

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.290 of 2017

Arising Out of PS. Case No.-55 Year-2004 Thana- ATRI District- Gaya

1. Deo Nandan Singh Son of Late Ganesh Singh.
 2. Parbhanjan Singh, Son of Sri Deo Nandan Singh.
 3. Babloo Singh, Son of Sri Ravindra Prasad Singh.
- All are residents of Village- Reula, Police Station- Atri in the district of Gaya.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 318 of 2017

Arising Out of PS. Case No.-55 Year-2004 Thana- ATRI District- Gaya

1. Umesh Singh Son of Late Suchit Singh, Resident of Village- Tetaru, Police Station- Atri in the District of Gaya.
2. Tanik Singh, Son of Sri Deo Nandan Singh, Resident of Village- Reula, Police Station- Atri in the District of Gaya.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 290 of 2017)

For the Appellants : Mr. Sunil Kumar, Advocate
Ms. Soni Srivastava, Advocate
For the State : Mr. Sujit Kumar Singh, Addl.PP
For the Informant : Mr. Binod Bihari Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 318 of 2017)

For the Appellants : Mr. Sunil Kumar, Advocate
Ms. Soni Srivastava, Advocate
For the State : Mr. Sujit Kumar Singh, Addl.PP
For the Informant : Mr. Binod Bihari Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 17-05-2024

These two criminal appeals are arising out of the judgment of conviction dated 18.02.2017 and the order of sentence dated 27.02.2017 passed by learned Additional District and



Sessions Judge-I, Gaya (hereinafter referred to as the 'trial court') in Sessions Trial No. 251 of 2006 (SJ) /9 of 2016 registered under Sections 147, 148, 149, 323, 324, 307 and 302 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act.

2. By the judgment under appeal, the learned trial court has found all the five accused persons guilty of the charge of the offence under Sections 302/34 IPC and Section 27 of the Arms Act. Accused Tanik Singh (A-5) and Umesh Singh (A-1) have been further held guilty for the offence under Section 325/34 IPC. Accused Deo Nandan Singh (A-3), Babloo Singh (A-2), and Prabhanjan Singh (A-4) have been found guilty of the charge for the offence punishable under Section 323 IPC. They have been sentenced to undergo rigorous imprisonment for life with fine of Rs.10,000/- for the offence punishable under Section 302/34 IPC and on default of payment of fine, convicts shall further undergo rigorous imprisonment for one year and all the convicts have been sentenced to undergo rigorous imprisonment for five years with fine of Rs.5,000/- each under Section 27 of the Arms Act and on default of payment of fine, convicts shall further undergo rigorous imprisonment for six months. Convicts Umesh Singh and Tanik Singh have been sentenced to undergo rigorous imprisonment for five years with fine of Rs.5,000/- each under Section 325/34 IPC



and in default of payment of fine, both the convict shall further undergo rigorous imprisonment for six months. Prabhanjan Singh, Deo Nandan Singh and Babloo Singh have been sentenced to undergo rigorous imprisonment for six months under Section 323 IPC. All the sentences are to run concurrently.

Prosecution Story

3. As per the prosecution story, the *fardbeyan* (Exhibit-12) of Janak Kishore Singh (PW-3) was recorded by A.S.I. J.K. Yadav of Magadh Medical Police Station (in short 'MMPS') on 04.09.2004 at 8:30 am in Anugrah Narayan Magadh Medical College and Hospital (in short 'ANMMCH'), Gaya in which the informant stated that on 03.09.2004, the Block Development Officer (in short 'B.D.O.') of Mohra Block had visited the village of informant for inquiry in respect of Indira Awas. **The** informant, his son and some people of his village had deposed against Ravindra Singh @ Panchu Singh, the Mukhiya of Sevatar Gram Panchayat and after inquiry when the B.D.O. went from Riula then on the same day at about 14:00 hours (i) Ravindra Singh @ Panchu Singh; (ii) Deo Nandan Singh; (iii) Prabhanjan Singh; (iv) Tanik Singh; (v) Babloo Singh; (vi) Ashok Singh; and (vii) Umesh Singh armed with weapons with common intention to kill encircled the informant and others in the paddy field situated to the



west of Devi Asthan and said that you people deposed against me and, therefore, now they should go to heaven to give evidence. After saying this, shouting at the prosecution party with an intention to kill, Ravindra @ Panchu Singh fired from the rifle in his hand upon Manohar Singh, the son of the informant. The shot first hit his left hand and after piercing the same, it went into the chest. When the informant and his son Mukesh went to save Manohar, then Deo Nandan Singh, Babloo and Prabhanjan Singh assaulted them by the butt of rifle and gun causing injury on head. The informant was assaulted by Tanik Singh, Ashok Singh and Umesh Singh on his left hand by butt of gun. The informant had become unconscious whereafter he was brought to ANMMCH on the same day and during treatment, Manohar Singh died.

4. The *fardebayan* of the informant was sent to Atri Police Station where a formal FIR giving rise to Atri P.S. Case No. 55 of 2004 under Sections 147, 148, 149, 323, 324, 307 and 302 IPC and Section 27 of the Arms Act was registered on 04.09.2004 at 04:45 PM. After investigation, police submitted chargesheet being Chargesheet no. 63 of 2005 dated 31.12.2005 against the accused persons whereafter the learned Chief Judicial Magistrate took cognizance of the offence on 18.01.2006. Thereafter, the records of the two accused, namely, Ashok Singh and Ravindra



Prasad @ Panchu Singh @ Ravindra Singh were separated. Records of the rest of the accused who are appellants before this Court were committed to the court of session where Session Trial No. 251 of 2006 was registered. The records were transferred to one court to another over the period and different trial numbers were registered in different courts. On 01.03.2007, charges for the offence under Section 302/34, 149, 307 IPC and 27 of the Arms Act were framed against the appellants after explaining them the charges in Hindi to which they pleaded not guilty and claimed to be tried. In course of trial, prosecution examined altogether 10 witnesses and exhibited 16 documentary evidences. The defence examined Dr. Anil Kumar Singh (DW-1) and Dr. Chitranjan Sharma (DW-2).

5. List of Prosecution witnesses:-

P.W. 1	Zilo Devi
P.W. 2	Jugal Mahato
P.W. 3	Janak Kishore Singh, Informant
P.W. 4	Mukesh Singh @ Tullu Singh
P.W. 5	Dr. Ajay Kumar Jha
P.W. 6	Rakesh Raman
P.W. 7	Dr. Asim Mishra
P.W. 8	Jugal Kishore Singh
P.W. 9	Kapildeo Singh
P.W. 10	Virendra Singh



6. List of Exhibits on behalf of Prosecution:-

Ext. 1	Signature of informant P.W. 3 on <i>Fardbeyan</i>
Ext. 1/a and Ext. 1/b	Signature of informant P.W. 3 on protest petition
Ext. 2 to 2/c	Injury report of injured identified by Dr. Ajay Kumar Jha (P.W. 5).
Ext. 3	Post-mortem report identified by Dr. Asim Mishra (P.W. 7) of Manohar Singh @ Hare Krishna son of Janak Kishore Singh
Ext. 7	Ext. F.I.R.,
Ext. 8	Letter no. 329 of D.R.D.A., Gaya
Ext. 9	Letter no. 265,
Ext. 10	Letter of D.D.C., Gaya.
Ext. 11	Letter no. 402
Ext. 12	Fardbeyan
Ext. 13	Endorsement on Fardbeyan
Ext. 14	Formal F.I.R.,
Ext. 15	C.C. of inquest report
Ext. 16	Petition regarding threatening given to witness Jugal Mahto

Findings of the Trial Court

7. After examining the evidences available on the record and upon consideration of the submissions of the prosecution as well as the defence, the learned trial court recorded a finding that this appellant along with other co-accused armed with deadly weapons had surrounded Manohar Singh (deceased) with an intention to kill him. Ravindra Prasad @ Panchu Singh @ Ravindra Singh told to the deceased that “AB BHAGWAN KE PAS JAKAR JANCH KARAOGE”. The court found that the



accused Ravindra Prasad fired shot from his rifle to Manohar Singh and the resultant bullet hit to the chest of the deceased after breaking the right hand and then the deceased fell down.

8. Learned trial court further believed the prosecution case that Janak Kishore Singh father of the deceased, Mukesh Singh brother of the deceased and Jugal Kishore Singh uncle of the deceased went to rescue the deceased Manohar Singh then accused persons, namely, Ashok Singh, Tanik Singh, Umesh Singh assaulted Janak Kishore Singh with kunda of gun and accused Deo Nandan Singh, Prabhanjan Singh and Babloo Singh also assaulted with kunda of rifle and gun to Mukesh Singh.

9. Learned trial court held that Dr. Ajay Kumar Jha (PW-5) had examined the injured deceased Manohar Singh and other injured Janak Kishore Singh and Mukesh Singh and he had found two injuries on the body of the deceased. Injury no. 1 firearm injury on the right hand of the deceased which had broken the right hand and injury no. 2 firearm injury on the chest of the deceased and both the injuries were charring of skin margin. PW-5 had also found some injuries on the body of Janak Kishore Singh (PW-3) and the injury on the left wrist of PW-3 was found grievous in nature and the doctor also found some injury on the body of Mukesh Kumar Singh caused by hard and blunt substance.



The trial court held that Rakesh Raman who is the Investigating Officer of the case has been examined as PW-6 has also supported the prosecution case during investigation. He had found some blood stain at the place of occurrence though most of the spot of the blood was washed off by rain. In ultimate analysis, the learned trial court found that the prosecution had partly proved all the facts and circumstances of the case and the appellants are found guilty of the charge for the offence punishable under Section 302 IPC.

10. Regarding charge under Section 307 IPC, learned trial court found that the said charge is not proved by the prosecution against these five accused persons but after perusal of the evidences regarding injury of the informant and Mukesh Singh, learned trial court held that accused Ashok Singh, Tanik Singh and Umesh Singh are guilty of the offence under Section 325/34 IPC and accused Prabhanjhan Singh, Deo Nandan Singh and Babloo Singh are guilty of the charge under Section 323 IPC. The charge under Section 149 IPC i.e. common object of murder could not be established by the prosecution party, hence, accused persons were not found guilty under Section 149 IPC. Regarding Section 27 of the Arms Act, the learned trial court held that the prosecution has established the case that the accused persons were armed with rifle and gun.



Submissions on behalf of the Appellants

11. Learned counsel for the appellants has submitted as under:-

(i) There is a substantive delay in giving *fardebayan* to ASI J.K. Yadav of MMPS by the informant (PW-3). The prosecution evidences would reveal that the occurrence took place on 02.09.2004 at 2:00 pm. The informant (PW-3) and PW-4 both were fully conscious. They reached ANMMCH, Gaya at about 4-4:30 pm. MMPS is situated within the premises of the ANMMCH but no information was given to the Police Station. The injured Manohar Singh was alive when he reached hospital and he died in course of treatment on 04.09.2004 at about 4 am. PW-3 gave his *fardebayan* on 04.09.2004 at 8:30 am and the same was sent to Atri Police Station on the same day whereafter the First Information Report was formally lodged at 16:45 hours (4:45 pm). The FIR was, however, seen by the learned I/c CJM, Gaya on 06.09.2004. Under these circumstances, the authenticity of the FIR becomes doubtful and there are huge chances of false implication of the family members of Ravindra Singh @ Panchu Singh, who is the main assailant in this case. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of (i) **Mehraj Singh versus State of U.P.** reported in (1994) 5 SCC 188 (ii)



Nandlal and Others versus State of Chattisgarh reported in
(2023) 10 SCC 470.

12. It is submitted that the prosecution has not been able to establish the genesis of the occurrence in this case. As per the prosecution witnesses, prelude to the present occurrence was an inquiry which was being conducted with regard to same complaint of financial embezzlement in the implementation of Indira Awas Yojana against Ravindra Singh (Mukhiya) who is appellant in Cr. Appeal (DB) No. 496 of 2017. The prosecution witnesses have stated that two government officials and several villagers had assembled at the Samudaik Bhawan but in course of trial, neither any government official nor any co-villager who might have been attended the inquiry have been examined and no beneficiary of Indira Awas Scheme has been examined as witness and there is no iota of evidence at all to conclusively prove that there was any gathering with regard to the complaint made against accused Ravindra Singh for misappropriation of money under the Indira Awas Scheme. It is submitted that the letters which were marked as Exhibit-2 to Exhibit-5 in Sessions Trial No. 141 of 2009 (State vs. Ravindra Singh @ Panchu Singh and Another) and marked as Exhibit-8 to 10 in Sessions Trial No. 173 of 2010 (State Vs. Umesh Singh and Another) to substantiate that some complaint



against the irregularities in the scheme of Indira Awas was made and there was some inquiry going on in respect of the said complaint, letters have been marked Exhibits with objection. Those exhibits were marked on the application filed by the prosecution and neither the maker thereof nor any formal witness has been examined by the prosecution to prove the content thereof. Thus, their contents cannot be looked into in accordance with law.

13. It is submitted that in this case, Zilo Devi (PW-1) is an interested witness and cannot be called independent. Her presence at the place of occurrence at the time of occurrence is not possible and she has made a belated statement before police after two days of the occurrence, therefore, she is a set up witness by the prosecution after due deliberation.

14. It is further submitted that Jugal Mahato (PW-2) was the ex-Mukhiya and had lost last election to Ravindra Singh @ Panchu Singh. In his examination-in-chief, he says that two consecutive shots were fired from the crowd, in paragraph '5', he states that a stampede took place after the firing. It is submitted that this witness did not turn up for further cross-examination after 13.08.2007. He filed an application dated 13.09.2007 allegedly in his signature saying that he had been threatened by the accused persons to depose according to their wishes. The learned trial court



did not direct any inquiry on the said application, no order was passed to provide him security to depose as a witness and his application dated 13.09.2007 has been exhibited as Exhibit-16 through PW-10, who is an Advocate Clerk. PW-10 has admitted in his cross-examination that this application was not written before him. It is further submitted that in this case, even though the prosecution witnesses have stated that co-villagers were present at the Samudaik Bhawan and 5-6 villagers were also there along with the informant and his son at the time of occurrence, no independent witness has been examined.

15. It is further submitted that A.S.I. J.K. Yadav of MMPS who recorded the *fardebayan* has not been examined in course of trial, he was a material witness, therefore, withholding of a material witness has caused prejudice to the defence. Out of 31 witnesses of the charge-sheet, only 10 witnesses in the trial and 7 witnesses (common to both trials) in the second trial were examined. The presence of material witness would have added to the quality of the evidence. It is also submitted that the prosecution has not established the place of occurrence and different prosecution witnesses have stated about different place of occurrence. It is submitted that it is a case of false implication of the appellants on account of the past enmity.



16. Learned counsel has also submitted that evidence of Doctor (PW-5) that there were two charring wounds on the person of the deceased is contrary to the prosecution case that there was a single shot fired by co-convict Ravindra Singh @ Panchu Singh. The second injury indicated in the postmortem report does not get any explanation as to how the same was caused, again raising a doubt as to the manner of occurrence. It is submitted that the finding of the grievous injury of Janak Kishore Singh has been given only on the basis of radiological report (X-ray) which is not on the record and the Radiologist Dr. R. K. Sharma has not been examined. On these grounds, it is submitted that the conviction of the appellants would not be sustainable.

Submissions on behalf of the Informant

17. Mr. Bipin Bihari Singh, learned counsel for the informant submits that there is no delay in giving the *fardbeyan* by PW-3. PW-3 was 37 years old, he was grievously injured and had become unconscious. The brother of the deceased was also injured and had become unconscious. The deceased had sustained firearm injuries under these circumstances, the only member along with them was Ram Ratan Singh who was the cousin of the deceased. Their prime motive was to save the life of the deceased and treat them seriously. It was PW-5 who was well aware of the incident,



therefore, when he regained consciousness, his *fardbeyan* was recorded in emergency ward at 08:30 am on 04.09.2004.

18. Learned counsel submits that there is no material inconsistencies much less any contradiction in the statement of the prosecution witnesses as regards the place of occurrence. PW-3 and PW-4 both have stated that the occurrence took place in the paddy crop field situated adjacent west to the Devi Asthan of the village. The I.O. (PW-6) has also corroborated the place of occurrence. He has stated that at the place of occurrence, he had found some blood like red mark. He has stated that the blood had been washed off at the place of occurrence because of rain.

19. Learned counsel further submits that in this case, there are two alive witnesses who are the informant Janak Kishore Singh (PW-3) and his son Mukesh Singh @ Tullu Singh (PW-4). They are the eyewitnesses and their presence at the place of occurrence cannot be doubted. Learned counsel submits that no material contradiction may be found in the evidence of these two witnesses. Learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of **Balu Sudam Khalde and Another Versus State of Maharashtra (Cr. Appeal No. 1910 of 2010 decided on 29.03.2023)**.



20. It is submitted that the evidence of injured witnesses has greater evidentiary value unless compelling reasons exist there, their statements cannot be discarded lightly. It is submitted that the prosecution has been able to establish the genesis and the manner of occurrence. In paragraph '4' of his evidence, PW-3 has stated that a scuffle took place between both the parties near Samudaik Bhawan. The genesis of the occurrence is clear. The informant and the deceased made a complaint about corruption committed by Mukhiya Ravindra Singh which led to an inquiry. It is for this reason, Ravindra Singh @ Panchu Singh went along with other accused and surrounded the deceased with common intention to kill him and injured the informant and his other son.

21. It is submitted that the Doctor has found charring margin injuries on the deceased and it has been established by the evidences that Ravindra Singh was standing towards East on road from where he shot at the deceased from a distance of 4 feet. Learned counsel submits that any person will be in standing position, his arm will be touching his chest. In this scenario, the bullet first hit the arm and broke right humerus bone and entered the chest. The bullet continuously broke the arm bone and entered the chest and reached the T6 vertebra. Learned counsel has, thus,



submitted that the wound of entry caused on the person of the deceased from the right arm to the surface of right lateral chest is one and single injury caused by single shot fired from the rifle which gets corroborated from the evidence of Dr. Ajay Kumar Jha (PW-5), who has initially examined the deceased and had found single entry wound with no exit injury and the same was the finding of Dr. Asim Mishra (PW-7) who conducted the autopsy on the dead body. Learned counsel submits that the two defence witnesses were only set up to save the main accused Ravindra Singh @ Panchu Singh (Mukhiya) and their evidences would not inspire confidence.

Submissions on behalf of the State

22. Learned Additional Public Prosecutor for the State has endorsed the submission of learned counsel representing the informant.

Consideration

23. We have heard learned counsel for the parties and perused the trial court records. We will first examine the submissions of learned counsel for the appellants as to the delay in lodging of the FIR. The materials available on the record would show that so far as the date and time of occurrence is concerned, the prosecution witnesses have consistently stated that the



occurrence took place on 03.09.2004 at 2:00 pm. The injured deceased, the informant (PW-3) and his own son Mukesh Singh @ Tullu Singh (PW-4) along with Soni (not examined) the grand daughter of the informant and Ram Ratan Singh (not examined) who was the nephew of the informant proceeded to ANMMCH, Gaya for treatment where they reached in between 4-4:30 pm. On way to Gaya, they had passed through Wazirganj where there is a police station but they did not stop. Although, the informant (PW-3) has stated in his *fardebayan* (Exhibit '12') that we (हमलोग) had become unconscious after receiving injury but on analysis of the evidence of PW-3 and PW-4, it has been found that they had not even fallen on the ground and had never lost their consciousness. To that extent, the statement of PW-3 in the *fardebayan* is not believable. In paragraph '6' of his cross-examination, he has categorically stated that he had not fallen on the ground after receiving assault. PW-4 has also stated in his cross-examination that he and his father jumped in the field where they were assaulted. He has further stated that they had not fallen down and at the time of lifting the injured Manohar Singh (since deceased), he, his father and others were there.

24. This Court finds that the MMPS is situated within the premises of the ANMMCH, Gaya but there is nothing on the



record to show that any information was given to the police station. Under what circumstances, no information was given to police station has not been explained by the prosecution. The *fardebayan* was recorded four and half hours after the death of Manohar Singh but in the *fardebayan*, PW-3 did not disclose the name of a single eye-witness. In explaining the delay, he seems to have come out with a concocted statement that he and his son (हमलोग) had become unconscious. PW-3 has stated in paragraph '7' of his cross-examination that his grand daughter Soni and his nephew Ram Ratan Singh had accompanied him to hospital. No one from village had accompanied them but there is no explanation as to why neither the statement of his grand daughter nor that of his nephew Ram Ratan Singh could be recorded.

25. We find that the *fardebayan* was forwarded to the Officer-Incharge Atri Police Station for information on the same day where the formal FIR was recorded on 04.09.2004 at 16:45 hours but the prosecution has not brought any evidence to show as to when was it dispatched to the court of learned CJM, Gaya. The formal FIR reached to the court of CJM Gaya on 06.09.2004 and was seen by the learned CJM on the same day.

26. On perusal of the inquest report (Exhibit '15') and the postmortem report of the deceased, it would appear that they



do not mention any sanha entry number or case number. As regards the delay in lodging the First Information Report, the Hon'ble Supreme Court, in the case of **Mehraj** (supra) held in paragraph '12' as under:-

“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 despatching 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.”

27. In the case of **Nandlal** (supra), the Hon’ble Supreme Court found that there was a delay of around four to five hours in lodging of the FIR which was not explained. The Hon’ble Supreme Court observed in paragraph ‘24’ as under:-

“**24.** Believing the contents of the FIR that the incident has taken place at around 8.30 p.m. and that the injured persons had reached Baloda Bazar at around 10-11 p.m. where they were informed that they could not be treated unless a report was lodged, a further delay of around four to five hours in lodging the FIR has not been explained. The distance between Baloda Bazar and Suhela Police Station is approximately 15 km. It has come on record that there is an all-weather road connecting the two places. As such, at the most, it would take around 30-40 minutes to reach Suhela Police Station from



Baloda Bazar. This delay of four hours in lodging the FIR is not at all explained.”

28. Further, in paragraphs ‘29’, ‘30’ and ‘31’, the Hon’ble Supreme Court has observed 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.

30. We may gainfully refer to the following observations of this Court in Ramesh Baburao Devaskar v. State of Maharashtra⁹: (SCC p. 509, para 19)



“19. In a case of this nature, enmity between two groups is accepted. In a situation of this nature, whether the first information report was ante-timed or not also requires serious consideration. First information report, in a case of this nature, provides for a valuable piece of evidence although it may not be a substantial evidence. The reason for insisting on lodging of first information report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eyewitnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a first information report is always considered to be vital.”

31. As held by this Court in Ramesh Baburao⁹, the FIR is a valuable piece of evidence, although it may not be substantial evidence. The immediate lodging of an FIR removes suspicion with regard to over implication of number of persons, particularly when the case involved a fight between two groups. When the parties are at loggerheads, the immediate lodging of the FIR provides credence to the prosecution case.”

9. (2007) 13 SCC 501 : (2009) 1 SCC (Cri) 212



29. From the discussions made hereinabove, we are of the considered opinion that in this case, there is a substantive delay in giving the *fardbeyan* by PW-3 and sending the FIR to the learned Jurisdictional Magistrate, however, that alone cannot be a ground to throw away the whole prosecution case. We will examine the evidence of prosecution witnesses and determine the evidentiary value of the prosecution evidences in the context of charges framed against these appellant.

30. Undisputedly, this case rests upon the evidence of highly inimical, related and interested witnesses. No doubt two of them, namely, Janak Kishore Singh (PW-3) and Mukesh Kumar @ Tullu Singh (PW-4) are said to be the injured witnesses. In the case of **Vadivelu Thevar and Another versus State of Madras** reported in **AIR 1957 SC 614**, in paragraphs '11' and '12', the Hon'ble Supreme Court held as under:-

“**11.** In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that “no particular number of witnesses shall, in any case, be required for the proof of any fact”. The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular



number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in *Sarkar's Law of Evidence* — 9th Edition, at pages 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in S. 134 quoted above. The section enshrines the well recognized maxim that “Evidence has to be weighed and not counted”. Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be



forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such



testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.”

31. It is well settled that in the category of “wholly reliable witness”, there is no difficulty for the prosecution to seek conviction on the basis of the testimony of such a witness. In case of “wholly unreliable witness”, the Court would have no difficulty in rejecting the testimony of a “wholly unreliable witness”. The real difficulty comes in case of the third category of evidence where the Court finds that the prosecution witnesses are partly reliable and partly unreliable. It has been held that in such cases, the Court is required to circumspect and separate the chaff from the grain and seek further corroboration from reliable testimony, direct or circumstantial.



32. Since the aforesaid propositions have been settled by the Hon'ble Supreme Court, this Court would analyse the evidence of the prosecution witnesses. PW-1 Zilo Devi has deposed in her examination-in-chief that at the time of occurrence, she was present at Devi Asthan, the deceased was also there. This witness states that the named accused persons armed with rifle and gun came there, surrounded the deceased and Panchu Singh shot at the deceased from his rifle as a result whereof the deceased fell down. This witness has stated that when his father Janak Kishore Singh and brother Mukesh Singh came ahead to save the deceased, they were also assaulted by the accused persons by the butt of gun and rifle.

In her cross-examination, this witness has stated in paragraph '2' that she came to the place of occurrence after hulla. In paragraph '3', she has stated that at the place of occurrence, many other persons had come but she does not know their names. She has stated that after about 15 minutes, the deceased was lifted on a cot and was taken to the hospital. In paragraph '4', she has stated that in her statement before police she had stated that she was working as a labourer for Janak Kishore Singh (PW-3) and others. Her statement was recorded by police after two days of the occurrence. On perusal of the deposition of PW-1, it would appear



that she has not stated about the presence of PW-3 and PW-4 at the place of occurrence when the deceased was shot at by Panchu Singh. She does not say that all the accused persons had surrounded the informant and his sons. This witness has stated that she came after hearing hulla whereafter she had seen the occurrence. To this Court, it appears that this witness was not present at the place of occurrence when the occurrence took place. She is not supporting the prosecution case based on the *fardebayan* of PW-3 that all the accused persons had surrounded the informant and his sons. She is saying that the place of occurrence is Devi Asthan whereas the prosecution case is that the place of occurrence is the paddy crop field situated adjacent West to Devi Asthan. This witness is, therefore, not a reliable witness.

33. PW-2 is Jugal Mahato, who has stated that he was at Devi Asthan at the time of occurrence. According to him, the accused persons had surrounded the deceased whereas the *fardebayan* of PW-3 is that the accused persons had surrounded him and his sons (हमलोग). This witness has stated that he was Mukhiya of Reula Gram Panchayat for 22 years. He had lost the last election against Ravindra Singh. In his cross-examination, in paragraph '3', this witness has stated that the BDO and one another officer had come for inquiry but no meeting took place at the place of



occurrence and they left the place after the occurrence started. In paragraph '4' of his cross-examination, he has stated that the firing was made from the crowd. It appears that this witness was not fully cross-examined. He did not appear for his further cross-examination and sent an application dated 13.09.2007 (Exhibit '16') saying that he was being threatened by the accused persons to give the evidence in their favour. The application dated 13.09.2007 said to have been submitted by PW-2 has been proved by an Advocate Clerk, namely, Birendra Singh who had deposed as PW-10. This Court, therefore, finds that the deposition of PW-2 cannot be looked into because he did not undergo the test of complete cross-examination.

34. In this case, the two star witnesses are Janak Kishor Singh (PW-3) and Mukesh Kumar Singh @ Tullu Singh (PW-4) who are the father and brother respectively of the deceased Manohar Singh. It is PW-3 who had given his *fardebayan* in which he has stated that the accused persons had surrounded him and others (हमलोग) but in course of trial in his cross-examination, he states that the accused persons surrounded the deceased in the paddy crop field West to Devi Asthan. In *fardebayan*, PW-3 has stated that he had become unconscious after assault but in his examination-in-chief, he does not say so. In paragraph '6' of the



cross-examination, he says that he had not fallen down after receiving the assault. This Court further finds that in the *fardbeyan*, PW-3 says that local persons and family members brought them to ANMMCH but in his evidence, he is silent on who brought the injured to the hospital. Further, this Court finds that in his *fardbeyan* (Exhibit '12'), PW-3 does not name any witness but in trial (paragraph '5'), he says that when proceeded for his house, with him his son, 5-6 villagers were accompanying. He has also stated that at community centre, there were about 100 villagers. Again, in paragraph '6' of his cross-examination, this witness makes contradictory statement saying that the accused persons had surrounded them, he (हमलोग) was 5-6 persons and he further says that these accused persons were in the paddy field. In paragraph '7', this witness says that he, his son Mukesh, his grand daughter Soni (not examined) and his nephew Ram Ratan Singh (not examined) had gone to hospital, no one from village had accompanied them to hospital. This witness has stated in paragraph '9' that he had submitted his nomination for Mukhiya in the Election of 2001 but had withdrawn the same on the request of Ravindra Singh @ Panchu Singh. He has further stated that the wife of the deceased had contested the Mukhiya Election in 2006.



35. If the deposition of PW-3 is read together with the deposition of PW-4, it would be found that PW-4 has been making materially different statements in course of trial. He states in his examination-in-chief that the accused persons surrounded them but in paragraph '5', he says that no one from village was there when the accused persons surrounded them. This is contrary to what has been stated by PW-3 that about 5-6 villagers were accompanying him while moving at the place of occurrence. PW-4 has further stated in paragraph '6' that the accused persons had intercepted (छेक लिया) from East side and he has further stated that they had intercepted only from one side, therefore, his own statement in examination-in-chief that accused persons had surrounded him and others in the paddy field gets contradicted. In paragraph '6' of his cross-examination, PW-4 states that Manohar Singh (deceased) had jumped into the paddy field and was standing when Panchu Singh fired on him. He has stated that the field is situated West to the road and Panchu had fired from the road. Thus, the whole prosecution case that all the accused persons had surrounded the informant and his sons in the paddy field where Panchu had fired on Manohar Singh gets contradicted.

36. PW-4 has stated that he and his father jumped into the field to save Manohar Singh where they were assaulted but



they had not fallen down. This witness has again stated that at the time of lifting the injured Manohar Singh, he, his father and others were there. From the deposition of PW-4, it is evident that neither PW-3 nor PW-4 had become unconscious at the place of occurrence, they had not even fallen down on the earth, therefore, PW-3 while giving his *fardebayan* (Exhibit '12') made a false statement that after assault given to him, he had become unconscious. PW-3 and PW-4 are giving different scene of crime and the sequence of occurrence. In the opinion of this Court, these two witnesses are though injured witnesses but considering that they are inimical, related and interested witnesses who have tried to make even false statement to the extent of saying that they had become unconscious after assault would place them in the category of neither wholly reliable nor wholly unreliable.

37. PW-5 is Dr. Ajay Kumar Jha who had examined the injured and deceased when he was alive, the informant (PW-3) and Mukesh Kumar Singh @ Tullu (PW-4) in ANMMCH. We will take the evidence of Dr. Ajay Kumar Jha (PW-5) and Dr. Asim Mishra (PW-7) together. It is PW-7 who had conducted autopsy on the dead body of the deceased Manohar Singh. On perusal of the evidence of PW-5, it is found that he had found the following injuries on the body of Manohar Singh:-



- “1. 18cm × 10cm × bone deep lacerated wound on medial aspect of right arm. Right humerus bone is broken. Charring of skin margin present.
2. 6cm × 2cm × muscle deep lacerated wound on lateral aspect of right half of the chest charring of skin margin present.

This witness had examined Janak Kishore Singh (PW-3) aged about 77 years and had found the following injuries:-

- “1. 4cm × 3cm bruise over left forearm near wrist.
2. 2cm × 1cm bruise over posterior aspect of lower part of neck. Mark of identification, mole near inner canthus of right eye. Time of injury within six hours. Nature of weapon, some hard and blunt substance. Nature of wound-opinion reserved till X-ray report is made available.”

38. Regarding injury no. 1 of PW-3, PW-5 submitted a supplementary injury report on the basis of X-ray report of Dr. R.K. Sharma, Radiologist and opined that the X-ray report of left wrist joint AP and lateral view shows fracture through lower end of radius. This injury has been found grievous in nature. The injury no. 2 sustained by PW-3 has been found simple. In course of his cross-examination, PW-5 has stated that injury no. 2 of PW-3 was superficial in nature. As regards injury no. 1 of PW-3, he had expressed his opinion on the basis of the report of the Radiologist.



However, in course of trial, the report of the Radiologist has not been proved.

PW-5 had also examined Mukesh Kumar Singh (PW-4). He found one injury on his body i.e. 4cm×3/10 cm× muscle deep lacerated wound on vault of skull. The nature of wound was simple and the nature of the weapon is said to be some hard and blunt substance.

PW-5 has opined that the nature of injury caused to Manohar Singh was grievous and the nature of weapon was some firearm. The injury reports of the deceased, Mukesh Kumar Singh (PW-4) and the informant (PW-3) have been marked Exhibits '2', '2/a', '2/b' and '2/c' respectively.

39. PW-7 has proved the postmortem report of the deceased which has been marked Exhibit '3'. The postmortem report shows the following antemortem injuries:-

- “1. Lacerated wound 6”×5”×bone deep present at anteromedial side of right arm with fracture of underlying portion of bone. Laceration of intervening muscles and blood vessels were present. The lower two inches were stitched by sutures, the corresponding surface of the right lateral chest wall has a stitched lacerated wound measuring 4”×2”× bone deep extending posteriorly up to posterior axillary line at the level of T6 vertebra. The underlying bones of chest were normal.
2. Grazing abrasion ranging from 1/2”×1/2”× to 1”×3/4” present involving right side of forehead, lateral aspect of



right eye or above eyebrow, right side of face of mandibular area. No foreign element was recovered from the above mentioned injuries.”

40. In his cross-examination, PW-7 has stated that if the firearm is fired from close range, it generally causes blackening, charring around the wound. There is no charring or blackening around the injury no. 1. No exit injury was found on the person of the deceased. No foreign body was found inside the body of the deceased. No bullet or pellet was found inside the body of the deceased. He found that it is not a fact that in absence of wound of exit, absence of bullet or pellet inside the body, absence of any sign caused by the gases emitted from the barrel, injury no.1 cannot be said to be caused by firearm. Grazing injury is like abrasion. In paragraph ‘4’ of his cross-examination, PW-7 has stated that it is a fact that some anti-social elements and relatives of the deceased had put pressure upon him to note down the postmortem report on a blank paper and he did so. He made complaint about it to his Principal and the authorities including the C.J.M., Gaya. The postmortem is counter-signed by Dr. Arvind Prasad. From the evidence of PW-7, it appears that he had noted two injuries on the body of the deceased. The injury no. 2 is said to have been caused by hard and blunt substance which is not the case of the prosecution. But the statements made by him in



paragraph '7' of his depositions casts serious doubt over the authenticity of the postmortem report showing two injuries on the body of the deceased which is completely contrary to the prosecution case.

41. On a careful perusal of the injury reports and the evidence of PW-5 and PW-7, this Court finds that so far as the death of Manohar Singh is concerned, the injury report (Exhibit '2') clearly shows that there was a 18cm × 10 cm × bone deep lacerated wound on medial aspect of right arm. Right humerus bone was broken and the doctor found charring of skin margin present. PW-5 had also noted lacerated wound of 6cm × 2cm × muscle deep on lateral aspect of right half of the chest, charring of skin margin present. The injury report (Exhibit '2') as regards the deceased Manohar Singh corroborates the ocular evidence of the prosecution witnesses that Manohar Singh was killed by firing which took place in the occurrence.

42. So far as the injuries caused to PW-3 and PW-4 are concerned, PW-5 has found that those have been caused by hard and blunt substance but there is no medical evidence on the record that the injuries suffered by PW-3 and PW-4 were caused by the butt of the rifles. Here, it is important to note that PW-3 and PW-4 both have stated that at the Samudaik Bhawan, large number



of villagers had assembled, the Block Development Officer and another officer had come to inquire into the complaint made against the embezzlement of money in Indira Awas Scheme. PW-3 has stated in paragraph '5' that the inquiry officers reached the Samudaik Bhawan from where they left within five minutes because quarrel/scuffle had started. Thus, this Court finds that the scuffle between the parties started at the Samudaik Bhawan itself where according to PW-3, at least 100 persons from the village had assembled. PW-3 states that within half minutes of his movement with his sons and 5-6 persons from Samudaik Bhawan, the accused persons had surrounded him and his sons. His statement in paragraph '6' that when he and his sons were surrounded, there was no crowd cannot be believed. He himself says that there were 5-6 persons but he had not disclosed about those 5-6 persons. The conduct of PW-3 in not disclosing the name of eye witnesses in the fardbeyan (Exhibit '12') would create huge doubt in the mind of this Court. PW-3 is trying to suppress the manner in which the quarrel/scuffle started at Samudaik Bhawan which led to the firing upon Manohar Singh in the field adjacent west to Devi Asthan.

43. To this Court, it appears that in the said scuffle which took place at Samudaik Bhawan, the supporters from both the sides indulged in physical battle. PW-3 is 77 years old and it is



possible that in order to save himself, he might have suffered a blow by hard and blunt substance in Samudaik Bhawan. Similarly, Mukesh Kumar Singh @ Tullu (PW-4) who was also present in the Samudaik Bhawan when the scuffle took place seems to have suffered the simple injury.

44. This Court finds that the presence of these appellants carrying rifle and gun has been stated generally in the fardbeyan. According to the prosecution, 3 persons assaulted PW-3 by butt of rifle, neither the injury noticed by PW-5 corresponds to size of the butt of the rifle or gun nor the IO (PW-6) has made any investigation on this point and no independent witness at all has been examined in this case. PW-3 and PW-4 are inimical witnesses, though are said to be injured witnesses also.

45. The witness Jugal Kishore Singh (PW-8) has stated in his examination-in-chief that accused persons had intercepted Manohar Singh. This witness does not say that the accused persons had surrounded Manohar Singh or the informant and his another son Mukesh Kumar Singh. Regarding the injury caused to Janak Kishore Singh (PW-3) and Mukesh Singh, this witness says that Tanik Singh and Umesh Singh assaulted by butt of the gun to Janak Kishore Singh. He does not name Ashok Singh as assailant of Janak Kishore Singh. Ashok Singh is appellant in



Criminal Appeal (DB) No. 341 of 2017. PW-3 has implicated him in his *fardebayan* and in course of trial. But PW-8 who is the brother of PW-3 comes out with only two names who assaulted PW-3. PW-8 comes out with a statement that Ashok Singh assaulted him on his back by butt of the gun but PW-8 does not claim to have gone to any doctor, he has not proved any injury on his body and from his deposition, it is evident that he is making an altogether different statement from that of PW-3 and PW-4 as regards the role of Ashok Singh.

46. The evidence of I.O. Rakesh Raman (PW-6) would show that he had visited the place of occurrence i.e. the paddy crop field and found that there was something like blood at the place of occurrence but it seems that some rain had fallen and he had not taken the sample of blood like substance from the place of occurrence. PW-6 has stated a very important fact that he did not remember whether the paddy crops were trampled in the field where the occurrence took place, he admits that he has not mentioned it in the case diary. He had not found any empty cartridge or bullet at the place of occurrence and he had not examined the officers who had gone for inquiry in the matter of embezzlement of fund of Indira Awas. From the evidence of I.O. (PW-6), it is found that the investigation of this case has been done



in a shoddy manner and most of the aspects of the prosecution case which were required to be investigated and proved in course of trial have not at all been investigated by PW-6.

47. This Court further finds from the statement of the accused-appellants recorded under Section 313 CrPC that all the incriminating material against them by the prosecution witnesses were not brought to the notice of the appellants and all the appellants were asked identical questions. For the sake of ready reference, the questions put to the appellants are being reproduced hereunder:-

“प्रश्न:-1 आपने सभी गवाहों की गवाही सुनी है क्या कहना है ?

उत्तर:- जी हाँ ।

प्रश्न:-2 आपके विरुद्ध साक्ष्य है कि आपने अन्य अभियुक्तों के साथ मिलकर दिनांक 3.9.2004 समय दिन 2 बजे दिन में घटना स्थल ग्राम -रिउला देवी स्थान के सटे धान के खेत में थाना अतरी जिला गया में सभी अभियुक्तगण मनोहर सिंह के जान मारने के मान्य उद्देश्य से राइफल एवं अन्य घातक हथियार से लैश वो घटना के दिन बी0 डी0 ओ0 साहेब जाँच में आये थे जिसमें मृतक ने गवाही दिया था इसी कारण से मृतक को गोली मार दिया जो मृतक का दहिना हाथ तोड़ते हुए सीना में लगय गया सूचक का लड़का टुल्लु उर्फ मुकेश बचाने आया तो उसको भी राइफल के कुण्डा से मारकर गंभीर रूप से जख्मी कर दिये तथा सूचक को भी मारपीट किये । इसी घटना में मनोहर सिंह की मृत्यु हो गई ।

उत्तर:- जी नहीं ।

प्रश्न:-1 सफाई में क्या कहना है ।

उत्तर:- निर्दोष हैं साक्ष्य देंगे ।”

48. It may be noticed from the above statement recorded under Section 313 CrPC that when Umesh Singh came for



statement under Section 313 CrPC, he was not informed that PW-3 and PW-4 have deposed in course of trial that he along with Tanik Singh and Ashok Singh had assaulted the informant by butt of the gun. Similarly, when Babloo Singh, Deo Nandan Singh and Prabhanjan Singh came for making statement under Section 313 CrPC, they were told that when the son of the informant Mukesh Kumar Singh @ Tullu Singh came to save then he was also assaulted by butt of the rifle causing him grievous injury. This Court finds that as per the prosecution case, Babloo Singh, Deo Nandan Singh and Prabhanjan Singh are said to have assaulted the son of the informant by butt of the rifle and gun and the son of the informant had suffered one simple injury. Therefore, what was told to these appellants at the time of their statement under Section 313 CrPC were not as per the prosecution evidence on record. Regarding the assault to the informant (PW-3) only a vague statement was made to all the appellants in this case that they had beaten the informant also whereas the prosecution case was specific that when the informant went to save his son, he was assaulted by Tanik Singh, Ashok Singh and Deo Nandan Singh by butt of the rifle and gun. This Court, therefore, finds that an important right conferred to the accused at the stage of 313 CrPC



have not been duly provided to them and this will too prove fatal to the prosecution.

49. The cumulative effect of the substantive delay in giving *fardbeyan* by PW-3, contradictions in the statements of the prosecution witnesses which this Court has noticed hereinabove and in absence of any independent witness even as about 100 persons were present at the Samudaik Bhawan would prove fatal to the prosecution.

50. In the present case, the learned trial court has not been able to establish that there was a common object of the accused persons to commit murder, therefore, the charge under Section 149 IPC has not been put. The trial court, however, proceeded to declare that the accused persons are found guilty of the charge of the offence under Section 302/34 IPC. There is no discussion in the judgment of the learned trial court that as to how the appellants would be found guilty of commission of murder with common intention. It is well known that under Section 34 IPC, the two elements that constitute the crime are the common intention and the participation in the crime while those in the case under Section 149 IPC are the common object and the participation in the unlawful assembly. On analysis of the evidences on the record, we find that there is no evidence on the



record to establish conclusively the element of common intention which is necessary to establish the charge under Section 302/34 IPC. Reference in this regard may be made to the judgment of the Privy Council in the case of **Mahbub Shah v. King-Emperor** reported in **AIR 1945 PC 118**, **Mamand v. Emperor** reported in **AIR 1946 PC 45**, **Fazoo Khan v. Jatoo Khan**, reported in **AIR 1931 Cal 643** and **Kripal v. State of U.P.** reported in **AIR 1954 SC 704**.

51. In the opinion of this Court, it would not be safe to convict the appellants on the testimony of PW-3 and PW-4. They are inimical, related and interested witnesses. The appellants seem to be the family members of the main accused Ravindra Singh @ Panchu Singh and the delay in giving the *fardbeyan* by PW-3 would take this Court to conclude that there are chances of false implication of the family members of co-convict Ravindra Singh @ Panchu Singh at a belated stage.

52. Since this Court finds that the very presence of the appellants at the place of occurrence armed with rifle and gun at the scene of the occurrence have not been proved beyond all reasonable doubts, the conviction of the appellants for the offence punishable under Section 302/34 IPC and Section 27 of the Arms Act would not be sustainable. Similarly, the conviction of Tanik



Singh and Umesh Singh under Section 325/34 IPC and conviction of Deo Nandan Singh, Babloo Singh and Prabhanjan Singh for the offence under Section 323 IPC are liable to be set aside and accordingly, set aside by this Court.

53. In result, these appeals are allowed.

54. The appellants are on bail, they are discharged from the liabilities of their respective bail bonds.

(Rajeev Ranjan Prasad, J)

(Jitendra Kumar, J)

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