

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.998 of 2023

Arising Out of PS. Case No.-35 Year-1997 Thana- KARAHGAR District- Rohtas

Shankar Dayal Singh Son Of Late Ramdhari Singh Resident Of Village -
Karup, P.S. - Kargahar, District - Rohtas

... .. Appellant/S

Versus

1. The State Of Bihar
2. Jhunna Kahar Son Of Late Jhuri Kahar Resident Of Village - Karup, P.S. - Kargahar, District - Rohtas
3. Sunil Siingh @ Sunil Kumar Singh Son Of Sharma Singh Resident Of Village - Karup, P.S. - Kargahar, District - Rohtas
4. Paddu Kahar Son Of Mundrika Kahar Resident Of Village - Karup, P.S. - Kargahar, District - Rohtas
5. Ramprit Singh Son Of Late Sarvajeet Singh Resident Of Village - Karup, P.S. - Kargahar, District - Rohtas
6. Ram Chandra Tiwari Son Of Ram Bachan Tiwari Resident Of Village - Karup, P.S. - Kargahar, District - Rohtas
7. Krishna Singh Son Of Vikrama Singh Resident Of Village - Karup, P.S. - Kargahar, District - Rohtas
8. Brajesh Kumar Singh Son Of Indrajeet Singh Resident Of Village - Karup, P.S. - Kargahar, District - Rohtas
9. Damodar Singh Son Of Gulli Singh Resident Of Village - Karup, P.S. - Kargahar, District - Rohtas
10. Baban Kahar Son Of Jhuri Kahar Resident Of Village - Karup, P.S. - Kargahar, District - Rohtas
11. Jag Narayan Singh Son Of Phulan Singh Resident Of Village - Karup, P.S. - Kargahar, District - Rohtas

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajesh Kumar, Sr. Advocate Manish Kumar Singh, Advocate
For the Respondent/s	:	Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SOURENDRA PANDEY)

Date : 04-04-2025



Heard Mr. Rajesh Kumar, learned Senior Advocate assisted by Mr. Manish Kumar Singh, learned Advocate on behalf of the appellant and learned Additional Public Prosecutor for the State.

2. The present appeal against the acquittal has been filed on behalf of the appellant against the judgment of conviction and order of sentence dated 07.07.2023 and 18.07.2023 respectively passed by the learned Additional Sessions Judge XLV, Rohtas at Sasaram passed in Sessions Trial no. 576 of 1997 (arising out of Karghar P.S. Case No. 35 of 1997 registered under Sections 147, 148, 149, 307 and 302 IPC and Section 27 of the Arms Act) (herein after referred to as 'the impugned judgment' and order respectively) the learned Trial Court has acquitted the respondent nos. 2 to 11 from all the charges while other co-accused namely Vishwanath Singh and Hanuman Singh were held guilty of the offences under Sections 302/302/34 IPC Raju Singh was found guilty of the offences under Sections 302 of IPC and they were sentenced to undergo RI for life and fine of Rs. 50,000/-.

3. As per the prosecution case the informant/appellant namely Shankar Dayal Singh has stated that on 07.03.1997 he along with Mukhiya of his Panchayat, Nathuni Singh and



Rameswaram Singh and other co-villager proceeded to see Maha Shivratri Mela at 13:30 hours and reached the Mela site at about 14 : 00 hours. He has further stated that his elder son namely Sayendra Kumar Singh also accompanied them. It was alleged that the informant along with his son was standing in the mela and in the meantime his co-villagers namely Raju Singh, having country made pistol in his hand, Vishwa Nath Singh having double barrelled gun, Pradeep Kumar having country made pistol, Hanuman Singh with country made pistol, Arun Kumar Singh with country made pistol, Rampreet Singh with rifle in his possession, Jhuna Kahar with country made pistol, Baban Kahar with country made pistol, Paddu Kahar with country made pistol, Brijesh Kumar Singh with country made pistol, Sachan Singh with single barrel gun, Haridwar Singh with gun, Damodar Singh with rifle, Sunil Kumar Singh with double barrelled gun, Krishna Singh with rifle, Sharma Singh with country made pistol, Ramachandran Tiwari with rifle, Shiv Murat Singh empty-handed, Jag Narain Singh with double barrelled gun, Phoolan Singh with double barrell gun came near his son, Satyendra Singh and at the instigation of Hanuman Singh and Vishwanath Singh, Raju Singh fired with his country made pistol upon the chest of Satyendra Singh from a very close



range. Thereupon, informant son fell on the ground and he became senseless. It has been further alleged that Raju Singh and other co-accused persons started firing indiscriminately, resulting in death of an unknown person who was stated to have died on the spot. It was further stated that the cartridge hit the unknown person on his head, upon which his head had burst open. All the accused persons were alleged to have fled while the informant son was taken to Hospital at Sasaram for treatment. The motive behind such incident is stated to be an old enmity with the accused persons. On the basis of such fardbeyan Karahgar P.S. Case No. 35 of 1997 dated 07.03.1997 was registered against twenty named persons for the offences alleged under Sections 147, 148, 149, 307 and 302 IPC and Section 27 of the Arms Act. Upon investigation, police submitted charge sheet No. 92 of 1997 dated 20.07.1997 for the offences under Sections 147, 148, 149, 307, 302 and 120B of the IPC and Section 27 of the Arms Act against the respondent Nos. 2 to 11 and 3 other

4. The learned jurisdictional Magistrate took cognizance of the offences under Sections 147, 148, 149, 307, 302 and 120B of the IPC and Section 27 of the Arms Act against the respondent Nos. 2 to 11 and others and the case was committed



to the Court of Sessions for trial. The accused persons pleaded not guilty and claimed to be tried. The learned Additional Sessions Judge II, Sasaram framed the charges under Sections 302/149 of IPC against the respondent Nos. 2 to 11 and others and under Section 302 of the IPC against the accused Raju Singh by order dated 24.04.2000.

5. The prosecution has altogether examined nine witnesses and seven documents were marked exhibits. The list of witnesses are provided hereunder :-

PW 1	Arun Kumar
PW 2	Virender Kumar Singh
PW 3	Nandeshwar Singh
PW 4	Amrendra Kumar Singh
PW 5	Rameshwaram Singh
PW 6	Abhay Singh
PW 7	Shanker Dyal Singh
PW 8	Shanker Kumar Jha
PW 9	Radhey Shyam Ram

6. The prosecution has produced several documents as evidence which were marked exhibits and are as follows :

Exhibit 1	Signature of Birendra Kumar Singh on carbon copy of inquest report
Exhibit 2	fardbeyan



Exhibit 3	Protest petition
Exhibit 4 4/1	P.M. Report
Exhibit 5	FIR
Exhibit 6 6/1	Inquest Report
Exhibit 7 7/1 7/2 7/3	Seizure lists

7. On the other hand defence has also examined three defene witnesses namely :

DW 1	Biao Paswan
DW 2	Sri Sudama Ram
DW 3	Sunil Kumar Singh

8. However, the defence has not produced any documentary evidence in support of their case :

Findings of the Trial Court

9. The learned Trial Court after analyzing evidence on the record found that the accused persons namely Hanuman Singh, Biswanath Singh and Raju Singh are acquitted of charges under Sections 302/149 of IPC. However, the prosecution through its evidence has proved that Raju Singh at the instigation of Hanuman Singh and Biswanath Singh intentionally fired upon Satyendra Kumar Singh with deadly firearm and caused an



injury on his chest which resulted in his death. Taking the same into account the learned Trial Court has come to the conclusion that prosecution has been successful in proving its case as well as the charge under Section 302/34 of IPC against the accused persons. The Trial Court held that accused Biswanath Singh and Hanunman Singh are guilty of charges under Section 302/34 of the IPC whereas accused Raju Singh was held guilty under Section 302 of IPC and thereby convicted all the three.

10. With respect to the accused persons other than Hanuman Singh, Raju Singh and Biswanath Singh, the learned Trial Court took into account that prosecution witnesses have stated that they also fired indiscriminately, however, there are deviations, abrasions and discrepancy in the statement of prosecution witnesses with respect to the manner of their firing. Some of the witnesses have stated that all the accused persons fired indiscriminately in air whereas some of the other witnesses has stated otherwise. The learned Trial Court also took note of the fact that there is no evidence attributing specifically against any of the accused persons other than the above three accused persons. The learned Trial Court has also observed in the impugned judgment that some of the prosecution witnesses have stated that 40 to 50 rounds of firing were made pointing at



Satyendra Singh and the persons accompanying him at mela place where more than 7,000 persons had assembled. However, only two persons have been inflicted with solitary firearm injury on the person of each of them. Therefore, the learned Trial Court opined that the circumstances and consequences scream otherwise. The learned Trial Court was of the opinion that if the evidences are taken to be true, more persons who were accompanying Satyendra Singh would have either been killed or grievously injured by firearm injury. The learned Trial Court also took into account that one of the prosecution witnesses have stated that 4 -5 persons were injured in indiscriminate firing but no such injury report was brought on record by the prosecution and it was also not proved.

11. In such view of the matter, the learned Trial Court held that the story of firing by 19-20 persons on huge gathering create serious doubts.

12. The learned Trial Court also relying on the statements of the prosecution witnesses held that if the accused persons were firing in air then the prosecution story of the object of killing Satyendra Singh also stands demolished.

13. The learned Trial Court taking into account that the story of indiscriminate firing by 19-20 persons being not true,



rather it was hypothetical and super-addition in order to settle the old rivalry and inimical relation to implicate other persons who had enmity with them.

14. Thus, taking the above view of the facts and circumstances, the learned Trial Court came to a conclusion that the prosecution has not been successful proving charges under Section 302/149 of IPC against the accused persons other than Hanuman Singh, Biswanath Singh and Raju Singh beyond all reasonable doubts and therefore, they were entitled to get benefit of doubt and accordingly the accused/respondents 2 to 11, were held not guilty of charges under Section 302/149 of IPC.

Submissions on behalf of the appellant.

15. Learned Senior counsel appearing on behalf of the appellant has assailed the impugned judgment on the ground *inter alia* that the learned Trial Court failed to appreciate that P.Ws 1 to 7 were consistent in their evidence and have all stated that the accused/respondents 2 to 11 along with the three accused who have been convicted, were variously armed and were firing indiscriminately upon son of the informant namely, Satyendra Kumar Singh.

16. It has been submitted that the informant who was examined as P.W 7 and is an eye witness, has stated in his



evidence that while they were standing after visiting Mela his co-villager Raju Singh, having country made pistol in his hand, Vishwa Nath Singh having double barrelled gun, Pradeep Kumar having country made pistol, Hanuman Singh having country made pistol, Arun Kumar Singh having country made pistol, Rampreet Singh having rifle in his possession, Jhuna Kahar with country made pistol, Baban Kahar with country made pistol, Paddu Kahar with country made pistol, Brijesh Kumar Singh with country made pistol, Sachan Singh with single barrel gun, Haridwar Singh with gun, Damodar Singh with rifle, Sunil Kumar Singh with double barrelled gun, Krishna Singh with rifle, Sharma Singh with country made pistol, Ramachandran Tiwari with rifle, Shiv Murat Singh empty-handed, Jag Narain Singh with double barrelled gun, Phoolan Singh with double barrell gun came near his son, Satyendra Singh, Hanuman Singh and Vishwa Nath Singh ordered to kill Satyendra Singh upon which Raju Singh fired from his country made pistol which hit Satyendra Singh on his chest. P.W. 7 has further deposed that all the accused persons started firing indiscriminately resulting in hitting one unknown person on his head causing immediate death.

17. The leaned Senior counsel further submits that on



perusal of the statements of witnesses 1 to 6 it would be clear that all the witnesses have stated the same story and there is no discrepancy or much deviation in their statements.

18. The learned Senior counsel on behalf of the appellant has also emphasized on the fact that all the accused persons had assembled at the 'mela' with the sole motive to eliminate Satyendra Singh and since there was an indiscriminate firing an unknown person who was a passerby, too received the shot on his head resulting into his death.

19. The learned Senior counsel has also referred to the deposition of P.W. 8 namely, Shankar Kumar Jha who was the Medical Officer at Sadar Hospital, Sasaram and had conducted the postmortem upon the deceased Satyendra Singh. He found the injuries namely :

“1. Average built. Rigor mortise present in neck. Absence in upper and lower limbs.

Injuries-

- (i) Lacerated wound over left side of chest in forth inter coastal space in mid clavicural line with black and inverted margin 1"x3/4"x cavity deep (Wound of entry).
- (ii) Lacerated wound over back on left side just below scapular with averted margin 1"x1/4"x3/4"x cavity deep (wound of exit). Both wound no. 1 and 2 communicating with each other.



2. On the same day at about at 9.35 P.M he conducted the autopsy on the dead body of the unknown person and found following injuries :-

“(1) Lacerated wound over vertex of skull with loss of skin and bone was coming out 3-1/2"x3"x cavity deep. Skin tag 2"x2" attached without wound.

Interior margin of wound with frontal level black and inverted.”

20. He has stated that considering the injury report and the ocular evidences of P.Ws. 1 to 7 there is parity in the story of injury being caused to Satyendra Singh and to the said unknown person who was later identified as Ajay Roy.

21. The learned Senior counsel has further drawn the attention of this Court towards the statement of P.W. 9 namely, Radhe Shyam Ram who was the SHO of Karahgar Police Station and had recorded the fardbeyan and proved the same. The I.O. (PW.9) has stated to have recovered DBBL gun from the house of Rajwansh Singh along with five live cartridges of 12 bore. There was an arms license also which was also seized. He has further stated in his deposition that one rifle was seized from the house of Ram Chandra Tiwary which was also made part of the seizure list and all the seizure list have been marked as Exhibit 7/1, 7/2 and 7/3. He has stated that he had recorded the statements of Arun Kumar Singh, Abhay Singh, Rameshwar



Singh, Ravinda Singh, Ramashish Tiwary, Bharat Singh etc who have supported the prosecution case.

22. The learned Senior counsel has summarized his argument stating that P.Ws 1 to 7 are all eye witnesses and they all have consistently stated about all the named accused persons who have been variously armed with deadly weapon and they all had started firing indiscriminately resulting in the death of one unknown person apart from the deceased Satyendra Singh, who was shot at by Raju Singh. The learned counsel has stated that PW 8, the Doctor and P.W. 9, the I.O of the case have fully supported the prosecution case and therefore, the judgment passed by the learned Trial Court acquitting the respondents 2 to 11 is wrong, manifestly erroneous and therefore, unsustainable and therefore, it was prayed that this Court may set aside the impugned judgment and pass a judgment of conviction and order of sentence against the respondent Nos. 2 to 11.

Submissions on behalf of the State.

23. The appeal has been opposed by learned Additional Public Prosecutor for the State. Mr. Bipin Bihari Singh the learned Additional Public Prosecutor submits that on bare perusal of the judgment, it would appear that there has been deviations and discrepancy in the statement of prosecution



witnesses with respect to the manner of their firing. The learned APP has drawn the attention of this Court towards the fact that some of the witnesses have stated that all the accused persons were firing indiscriminately in air and almost 40-50 rounds of firing was made, however, keeping in mind the place of occurrence which was a 'mela' and more than 7000 persons had assembled there no other person having been inflicted with any injuries seems to be highly improbable which casts a shadow of doubt on the prosecution story.

24. The learned APP has submitted that the learned Trial Court was correct in forming an opinion that the story of firing by 19-20 persons on huge gathering is seriously doubtful as the prosecution story and the seizure list does not support each other and the factum of indiscriminate firing is not proved. No cartridge was found by the I.O. at the spot during the investigation of the case.

25. The learned Additional Public Prosecutor for the State submits that specific allegation of firing was on Raju Singh whose bullet had hit the son of the informant Satyendra Singh, deceased. There is no specific allegation much less any evidence against Respondent Nos. 2 to 11 of causing any injury to either Satyendra Singh or the unknown person who was later



identified as Ajay Roy.

26. The learned APP for the State has stated that P.W. 7 in his evidence has deposed that 4-5 persons were injured during indiscriminate firing. However, none of the said injured persons were examined by the prosecution. The learned APP therefore, has submitted that the respondents 2 to 11 were named in the present case merely to settle the old rivalry and inimical relation and therefore, all those persons who were on the side of Hanuman Singh and his family or were very close to his family have been implicated falsely in the present case and therefore, the learned Trial Court has rightly appreciated the entire evidence on record and concluded that the prosecution had failed to establish its case beyond all reasonable doubts as far as the respondents no. 2 to 11 are concerned and has convicted the other three accused persons namely Hanuman Singh, Vishwa Nath Singh and Raju Singh for the charges under Section 302/34 of IPC and under Section 302 of IPC respectively.

Consideration

27. The present case is based upon the fardbeyan of the Appellant given on 07.03.1997 wherein he has stated that while he was at the 'Mela' along with his son, the 20 named accused persons, all variously armed, approached near his son Satyendra



Singh and on the instigation of Hanuman Singh and Vishwanath Singh co-accused Raju Singh shot from his pistol hitting his son on the chest. The informant has further alleged that the other accused persons also started indiscriminate firing and one unknown person too was hit on his head. On the said fardbeyan formal FIR was drawn and registered as Karahgar PS No. 35 of 1997 dated 07.03.1997 for offenses under Sections 147, 148, 149, 307, 302 of IPC and Section 27 of the Arms Act against the 20 named accused persons.

28. PW 1, who is the own brother of the deceased and son of the appellant, has stated that he too was at the place of occurrence along with his father and elder brother and has seen the named accused persons to be present there variously armed and on the instigation of Hanuman Singh and Vishwanath Singh Raju Singh shot upon his brother. He has further deposed that all the criminals started firing indiscriminately hitting one unknown person who was a bystander. He has deposed in his cross examination that the accused persons was standing around 6 to 7 feet from him and he has recognition of each and every of them. P.W 1 has also stated that there were around 6000 to 7000 people present at the relevant time at the 'Mela'. P.W 1 has denied the suggestion that he was not present at the time of



occurrence and had stated that the police arrived at the place of occurrence after sometime of the incident.

29. In paragraph 5 of his deposition, P.W 1 has stated that he is accused in criminal cases and his father is also an accused in a case filed by the accused Vishwanath Singh. He has further deposed that there were 2-3 cases lodged against his deceased brother. PW 1 has stated that the distance between his village and the 'Mela' was around 2 km and the accused persons were going along with them to visit the 'Mela'. He further states that there was no crowd on the way to the Mela. PW1, during his cross-examination, has stated that when Satyendra Singh was being shot there was around 40 to 50 rounds of firing made by the accused persons. He has stated that firing continued for 10 minutes, however, he fled from the place of occurrence as soon as Satyendra Singh was shot.

30. This PW1 has stated that the police had prepared an inquest report of the deceased Ajay Rai and on such inquest report his cousin brother Birendra Singh and his maternal uncle Bharat Singh had put their signatures. This P.W 1 in his cross-examination has stated that the indiscriminate firing was not being made in air rather the same was pointed towards them.

31. P.W 2, Birendra Kumar Singh in his deposition has



reiterated the version of PW1 and has supported the fact that all the accused persons started indiscriminate firing and Satyendra Singh was shot at by Raju Singh. PW2 has stated that the police arrived at the place of occurrence after 8 to 10 minutes of the incident and they took the injured for treatment. PW 2 has identified and proved the two inquest reports prepared by the police which was marked as exhibit 1 and 1/1. PW1 in his cross-examination has supported the fact of around 6000 to 7000 people being there at the 'Mela' and has denied the suggestion that he was not available there. PW 2 in paragraph 12 of his deposition has stated that when the police had arrived Satyendra Singh was alive and police had questioned Satyendra Singh and had also taken his signature. PW2 claims to identify all the accused persons.

32. PW 3 Nandeshwar Singh, in course of his examination- in-chief has stated that the occurrence took place on 07.03.1997 and he along with Shankar Dayal Singh (appellant), Arun Singh, Satyendra Singh, Birendra Singh, Rameshwaram Singh, Nathuni Singh Mukhiya proceeded to see the fair and to offer puja to Shankar Bhagwan. PW3 has also supported the prosecution case that on the instigation of Vishwanath Singh and Hanuman Singh, Raju Singh took out his



country made pistol and fired upon the chest of Satyendra Singh. He further deposed that all the accused persons started firing indiscriminately consequently an unknown person was also hit by the alleged firing and he died on the spot. PW 3 in his deposition has stated that the accused persons and the informant are his agnates and earlier son of Hanuman Singh was murdered and his agnates were accused in the said murder case. This PW 3 in his deposition has stated that around 50 rounds of firing was made. He has stated that the firing was being made from one direction and in this stampede there were around 5000 to 6000 people. However, he had fled away after the bullet had hit Satyendra Singh. PW3 has also stated that he reached the place of occurrence only when the police had arrived and Satyendra Singh died after five minutes of his reaching to the said place.

33. PW 4, Amrandra Kumar Singh, in course of his examination-in-chief has deposed the same fact as has been stated by PW1 to PW 3. PW 4 in his cross-examination has stated that there were around 5,000 to 10,000 persons in the fair. He has stated that after Satyendra Singh was shot, he had seen him alive and when the police had arrived, Satyendra Singh was alive. PW4 has admitted that Vishnu Singh, Ram Preet Singh and Hanuman Singh are own brothers while Pradeep Singh is



son of Vishwanath Singh while Raju Singh is son of Ram Preet Singh and Arun Singh is son of Hanuman Singh. The PW 4 has admitted that he is an accused in the murder case of Arun Singh who was son of Hanuman Singh, an accused in the present case.

34. PW 5, Rameshwar Singh has supported the evidence of PW 1 to PW 4 on perusal of his deposition no contradiction or inconsistency is found in so far as more reliable to Respondent no. 2 to 11.

35. PW 6, Abhay Singh is stated to be an eyewitness who had seen the occurrence while he was accompanying the informant and others. PW 6 has also stated that when the indiscriminate firing was being made he had fled and hid himself. He has further deposed that all the accused persons were firing one by one. When the firing started, there was a stampede in the fair and everyone started running here and there.

36. PW 7 is the informant of the case and in course of his examination-in-chief he has stated that the occurrence took place on 07.03.1997 while he along with Nathuni Prasad Singh, Rameshwar Singh and other villagers had gone to view the Maha Shiv Ratri Mela. PW 7 in his deposition has reiterated the fact of all the 20 named accused persons who were variously armed with deadly weapons came near his son Satyendra Kumar



Singh and on the instigation of Hanuman Singh and Vishwanath Singh, Raju Singh shot Satyendra Kumar Singh on his chest from his country made pistol. He has stated that all the accused persons started firing indiscriminately resulting in an injury to an unknown person present at the fair. The accused persons thereafter, fled towards village Karup and after sometime police party arrived at the place of occurrence and before they could take Satyendra Kumar Singh to Sadar Hospital he breathed his last. PW 7 has stated that his statement was recorded by the police and he had signed the same and has identified his signature signature. PW 7 has denied the suggestion that he had not seen the occurrence and his son had died as his man had fired which hit the unknown person and in retaliation his son was shot dead.

37. PW8 is Dr. Shankar Kumar Jha who has conducted the postmortem examination of the deceased Satyendra Singh. In course of postmortem examination he has recorded as under :-

“:-Average built-Rigour mortise present in neck and absent in upper and lower limbs.”

Injuries:- 1. Lacerated wound over left side of chest in forth inter coastal space in mid clavicular line with black



and inverted margin 1"X3/4" cavity deep (wound of entry). 2. Lacerated wound over back on left side just below scapular with averted margin 1"X1/4"X3/4" cavity deep (wound of exit). Both wound No. 1 and 2 communicating with each other. On opening the chest:- Left plural cavity full of blood. Left upper lobe lung lacerated. Left ventricle ruptured. Fourth rib in front and 8 rib on back of left side found fractured. Right chamber of heart empty. Right lung intact and pale. 18. Opening the skull:- Meninges pale, brain normal. On opening abdomen:- Liver, spleen, kidneys intact and pale. Bladder contains urine of 15 M.L. Stomach contains semi digested food about 02 ounce. Small intestine contained fluid and gas. Large intestine contains gas and faecal matter. Death, in my opinion:- Occurred due to shock and hemorrhage as a result of injury over chest caused by fire arms. Time since death: about Six hours." This report is in my pen and signature and same is exhibited as Ext.-4.

38. On the same day another postmortem was conducted at 9.35 PM of an unknown person aged about 20 years and the following injuries were found :-



“1. Lacerated wound over vertex of skull with loss of skin and bone with brain matter coming out 3-1/2"X3" cavity deep. Skin tag 2"X2" attached with posterior margin of wound. Interior margin of wound with frontal level black and inverted. On dissection of skull"- Remaining parts of both parietal and frontal bone found fractured. Brain extensively lacerated. On opening the chest-Both lungs intact and normal. Both chamber of heart contains blood. On opening the abdomen- Liver, spleen, kidneys intact and normal. Bladder contains urine about 15 ML. Stomach contains semi digested food about 02 ounce. Small intestine contains fluid and gas. Large intestine contains gas and feces. Average built. Rigor mortise present in neck. Absence in upper and lower limbs. Death, in my opinion:- Occurred due to injury to brain as a result of injury over skull caused by fire arm. Times since death-about six hours. This P.M. report is also my pen and signature and same is marked as Ext. 4/1.”

39. P.W 9 is the I.O of the case and in course of his examination-in-chief he has stated that he was the Officer-in-Charge of Kargahar Police Station and had recorded the



fardbeyan of Shankar Dal Singh at village Pahari and has identified the signature and handwriting which has been proved as Exhibit 2. He has further stated that he had sent the fardbeyan to Police Station to register the formal FIR and he himself took up the investigation.

40. P.W. 9, in his deposition has given the details of the place of occurrence and has stated that the dead body of an unknown person who was identified as Ajay Rai was found around 20 gaj away from the temple and from that place at a distance of 8 gaj Satyendra Kumar Singh was found in injured state. He has stated that Satyendra Kumar Singh was sent for treatment to Sasaram, he had prepared the inquest report of Satyendra Kumar Singh and identified the same in his pen and signature. He has also identified the inquest report of Ajay Rai which was also prepared in his pen and signature and both the reports were marked as Exhibit 6 and Exhibit 6 /1.

41. P.W.9, has further stated that he had recorded the statement of witnesses namely, Arun Kumar Singh, Abhay Singh, Rameshwar Singh, Ravindra Singh, Ramashish Tiwari, Bharat Singh etc. and after preparing the inquest report he had sent the dead bodies for conducting the postmortem examination. He has obtained three bullet like materials from



Doctor T.M. Singh and seized the same. He has identified the seizure list in his pen and signature and on the same day he seized double barrel gun and five live cartridges of 12 bore from the house of Raj Bansh Singh. He has stated that he prepared the seizure list of seized arms and identified the same as Exhibit 7/1. He has stated that he also seized a bullet motorcycle and has prepared a seizure list and had also seized a rifle from the house of Ramchand Tiwari and had prepared a seizure list for the same. Lastly, he has submitted that upon completion of the investigation the occurrence being found true, he had submitted the charge sheet against the accused persons under Sections 147, 148, 149, 307, 302, 120(B) of Indian Penal Code and Section 27 of Arms Act.

42. The defence has also examined 3 witnesses and among them DW 1, Sri Biao Paswan, who was the Sarpanch of Babhani Panchayat in 1997 has stated that Satyendra Singh had fired and then hulla was raised that one boy from village-Ladvi had died due to the shot fired by Satyendra Singh. D.W.2, Sri. Sudama Ram has deposed that he was present in the Mela and at around 1.30 PM he heard sounds of firing and learnt that a boy of Laduni village is dead. He has stated that there was indiscriminate firing being made between villagers of Laduni



village and Karup village and after a few minutes another man was shot dead, who was Satyendra Singh from Karup village. D.W 2 has denied the suggestion that he is well acquainted with Vishwanath Singh. D.W. 2 has also denied the suggestion that Satyendra Singh was done to death by Raju Singh. D.W. 3 in his deposition has stated that firing was being exchanged between two groups belonging to Karup village and Laduni village. D.W. 3 has stated that he did not see as to who had fired upon the two persons, who were shot dead. D.W. 3 has stated that he was personally present there at the Mela. He has further deposed that he is not an agnate of Hanuman Singh and has denied the suggestion that he was not present at the place of occurrence and has also denied that he was an agnate of Vishwanath Singh and is making false deposition at the behest of the accused persons.

43. On careful examination and scrutiny of the entire evidence on record, it appears that in this case the prosecution is trying to implicate all the persons acquainted with the family of Hanuman Singh and has given names of altogether 20 persons as an accused in this case. All of them barring one have been shown with an arm/weapon in his hand which has been meticulously detailed not only in the first version of the informant but also in his re-statement as well as during the



evidence by all prosecution witnesses, who are either relatives of the accused Hanuman Singh or his agnates.

44. This Court is of the view that even if the statement that all the accused persons were armed with deadly weapons of different kinds is taken into consideration, it is very peculiar that only two firearm injuries were reportedly caused i.e. one on the chest of Satyendra Kumar Singh and the other hitting an unknown person on his head. If at all the accused persons had an intention to kill Satyendra Kumar Singh as also his other family members when all the accused persons would be armed with deadly weapons, there would have been more injuries to either the family members of Satyendra Singh or to people who were there at the 'Mela' in large numbers. The story of indiscriminate firing seems improbable as no person other than the two namely, Satyendra Kumar Singh and Ajay Rai have received any injury.

45. This Court also takes note of paragraph number 10 of the cross examination of PW1 wherein he has stated that the distance between his village and the fair was 2 kilometers and they had gone on their feet along with the accused persons to the 'Mela. This PW has admitted that in route to the fair there were lonely places which could have been a safe heaven for the



accused persons to kill the informant and his son. PW 1 has also stated that accused persons had been firing pointing towards them and they were not firing in the sky. PW 2 in his cross-examination in paragraph No. 5 has stated that two or three cases have been pending in between the family members of Vishwanath Singh and his family. He has also stated that he is an accused in a case instituted by the family member of Vishwanath Singh. In paragraph No. 6 of his cross-examination he has stated that Shankar Dal Singh is brother of his father who is an accused in a murder case instituted by Vishwanath Singh. Thus, it is evident that the accused persons were in inimical terms with the informant's family.

46. At this juncture, it is relevant to observe that the kith and kin of the deceased are the main witnesses, their presence at the time and place cannot be doubted. However, their evidence has to be scrutinized with greater caution especially in the background of enmity that gripped the two factions i.e. the appellant and the informant. We have observed that the eye witnesses whose evidence is on record are closely related to the deceased and the independent witnesses whose presence at the spot has been established were neither examined nor the so called injured persons have come forward to depose before the



learned Trial Court. This according to us, makes it unsafe to act on the testimony of these interested witnesses as regards involvement of Respondents no. 2 to 11 in the present case.

47. As already observed above, P.W. 1, P.W. 2, P.W. 3 and P.W. 4 have all stated that there was criminal case pending between the parties. It is relevant to refer the judgment in case of **Shiv Shankar Pandey & Ors. Vs. the State of Bihar** reported in **(2002) 7 SCC 229** wherein the Hon'ble Supreme Court has held that when the witnesses are closely related persons and there is a history of bitter enmity between the deceased and the accused persons the evidences should be scrutinized with greater care and circumspection as there was every possibility of exaggeration and embellishment. The Hon'ble Supreme Court has also taken note of the point and has observed thus “....The anxiety on the part of the prosecution to implicate as many members of the opposite faction as possible is quite apparent. Unfortunately, the evidence of material witnesses especially that of PW10, had not been critically and carefully examined by both the Courts despite the fact that the witnesses were prone to exaggerate or distort the facts in view of enmity and close relationship. The crucial aspects, as discussed above, escaped the attention of the High Court.”



48. In the present case, we have already noted that the allegation of firing upon Satyendra Kumar Singh with a deadly firearm was at Raju Singh at the instigation of Hanuman Singh and Vishwanath Singh. However, the allegation on other accused persons (Respondents no. 2 to 11) is of indiscriminate firing resulting in death of an unknown person. In this background and going by the evidence on record, reasonable doubt arises on the veracity of the prosecution version that the Respondents no. 2 to 11 armed with weapons went to the scene of occurrence with a view to kill or injure the son of the informant namely, Satyendra Singh.

49. We also take note of the situation that when the informant and his son were being surrounded by armed persons, in presence of large number of visitors in the fair ('Mela') the informant could not have noticed meticulously who all were armed and with which weapon. This was a case where the informant has named more than 13 persons along with the weapons they were carrying. It also does not stand to reason as to no other person there had received a single injury despite indiscriminate firing by 19-20 persons. No fired cartridge has been seized by I.O. from the place of occurrence. Further, the prosecution witnesses have also stated that as soon as Satyendra



Kumar Singh was fired upon by Raju Singh they ran for safety and returned only when the accused persons had fled away. Thus, their deposition does not entail confidence as regards involvement of R-2 to R-11.

50. PW 3, in course of his examination-in-chief, has stated that the accused persons and the informant are his agnates and earlier Arjun Singh son of Hanuman Singh was murdered and a case with regard to the said incident is still pending. He has admitted that in that case his neighbours and agnates were the accused.

51. PW 4 in course of his examination, in paragraph 15 has stated that he has no knowledge as to when did the murder of Arjun Singh son of Hanuman Singh took place. However, he has admitted that he is an accused in the murder of Arjun Singh.

52. PW 6 in course of his examination-in-chief has not named the accused Jag Narayan Singh while the other prosecution witnesses have taken the name of Jag Narayan Singh. He has further stated that Satyendra Singh had given evidence in kidnapping case of a child, therefore, he was murdered. Even PW 6 has admitted that Arjun Singh son of accused Hanuman Singh was murdered and he is an accused in the said case.



53. One of the most startling fact was revealed by PW 2 that the police had reach the place of occurrence prior to the death of Satyendra Singh and the police had taken his statement and had also obtained his signature. However, the concerned Police Officer was not examined nor any such statement of Satyendra Singh, which could have been a dying declaration have been brought on record.

54. We have observed that almost all the prosecution witnesses have stated that one Nathuni Singh, Mukhiya of the Panchayat had also gone along with them to the Maha Shiva Ratri 'Mela' and he was an independent witness. However, surprisingly he has not been examined by the prosecution for the reason best known to them. Non-examination of this independent witness has led to drawing of adverse inference to the prosecution case, as his evidence would have been very important looking at the fact that all the other prosecution witnesses are family members of the informant.

55. We take a leaf out from the judgment rendered by the Hon'ble Supreme Court in the case of **Takhaji Hiraji vs Thakore Kubersing Chamansing & Ors** reported in (2001) 6 SCC 145 wherein it has been held that "if a material witness, which would unfold the genesis of the incident or an essential



part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness which though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case.”

56. In the present case there are witnesses whose presence at the place of the incident and whose having seen the incident cannot be doubted as would be evident from the deposition of the various prosecution witnesses, PW 1, PW 2, PW 3, PW 4, PW 5 and PW 7 have all stated the presence of Mukhiya, Nathuni Singh along with the prosecution party at the place of occurrence.

57. In the present facts of the case, it was necessary to examine such independent witnesses on two counts (i) all the prosecution witnesses who were present at the place of occurrence has stated the name of this person namely, Nathuni Singh to be present there and (ii) the rest of the prosecution witnesses were interested and inimical witnesses. In such view



of the matter, non-examination of Mukhiya Nathuni Singh will draw adverse inference against the prosecution.

58. We will also like to refer at this stage a judgment rendered by the Hon'ble Supreme Court in the case of **Vijay Singh @ Vijay Kr. Sharma vs. State of Bihar** reported in **2024 (6) BLJ SC 36** wherein a consideration was being made with regard to the objection against the testimonies of the eye witnesses that none of the eye witness is an independent witness of fact. We would like to reproduce para 24 of the said judgment as under :

“24. The second limb of the objection against the testimonies of the eye witnesses is that none of the eye witnesses is an independent witness of fact. Ordinarily, there is no rule of law to discard the testimonies of the witnesses merely be-cause they were known to the victim or belonged to her family. For, an offence may be committed in circumstances that only the family members are present at the place of occurrence in natural course. However, the present case does not fall in such category. In the facts of



the present case, the natural presence of the eye witnesses at the place of occurrence is under serious doubt, as discussed above, and for unexplained reasons, the naturally present public persons were not examined as witnesses in the matter. The non-examination of natural witnesses such as Doman Tenti, Daso Mistry, Soordas, Kumud Ranjan Singh and many other neighbours who admittedly came out of their houses to witness the offence, coupled with the fact that the projected eye witnesses failed to explain their presence at the place of occurrence, renders the entire version of the prosecution as improbable and unreliable. The eye witnesses, being family members, were apparently approached by PW18 who informed them about the incident and later, their versions were fabricated to make the case credible. Notably, when the version put forth by the interested witnesses comes under a shadow of doubt, the rule of prudence



demands that the independent public witnesses must be examined and corroborating material must be gathered. More so, when public witnesses were readily available and the offence has not taken place in the bounds of closed walls.”

59. As can be gathered from the aforesaid judgment, it is clear that despite the fact that there was thousands of persons available at the place of occurrence, for unexplained reasons, the naturally present public persons were not examined as witnesses in the present case. The non- examination of natural witness like the Mukhiya, Nathuni Singh and other by-standars coupled with the fact that the prosecution witnesses 1 to 7 have very mechanically detailed the entire incident renders the prosecution case as against Respondents no. 2 to 11 unreliable.

60. We have also taken note of the statement of PW 7 who happens to be the informant of the case, made in paragraph No. 8 of his cross-examination where he has stated that in the indiscriminate firing 4-5 persons got injured and he has even stated that son of Ramji Singh, son of Sah Ji and a relative of Vijaya Sinha were injured in the occurrence.



However, we observe that none of the injured persons have been examined in this case.

61. In our opinion, the learned Trial Court has correctly come to a finding that the prosecution has not been able to prove their case as far as respondent Nos. 2 to 11 are concerned as no specific role has been assigned to the said accused persons in commission of the said crime and their presence at the place of occurrence with an object to kill Satyendra Singh and also their participation in the alleged occurrence with an object to kill Satyendra Singh becomes highly improbable and thus, the said accused persons/respondents nos. 2 to 11 were given the benefit of doubt as the prosecution was not successful in proving the charges under Section 302/149 of IPC.

62. In an appeal against acquittal the principles which are required to be kept in mind are reiterated in the case of **H.D. Sundara vs. State of Karnataka** reported in **(2023) 9 SCC 581** Paragraph '8' thereof is being reproduced here under :-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal



against acquittal under Section 378 CrPC can be summarised as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

63. In our view, the acquittal of accused persons/respondents 2 to 11 needs no interference.

64. It is made clear that we are appreciating the evidence of the prosecution witnesses in relation to Respondents no. 2 to 11 and no part of the observation made in this judgment shall be used in the matters relating to the convicts of this case.



65. The appeal is dismissed.

66. Let a copy of the judgment be communicated to the learned trial Court and the records of the trial Court be sent back if not required in any other case.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	
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