Pandey, also known as Rajnish Kumar Pandey, in Cr.APP (DB) No. 693 of 2017 was declared a juvenile vide order dated 04.08.2021 and vide order dated 24.06.2025, passed by this Court, the order of sentence has been set aside and his case has been remanded back to the Juvenile Justice Board, Rohtas at Sasaram for passing an appropriate order regarding his detention and custody, in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, consequently the said Cr. Appeal



(DB) No. 693 of 2017 has been de-tagged from the aforesaid Appeals. However, for the purpose of discussing the relevant facts and allegations, he will be referred to as the convict hereinafter.

2. The impugned judgment of conviction and orders of sentence have been passed by the learned Sessions Judge, Rohtas at Sasaram, in Sessions Trial Case No. 360 of 2007, arising out of Kargahar P.S. Case No. 03 of 2006. The appellants in all these appeals have been convicted for offences under sections 302/149, 307/149, 427/149, and 452 of the Indian Penal Code (in short 'IPC'). Additionally, the appellants, namely, Ashutosh Pandey, Daya Shankar Pandey, Amarendra Pandey, Dharmendra Pandey, Hari Shankar Pandey, Anil Dubey, Dhananjay Pandey, and Ram Pravesh Pandey, have also been convicted under section 27 of the Arms Act.

By the impugned orders of sentence dated 26.05.2017 and 29.06.2017, all appellants have been sentenced to undergo life imprisonment with a fine of Rs. 25,000/- each under section 302/149 of the IPC; rigorous imprisonment for 10 years with a fine of Rs. 10,000/- each for the offence under section 307/149 of the IPC; rigorous imprisonment for six months with a fine of Rs. 1,000/- each under section 452 of the IPC; and further a fine



of Rs. 1,000/- each has been imposed for the offence under section 427 of the IPC.

The appellants, namely, Ashutosh Pandey, Daya Shankar Pandey, Amarendra Pandey, Dharmendra Pandey, Hari Shankar Pandey, Anil Dubey, Dhananjay Pandey and Ram Pravesh Pandey, have also been sentenced to undergo rigorous imprisonment for three years with a fine of Rs. 5,000/- each for the offence under section 27 of the Arms Act. In default of payment of the fine, they have been directed to undergo rigorous imprisonment for one year. The learned trial court has directed that all sentences shall run concurrently.

Prosecution story :-

3. The prosecution story, as it appears from the FIR, is as follows:-

According to the informant, Swami Nath Pandey, on 05.01.2006, at around 7:00 A.M., he was standing at his door when he saw the appellants Ashutosh Pandey, Amarendra Pandey, Dharmendra Pandey, and Daya Shankar Pandey, along with some unknown persons, walking on the roof of the houses belonging to appellants Ramchandra Pandey and Ram Pravesh Pandey. Ram Pravesh Pandey and Ram Chandra Pandey then stepped down from the roof and started breaking a wall using a



khanti and spade whereupon the informant's elder son, Shashikant Pandey @ Bablu Pandey (deceased), asked them not to break the wall. Upon which Ram Pravesh Pandey (appellant No. 2 in Cr.APP (DB) No. 703 of 2017) responded that they were opening the door and also said that if anyone resisted, he would get all opposers shot, as his associates were armed at that time. Despite this, Bablu Pandey continued to resist. Ashutosh Pandey then fired at him, causing a firearm injury on his chest. After sustaining the injury, Bablu Pandey walked for some distance before falling down in his lane. Upon hearing the sound of shot, his mother, Janki Devi, rushed to protect him but, the accused/appellants Harishankar Pandey and Deepak Pandey forcibly separated her from the deceased by dragging her away. Thereafter, Harishankar Pandey fired a bullet at her head from very close range, causing her to lose consciousness, while the deceased was still alive at that time. Dayashankar Pandey (appellant in Cr.APP (DB) No. 1161 of 2017) then fired a bullet at the deceased's head using his gun. Immediately thereafter, Amarendra Pandey (appellant in Cr.APP (DB) No. 709 of 2017) fired from his rifle, with the bullet grazing near the deceased's stomach. The deceased was then dragged to the accused's courtyard, where the appellant Dharmendra Pandey hit him on



the chin using a katta (country-made pistol). Then Aswarna Devi (PW-2), wife of the informant's elder brother, Nathuni Pandey, came and covered the deceased's body by placing herself over him. Then the appellant Ram Pravesh Pandey assaulted her on the head and cheek with a khanti, causing injuries to her. Subsequently, known and unknown persons started indiscriminate firing from both the roofs. The appellant Anil Dubey, who was also present amongst them, used a licensed gun belonging to his maternal grandfather, causing a bullet injury to one Munni Pandey on the thigh. According to the informant, the accused had called the terrorists and hid them in their houses and village. Approximately 30 rounds were fired during the occurrence. The informant further alleged that after committing the aforesaid occurrence, the accused appellant Dhananjay Pandey and Pawan Pandey surrounded his uncle's son, Manoj Pandey, and then Dhananjay Pandey inflicted upon him a bullet injury using his gun. Thereafter, appellant Ram Pravesh Pandey started indiscriminate firing using his country-made pistol, due to which the informant's younger son, Rahul Pandey, sustained firearm injuries. After that, one person from the informant's side went to the police station and informed the police about the incident of firing and murder. However, before



the police reached, the accused Mithilesh Pandey, Arvind Pandey, Ram Chandra Pandey, Parshuram Pandey, Ramshankar Pandey and Shriram Pandey entered the informant's house and assaulted Srimati Devi, wife of Sanjay Pandey, using lathi and khanti, seriously injuring her. According to the informant, two ladies Menka Pandey and Jamwanti Devi, family members of the accused, and some others were instigating the accused, pelting stones and bricks at the prosecution party and also helping the accused in providing them weapons. In the meantime, one lady named Lilawati Devi threw bricks at the informant's son, causing injury to his chest.

The informant has further alleged that the accused Deepak Pandey and Jamwant Pandey assaulted him with lathi on his hand. Thereafter, all the accused fled away from the village upon seeing the police and during the course, thereof, the informant identified some of the accused persons, namely, Chandan Pandey, Kundan Pandey, Sardar Magat @ Guddu Pandey and Mantu Singh, who had stayed at the house of Ramayan Pandey.

4. The informant, Swami Nath Pandey (PW-8), filed a written application (Exhibit-1) and on the basis of the same, a formal FIR bearing Kargahar P.S. Case No. 03/2006



was registered for offences under sections 341, 323, 324, 337, 452, 504, 427, 302, and 34 of the Indian Penal Code, as well as under section 27 of the Arms Act against 25 persons. This set the criminal law in motion. The formal FIR was registered on the same day of the occurrence i.e. 05.01.2006 at 3:30 P.M.

5. The investigating officer initially submitted Chargesheet No. 35/2006 dated 05.04.2006 against the accused Ramayan Pandey, Shriram Pandey, Daya Shankar Pandey, Amarendra Pandey, Parshuram Pandey, Ramshankar Pandey, and Arvind Pandey. Subsequently, vide Chargesheet No. 118/2006 dated 30.09.2006, the accused Anil Dubey, Deepak Pandey, Harishankar Pandey, Ram Pravesh Pandey, Dhananjay Pandey, Ramchandra Pandey, Dharmendra Pandey, Pawan Pandey, Mantu Singh @ Rakesh, and Mithilesh Pandey were chargesheeted. Further, vide Chargesheet No. 174/2007 dated 30.11.2007, the accused Ashutosh Pandey was chargesheeted, showing him as an absconder. Accordingly, the accused/appellants were chargesheeted through the filing of three separate chargesheets. The FIR-named accused Menka Pandey, Jamwant Pandey, Kundan Pandey, Chandan Pandey, Sardar Bhagat @ Guddu Pandey, Leelawati Devi, and Jamwanti Devi were not sent up for trial by the police.



6. Upon receiving the chargesheets, the learned Chief Judicial Magistrate, Rohtas, took cognizance of the offences under sections 341, 323, 324, 337, 452, 504, 427, and 302/34 of the IPC, as well as under section 27 of the Arms Act, against the chargesheeted accused vide order dated 05.04.2006. Subsequently, vide order dated 07.06.2007, the case was committed to the Court of Sessions, as the offence punishable under section 302 of the IPC is exclusively triable by the Sessions Court. Thereafter, the case remained transferred between several courts and ultimately concluded by the impugned judgment. During the pendency of the trial, one accused, Ramchandra Pandey, died, and the proceedings against him were dropped by the trial court. In total, seventeen accused persons faced trial.

7. The appellants were charged with the offences under sections 302, 307, 427, and 452, all read with section 149 of the IPC. Additionally, the appellants Ashutosh Pandey, Daya Shankar Pandey, Amarendra Pandey, Dharmendra Pandey, Harishankar Pandey, Anil Pandey, Dhananjay Pandey, and Ram Pravesh Pandey were charged under section 27 of the Arms Act alongside the aforementioned charges. The charges were read over and explained to the appellants in Hindi, to which they



pleaded not guilty and claimed to be tried.

8. During the course of trial, the prosecution examined the following witnesses :-

	Name	Relevancy
PW-1	Manoj Pandey	An injured witness
PW-2	Aswarna Devi	Wife of PW-4 and aunt of deceased
PW-3	Srimati Devi @ Poonam Devi	An injured witness
PW-4	Nathuni Pandey	Uncle of the deceased and husband of PW-2 and claimed himself as an eyewitness
PW-5	Rahul Kumar Pandey	An injured witness and full brother of the deceased
PW-6	Ravikant Pandey	An eyewitness and son of the informant
PW-7	Janki Devi	The mother of the deceased and an injured
PW-8	Swami Nath Pandey	The informant and father of the deceased
PW-9	Dr. Ashwani Kumar Sinha	Conducted postmortem examination of the body of the deceased
PW10	Dr. Arun Kumar Sharma	He proved the injury reports of some injured persons
PW-11	Dr. Subodh Kumar	He also proved the injury reports of some injured persons
PW-12	Anand Lal Mahto	Investigating Officer

9. In documentary evidence, the prosecution produced and exhibited the following documents :-

Ext-1	Signature of Swami Nath Pandey @ Tum Nath Pandey on written application (fardbeyan)
Ext-2	Postmortem report of the deceased
Ext- 3 to 3/7	The injury report of injured persons namely Aswarna Devi, Janko Devi, Muni Pandey, Rahul Pandey and supplementary injury reports
Ext-3/8	Injury report of injured Manoj Pandey
Ext-3/9	Injury report of injured Poonam Devi
Ext-4	Inquest report of the deceased
Ext-1/1	An endorsement on the written report



10. After completion of the prosecution's evidence, the statements of the appellants were recorded under section 313 Cr.P.C., providing them an opportunity to explain the main circumstances appearing against them from the prosecution's evidence, which they denied. All the appellants pleaded innocence and, while recording their statements, they did not present any specific defence except the appellant Ashutosh Pandey, other than denying the incriminating circumstances. The appellant Ashutosh Pandey took the plea that he had sustained fracture injuries in his both hands on 01.01.2006 in an accident for which he underwent operation at Kabir Johra Hospital at Varanasi where he remained under treatment from 01.01.2006 to 10.01.2006.

11. In defence, the appellants examined three witnesses who are as follows :-

DW-1	Dharmendra Pandey
DW-2	Jagjati Singh
DW-3	Hargovind Singh

12. In documentary evidence, the appellants produced and exhibited the following documents :-

Ext-A/1	Certified copy of chargesheet No. 03/2005 dated 22.01.2005, pertaining to Kargahar P.S. Case No. 87 of 2004.
Ext-A/2	photo copy of receipt No. 141 of Shaluja Shastralaya
Ext-A	Signature of the doctor on the letter



Ext-C	Writing and signature at Sr. No. 162 on a document
Ext-D	Certificate issued by Mukhiya of gram panchayat Bhokhari
Ext-E	Rent receipt issued in the name of Lalmuni Devi for the year 2011-12
Ext-F	The original certificate issued in the name of Anil Dubey by Dr. Prahlad Singh dated 07.01.2006

13. While convicting the appellants, the learned trial court primarily relied on the ocular evidence presented by the prosecution witnesses PW-1 to PW-8, despite these witnesses being family members of the deceased and the injured persons. Regarding the contradictions concerning the allegations of firearm injuries inflicted upon the injured persons, namely Muni Pandey and Rahul Pandey, the learned trial court observed that the doctor, Arun Kumar Sharma (PW-10), had not adequately assessed the use of weapons during the examination, although he had found a bullet inside the body of one injured person and this discrepancy had not weakened the ocular evidence. The trial court noted material contradictions but did not disbelieve the veracity of the prosecution witnesses. Additionally, the trial court found sufficient explanation for the delay of some hours in lodging the FIR by the informant. The plea of *alibi* raised by appellant Ashutosh Pandey was rejected by the trial court.

Arguments by learned counsel for the appellants



Amrendra Pandey, Ashutosh Pandey and Daya Shankar

Pandey :-

14. Mr. Pratik Mishra, learned counsel appearing for the aforementioned appellants, has argued that the earliest version of the prosecution story, as revealed by PW-8, had been suppressed. The informant had handed over a written application to the police at 7:45 A.M. on the day of the alleged occurrence; however, the formal FIR was registered only at 3:30 P.M. The investigating officer testified that the written application was received after the body was sent for postmortem examination, which occurred around 2 P.M. on 05.01.2006. Therefore, the police received the second written information at about 2 P.M. The informant stated that the written application was scribed by one person, namely, Shri Krishan Chand Pandey, who was neither produced nor examined by the prosecution. Further, the original inquest report was withheld by the prosecution, and the relevant portion of the case diary containing the details of the inquest was exhibited, which was improper. Moreover, the witnesses to the inquest proceedings were not produced and examined, resulting in the inquest proceedings relating to the deceased's body being deemed unproven by the prosecution.



The inquest report (Ext-4) contains the details of Kargahar P.S. Case No. 03/2006, linked to the FIR of the present case. The report's preparation time is recorded as 7:20 A.M. on 05.01.2006, before the formal FIR registration at 3:30 P.M. This raises a question as to how the SHO of the police station had got knowledge of the case number at that time, a fact the prosecution has failed to explain. This circumstance suggests that Ext-4 and the FIR were antedated and fabricated *post facto*.

It has been further argued that the police caused an unreasonable and unexplained delay in sending the FIR to the concerned Magistrate and two days passed before the Chief Judicial Magistrate received it. This violates section 157 of the Cr.P.C., which casts a serious doubt on the FIR's veracity. To support this contention, Mr. Mishra has cited and referred three judgments of the Hon'ble Supreme Court, which are as follows:-

(i) **State of Rajasthan v. Teja Singh** reported in (2001) 3 SCC 147; the relevant paragraph No. 4 upon which the learned counsel has placed reliance, is being reproduced as under:-

“4. We have examined the evidence of the three eyewitnesses as also that of Iqbal Singh (PW 10), the Investigating Officer. We have also perused the evidence of Ram Pratap, Sarpanch (DW 1) and we do



not find any reason to differ with the finding of the High Court which sitting as the first court of appeal on facts, had every right to reappreciate the evidence. In our opinion, the High Court, in that process, has not committed any error. As a matter of fact, the explanation put forth by the learned counsel in regard to the delay in the FIR reaching the court is not tenable because assuming that there were some court holidays that cannot be a ground for the delay in the FIR reaching the Magistrate, because requirement of law is that the FIR should reach the Magistrate concerned without any undue delay. We are of the opinion that the explanation given by the prosecution regarding the delay in the FIR reaching the Magistrate is neither convincing nor acceptable.”

(ii) Jagdish Murav v. State of U.P., reported in (2006)

12 SCC 626; the relevant paragraph No. 22 upon which the learned counsel has placed reliance, is being reproduced as under:-

“22. Investigation of the case was conducted by PW 4 in a slipshod manner. PW 4 did not explain as to why the original general diary was not produced. In terms of the Police Act, a copy of the statement of the first information report is required to be handed over to the informant. The first information report was required to be taken down in the general diary. Production of the general diary was necessary as the first information report was said to be ante-timed and ante-dated. The learned trial Judge categorically opined the same to be so. No explanation has been given as to why the independent witnesses whose statements had allegedly been recorded were not examined. There was no reason as to why the statement of PW 2 was taken after such a long time, although, according to the medical report he was not unconscious as would be evident from the fact that his left thumb impression was taken



in the hospital register. If PW 2 was taken within a few minutes to the district hospital, the doctor-in-charge must have informed the police. The investigating officer does not say so. He had not made any attempt to apprehend the culprits immediately. There is absolutely no reason as to why in a case of grave nature, a copy of the first information report was sent to the Circle Officer 4 days after the incident and to the court 8 days thereafter. section 157 of the Code of Criminal Procedure mandates that the first information report should be sent to the nearest Magistrate within a period of 24 hours. The incident took place at Gorakhpur which is a district town. section 147 of the Police Act and the rules framed thereunder provide for safeguards for the accused persons from false implication. The legal requirements were not complied with. This Court in Meharaj Singh v. State of U.P. [(1994) 5 SCC 188 : 1994 SCC (Cri) 1391] stated the law, thus: (SCC pp. 195-96, para 12)

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared



under section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.””

15. He has further argued that according to the prosecution, police officers arrived at the scene within an hour of the incident and met with the injured and others. However, by the time of the inquest report preparation, the police were unsure of the accused involved in the alleged murder and attempted murder. This indicates that either the victims and informant withheld the full and actual story when police first arrived or lacked the knowledge of the actual assailants. Evidence shows that one person, namely, Shri Krishna Chand Pandey, a relative of the deceased's family and a practicing advocate, was present and living at Sasaram at the time. The injured were rushed to Sasaram Sadar Hospital and they returned before 3 P.M. This gave the said advocate an opportunity to meet the injured and potentially prepare a narrative implicating all those against whom the prosecution



party had prior enmity. Consequently, the FIR appears to have been lodged by way of an afterthought and after suppressing the true initial information.

16. It has been argued that vital contradictions exist between the main allegations narrated in the FIR and the statements of the material prosecution witnesses concerning the manner of the occurrence, especially regarding the firearm injuries inflicted upon the deceased and the so-called injured (PW-1, PW-5, PW-7). While these witnesses testified to have sustained firearm injuries, but the ocular evidence does not corroborate the charges against the accused, nor does the medical evidence support the claims of firearm injuries inflicted upon these individuals.

17. It has been further argued that the evidence of the informant (PW-8) shows that immediately after the alleged occurrence, Manoj Pandey (PW-1) rushed to the police station to inform the police about the incident and commission of the murder. This should have been treated as the first information regarding the alleged cognizable offences. However, it was not registered as an FIR. Instead, the SHO of Kargahar police station took a written application from the informant at the place of occurrence at around 2:00 P.M. Notably, an earlier written



application had already been submitted by the informant to the same SHO, but this fact was suppressed. Furthermore, when the police arrived at the crime scene, several prosecution witnesses including the injured were present, providing the SHO ample opportunity to record their statements or, if no private person could provide relevant information, to record his own official report (fardbeyan). The SHO failed to take any such steps. This conduct raises serious doubts about the credibility of the prosecution story as narrated in the FIR.

18. Mr. Pratik Mishra, learned counsel has further argued that as per the prosecution story detailed in the FIR, Janki Devi (PW-7) is stated to have suffered firearm injury in the alleged occurrence but as per the injury report, she had not received any firearm injury, so, the medical findings given by Dr. Arun Kumar Sharma (PW-10) and Dr. Subodh Kumar (PW-11) in respect of the injuries of the said injured are highly inconsistent with the prosecution's allegation and this inconsistency is sufficient to render the prosecution story mentioned in the FIR to be highly doubtful. Learned counsel has further argued that all the material witnesses of the prosecution have alleged that the appellant Ashutosh Pandey fired, which hit on the chest of the deceased but as per the evidence of Dr.



Ashwani Kumar Sinha (PW-9), who conducted postmortem examination of the dead body of the deceased, no entry wound of any firearm injury was found on the chest of the deceased though an exit wound was found near the nipple of the deceased but it does not support the said allegation. In fact the deceased might have sustained a bullet injury when he was at a higher position than the assailant, who had caused injury No. 2, since the direction of the injury Nos. 2 and 3, which are communicating to each other, was found travelling from downward position to upward position, which was not possible if the appellant Ashutosh Pandey had fired at the deceased, as according to the prosecution evidence, the deceased and the said appellant were stated to be present and standing in parallel position to each other on the spot. It has been next argued that the prosecution's material witnesses including the injured PW-1, PW-2, PW-3 PW-4, PW-5, PW-6, PW-7 and PW-8 were confronted with their earlier statements recorded by the investigating officer and it is apparent that their evidence is highly contradictory to the prosecution story narrated in the FIR and even the informant's own evidence is highly contradictory to the version narrated by this witness in his written FIR and in this regard, the evidence of the investigating officer is very



relevant. It has been further argued that the injury Nos. 1 to 4 of the deceased are alleged to have been the result of gunshots allegedly fired by the accused but Dr. Ashwani Kumar Sinha (PW-9) has not given specific opinion with regard to injury Nos. 1 and 4 as being the result of gunshot. Moreover, if we see the description of both the injuries then it would be very difficult to presume them to be the result of gunshot.

According to the prosecution story, the appellant Amarendra Pandey fired at the deceased using a rifle, thereby causing a firearm injury on the deceased near his stomach, however, no injury has been found on or near the stomach. Thus, the allegation made in the FIR on this aspect is demonstrably false and contradicted by the medical evidence. Furthermore, the informant deviated from his own version of events, as recorded in the FIR, while testifying before the trial court in relation to the injured Janki Devi. The injured persons stated that they were taken to Sasaram Sadar Hospital for treatment; but their injury reports were not issued by that hospital. Instead, the reports were issued by the Primary Health Centre (PHC), Kargahar, and no explanation has been provided by the prosecution for this discrepancy.

With respect to the injured Rahul Pandey, he is said to



have been treated at PHC Kargahar on 07.01.2006. But, there is no explanation as to why he did not receive any medical treatment on 05.01.2006 or 06.01.2006, especially when the treatment of the other injured persons had begun on 05.01.2006. Most notably, the investigating officer has stated in his evidence that when he met Rahul Pandey (PW-5) on 06.01.2006, he found no visible injuries on him. This circumstance casts a serious doubt about the credibility of Rahul Pandey's injury report.

It has been further argued that, according to the prosecution story, the deceased first received a gunshot injury while standing in his personal lane. Thereafter, the appellant Daya Shankar Pandey allegedly fired a second shot, causing a gunshot injury on the deceased's head. The third gunshot injury, near the stomach, was said to have been caused by appellant Amarendra Pandey. Following this, it is alleged that the deceased was dragged by the accused persons to their courtyard. There was some distance between the place where the alleged three gunshots were fired and the courtyard. According to the evidence of the prosecution witnesses, due to excessive bleeding from the deceased's body, the clothes of Aswarna Devi (PW-2) and Janki Devi (PW-7), who attempted to save the victim by



covering him, were soaked with blood. If this account is to be believed, there ought to have been a visible trail of blood in the lane on the earth where the deceased was allegedly dragged. However, the investigating officer admitted that no trail of blood was found at the crime scene in the lane. Moreover, the blood-stained clothes of PW-2 and PW-7 were not produced before the trial court, as such, the prosecution failed to prove the actual place of occurrence.

It has been further argued that the investigation in the present matter, was also faulty, as neither the alleged weapons nor the blood-stained clothes of the victims were recovered or seized. Additionally, the investigating officer failed to produce any documentary evidence indicating that he had arrived at the crime scene after receiving rumored information as it is mandatory for a police officer to make necessary entry in the police register, specifying the reason for leaving the police station and going to the place of occurrence. In support of this contention, particularly regarding the impact of defective investigation on the prosecution case, learned counsel has relied upon the judgment of the Hon'ble Apex Court passed in the case of *Sunil Kundu v. State of Jharkhand*, reported in (2013) 4 SCC 422, the relevant paragraph No. 29 upon which the learned



counsel has placed reliance, is being reproduced as under:-

“29. We began by commenting on the unhappy conduct of the investigating agency. We conclude by reaffirming our view. We are distressed at the way in which the investigation of this case was carried out. It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the deprecable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes. This Court has laid down that the lapses or irregularities in the investigation could be ignored subject to a rider. They can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality. If the lapses or irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored. In this case, the lapses are very serious. PW 5 Jaldhari Yadav is a pancha to the seizure panchnama under which weapons and other articles were seized from the scene of offence and also to the inquest panchnama. Independent panchas have not been examined. The investigating officer has stated in his evidence that the seized articles were not sent to the court along with the charge-sheet. They were kept in the malkhana of the police station. He has admitted that the seized articles were not sent to the forensic science laboratory. No explanation is offered by him about the missing sanha entries. His evidence on that aspect is evasive. Clothes of the deceased were not sent to the forensic science laboratory. The investigating officer admitted that no seizure list of the clothes of the deceased was made. Blood group of the deceased was not ascertained. No link is established between the blood found on the seized articles and the blood of the deceased. It is difficult to make allowance for such gross lapses. Besides, the evidence of eyewitnesses does not inspire confidence. Undoubtedly, a grave suspicion is created about the involvement of the accused in the offence of murder. It is well settled that suspicion, however strong, cannot take the place of proof. In such a case, benefit of doubt must go to the accused. In the circumstances, we quash and set aside



the impugned judgment and order [Sunil Kundu v. State of Jharkhand, Criminal Appeal No. 1762 of 2004, decided on 20-8-2007 (Jhar)] . The appellant-accused are in jail. We direct that the appellants A-1 Sunil Kundu, A-2 Bablu Kundu, A-3 Nageshwar Prasad Sah and A-4 Hira Lal Yadav be released forthwith unless otherwise required in any other case.”

19. It has been lastly submitted by Mr. Pratik Mishra, learned counsel, that the prosecution has failed to establish the genesis of the occurrence. According to the prosecution story, the appellants Ram Pravesh Pandey and Ram Chandra Pandey (now dead) were engaged in breaking the wall of the victim's family. However, as per the testimonies of Manoj Pandey (PW-1), Aswarna Devi (PW-2), and Nathuni Pandey (PW-4), only these two individuals were involved in breaking the wall. But in contrast, Ravikant Pandey (PW-6) deposed that all the accused persons were breaking the wall at the relevant time. This contradiction among the prosecution witnesses creates a serious doubt regarding the genesis of the occurrence. Furthermore, although the prosecution claims that a sketch map of the place of occurrence was prepared by the investigating officer, but the said map was neither proved nor exhibited in evidence. As a result, the prosecution has failed to establish the exact location of the place of occurrence.

It has been lastly argued that the appellant, Ashutosh



Pandey, was not present at the alleged place and time of commission of the offence of murder, as he was undergoing treatment at Kabir Johra Hospital at Varanasi. He remained under treatment from 01.01.2006 to 10.01.2006 due to having sustained fracture injuries to both of his hands. In this regard, an application was filed by one Nago Devi, wife of accused Ramachandra Pandey (now dead) and acting upon the said application, and following the directions issued by the DIG, Sahabad, the investigating officer had conducted an inquiry and had personally visited the said hospital, where he found substance in the appellant's defence. The investigating officer accepted the findings of his inquiry and acknowledged the same during his cross-examination before the trial court. Accordingly, it is submitted that the plea of *alibi* taken by this appellant stands substantiated, indicating that he has been falsely implicated in the alleged offence of murder but still the learned trial court has erroneously convicted him based on manufactured evidences. In support of this plea of *alibi*, learned counsel has relied upon a judgment rendered by the Hon'ble Apex Court passed in the case of **Jayantibhai Bhenkarbhai vs. State of Gujarat** reported in **(2002) 8 SCC 165**; the relevant paragraph No. 19 upon which the learned counsel has placed



reliance, is being reproduced as under :-

“19. The plea of alibi flows from section 11 and is demonstrated by Illustration (a). Sarkar on Evidence (15th Edn., p. 258) states the word “alibi” is of Latin origin and means “elsewhere”. It is a convenient term used for the defence taken by an accused that when the occurrence took place he was so far away from the place of occurrence that it is highly improbable that he would have participated in the crime. Alibi is not an exception (special or general) envisaged in the Penal Code, 1860 or any other law. It is only a rule of evidence recognized in section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. The burden of proving commission of offence by the accused so as to fasten the liability of guilt on him remains on the prosecution and would not be lessened by the mere fact that the accused had adopted the defence of alibi. The plea of alibi taken by the accused needs to be considered only when the burden which lies on the prosecution has been discharged satisfactorily. If the prosecution has failed in discharging its burden of proving the commission of crime by the accused beyond any reasonable doubt, it may not be necessary to go into the question whether the accused has succeeded in proving the defence of alibi. But once the prosecution succeeds in discharging its burden then it is incumbent on the accused taking the plea of alibi to prove it with certainty so as to exclude the possibility of his presence at the place and time of occurrence. An obligation is cast on the court to weigh in scales the evidence adduced by the prosecution in proving the guilt of the accused and the evidence adduced by the accused in proving his defence of alibi. If the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the place and time of occurrence, the court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the prosecution leaves any slot available to fit therein the defence of alibi. The burden of the accused is undoubtedly heavy. This flows from section 103 of the Evidence Act which provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence.



However, while weighing the prosecution case and the defence case, pitted against each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to the benefit of that reasonable doubt which would emerge in the mind of the court.”

20. Mr. Dineshwar Mishra, learned counsel appearing for Anil Dubey (appellant in Cr. APP (DB) No. 772 of 2017), has submitted that the appellant has not been alleged to have played any role in the first part of the occurrence relating to the murder of the deceased. Therefore, his conviction under section 302 with the aid of section 149 of the IPC is unsustainable, as there is nothing in the evidence of the material prosecution witnesses to suggest that the appellant was, in any manner, involved with the main assailants who allegedly caused gunshot injuries to the deceased. Moreover, their evidence does not indicate that this appellant shared a common object with the other accused to kill the deceased, nor can it be presumed that he had knowledge of the possible acts of the main assailants or that their actions were likely to cause the death of the deceased.

Learned counsel has further argued that all relevant incriminating circumstances appearing against this appellant were not put to him during his examination under section 313 Cr.P.C., thereby violating the mandatory provisions of this section. As a result, the appellant was deprived of a fair



opportunity to explain those circumstances.

It has also been contended that the appellant, Anil Dubey, is alleged to have caused a firearm injury on one Munni Pandey on his thigh. But, according to the injury report, no firearm injury was found on the thigh of Munni Pandey. Furthermore, although it is alleged that the appellant used the licensed gun of his maternal grandfather, Late Sanmukh Narayan Pandey, it is an undisputed fact that the said grandfather passed away in the year 2004. Thereafter, the licensed gun was deposited at Saluja Shastralaya, Dehri, on 07.02.2004, and has remained deposited there ever since. Sufficient documentary evidence has been produced in this regard by the defence. Initially, the prosecution claimed that the appellant used a rifle. However, when it came to light during the trial that the said rifle had been deposited by Harishankar Pandey (son of the maternal grandfather) in 2004, the prosecution witnesses altered their version and alleged that the appellant had used a gun to cause the injury to Munni Pandey.

It has been further argued that prosecution witnesses Manoj Pandey (PW-1) and Swami Nath Pandey (PW-8) did not attribute any overt act to this appellant in connection with the first part of the alleged incident, which led to the death of the



deceased. While Rahul Kumar Pandey (PW-5) and Janki Devi (PW-7) merely stated that this appellant was present on the roof with other accused persons, PW-8 did not even mention the presence of the appellant on the roof in his deposition. Despite this, the appellant has been convicted with the aid of section 149 of the IPC.

In support of above submissions, particularly concerning the violation of section 313 Cr.P.C., the learned counsel has relied upon the following judgments of the Hon'ble Apex Court:

(i) **Anand Ramachandra Chougule v. Sidarai Laxman Chougala**, reported in **(2019) 8 SCC 50**, the relevant paragraph No. 10 upon which the learned counsel has placed reliance, is being reproduced as under :-

“10.The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.”

(ii) **Allauddin Mian v. State of Bihar**, reported in **AIR 1989 SC 1456**, the relevant paragraph No. 8 upon which the



learned counsel has placed reliance, is being reproduced as under :-

“8. We now proceed to consider whether accused 3 to 6 have been rightly convicted with the aid of section 149 for the acts of accused 1 and 2. section 141, IPC, defines an unlawful assembly as an assembly of five or more persons whose common object is to commit any one of the five acts enumerated therein. The explanation to that section makes it clear that an assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly. section 142 states : whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. section 143 sets out the punishment for being a member of an unlawful assembly. section 144 prescribes the punishment for joining an unlawful assembly armed with deadly weapons. section 145 prescribes the punishment for joining or continuing in an unlawful assembly which has been commanded to disperse. section 146 defines rioting. It says that whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. section 147 then prescribes the punishment for rioting. section 148 prescribes the punishment for rioting by members of an unlawful assembly armed with deadly weapons. Then comes section 149 which reads as under :

149 If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Therefore, in order to fasten vicarious responsibility on any member of an unlawful assembly the prosecution must prove that the act constituting an offence was done in prosecution of the common object of that assembly or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that assembly. Under this section, therefore, every member of an unlawful assembly renders himself liable for the criminal act or acts of any other member or members of that assembly provided the same is/are done in prosecution of the common object or is/are such as every member of that assembly knew to be likely to be committed. This



section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence provided the same was/were committed in prosecution of the common object or was/were such as the members of that assembly knew to be likely to be committed. Since this section imposes a constructive penal liability, it must be strictly construed as it seeks to punish members of an unlawful assembly for the offence or offences committed by their associate or associates in carrying out the common object of the assembly. What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was one which the members knew to be likely to be committed. There must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object every member of the assembly will become liable for the same. Therefore, any offence committed by a member of an unlawful assembly in prosecution of any one or more of the five objects mentioned in section 141 will render his companions constituting the unlawful assembly liable for that offence with the aid of section 149, IPC. In the present case, the common object of the unlawful assembly as alleged in the charge was to kill PW 6 Baharan Mian. To accomplish that objective accused 1 and 2 went after PW 6. Sensing danger PW 6 ran into the adjoining room to fetch a spear to defend himself. His wife PW 5, however, blocked his way and did not permit him to go out. When accused 1 and 2 realised that PW 6 was beyond their reach, they, frustrated at their failure to accomplish their mission, wielded their weapons on the innocent girls who were playing in the "dalan". The common object having thus been frustrated, accused 1 and 2 took out their wrath on the innocent girls which was no part of the common object of the unlawful assembly. It was not necessary to kill these girls to accomplish their object of killing PW 6 as these two girls had not prevented them from reaching PW 6. The learned counsel for the accused, therefore, rightly submitted that while accused 1 and 2 can be punished for their individual acts committed after the common object stood frustrated and abandoned on PW 6 placing himself beyond their reach, the other members of the unlawful assembly could not be punished for the acts of accused 1 and 2 as the killing of the girls was no part of the common object of the assembly. Once PW 6 was beyond the reach of his two tormentors, the common object to kill him stood frustrated and whatever the individual members did thereafter could not be said to have been done in prosecution of the common object of the assembly. It is not the intention of the legislature in enacting section 149 to



render every member of an unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to invoke section 149 it must be shown that the incriminating act was done to accomplish the common object of the unlawful assembly. Even if an act incidental to the common object is committed to accomplish the common object of the unlawful assembly it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object they would be liable for the same under section 149, IPC. In the instant case, however, the members constituting the unlawful assembly had gone to the house of PW 6 to kill him. That was the common object of the unlawful assembly. For accomplishing that common object it was not necessary to kill the two girls who were not an hinderance to accused 1 and 2 accomplishing their common object. We are, therefore, of the opinion that accused 3 to 6 cannot be convicted for the injuries caused to the two minor girls by accused 1 and 2 with the aid of section 149, IPC. We, therefore, set aside the conviction under section 326/149, IPC, and also the sentence imposed on accused 3 to 6 on that count. We, however, hold accused 3 and 4 guilty under sections 447 and 148, IPC, and confirm the sentences awarded to them on those counts. So also we hold accused 5 and 6 guilty under section 447 and 147, IPC and confirm their sentences for the said offences.”

(iii) Sukhan Raut v. State of Bihar, reported in **(2001)**

10 SCC 284, the relevant paragraph No. 6 upon which the learned counsel has placed reliance, is being reproduced as under :-

“6. section 149 of the Code makes the members of an unlawful assembly vicariously liable where it is proved that the offence is committed in pursuance of the common object of the unlawful assembly which the members of the unlawful assembly knew that such offence was likely to be committed in prosecution of the object of the unlawful assembly. Once it is established that the unlawful assembly had



common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act for the purposes of incurring the vicarious liability for the offence committed by a member of such unlawful assembly. Under this section the liability of the other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object. Common object has to be distinguished from the common intention. There is no question of common intention in section 149 of the Code. Where no injury is inflicted pursuant to the common object to kill the deceased, but caused only when provoked by one of the witnesses, the members of the unlawful assembly cannot be held guilty for the commission of the offence of murder.”

21. Ms. Surya Nilambari, learned counsel appearing for the appellant Dharmendra Pandey, has adopted the arguments advanced by learned counsel Mr. Pratik Mishra. She has additionally argued that, as per the first part of the prosecution story narrated in the FIR, a specific allegation was made that this appellant opened fire at the deceased, causing a firearm injury to his chin. However, according to the medical opinion of Dr. Ashwini Kumar Sinha (PW-9), who examined the external injuries on the body of the deceased, an injury was found on the left side of the midline of the chin. Nonetheless, PW-9 did not give any specific opinion as to whether the said injury was caused by a firearm. The said injury has been described as a lacerated wound measuring 1” x ¼” x 1/3”, bone



deep, an injury unlikely to be caused by a close-range gunshot. Furthermore, the material prosecution witnesses - PW-3, PW-4, PW-5, PW-6, and PW-7, did not mention any specific role of this appellant. Although PW-1, PW-2, and PW-8 attributed a specific role to him, but their testimonies contained serious contradictions when compared to their earlier statements recorded by the investigating officer, especially in cross-examination. In this regard, the testimony of the investigating officer becomes particularly relevant. In order to substantiate the aforesaid grounds, the learned counsel has relied upon the following judgments of the Hon'ble Apex Court:-

(i) ***Indira Devi v. State of H.P.***, reported in (2016) 12 SCC 770; the relevant paragraph No. 7, upon which the learned counsel has placed reliance, is being reproduced as under : -

“7. The proposition of law that an injured witness is generally reliable is no doubt correct but even an injured witness must be subjected to careful scrutiny if circumstances and materials available on record suggest that he may have falsely implicated some innocent persons also as an afterthought on account of enmity and vendetta. The trial court erred in not keeping this in mind.”

(ii) ***Syed Ibrahim v. State of A.P.***, reported in (2006) 10 SCC 601; the relevant paragraph No. 10 upon which the learned counsel has placed reliance, is being reproduced as under :-



“10. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by PW 1 to a large extent to contend about the desirability to throw out the entire prosecution case. In essence the prayer is to apply the principle of “falsus in uno falsus in omnibus” (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of the court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be not wholly credible. Falsity of material particular would not ruin it from the beginning to end. The maxim “falsus in uno falsus in omnibus” has no application in India and the witness or witnesses cannot be branded as liar(s). The maxim “falsus in uno falsus in omnibus” has not received general acceptance nor has this maxim come to occupy the status of the rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence. (See Nisar Ali v. State of U.P. [1957 SCR 657 : AIR 1957 SC 366 : 1957 Cri LJ 550]) In a given case, it is always open to a court to differentiate the accused who had been acquitted from those who were convicted where there are a number of accused persons. (See Gurcharan Singh v. State of Punjab [AIR 1956 SC 460 : 1956 Cri LJ 827] .) The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P. [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] and Ugar Ahir v. State of Bihar [AIR 1965 SC 277 : (1965) 1 Cri LJ 256] .) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate



grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. [(1952) 2 SCC 560 : AIR 1954 SC 15 : 1954 Cri LJ 230] and Balaka Singh v. State of Punjab [(1975) 4 SCC 511 : 1975 SCC (Cri) 601] .) As observed by this Court in State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] , normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. The courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted in Krishna Mochi v. State of Bihar [(2002) 6 SCC 81 : 2002 SCC (Cri) 1220] and in Sucha Singh v. State of Punjab [(2003) 7 SCC 643 : 2003 SCC (Cri) 1697] . It was further illuminated in Zahira Habibulla H. Sheikh v. State of Gujarat [(2004) 4 SCC 158 : 2004 SCC (Cri) 999] , Ram Udgar Singh v. State of Bihar [(2004) 10 SCC 443 : 2004 SCC (Cri) Supp 550] , Gorle S. Naidu v. State of A.P. [(2003) 12 SCC 449 : 2004 SCC (Cri) Supp 462] and in Gubbala Venugopalaswamy v. State of A.P. [(2004) 10 SCC 120 : 2004 SCC (Cri) 1764]”

22. Mr. Rajesh Kumar Singh, learned senior counsel appearing for the appellants in Cr. APP (DB) Nos. 678/2017, 1016/2017, and 1036/2017, has argued that, as per the prosecution story, the appellants Parshuram Pandey, Ramashankar Pandey, Arvind Pandey, and Mithilesh Pandey have been alleged to have assaulted Shrimati Devi @ Poonam Devi (PW-3) with lathi and khanti. However, this allegation is



not corroborated by the evidence of PW-3. These appellants are said to have participated only in the second part of the incident, which is not directly related to the main occurrence involving the murder. Even if the prosecution story is accepted, these appellants cannot be held liable for the alleged murder, even with the aid of section 149 of the IPC, as the prosecution has failed to establish that they shared a common object with the main assailants who allegedly inflicted firearm injuries on the deceased. Moreover, these appellants played no role in the first part of the occurrence; hence, the offence under section 302 of IPC is not attracted against them. He has further submitted that as per the prosecution, appellant Dhananjay Pandey fired at Manoj Pandey (PW-1), but no gunshot injury was found on the body of PW-1 by the concerned doctor. Regarding the appellant Pawan Pandey, he is merely alleged to have surrounded the injured Manoj Pandey along with Dhananjay Pandey, a minor allegation that does not warrant a conviction for murder. Furthermore, although Manoj Pandey (PW-1) sustained one injury, Dr. Subodh Kumar (PW-11) did not give a conclusive opinion regarding its nature. With respect to the allegations against Pawan Pandey and Dhananjay Pandey, the main prosecution witnesses have contradictory statements during



cross-examination when confronted with their previous statements. In this regard, the evidence of investigating officer is crucial, as he has proved the earlier inconsistent statements of the prosecution witnesses.

Therefore, it is submitted that these appellants are not liable for the alleged murder of the deceased, as they had neither direct nor indirect involvement in the incident. Consequently, they cannot be held responsible for the said offence, even with the aid of section 149 of the IPC.

23. Mr. Vindhayachal Singh, learned senior counsel appearing for the appellants Ram Pravesh Pandey and Harishankar Pandey, has argued that as per the prosecution story, the appellant Ram Pravesh Pandey assaulted Aswarna Devi (PW-2) using a lathi and khanti and the appellant Harishankar Pandey allegedly shot Janki Devi (PW-7) on her head, however the medical evidence completely negates the allegation of causing a firearm injury on the head of Janki Devi (PW-7). Further, with regard to the allegation of assaulting Aswarna Devi (PW-2) by Ram Pravesh Pandey, there are serious contradictions among the testimonies of the prosecution witnesses. Both the appellants have been convicted with the aid of section 149 of the IPC, but there is nothing on record to



demonstrate a meeting of minds between these appellants and the main assailants who allegedly caused the death of the deceased or any common object to commit murder.

Learned senior counsel has further submitted that according to the evidence of the prosecution witnesses, including the investigating officer, the police arrived at the crime scene within half an hour of the incident. At approximately 7:45 A.M., a written application was given to the SHO of Kargahar Police Station by the informant (PW-8). However, this first application was suppressed by the prosecution, and instead, a second application was submitted at 2:00 P.M. on the same day, on the basis whereof, the FIR was registered. As a result, the initial version of the prosecution, containing actual details of the mode and manner of occurrence and identifying the true assailants, was intentionally concealed. This omission ought to have been treated as fatal to the prosecution's case by the trial court, but it was erroneously ignored. In support of above contention regarding the suppression of the first version, learned counsel has relied upon the following judgments of the Hon'ble Apex Court:

(i) State of M.P. v. Ratan Singh, reported in (2020) 12 SCC 630; the relevant paragraph No. 9 upon which the learned



counsel has placed reliance, is being reproduced as under : -

“9. Thus, not only was there a delay in filing of the FIR (which remained unexplained) which was taken as the basis of the investigation in this case, but also there was a wilful suppression of the actual first information received by the police. These factors together cast grave doubts on the credibility of the prosecution version, and lead us to the conclusion that there has been an attempt to build up a different case for the prosecution and bring in as many persons as accused as possible.”

(ii) Jagdish Murav v. State of U.P., reported in (2006)

12 SCC 626; the relevant paragraph No. 22 upon which the learned counsel has placed reliance, is being reproduced as under : -

“22. Investigation of the case was conducted by PW 4 in a slipshod manner. PW 4 did not explain as to why the original general diary was not produced. In terms of the Police Act, a copy of the statement of the first information report is required to be handed over to the informant. The first information report was required to be taken down in the general diary. Production of the general diary was necessary as the first information report was said to be ante-timed and ante-dated. The learned trial Judge categorically opined the same to be so. No explanation has been given as to why the independent witnesses whose statements had allegedly been recorded were not examined. There was no reason as to why the statement of PW 2 was taken after such a long time, although, according to the medical report he was not unconscious as would be evident from the fact that his left thumb impression was taken in the hospital register. If PW 2 was taken within a few minutes to the district hospital, the doctor-in-charge must have informed the police. The investigating officer does not say so. He had not made any attempt to apprehend the culprits immediately. There is absolutely no reason as to why in a case of grave nature, a copy of the first information report was sent to the Circle Officer 4 days



after the incident and to the court 8 days thereafter. section 157 of the Code of Criminal Procedure mandates that the first information report should be sent to the nearest Magistrate within a period of 24 hours. The incident took place at Gorakhpur which is a district town. section 147 of the Police Act and the rules framed thereunder provide for safeguards for the accused persons from false implication. The legal requirements were not complied with. This Court in Meharaj Singh v. State of U.P. [(1994) 5 SCC 188 : 1994 SCC (Cri) 1391] stated the law, thus: (SCC pp. 195-96, para 12)

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even



though the inquest report, prepared under section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.””

The learned senior counsel has also adopted the arguments advanced by previous counsel Mr. Pratik Mishra regarding contradictions in the manner of occurrence.

It has been lastly argued that both the appellants are sons of Late Sanmukh Pandey and their house is not situated in the alleged lane where the incident is said to have taken place. These appellants have no connection with the wall of the informant's building, which was allegedly broken, therefore, they had no motive to participate in breaking it. In fact, there was pre-existing enmity between these appellants and the informant's family due to a prior litigation under the B.T. Act, hence the informant falsely implicated them with a vindictive



motive. In support of these submissions, learned counsel has drawn our attention to the statements of following prosecution witnesses, made in:-

- (i) Paragraph No. 14 of PW-1
- (ii) Paragraph No. 53 of PW-4
- (iii) Paragraph No. 4 of PW-6
- (iv) Paragraph No. 37 of PW-2
- (v) Paragraph No. 38 of PW-7
- (vi) Paragraph No. 11 of PW-8

24. In response to the above arguments advanced by the learned counsels for the appellants, Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State, has submitted that the prosecution has successfully established the guilt of the appellants for the murder, with the aid of section 149 of the IPC. Although the investigating officer changed his version mid-way during cross-examination, this does not affect the prosecution case, as there is sufficient evidence of the eye-witnesses to prove the commission of the murder by the appellants. Learned APP has further submitted that the FIR was lodged within few hours of the incident and the informant had no opportunity to consult with Sri Krishna Chand Pandey, who allegedly wrote the FIR on his instructions. Thus, the credibility



of the FIR cannot be questioned merely on that basis. There is strong evidence against the appellant Ashutosh Pandey and the allegations made against him are fully corroborated by medical evidence. The plea of *alibi* raised by this appellant is not believable and has rightly been rejected by the learned trial court. It has been further submitted that although the alleged incident took place in three parts, but all the appellants involved in those events were part of the same unlawful assembly, therefore they are equally liable for the offence of murder with the aid of section 149 of IPC. The dead body of the deceased was recovered from the courtyard of accused Ramchandra Pandey, lying in a pool of blood. Although there are some contradictions between the testimonies of prosecution witnesses and their previous statements recorded by the investigating officer, however these are minor discrepancies that do not affect the core of the prosecution case.

Lastly, it has been argued that the wall of the informant's building, allegedly broken by the accused, was found in a broken condition when the investigating officer visited the place of occurrence, which is sufficient to establish the genesis of the incident. Therefore, the learned trial court has rightly convicted all the appellants under sections 302, 307, and 427 of IPC, read



with section 149 IPC, as well as under section 452 IPC and section 27 of the Arms Act. Thus, these appeals are devoid of merit and are liable to be dismissed.

Consideration and analysis :-

25. We have heard both the sides and perused the evidences adduced by them before the trial court and have given our thoughtful consideration to the submissions advanced by both sides.

In the present matter, the prosecution story consists of two parts, although both relate to same transaction of the alleged occurrence. The first part concerns with the killing of the deceased, son of the informant, in which the appellants Ashutosh Pandey, Dharmendra Pandey, Amrendra Pandey, Daya Shankar Pandey, Ram Pravesh Pandey, Harishankar Pandey, Deepak Pandey, and Anil Dubey are alleged to have actively played a role.

According to the prosecution story narrated by the informant in his written report, the appellants Ashutosh Pandey, Amrendra Pandey, Dharmendra Pandey, and Daya Shankar Pandey were walking on the roof of the houses of Ramchandra Pandey and Ram Pravesh Pandey. Then, the appellants Ram Pravesh Pandey and Ramchandra Pandey (now dead) came



down from the roof equipped with khanti and spade and started breaking the wall of the informant's house using the khanti and spade. Then the informant's elder son, Shashikant Pandey @ Bablu Pandey (victim/deceased), objected to this, upon which Ram Pravesh Pandey said that he was opening a door and threatened to kill anyone who would resist their act. Despite this, Bablu Pandey continued to resist, whereupon appellant Ashutosh Pandey fired at him, causing a firearm injury on his chest, which led to Bablu Pandey falling down in the lane. The deceased's mother rushed out upon hearing the gunfire and grabbed her son's body. Then, appellants Harishankar Pandey and Deepak Pandey forcibly separated her from the deceased.

The appellant Harishankar Pandey fired at the victim's mother using a country-made pistol, thereby causing a firearm injury on her head, which resulted in her becoming unconscious. According to the prosecution story, the deceased was still alive at that time. Then, the appellant Daya Shankar Pandey caused a firearm injury on the head of the deceased by using a gun and the appellant Amrendra Pandey opened fire with a rifle, hitting near the deceased's stomach. Thereafter, the deceased was dragged by the accused and taken inside the courtyard, where the appellant Dharmendra Pandey fired at the deceased and



caused a firearm injury on his chin. Following this, the informant's elder brother's wife, Aswarna Devi (PW-2), covered the body of the deceased by placing herself upon him to protect him but she was also assaulted by the appellant Ram Pravesh Pandey, who caused injuries on her head and cheek by using a khanti. Subsequently, indiscriminate firing was made from the roofs of the accused houses by both known and unknown persons. In the meantime, the appellant Anil Dubey used the licensed gun of his maternal grandfather and caused a firearm injury on the thigh of one person, namely Muni Pandey, who then fell down.

26. The foremost contention raised by all the learned counsels relates to the manner of occurrence. According to them, in light of the evidence of the prosecution witnesses and the medical evidence provided by Dr. Ashwani Kumar Sinha (PW-9), who conducted the postmortem examination of the deceased, Dr. Arun Kumar Sharma (PW-10) and Dr. Subodh Kumar (PW-11), who examined the injuries of the alleged injured persons, the prosecution story cannot be believed to have taken place in the same manner as described in the FIR.

In view of the aforesaid contention, we have analysed the evidences and find substance in the said argument, as there are



strong circumstances going against the prosecution story and the manner of occurrence narrated in the FIR. Firstly, as per the FIR, only four identified accused appellants were alleged to be walking on the roof of Ram Pravesh Pandey's and Ramchandra Pandey's houses at the relevant time, in addition to the appellants Ram Pravesh Pandey and Ramchandra Pandey. Although the name of appellant Anil Dubey was later added, before the trial court, the informant and other witnesses revealed the presence of several others on the roof with the said appellants, identifying more than 15 to 16 persons, which contradicts the FIR. In this regard, the evidence of Swami Nath Pandey (PW-8), the informant, is relevant. He has stated in paragraphs Nos. 5 and 37 that at the time of indiscriminate firing from the rooftops of Ramchandra Pandey's and Ram Pravesh Pandey's houses, Jamwanti Devi, Leelawati Devi, and Menka Devi were throwing bricks and also assisting the other accused by providing them weapons. He has further stated that the appellants Parshuram Pandey, Ramashankar Pandey, Mithilesh Pandey, and Dharmendra Pandey were present on the roof of Ramchandra Pandey's house and were involved in firing. From the roof of Ram Pravesh Pandey's house, the accused Chandan Pandey, Kundan Pandey, and Sriram Pandey were also



involved in firing.

Secondly, when the wall was being broken by Ram Pravesh Pandey (appellant) and Ramchandra Pandey (now dead), the victim/deceased resisted despite threats given by the said accused. It has come in the evidence of the informant, mentioned in paragraph No. 23, that at the time of firing, the barrel of the rifle of appellant Ashutosh Pandey was parallel to the ground. The prosecution does not claim that the deceased's standing position was higher than that of Ashutosh Pandey. Additionally, Ravikant Pandey (PW-6), son of the informant and brother of the deceased, testified that at the time when the wall was being broken, the deceased was milking a buffalo. Furthermore, none of the prosecution witnesses who claimed to have witnessed the occurrence stated that the deceased was standing on a higher position than appellant Ashutosh Pandey.

From the evidence of Dr. Ashwani Kumar Sinha (PW-9), who conducted the postmortem examination of the victim's dead body, injury Nos. 2 and 3, which were communicating with each other, were found travelling from the lower part of the posterior axillary line towards near the left nipple of the deceased. The wound of entry was found on the right side of the chest in the lower part of the posterior axillary line, and the



wound of exit was located about 2 inches above the left nipple; both wounds were found to be communicating with each other.

In cross-examination, PW-9 accepted that if both injuries are taken into account, it can be deemed that the bullet causing the entry and exit wounds was fired from the right side of the deceased's body. On the body of the deceased, four injuries were found, as follows:

(i) Lacerated wound measuring 1" x 1/4" x 1/3", bone deep, on the left side of the midline of the chin.

(ii) Lacerated wound measuring 1/2" x 1/3" x cavity deep, with blackening and inverted margins, on the right side of the chest in the lower part of the posterior axillary line (wound of entry).

(iii) Lacerated wound measuring 2 1/4" x 2" x cavity deep, with everted margins, about 2 inches above the left nipple (wound of exit). Injuries No. 2 and 3 were communicating with each other.

(iv) Lacerated wound about 2 inches on the right side of the forehead.

Though PW-9 opined that the cause of death was shock and hemorrhage due to the above four firearm injuries, he did not give a specific opinion regarding injury Nos. 1 and 4. It is difficult to believe that both these injuries resulted from gunshots, particularly when the shots were fired from close range, as alleged in the present case. Injury No. 1 was a



lacerated wound measuring 1" x 1/4" x 1/3", bone deep, on the left side of the midline of the chin, and injury No. 4 was a lacerated wound about 2 inches on the right side of the forehead. As per the allegations, gunshots were fired at these parts of the deceased's body from very close range when the deceased was in the grip of the assailants. The injury Nos. 2 and 3 can be deemed mainly responsible for the death of the deceased and were also caused by gunshots. In view of the standing position of the deceased and appellant Ashutosh Pandey, as revealed by the prosecution witnesses and appearing from the prosecution story narrated in the FIR, it is not believable that the injury Nos. 2 and 3 could have been caused by appellant Ashutosh Pandey, who was standing parallel to the ground with the deceased. This aspect further strengthens the contention raised by the appellants' counsel.

Secondly, as per the prosecution story, the deceased sustained three gunshot injuries while standing in the lane: first, to the right side of chest, inflicted by appellant Ashutosh Pandey; second, on the head, inflicted by appellant Daya Shankar Pandey; and third, near the stomach, inflicted by appellant Amrendra Pandey. Thereafter, the deceased was dragged and taken into the courtyard of the accused, where the



fourth gunshot injury was inflicted on the chin by appellant Dharmendra Pandey.

The prosecution witnesses have stated that in the lane, while the deceased was being dragged, the deceased's mother, Janki Devi (PW-7), and deceased's aunt (PW-2) tried to save the victim by wrapping themselves around his body. The witnesses accepted that their clothes became wet due to the deceased's blood.

If one sustains three gunshot injuries on vital parts of the body, there would definitely be bleeding. Moreover, being dragged 10 to 15 feet on a kacha (unpaved) lane would leave a trail of blood on the ground. However, in the present matter, despite the deceased sustaining three gunshot wounds on vital parts of his body and being dragged 10 to 15 feet in the lane by the accused/appellants, the investigating officer did not find any trail of blood or blood spots in the lane. In this regard, the statement made by the investigating officer in paragraph No. 11 of his cross-examination is relevant.

Thirdly, as per the prosecution story, indiscriminate firing was made by the accused during the course of occurrence and the informant estimated about thirty rounds of firing. Although the investigating officer found several marks of gunshot firing



on the wall of one person, namely, Sanjay Pandey's house, but he also accepted that at the place where the deceased was dragged and where the gunshots hit the railing and wall, he did not find any used cartridges or empty shells. This situation also strengthens the appellants' aforementioned contention.

27. Now, we come to the contradictions pointed out by the learned counsels appearing for the appellants between the ocular evidence relating to the main allegation of firing and causing of firearm injuries to several persons, including the deceased and the medical evidence given by Dr. Arun Kumar Sharma (PW-10) and Dr. Subodh Kumar (PW-11), who had examined the injured persons and prepared their injury reports.

28. As per the prosecution's case, the first gunshot was fired on the deceased by the appellant Ashutosh Pandey. The informant alleged that the shot fired by this appellant hit the deceased in the chest. Similar evidence was given by Manoj Pandey (PW-1) and other prosecution witnesses, including the informant. However, the medical evidence provided by Dr. Ashwani Kumar Sinha (PW-9), who conducted the postmortem examination of the deceased, contradicts the claim that the bullet hit the chest. No entry wound was found on the chest; rather, an entry wound was located on the right side of the chest



in the lower part of the right posterior axillary line, with an exit wound about 2 inches above the left nipple. This medical evidence suggests that the shot did not strike the chest as alleged. Injuries Nos. 2 and 3, detailed in the postmortem report and said to be communicating with each other, appear to have originated from the lower posterior axillary line and traveled upward, exiting above the left nipple. This trajectory indicates that the alleged gunshot could not have been inflicted by Ashutosh Pandey while standing parallel to the deceased on the ground. Therefore, the allegation against appellant Ashutosh Pandey does not appear probable/reliable.

According to the FIR, after being hit by the first gunshot, the deceased fell in the lane. His mother, Janki Devi (PW-7), rushed to him upon hearing the gunfire and laid over his body in an attempt to protect him. She was then forcefully separated from the deceased by appellant Harishankar Pandey and Deepak Pandey. Subsequently, Harishankar Pandey allegedly fired at Janki Devi from close range with a country-made pistol, causing a head injury that rendered her unconscious.

It is further alleged that the deceased was still alive at that time. Appellant Daya Shankar Pandey then fired at his head using a gun, followed by appellant Amrendra Pandey, who fired



a shot at his stomach using a rifle. From the sequence of these events and the proximity of the assailants, it appears that the deceased and his mother were very close to the assailants when the subsequent gunshots were fired. However, the postmortem reveal only one lacerated wound, measuring about 2 inches, on the right side of the forehead. The skull, brain, and meninges were found intact, making it unlikely that this injury was caused by a close-range gunshot on the forehead. Moreover, Dr. Sinha (PW-9) did not give a definitive opinion regarding whether injury No. 4 was caused by a gunshot.

Regarding the injuries inflicted upon Janki Devi, Dr. Arun Kumar Sharma (PW-10) did not find any firearm injuries. He identified two lacerated wounds, one on the left side of the head ($\frac{1}{2}$ " x $\frac{1}{2}$ " x skin deep) and the other on the back of the head (1" x $\frac{1}{2}$ "). According to PW-10, both the injuries were simple and caused by a hard, blunt object.

29. Turning now to the ocular evidence concerning the firearm injury inflicted on Janki Devi (PW-7); Manoj Pandey (PW-1), an injured eyewitness, has stated in his examination-in-chief that Harishankar Pandey caused a bullet injury on the left side of Janki Devi's head, which pierced through and he added that the deceased was still alive at that



point, after which Daya Shankar Pandey fired at his head using a rifle.

Another eyewitness, Aswarna Devi (PW-2), testified that after the deceased was shot and fell, Janki Devi wrapped her arms around him. She stated that Deepak Pandey, Harishankar Pandey, Parshuram Pandey, and Sriram Pandey forcefully separated Janki Devi from the deceased's body. She further alleged that Harishankar Pandey then fired at Janki Devi using a country-made pistol ("katta"). This witness added the names of two more assailants who were not mentioned in the FIR.

Swami Nath Pandey (PW-8), the informant and father of the deceased, testified that Harishankar Pandey assaulted Janki Devi with a khanti (a type of agricultural tool) on her temple and that Daya Shankar Pandey assaulted the deceased with a gun. Notably, he did not mention that either of them received firearm injuries from Daya Shankar Pandey. As an important witness, he contradicted his own FIR during his testimony.

The prosecution also alleged that Amrendra Pandey shot the deceased in the stomach with a rifle. However, the post-mortem report and medical testimony of Dr. Sinha (PW-9) reveal no firearm or other injury on the deceased's stomach, contradicting this claim.



Further, it is alleged that after being hit by the first shot and falling in the lane, the deceased was shot three times while lying down. In cross-examination (paragraph 9), Janki Devi (PW-7) stated that blood from the victim fell in a circular area where he collapsed and stained her sari and blouse. Swami Nath Pandey (PW-8) also said in paragraph No. 28 of his cross-examination that blood fell along the entire path where the deceased was dragged in the lane. In paragraph No. 30, he mentioned that Munni Pandey, who also sustained injury during the incident, bled at the location where he collapsed.

However, the investigating officer (PW-12), in paragraph No. 14 of his cross-examination, stated that no blood trail or drag marks were found in the lane. In paragraph No. 11, he further confirmed that no empty bullet shells, cartridges, or pellets were recovered from the locations where the body was allegedly dragged or found despite allegation of two gunshots being fired at the deceased and one at Janki Devi in the lane.

It is also alleged that appellant Ram Pravesh Pandey assaulted Aswarna Devi (PW-2) on her head and cheek with a *khanti*. Yet in paragraph No. 5 of her chief examination, PW-2 stated that Daya Shankar Pandey and Ram Pravesh Pandey hit her on the forehead and right shoulder with *khantis*, while



Ramashankar Pandey struck her temple with bricks. These allegations appear exaggerated. The injuries found on PW-2 are not consistent with those inflicted by a sharp or pointed object and no injury was found on her cheek by the examining doctor.

PW-2 also stated that she tried to protect the deceased when he was being dragged and that her clothes were stained with his blood, however the prosecution did not produce the blood-stained clothes in trial court, even though the informant testified that police had seen those clothes during the investigation.

It is also alleged that the deceased was taken into the courtyard of the accused, where accused Dharmendra Pandey shot him on the chin with a katta. Dr. Ashwani Kumar Sinha (PW-9), who conducted the postmortem, found a lacerated wound on the left side of the chin (1" x ¼" x ⅓", bone deep). However, he did not confirm whether it was a firearm injury. Moreover, the nature and position of the injury raises doubt as to whether it could have been caused by a close-range gunshot while the deceased was being held in the grip of the accused.

30. We now turn to other contradictions. Aswarna Devi (PW-2), an important prosecution witness who claims to be present with the deceased's body when it was allegedly being



dragged by the accused, has stated in paragraph 20 of her cross-examination that the accused persons tied the body of the deceased with a *chat* (made of sackcloth) and then placed the body into a box, however neither the informant nor the other so-called eyewitnesses revealed any such act in their testimonies or in the FIR.

According to the prosecution story, indiscriminate firing was carried out by known and unknown persons from the rooftops of the houses of accused Ramchandra Pandey and Ram Pravesh Pandey. It is further alleged that firing was made by appellant Anil Dubey, who used the licensed gun of his maternal grandfather, namely Sanmukh Narayan Pandey, which struck Munni Pandey, the informant's father, on the thigh. Munni Pandey was examined by Dr. Arun Kumar Sharma (PW-10), who noted a lacerated wound on the thigh but did not opine it to be as a result of a gunshot firing. According to PW-10, the injury could have been caused by a hard and blunt object and was simple in nature.

Importantly, the appellant Anil Dubey has taken the defense that, at the time of the alleged occurrence, the licensed gun of his late maternal grandfather had already been deposited in the year 2004 at Saluja Shastralaya, an arms dealership. The



proprietor of Saluja Shastralaya was produced and examined as a defense witness. He confirmed that the gun was deposited at the shop and remained in his custody until the date of recording his testimony. As such, the medical evidence concerning Munni Pandey does not support the allegation against Anil Dubey and the defense evidence further disproves the claim that he used the licensed gun of Sanmukh Narayan Pandey during the incident.

31. We shall now discuss the alleged suppression of the earliest information given to the SHO of Kargahar Police Station concerning the incident, as argued by counsel for the appellants. In support of this argument, attention has been drawn to the testimonies of the informant (PW-8) and the investigating officer (PW-12).

In the formal FIR (Exhibit-7), the time and date of receipt are recorded as 05.01.2006 at 7:10 A.M. The investigating officer (PW-12), who was also the SHO of Kargahar Police Station, stated in paragraph No. 10 of his cross-examination that the written application was handed over to him at the place of occurrence at 7:15 A.M. However, this detail was not recorded in the case diary nor did he mention it in his official report. He further stated that paragraph No. 1 of the original case diary records the time and date as 15:30 on 05.01.2006. In paragraph



No. 13 of his cross-examination, the SHO testified that the place of occurrence was only $\frac{1}{4}$ km from the Kargahar Police Station. Based on his version, the written application was received at 7:15 A.M. on 05.01.2006, however, in paragraph No. 32 of his cross-examination, the informant has stated that the police arrived at the place of occurrence at 8:00 A.M. and, until then all the injured persons remained in the house. He also stated that the police took the deceased's clothes and the SHO stayed at the scene for about half an hour, during that time he inquired about the occurrence, but no formal statement was recorded. In paragraph No. 12 of his cross-examination, the informant added that paragraph No. 1 of the case diary mentions that the relatives of the deceased had blocked the road and were demanding the presence of senior police officials. These officials arrived at 2:00 P.M., and only then the body was sent for postmortem examination. Thereafter, the informant gave a written application, upon which the police case was registered. This suggests that the informant gave two applications to the SHO of Kargahar Police Station, first at 7:15 A.M. and thereafter again at 2:00 P.M. on the same day. It also emerges from the testimony of the injured witnesses that they were taken to Sadar Hospital, Sasaram for medical treatment. The informant's relative,



Krishna Chand Pandey, an advocate practicing at Sasaram Civil Court, was residing there at that time. This was confirmed by the informant during his cross-examination in paragraph No. 58.

Though the informant denied going to Sasaram after the incident but he has stated in paragraph No. 12 of his examination-in-chief that the written application (Exhibit-1) was scribed by Krishna Chand Pandey on him dictating the same. This raises a clear contradiction. If the informant did not go to Sasaram, how could Krishna Chand Pandey have drafted the application? On the other hand, since many of the injured were treated at Sasaram, they likely had the opportunity to meet and consult with Krishna Chand Pandey.

Furthermore, the SHO (PW-12) confirmed that he received the written application at 2:00 P.M. on 05.01.2006 and also acknowledged that the informant had provided another written application earlier that morning at 7:15 A.M. These circumstances strongly suggest that Exhibit-1, the written FIR, was prepared with the assistance of an advocate who applied his legal mind. Therefore, the first written application submitted at 7:15 A.M. appears to have been suppressed. It is a settled proposition of law that intentional suppression of the first information report, i.e., intentionally concealing or withholding



the original FIR, can have serious legal consequences and may adversely affect the outcome of the case. If suppression is proved, the prosecution's case can be significantly weakened, potentially leading to its dismissal.

The Hon'ble Apex Court, in the case of ***Ramesh Baburao Devaskar & Others vs. State of Maharashtra***, reported in (2007) 13 SCC 501 observed that where there is enmity between two groups, the FIR assumes evidentiary value, even though it may not be substantive piece of evidence by itself. Timely lodging of the FIR eliminates suspicion of over-implication of several individuals. Reiterating this principle, the Hon'ble Supreme Court, in ***Nand Lal & Others v. State of Chhattisgarh***, reported in (2023) 10 SCC 470, seriously took into account the suppression of the first information report regarding the alleged offence against the prosecution. The relevant observation made in paragraph No. 29 in the case of **Nand Lal (supra)** by the Apex Court, is reproduced as under:-

“29. That leaves us with the appeal of the other 3 accused, namely, Accused 8 Nandlal, Accused 9 Bhagwat and Accused 10 Ramdular. For considering their case we will have to take into consideration the delay in lodging the FIR. No doubt that in each and every case, delay in lodging the FIR would not be fatal to the prosecution case. It will depend upon facts and circumstances of each case. In



the present case, as already discussed hereinabove, assuming that the incident had taken place at 8.30 p.m. and the injured persons were at Baloda Bazar between 10-11 p.m., and taking into consideration that the distance between Baloda Bazar to Suhela Police Station is 15 km, a delay of four hours in lodging the FIR would cast a serious doubt on the genuineness of the prosecution case. It becomes more glaring since Accused 11 Naresh Kumar had, in any case, informed the police about the incident prior to 11.45 p.m. The suppression of the FIR lodged by him with respect to the attack on him by Atmaram (PW 1), so also the suppression of the FIR lodged by Atmaram (PW 1) against Accused 11 Naresh Kumar, adds to the doubt.”

32. We find that there are two additional circumstances that cast serious doubt on the credibility of the First Information Report (FIR).

Firstly, in the inquest report (Exhibit-4), the SHO of Kargahar Police Station has mentioned the police case number of the present matter. However, the investigating officer (PW-12) deposed in paragraph No. 9 of his cross-examination that the inquest report was prepared at 7:30 A.M. Notably, the formal FIR was recorded at 3:30 P.M. on the same day. This raises a crucial question, as to how the police case number be mentioned in the inquest report if the FIR was not yet formally registered? This strongly suggests that the inquest report was ante-timed. Furthermore, the inquest report itself has not been formally



proved in court, only its substance, as recorded in the case diary, was produced by the prosecution.

Secondly, after the FIR was registered, there was an unexplained delay of two days in forwarding the same to the office of the Chief Judicial Magistrate (CJM), as required under law. The prosecution has failed to provide any justification for this delay.

In view of these factors, we are of the considered opinion that the prosecution deliberately suppressed the initial first information given by the informant. The FIR that was ultimately registered appears to be highly doubtful, particularly as it was drafted by an advocate Krishna Chand Pandey, a relative of the informant. Moreover, contradictions exist regarding the location where the FIR was dictated. The informant testified that he did not go to Sasaram, and also affirmed that the said advocate did not visit his village on 05.01.2006, the date when the FIR was allegedly lodged. At the same time, the injured witnesses had gone to Sadar Hospital, Sasaram, where the said advocate resided and thus had ample opportunity to consult with him.

According to the injured witnesses, they returned to their village around 2:00 P.M. on 05.01.2006. The investigating officer confirmed during cross-examination that he received two



written applications from the informant on the same day, one at 7:15 A.M. and another at 2:00 P.M. This sequence of events further reinforces the likelihood that the FIR was prepared with legal advice raising substantial doubt about its authenticity and spontaneity.

33. We now turn to the allegation regarding the firearm injury sustained by Rahul Kumar Pandey (PW-5), the younger son of the informant. It has been alleged in the FIR that accused Dhananjay Pandey and Pawan Pandey surrounded the informant's cousin, Manoj Pandey, and that Dhananjay Pandey fired at him. It has been further alleged that the appellant Ram Pravesh Pandey began indiscriminate firing with a *katta* (country-made pistol), resulting in Rahul Kumar Pandey (PW-5) sustaining a bullet injury. Thus, according to the FIR, both Rahul Kumar Pandey and Manoj Pandey suffered firearm injuries in the incident.

Now, adverting to the medical evidence of these two individuals, we find that Dr. Arun Kumar Sharma (PW-10) has testified that he examined Rahul Kumar Pandey on 07.01.2006 and observed a lacerated wound on the right side of his chest measuring 1 cm × 1 cm, initially assessed as caused by a hard and blunt object. Upon receiving the X-ray report, which



showed two foreign bodies resembling pellets in the chest area, he revised his opinion to suggest that the injury was caused by a firearm. However, such a serious inconsistency undermines the credibility of this medical opinion. All injured witnesses -PW-1, PW-2, and PW-7, stated that they were taken to Sadar Hospital, Sasaram, for treatment on the same day, i.e., 05.01.2006 and their injury reports were issued on the same day. However, all such injury reports have been issued by Primary Health Centre (PHC), Kargahar, and not by Sadar Hospital, Sasaram. Rahul Kumar Pandey (PW-5), in contrast, was medically examined two days later, on 07.01.2006, despite being among those injured during the same incident. This delay in medical examination remains unexplained. Moreover, the final medical opinion regarding his injuries was given by the Medical Officer of PHC, Kargahar, on 18.02.2006, after a delay of more than 30 days, again without any explanation. If the two foreign bodies (resembling pellets) visible in the X-ray were indeed a result of gunshot injury, there should have been corresponding signs of an entry wound or related trauma on the chest. However, the doctor (PW-10) gave no definitive opinion regarding any such entry wound. Therefore, the medical opinion given regarding PW-5 appears highly suspicious and lacks necessary



corroboration. Regarding Manoj Pandey, Dr. Subodh Kumar (PW-11) reported a transverse lacerated wound measuring 3 cm $\times$ $\frac{1}{2}$ cm $\times$ $\frac{1}{2}$ cm on the right lateral part of the head, 2 cm from the mid head with slight blackening around its margins. Although this injury may have been caused by a firearm, but PW-11 refrained from giving a conclusive opinion. A mere possibility is not sufficient to corroborate the allegation of a gunshot injury beyond reasonable doubt.

34. Here, we would like to refer to the evidence of Swami Nath Pandey (PW-8). This witness has stated in paragraph No. 59 of his cross-examination that he did not go to the Kargahar police station, rather, Manoj Pandey (PW-1) went to the police station. If PW-1 had sustained a firearm injury on the temporal region of his head, then it is questionable how it was possible for him to go to the police station to report the occurrence. This circumstance also creates a doubt regarding the reliability of the allegation concerning the firearm injury to PW-1.

35. Now, we come to the plea of *alibi* taken by appellant Ashutosh Pandey. Though such a plea is considered a weak defence, however, it may be relevant under section 11 of the Indian Evidence Act. If the plea of *alibi* is proven, it can create a reasonable doubt, potentially leading to the accused's



acquittal. The burden of proving such a plea lies on the accused in light of the provisions of section 103 of the Indian Evidence Act. However, when the prosecution case and the defence case are weighed against each other, and the balance tilts in favour of the accused, the prosecution fails and the accused becomes entitled to the benefit of the doubt that arises in the mind of the court. In this regard, we may refer to the observation made by the Hon'ble Apex Court in paragraph No. 19 of the judgment rendered in the case of **Jayantibhai Bhenkarbhai vs. State of Gujarat**, reported in **(2002) 8 SCC 165**, which is being reproduced as under :-

“19. The plea of alibi flows from section 11 and is demonstrated by Illustration (a). Sarkar on Evidence (15th Edn., p. 258) states the word “alibi” is of Latin origin and means “elsewhere”. It is a convenient term used for the defence taken by an accused that when the occurrence took place he was so far away from the place of occurrence that it is highly improbable that he would have participated in the crime. Alibi is not an exception (special or general) envisaged in the Penal Code, 1860 or any other law. It is only a rule of evidence recognized in section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. The burden of proving commission of offence by the accused so as to fasten the liability of guilt on him remains on the prosecution and would not be lessened by the mere fact that the accused had adopted the defence of alibi. The plea of



alibi taken by the accused needs to be considered only when the burden which lies on the prosecution has been discharged satisfactorily. If the prosecution has failed in discharging its burden of proving the commission of crime by the accused beyond any reasonable doubt, it may not be necessary to go into the question whether the accused has succeeded in proving the defence of alibi. But once the prosecution succeeds in discharging its burden then it is incumbent on the accused taking the plea of alibi to prove it with certainty so as to exclude the possibility of his presence at the place and time of occurrence. An obligation is cast on the court to weigh in scales the evidence adduced by the prosecution in proving the guilt of the accused and the evidence adduced by the accused in proving his defence of alibi. If the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the place and time of occurrence, the court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the prosecution leaves any slot available to fit therein the defence of alibi. The burden of the accused is undoubtedly heavy. This flows from section 103 of the Evidence Act which provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. However, while weighing the prosecution case and the defence case, pitted against each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to the benefit of that reasonable doubt which would emerge in the mind of the court.”

The appellant Ashutosh Pandey has taken a specific plea



in his statement recorded under section 313 of the Cr.P.C. that he had sustained fractures in both his hands due to an accident on 01.01.2006 and underwent an operation at Kabir Johra Hospital, Varanasi, where he remained hospitalized from 01.01.2006 to 10.01.2006. The Investigating Officer has stated in paragraph No. 17 of his cross-examination that one Smt. Nago Devi, wife of appellant Ramchandra Pandey, had filed an application before the DIG, Sahabad, which was forwarded to him for enquiry. He recorded the statements of several villagers, namely, Ramayan Ram, Rameshwar Pandey, Keshwar Lohari, and Nathuni Ram and found that the appellant Ashutosh Pandey had sustained fractures to both his shoulders on 01.01.2006 owing to a motorcycle accident and remained under treatment from 01.01.2006 to 10.01.2006 at Shiv Prasad Hospital, Varanasi. He has further stated that he went to Varanasi for further enquiry and also examined the relevant hospital register, the details of which have been mentioned in paragraphs Nos. 9 and 10 of the case diary.

As such, the Investigating Officer accepted the factum of medical treatment of appellant Ashutosh Pandey in Varanasi between 01.01.2006 and 10.01.2006 and provided details of the enquiry he had conducted to verify this fact. There is nothing on



record to disbelieve the conclusion drawn by the Investigating Officer and the learned APP has not pointed out any lapses on his part in verifying the plea of *alibi* taken by the appellant Ashutosh Pandey. Although there is some discrepancy regarding the name of the hospital but during the course of arguments, the learned counsel appearing for the appellant clarified the ambiguity by providing the complete address of the said hospital. Accordingly, we find substance in the plea of *alibi* taken by the appellant Ashutosh Pandey and we are of the view that the trial court erred in disbelieving the said plea.

36. Now, we come to the contradictions pointed out by learned counsel Mr. Prateek Mishra between the testimonies of the prosecution witnesses (PW-1 to PW-8) and their previous statements given before the Investigating Officer, which were reduced into writing under section 161 of the Cr.P.C. The learned counsel has taken us through the statements made by PW-1 to PW-8, specifically through the following:-

- (i) paragraph No. 23 of PW-1,
- (ii) paragraph Nos. 17, 19 and 20 of PW-2,
- (iii) paragraph Nos. 11 to 14 of PW-3,
- (iv) paragraph Nos. 30 and 31 of PW-4,
- (v) paragraph No. 7 of PW-5,



(vi) paragraph Nos. 11, 13 and 15 of PW-6,
(vii) paragraph No. 10 of PW-7,
(viii) paragraph Nos. 41, 42, 44, 46, 48, 49, 50, 51,
52, 53, 54, 56 and 57 of (PW-8).

37. The learned counsel has also drawn our attention to the statements made by the Investigating Officer (PW-12) in paragraph nos. 17 to 26, wherein the investigating officer was cross-examined with respect to the statements of PW-1 to PW-8 made before him under section 161 of the Cr.P.C., in order to prove the contradictions, omissions and improvements arising in between the testimonies of the said witnesses and their prior statements recorded under section 161 of the Cr.P.C.

Although we find substance in the claim made by the learned counsel, but upon careful perusal of all these paragraphs, we find that during the cross-examination of PW-1 to PW-8 regarding their previous statements made under section 161 of the Cr.P.C., the provisions contained in section 145 of the Indian Evidence Act were not followed in their strict sense, as the attention of these witnesses was not drawn to the specific portions of their prior statements which were intended to contradict them.



It appears that these witnesses were cross-examined in accordance with the first part of section 145 of the Indian Evidence Act, which permits a witness to be cross-examined regarding his previous written statement without that statement being shown to him. However, the second part of this section clearly stipulates that if the intention is to contradict the witness's current testimony with his previous statement, then his attention must be drawn to the relevant part of the previous written statement. Only after such attention is drawn, the previous statement can be formally proved and used for the purposes of contradiction. The purpose of this provision is to ensure fairness, as it provides the witness an opportunity to explain any inconsistency between his current testimony and his prior statement before his credibility is impeached.

38. While dealing with numerous criminal appeals, we have come across repeated instances of non-compliance with the strict requirements of section 145 of the Indian Evidence Act in the trial courts of the State of Bihar. It has become a common practice to cross-examine a witness about his previous written statement, or with one reduced into writing, without drawing the witness's attention to the particular portion intended for contradiction, omission or improvement. Typically, witnesses



are cross-examined regarding their previous statements, and thereafter the Investigating Officer is cross-examined to prove those statements. This practice is improper and undermines the criminal justice system, as in many cases the accused succeeds in obtaining the relief either from this Court or the Hon'ble Apex Court, due to the improper application of section 145 of the Indian Evidence Act.

39. In this regard, we may first of all refer to Rule 111 of the Criminal Court Rules of the High Court of Judicature at Patna, 1968 which provides for the manner in which the records of Courts of Session shall be maintained and further prescribes that the records of a Court of Session shall consist of two files as also defines the contents of the said files. Rule 111 also stipulates, under Rule 111(8)(a) that File 'A' pertaining to the records of a Court of Sessions shall contain the deposition of the witnesses for the prosecution examined at the trial in chronological order and the note appended to it reads as follows:-

“Note-When a witness has been cross-examined under Section 145 of the Evidence Act, for the purpose of contradicting him as to previous statements made by him in writing or reduced into writing (e.g., deposition taken during the enquiry before the Magistrate), such statements shall be filed in the record immediately after the



deposition of the witnesses to which these relate. Every such statement, when proved, shall be marked by the Court in a series of its own which shall be noted in the order-sheet, but need not be included in any list.”

We find that the aforesaid procedure is not being followed by the learned Trial Courts while conducting criminal trials leading to hampering of appreciation of evidence, especially at the appellate stage.

40. We may at this juncture point out that the Hon’ble Apex Court had initiated a suo motu proceeding under Article 32 of the constitution of India vide *Suo Moto Writ (Crl) No. 1 of 2017 (In Re: To Issue Certain Guidelines Regarding Inadequacies And Deficiencies In Criminal Trials)*. The Hon’ble Apex Court noticed common deficiencies which occur in the course of criminal trials and certain practices adopted by trial courts in criminal proceedings as well as in the disposal of criminal cases and causes. These related, amongst others, to the manner in which documents (i.e. list of witnesses, list of exhibits, list of material objects) referred to are presented and exhibited in the judgment, and the lack of uniform practices with regard to preparation of injury reports, deposition of witnesses, translation of statements, numbering and



nomenclature of witnesses, labelling of material objects, etc., which very often lead to asymmetries and hamper appreciation of evidence, which in turn has a tendency of prolonging proceedings, especially at the appellate stages. One of such deficiency noted by the Hon'ble Apex Court in its Order dated 30.03.2017, passed in *Suo Moto Writ (Crl) No. 1 of 2017*, reported in *(2023) 12 SCC 683* is as follows:-

“Marking of contradictions— A healthy practice of marking the contradictions/omissions properly does not appear to exist in several States. Ideally the relevant portions of case diary statement used for contradicting a witness must be extracted fully in the deposition. If the same is cumbersome at least the opening and closing words of the contradiction in the case diary statement must be referred to in the deposition and marked separately as a prosecution/defence exhibit.”

41. The Hon'ble Apex Court had noticed in the said Order dated 30.03.2017 that on the aforesaid prominent aspects, rules appeared to have been formulated by certain High Courts, whereas many other High Courts have not framed such rules, which has led to a lack of clarity and uniformity with regard to the presentation of trial court proceedings and records, for the purpose of appreciation at the High Court level and eventually, before the Hon'ble Apex Court. By an elaborate order dated 30.03.2017, the Hon'ble Apex Court noted various salient



aspects and flagged inadequacies in the practices and rules of High Courts and issued notices to the Registrars General of all the High Courts, and the Chief Secretaries/the Administrators and the Advocates General/Senior Standing Counsel of all the States/Union Territories, so that general consensus can be arrived at on the need to amend the relevant rules of practice/criminal manuals to bring about uniform best practices across the country. Subsequently, the Hon'ble Apex Court appointed amicus curiae and all concerned State Governments and Union Territories as well as High Courts through their Registrar Generals were called upon to submit their responses along with suggestions. Ultimately, Draft Rules of Criminal Practice, 2021 was framed, whereafter the Hon'ble Apex Court, by an Order dated 20.04.2021, passed in *Suo Moto Writ (Crl) No. 1 of 2017*, reported in *(2021) 10 SCC 598* issued the following directions:-

“The court is of the opinion that the Draft Rules of Criminal Practice, 2021, (which are annexed to the present order, and shall be read as part of it) should be hereby finalized in terms of the above discussion. The following directions are hereby issued:

(a) All High Courts shall take expeditious steps to incorporate the said Draft Rules, 2021 as part of the rules governing criminal trials, and ensure that the existing rules, notifications, orders and practice



directions are suitably modified, and promulgated (wherever necessary through the Official Gazette) within 6 months from today. If the state government's co-operation is necessary in this regard, the approval of the concerned department or departments, and the formal notification of the said Draft Rules, shall be made within the said period of six months.

(b) The state governments, as well as the Union of India (in relation to investigating agencies in its control) shall carry out consequential amendments to their police and other manuals, within six months from today. This direction applies, specifically in respect of Draft Rules 1-3. The appropriate forms and guidelines shall be brought into force, and all agencies instructed accordingly, within six months from today."

42. At this juncture we think it appropriate to reproduce Rule 10 of the aforesaid Draft Rules of Criminal Practice, 2021 herein under:-

"10. REFERENCES TO STATEMENTS UNDER SECTION 161 AND 164 CRPC:

i. During cross examination, the relevant portion of the statements recorded under Section 161 Cr.PC used for contradicting the respective witness shall be extracted. If it is not possible to extract the relevant part as aforesaid, the Presiding Officer, in his discretion, shall indicate specifically the opening and closing words of such relevant portion, while recording the deposition, through distinct marking.

ii. In such cases, where the relevant portion is not extracted, the portions only shall be distinctly marked as prosecution



or defence exhibit as the case may be, so that other inadmissible portions of the evidence are not part of the record.

iii. In cases, where the relevant portion is not extracted, the admissible portion shall be distinctly marked as prosecution or defence exhibit as the case may be.

iv. The aforesaid rule applicable to recording of the statements under Section 161 shall mutatis mutandis apply to statements recorded under Section 164 of the Cr.PC, whenever such portions of prior statements of living persons are used for contradiction/corroboation.

v. Omnibus marking of the entire statement under S. 161 and 164 Cr.P.C shall not be done.”

43. In pursuance to the aforesaid directions issued by the Hon’ble Apex Court, by an Order dated 20.04.2021, passed in ***Suo Moto Writ (Crl) No. 1 of 2017*** and consequent upon incorporation of the Draft Rules of Criminal Practice, 2021, the Criminal Court Rules Of The High Court Of Judicature At Patna (Volume-I) (Third Edition) was amended vide “***Addenda And Corrigenda To Criminal Court Rules Of The High Court Of Judicature At Patna (Volume-I) (Third Edition)***”, published in the Bihar Gazette on 26th November, 2021. The relevant amendments made in the Criminal Court Rules of the High Court of Judicature at Patna (Volume-I) are being reproduced herein below:-



“1. After Rule-29 under Part-1, Chapter-III (Confession and Statements of Accused–Section 164 Cr.P.C.), the following Rules shall be inserted, namely:–

29-A. REFERENCES TO STATEMENTS UNDER SECTION 161 AND 164 Cr.P.C.–

i. During cross examination, the relevant portion of the statements recorded under Section 161 Cr.P.C. used for contradicting the respective witness shall be extracted. If it is not possible to extract the relevant part as aforesaid, the Presiding Officer, in his discretion, shall indicate specifically the opening and closing words of such relevant portion, while recording the deposition, through distinct marking.

ii. In such cases, where the relevant portion is not extracted, the portions only shall be distinctly marked as prosecution or defence exhibit as the case may be, so that other inadmissible portions of the evidence are not part of the record.

iii. In cases, where the relevant portion is not extracted, the admissible portion shall be distinctly marked as prosecution or defence exhibit as the case maybe.

iv. The aforesaid rule applicable to recording of the statements under Section 161 shall mutatis mutandis apply to statements recorded under Section 164 of the Cr.P.C., whenever such portions of prior statements of living persons are used for contradiction/corroboation.

v. Omnibus marking of the entire statement under S. 161 and 164 Cr.P.C. shall not be done.”



44. Thus while conducting Criminal Trials, the Ld. Trial Judge of the Trial Courts are mandatorily required, during cross examination to extract the relevant portion of the statements recorded under Section 161 Cr.P.C. used for contradicting the respective witness, in the manner provided for in the amended Criminal Court Rules of the High Court of Judicature at Patna, as aforesaid.

45. We may also gainfully refer to a judgement rendered by the Hon'ble Apex Court in the case of ***Vinod Kumar v. State (NCT of Delhi)***, reported in ***(2025) 3 SCC 680***, paragraph No. 15 whereof being relevant is being reproduced herein below:-

“15. Before we part with the judgment, we must refer to a peculiar practice followed by the trial court. PW 1 and PW 3 were confronted in the cross-examination with their statements recorded under Section 161CrPC. In the depositions, it is mentioned that the attention of the witness was invited to a particular portion of the prior statement. After recording the answer of the witness, the portion of the prior statement used to contradict the witness has been reproduced in brackets. The law is well settled. The portion of the prior statement shown to the witness for contradicting the witness must be proved through the investigating officer. Unless the said portion of the prior statement used for contradiction is duly proved,



it cannot be reproduced in the deposition of the witnesses. The correct procedure is that the trial Judge should mark the portions of the prior statements used for contradicting the witness. The said portions can be put in bracket and marked as AA, BB, etc. The marked portions cannot form a part of the deposition unless the same are proved.”

46. Accordingly, we direct all the learned trial courts in the State of Bihar, conducting criminal trials, to ensure strict compliance with the provisions of section 145 of the Indian Evidence Act, when a witness is being cross-examined in respect of his previous statement, whether made in written form or reduced to writing. The procedure for marking/extracting the relevant portion of the statements recorded under section 161 of Cr.P.C. used for contradicting the respective witnesses during cross-examination, as laid down in the amended Criminal Court Rules of the High Court of Judicature at Patna, as aforesaid and clarified by the Hon'ble Apex Court in the case of ***Vinod Kumar (supra)***, must be followed. The Principle District & Sessions Judges of Bihar are directed to sensitize all judicial officers as well as learned advocates about the spirit and requirements of section 145 of the Indian Evidence Act as also the mandate of the amended Criminal Court Rules of the High Court of Judicature at Patna. In this regard, necessary steps may



also be taken by the Bihar Judicial Academy.

47. Now, returning to the present matter, as the attention of PW-1 to PW-8 was not drawn to the specific portions of their previous statements that are intended to contradict their testimony in court, it would not be proper to use those portions, as highlighted by the learned counsels, against the prosecution.

Conclusion :-

48. After analyzing the evidences adduced by both the sides, we are of the considered view that in the present matter, the prosecution has withheld the first written application submitted by the informant to the police at 7:15 A.M. on 05.01.2006, which contained a clear account of the alleged incident, instead, the prosecution case has been built in a subsequent written application (Exhibit-1), submitted to the police at about 2:00 P.M. on the same day. By that time, the injured witnesses had already travelled to Sasaram for medical treatment and had sufficient opportunity to consult with Krishna Chand Pandey, a practicing advocate and a relative of the informant. Upon their return, the subsequent application was given to the police and the informant admitted that the later application had been scribed by Krishna Chand Pandey at his



instruction. This sequence of events creates a strong possibility that a planned version of the incident was manufactured with the help of legal brain, naming several persons as accused with whom the prosecution party did not share good relations, while assigning them specific roles in the alleged occurrence. Though an incident involving the murder of the deceased and injuries to the so-called injured persons took place, but it did not occur in the manner described in the FIR, thereby rendering the prosecution story highly doubtful.

Furthermore, the testimony of the prosecution witnesses is wholly inconsistent with the medical evidence, which constitutes a fundamental flaw in the prosecution's case. The prosecution has failed to explain this inconsistency, leaving us with no option but to discredit the testimony of the prosecution witnesses.

The learned trial court has not provided sufficient reasons to support its acceptance of the prosecution's version and its findings fail to satisfy judicial scrutiny. Consequently, the judgment of conviction and the orders of sentence are not sustainable in the eyes of law. Accordingly, we set aside the judgment of conviction dated 19.05.2017 and the orders of sentence dated 26.05.2017 and 29.06.2017 passed by the learned



Sessions Judge, Rohtas at Sasaram in Sessions Trial Case No. 360 of 2007, arising out of Kargahar P.S. Case No. 03 of 2006, and extend the benefit of doubt to the appellants. The appellants of the aforesaid appeals are acquitted of the charges levelled against them. The respective appeals, as aforesaid, are hereby allowed.

49. The appellants, namely Dharmendra Pandey (appellant in Cr. APP (DB) No. 757 of 2017) and Ashutosh Pandey (appellant in Cr. APP (DB) No. 986 of 2017), who are currently in custody, are directed to be released from the jail forthwith, if not required in connection with any other case.

50. The appellants of Cr. APP (DB) No. 678 of 2017, Cr. APP (DB) No. 703 of 2017, Cr. APP (DB) No. 709 of 2017, Cr. APP (DB) No. 772 of 2017, Cr. APP (DB) No. 1016 of 2017, Cr. APP (DB) No. 1036 of 2017, and Cr. APP (DB) No. 1161 of 2017 are on bail, hence they are discharged from the liability of their respective bail bonds.

51. Let a copy of this judgment be circulated amongst all Principal District & Sessions Judges in the State of Bihar, through the learned Registrar General of the Patna High Court for strict compliance of the direction given in the paragraph No. 46, herein above.



52. Let a copy of this judgment be sent to the trial court along with the lower court records (LCR) forthwith for necessary information and compliance.

(Mohit Kumar Shah, J)

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	NA
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