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Jharkhand High Court

Case No: Death Reference Case No. 1 of 2000 (R) with Cr. Appeal No"s. 115 and 130 of 2000 (R) with Govt. Appeal No. 17 of 2000 (R)

State of Bihar	APPELLANT
Vs	
Surendra Singh Rautela alias Bengali Surendra Singh Rautela alias Surendra Singh Bengali Vs State of Bihar Md. Anis Vs State of Bihar State of Bihar Vs Md. Anis	RESPONDENT

Date of Decision: Dec. 18, 2000

Acts Referred:

- Arms Act, 1959 - Section 2, 27, 27(3), 5, 7
- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 235(2), 313, 354(3), 366, 377(3)
- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 149, 299, 300, 302, 307

Citation: (2001) 49 BLJR 78 : (2001) CriLJ 1650 : (2001) AIR Jhar HCR 76 : (2001) 1 EastCriC 139

Hon'ble Judges: V.K. Gupta, C.J; M.Y. Eqbal, J

Bench: Division Bench

Advocate: Laljee Sahay, app, T.R. Bajaj, Randhir Singh, A. Kumar, Arun Kumar Sinha and Nitu Singh, for the Appellant;

Final Decision: Dismissed

Judgement

M.Y. Eqbal, J.

Reference has been made by the 5th Additional Judicial Commissioner, Ranchi u/s 366

of the Code of Criminal Procedure for confirmation of death sentence of the convict Surendra Singh Rautela alias Surendra Singh Bengali, whereas the said convict filed Criminal Appeal No. 115/2000 (R) for setting aide the judgment and order and another convict Md. Anis filed Criminal Appeal No. 130/2000 (R) for setting aside the judgment and order passed by the said Court. The appellant-State of Bihar also filed Govt. Appeal No. 17/2000 (R) u/s 377(3) of the Code of Criminal Procedure for enhancement of punishment of life imprisonment of the convict Md. Anis to death penalty. All these cases have been heard together and are being disposed of by this judgment.

2. Appellant Surendra Singh Rautela alias Surendra Singh Bengali has been convicted for the offence u/s 302 of the Indian Penal Code and also u/s 307 of the Indian Penal Code and is sentenced to Rigorous imprisonment for life and further the said appellant Surendra Singh Bengali is sentenced to be hanged till death for the offence u/s 27 Sub-section 3 of the Arms Act. Another Appellant convict Md. Anis has been convicted for the offence u/s 302/34 of the Indian Penal Code and sentenced to Rigorous imprisonment for life and also convicted u/s 307/34 of the Indian Penal Code and sentenced to rigorous imprisonment for Ten years and also sentenced to rigorous imprisonment for seven years u/s 27 Sub-section 1 of the Arms Act.

3. The prosecution case as stated in the FIR is that on 4.4.1996 at 10 a.m. the informant Ranjan Singh alongwith his maternal uncle Dhananjay Singh and their body-guard Shyam Bihari Singh and Karu Singh were going to their site on his Maruti Car bearing registration No. MZV 2484. These persons were going to their site where contract work was going on. Car was being driven by the informant Ranjan Singh and his maternal uncle Dhananjay Singh was sitting beside him and in the back seat his personal body-guards Shyam Bihari Singh and Karu Singh were sitting. Said Shyam Bihari Singh was holding revolver of the informant who is the licensee. When at about 10.20 a.m. they reached near Military Chowk at Booty Road, one black coloured Yamaha Motorcycle, on the rear seat of which Surendra Singh Bengali was sitting came from behind at the right gate of the car started firing by Sten-gun at the informant. The informant pushed himself behind. In the meantime, there was firing from the left side of the car also. Informant''s maternal uncle cried loudly. Further case of the prosecution is that the informant turned the car towards left side for saving them and stopped it near traffic post and then informant saw that he had received bullet injuries on his chest and hand and his maternal uncle had received bullet injuries on the right side of his chest. After tiring, Surendra Singh Bengali and his associates fled away towards west. At that time some police personnel came there and took the informant and his maternal uncle in injured condition to the Rajendra Medical College Hospital and there the doctor has declared Dhananjay Singh dead. Informant Ranjan Singh was put on medical treatment. The informant further stated in the fardbeyan that he had identified the person who was driving Yamaha Motorcycle and the person who had fired from the left side riding on scooter. Reason for the occurrence has been stated, to be that Surendra Singh Bengali had demanded Rs. Two lakhs as Rangdari and he had told him 2-3 times but the informant refused to give Rangdari and out of that

reason Surendra Singh Bengali and his associates fired at the informant and others causing injuries to them and the death of his maternal uncle Dhananjay Singh.

4. On the fardbeyan of the informant Ranjan Singh formal FIR was lodged at the Lalpur police station. After investigation, the Investigating Officer submitted charge-sheet against these two accused-persons, namely, Surendra Singh Rautela alias Bengali and Md. Anis. Cognizance of the offence u/s 302/307/324/34 of the Indian Penal Code was taken against these two accused-persons by the Chief Judicial Magistrate, Ranchi. The Chief Judicial Magistrate, Ranchi committed the case to the Court of Session and finally the case was transferred to the Court of 5th Additional Judicial Commissioner, Ranchi for trial and disposal.

5. Charges under Sections 302/307 of the Indian Penal Code were framed against the accused-persons, namely, Surendra Singh Rautela alias Bengali and Md. Anis and charges were explained to them who pleaded not guilty and claimed to be tried. On the prayer of the prosecution to add another charge u/s 27 of the Arms Act against the accused-persons and after hearing the parties prayer of the prosecution was allowed. Charge u/s 27 of the Arms Act was also framed and was ex- plained to the accused-persons, Surendra Singh Rautela alias Bengali and Md. Anis who pleaded not guilty and claimed to be tried. Accused-persons were accordingly examined u/s 313 of the Cr PC. They are also pleaded not guilty but declined to adduce any evidence in defence.

6. The prosecution in support of its case examined altogether 14 witnesses. PW 1 Rampal Singh is father of the informant, PW 2 Surendra Lal is formal witness on inquest report, PW 3 Om Prakash is own brother of the informant, PW 4 Shyam Bihari Singh, who has been declared hostile, PW 5 Kundan Prakashan is another brother of the informant, PW 6 is the doctor who has conducted postmortem examination of the dead-body of Dhananjay Singh, PW 7 is the informant Ranjan Singh. PW 8 is another doctor, V.K. Jain, who has examined Ranjan Singh. PW 9 is Md. Sanaullah, one of the Investigating Officer of the case who has also recorded fardbeyan of the informant, PW 10 is Sri Ishratullah, Judicial Magistrate, Ist class, who has conducted T.I.P. of the convict Md. Anis in jail. PW 11 is Victor Anthony who alongwith Dy. S.P. Sri Abdul Mir Gani and Civil Jamadar Sudarshan Singh brought the accused Surendra Singh Rautela alias Bengali under arrest in connection with this case from Calcutta. PW 12 is Asstt. Director (Blastic), R.F.S.L. PW 13 is Rajiv Ranjan Kumar, who is another Investigating Officer in the case and PW 14 Naresh Bahadur Singh, S.I. posted at Kotwali police station.

7. The trial court has scrutinised and analysed the evidence of the prosecution witnesses in detail and discussed the evidence of the witnesses including the Doctors and the Forensic expert who examined bullet which was recovered from the body of the deceased. The trial court further took notice of the confessional statement of the accused Surendra Singh Rautela alias Bengali on the basis of which fire arms used in the occurrence of the case has been recovered and came to a conclusive finding that the

charges against the appellants have been proved beyond all reasonable doubts and accordingly held that both the appellants are guilty of the charges and liable to be convicted and sentenced to death and life imprisonment respectively.

8. Mr. T.R. Bajaj, learned counsel for the appellants assailed the impugned judgment and order of conviction and sentence passed by the trial court as being illegal and against the weight of the evidence or record. Learned counsel submitted that the trial court has failed to appreciate the evidence on record in its right perspective and the judgment and order of conviction is bad in law.

9. Learned counsel firstly submitted that the delay in sending the FIR has not been sufficiently explained by the prosecution. The occurrence took place on 04.4.1996 at 10.20 a.m. and FIR was drawn on the same day but it was sent to the Court on 6.4.1996, learned counsel then submitted that even the place of the occurrence has not been proved. Learned counsel then submitted that the bullet which was found in the body of the deceased has not been produced in the court. Learned counsel submitted that although there is evidence that bullet was handed over to the constable for giving it to PW 9 the Investigating Officer but PW 9 in his evidence has stated that he never received any bullet from the hospital. Learned counsel further referred the evidence of PW 12, the biastic expert who has stated that one bullet was received by his office only on 19.8.1998. Learned counsel tried to show us the contradiction in the evidence of the concerned witnesses on the fact that although bullet was kept in a sealed cover envelope but the same was received in plastic container. Learned counsel submitted that the bullet which has been examined by PW 12 is not the same which had been recovered by the Doctor from the body of the deceased. Learned counsel further submitted that the arms which have been recovered on the basis of confessional statement made by the accused Surendra Singh Rautela alias Bengali has not been produced in the court. Those arms were not even sent for examination by the expert and there is no evidence that the same bullet was used by the said arms which caused the death of the deceased. Learned counsel has further submitted that there is no evidence to prove that bullet found in the dead-body or bullet examined by the expert can be said to have been fired from any weapon which have been found and recovered from the Ceramic factory on the confessional statement of the accused. Learned counsel submitted that on the basis of confessional statement arms were recovered and for that separate case was instituted under the Arms Act at Tantisilwai police station. According to the learned counsel in such circumstances the weapons in question being not incriminating article in this case even if the recovery of the same is made as a result of confessional statement and therefore, Section 27 of the Evidence Act will have no application. Mr. Bajaj then submitted that the Investigating Officer examined the car at Kotwali police station in which after the occurrence PW 4, Shyam Bihari Singh was found driving and was found in possession of the arms. The said Investigating Officer in his evidence has stated that he did not find any blood stain either inside or outside of the car. He also did not find any bullet mark on any part of the car in question either inside or outside inspite of the fact that according to the

informant firing on the car had been done in a discriminating manner both from the right and the left side which goes to show that the occurrence did not take place inside the car and in the manner the prosecution made out a case. Learned counsel then submitted that most important witness, namely, Karu Singh who was admittedly sitting in the car has not been examined and non examination of Karu Singh demolish the prosecution story. Learned counsel further submitted that neither the seizure list witness nor any independent witness including the guards who brought the injured to the hospital have been examined.

10. Mr. Bajaj, learned counsel appearing for the appellants then submitted that so far identification of the appellant no. 2 Md. Anis is concerned, this accused was in custody since 17.3.1997 and there is nothing to show as to under what circumstances his Test Identification Parade could not be done prior to 24.7.1997. It is contended that the accused Md. Anis was shown to the witness before holding of the T.I. Parade in order to facilitate his identification in the jail. An attempt was made by the prosecution to get T.I. Parade held on 4.7.1997. Learned counsel submitted that PW 7 who identified the accused, himself is a criminal and that witness was not supported by any other witness who was sitting in the car. Learned counsel lastly made alternative argument that in case sentence of life imprisonment is up held by this court then in no circumstance the death sentence of the appellant Surendra Singh Rautela alias Bengali can be sustained in law.

11. Mr. Laljee Sahay, learned counsel for the State, on the other hand, supported the judgment and order of conviction and sentence passed by the trial court. Learned counsel firstly submitted that the occurrence took place on 4.4.1996 and on the same day FIR was drawn. Thereafter FIR was sent to the Court of Chief Judicial Magistrate, Ranchi on5.4.1996. Since, 5.4.1996 was holiday on the occasion of Good Friday, the FIR was received and sent by the Chief Judicial Magistrate on 6.4.1996. According to the learned counsel there is no delay in sending FIR with regard to place of occurrence learned counsel drawn our attention to the evidence of PW 1, 3, 5, 7 and 9 who has consistently supported the version of the informant about the place of occurrence. Learned counsel drawn our attention to the evidence of PW 7 and submitted that blood stain and bullet mark was found in the car. So far non-examination of Karu Singh is concerned, learned counsel submitted that said Karu Singh died before the commitment of the case to the Court of Session which is evident from the order-sheet of the trial Court. Learned counsel then submitted that the seizure list which was prepared for the arms recovered on confessional statement of accused Surendra Singh Rautela alias Bengali was brought in this case and have been marked Ext. 10 to 10/5. Learned counsel lastly submitted that no defence from the side of the accused-persons have been taken nor any suggestion was given to the prosecution witnesses about the change or tempering of the bullet or not existence of blood stain or bullet mark in the car in which the informant and the deceased sustained injuries by fire-arms.

12. From the judgment of the trial court, we find that the trial court has recorded categorical finding in respect of place of occurrence and the manner the offence was

committed by the accused-persons. The contention of Mr. Bajaj, learned counsel for the appellants that the place of occurrence has not been proved is devoid of any substance. From perusal of the fardbeyan and the FIR it appears that informant Ranjan Singh very categorically stated that the occurrence took place near the Military Chowk. PW 7, Ranjan Singh in his evidence reiterated that as and when the Maruti Car reached Sainik Chowk near the residence of Senior Superintendent of Police at Booty Road, accused-persons came in the motorcycle and started firing at the informant and the occupants of the car. PW 9 the Investigating Officer in his evidence stated that after getting information on wireless he had gone to the place of occurrence and from there he had gone to the hospital and had taken the fardbeyan of the injured Ranjan Singh. The said witness further stated about the place of occurrence at Booty Road in front of residence of Senior Superintendent of Police, Ranchi near Military Chowk. The FIR was drawn up by PW 9 in presence of PWs 1, 3 and 5 who have fully supported the case of the prosecution that the occurrence took place at Military Chowk near the residence of Senior Superintendent of Police.

13. The next contention of Mr. Bajaj is that no blood stain or bullet marked was found in the car is also without any basis. PW 7 in para 27, 28 and 29 of the evidence during cross-examination by the defence has stated that the car was damaged due to firing. It was further stated that the Maruti car was seized by the police and after its release it was sent to garrage for repair where bullet marks were found in the seats of the car also. Apart from that from the deposition of the injured Ranjan Singh, it appears that as soon as he and the deceased Dhananjay Singh received firearm injuries, police personnels came there from the residence of Senior Superintendent of Police, Ranchi, both were taken out from the car and were taken to Rajendra Medical College Hospital. The trial court therefore rightly took the view that there was no possibility of any blood marks either in the car or on the road. The doctor (PW 8) had seen blood on the clothes of the injured Ranjan Singh at the time of examination. PW 8 has stated that he had found fire arm injuries on the interior aspect of the right arm on the charred margin and also on the left side upper chest wall. Injury report has been marked as Ext 4, which goes to show that the injuries were inflicted by fire-arm on vital portion of the body. Type of injuries further indicate that it had been caused with intention to kill the injured.

14. Regarding non-examination of Karu Singh, it appears that the case was committed to the Court of Session on 6.1.1998 and before the commitment of the case to the Court of Session, Karu Singh died on 16.12.1997. The said fact was brought to the notice of the court by the prosecution by filing a petition and the same has been mentioned in the order-sheet of the trial court dated 01.2.2000. The statement of Karu Singh in the case diary fully supported the case of the prosecution.

15. The next contention of Mr. Bajaj, learned counsel for the appellants is that there is no evidence that the same bullet which was recovered from the dead-body of the deceased was sent for examination and the same bullet was used by the arms recovered on the confessional statement of appellant Surendra Singh Rautela alias Bengali. Learned

counsel further contended that the bullet was examined after about two years. In this regard, it is worth to refer the evidence of prosecution witnesses PW 6, Doctor A.K. Choudhary, who conducted the post-mortem examination of the dead-body of Dhananjay Singh has very categorically stated that the bullet found inside the body was filled weapon and the said bullet was sent to the Investigating Officer under sealed cover through constable. PW 13, Rajiv Ranjan Kumar, the Investigating Officer in para 21 of his evidence has very categorically stated that the bullet was received from Rajendra Medical College Hospital on 18.9.1997 and he received it after putting his signature in the register maintained by the said hospital. It has further come in evidence that after submission of charge-sheet the said bullet was sent for examination by the order passed by the Chief Judicial Magistrate, Ranchi.

16. Now we shall consider the evidence of prosecution witnesses and also to find out whether the trial court has correctly appreciated the evidence of those witnesses, PW 1 Rampal Singh is the father of the informant who has stated that at 11 a.m. when he learnt that Surendra Singh Bengali had injured his son and Sala Dhananjay Singh by firing and they have taken to Rajendra Medical College Hospital, he rushed to the hospital where he found his son injured and Dhananjay Singh was declared deed. He was told by his son Ranjan Singh that near the residence of Senior Superintendent of Police, Ranchi, Surendra Singh Bengali with other criminals fired with Sten-gun and revolver and injured them. He further stated that the cause of alleged occurrence is due to demand of rupees two lacs as Rangadari from his son for which telephonic call had also been received in his presence. PW 3 Om Prakash, another brother of the informant has reiterated the same fact which has been stated by his father. He has further stated that fardbeyan was recorded in his presence by the police over which he also signed. PW 4 Shyam Bihari, Singh said to be the body-guard of the informant at the time of alleged occurrence, has stated that the occurrence took place at Karamtoli Chowk. He further stated that as soon as he alongwith the informant and other occupants of the car reached Karmatoli Chowk one of the tyre of the car got punctured and firing took place when he was changing punctured tyre of the car. The witness was then declared hostile. The trial court took notice of the fact that part of the evidence of this witness supports the case that some persons had come at scooter and had fired at Ranjan Singh and Dhananjay Singh causing injuries to then. PW 5 Kundan Prakashan is brother of the informant who has also narrated the facts and supported the version of the informant. PW 6 the doctor had found fire-arms injuries and gave his opinion that the injuries were caused by fire-arms. In cross-examination he has stated that he had not seen the bullet of the Carbine or Sten-gun but he has opined that the injuries might have been caused by Carbine or Sten-gun. PW 7 the informant is the witness of the occurrence and received injuries by the use of fire-arms. He has categorically stated that he had received injury by firing from the side of Surendra Singh Bengali and his associates. The informant narrated the entire facts which took place on the date of occurrence and further stated that he had identified the persons who were firing from the scooter. The trial court after considering the entire evidence has come to a conclusion that some persons had fired by Sten-gun and revolver

at the informant and the deceased Dhananjay Singh causing his death and injury to the informant. PW 8 Dr. VK. Jain who examined the informant has stated in his deposition that injuries found on the person of the injured was caused by firearms. He has also stated that in the clothes which the injured was wearing at the time of examination, there was blood.

17. PW 9, Md. Sanaullah, who is Investigating Officer of this case proved fardbeyan and the FIR which have been marked Ext 1 and 5 respectively. This witness has stated that when he reached Rajendra Medical College Hospital, he learnt from A.S.I. Shailendra Kumar Singh that due to fire-arms injuries Dhananjay Singh has died. This witness then prepared the inquest report with carbon copy marked as Ext. 6. The confessional statement of Surendra Singh Bengali has been brought on record. In his confessional statement accused has stated that he had kept the fire-arms in the Bharat Mineral and Ceramic Industry. The accused further confessed that these arms were used in the occurrence of the case. From the seizure-list it appears that many other fire- arms alongwith Sten-gun had been recovered from M/s Bharat Mineral and Ceramics Industry on the confessional statement and identification of the accused Surendra Singh Bengali. The trial court rightly came to the conclusion that confessional statement of the accused Surendra Singh Bengali leading to the recovery of Sten-gun alongwith other fire-arms and ammunitions is admissible into the evidence and in absence of any contradiction it will be presumed that the said recovered Sten-gun and other firearms had been used in the commission of the offence. The confessional statement further finds support from the evidence of PW 12 Ezaj Ahmad Khan, who is Assistant Director, Ranchi Regional Forensic Science Laboratory that the bullet which he had examined was of 9 mm automatic pistol or the Sten-gun. PW 14 Naresh Bahadur Singh, who was the officer in-charge Tantisilwai police station stated in his evidence that on the basis of confes-sional statement of the accused Surendra Singh Bengali, he took out fire arms from M/s Bharat Mineral and Ceramic Industry, Mahilong in his presence and the seizure list was prepared.

18. Besides the above, PW 13 the Investigating Officer has stated that on 24.6.1997 accused Surendra Singh Bengali was brought before him in Lalpur police station and he was taken into custody. He further stated that said accused made confessional statement before him that he had kept fire-arms used in the occurrence of this case at M/s. Bharat Mineral and Ceramic Industry, Mahilong. The witness then went to Tantisilwai police station alongwith accused and from there he and other police officers, went to the said factory on the identification of the accused Surendra Singh Bengali from where many fire-arms including one Sten-gun was recovered, PW 13 has proved the confessional statement of the accused Surendra Singh Bengali and seizure list was prepared which has been proved and marked Ext. 10 to 10/5.

19. Analysing entire evidence of the prosecution witnesses; it is proved that the deceased Dhananjay Singh had been killed by firing by Sten-gun and the informant Ranjan Singh had received fire-arms injuries on the chest and arm. It is also proved that on the basis of

confessional statement of the accused Surendra Singh Bengali Sten-gun and another fire arms used in the occurrence of this case had been recovered on his identification from M/s. Bharat Mineral and Ceramic Industry, Mahilong and the said fire arms were used as confessed by accused Surendra Singh Bengali in killing Dhananjay Singh and causing injuries to the informant.

20. Now, I shall discuss the evidence of the witnesses with respect to another accused Md. Anis. The said accused has been identified by the informant Ranjan Singh at the time of occurrence. The informant in his evidence has stated that the officer incharge of Lalpur police station told him on 4.4.1997 to go and identify in the T.I. Parade one accused who had been caught and since he had gone out the informant went alongwith officer incharge to jail on 24.7.1997 where in presence of the Magistrate, the informant identified the accused Md. Anis. The informant also identified this accused in the court at the time of his deposition. No contradiction has come in evidence of the informant PW 7 during cross-examination. The Judicial Magistrate who was examined as PW 10 has stated that on the order of Chief Judicial Magistrate, Ranchi he conducted T.I. Parade of the accused Md. Anis in jail in connection with this case and that witness Ranjan Singh identified the accused Md. Anis from amongst 10 persons standing in a row at the time of T.I. Parade. The Magistrate further stated that the informant Ranjan Singh told him that this accused Md. Anis had fired from the left side. The trial court therefore rightly came to the conclusion that there is nothing in the cross-examination of the informant to disbelieve him. There are ample evidence to the effect that this accused Md. Anis had also fired at the informant and the deceased by revolver in furtherance of common intention of other accused-persons including Surendra Singh Bengali. It is, therefore, clear that accused-persons, namely, Surendra Singh Bengali and Md. Anis and other two persons who were driving motorcycle and the Vespa Scooter cause the death of Dhananjay Singh and injured informant Ranjan Singh. It is worth to mention here that certified copy of the order-sheet of G.R. case no. 2246/96 corresponding to Hatia P.S. case no. 163/96 has been filed to show that the accused Md. Anis had surrendered in the court of Judicial Magistrate on 17.3.1997 and so there was no occasion to the prosecution to get him identified. After the accused surrendered on 17.3.1997, he remained in custody and therefore it can not be accepted that the said accused got identified by the police before T.I. Parade was conducted.

21. From the evidence discussed herein above, it is proved without any contradiction that the informant at a distance of 5-6 feet saw the accused Surendra Singh Bengali using fire-arms and firing on the car in an indiscriminating manner and also identified another accused Md. Anis who was firing from revolver and both with common intention to kill the informant and the occupants of the car. It has not been disputed that the informant sustained severe injuries and he is eye-witness to the occurrence. It is also evident that the informant who is eye-witness received injuries and his fardbeyan was recorded on the basis of which FIR was drawn up. The evidence of the eye-witness is consistent with the FIR and is supported by the medical evidence. In such circumstances evidence of sole

witness has to be relied upon. In this connection reference may be made to the decision of Apex Court in the case of Karunakaran v. State of Tamil Nadu 1976 SC 383.

22. At this stage we must also point out that it is not a case where firearms were recovered on the confessional statement of the accused from the place which was open and accessible to all but as a matter of fact care had been taken by the accused to conseal the fire-arms used in the commission of the crime in an almirah in the factory, namely, M/s. Bharat Mineral and Ceramic Industry which is not open and accessible to all persons. It was therefore not possible for the police to recover those fire-arms from that place without confessional statement of the accused Surendra Singh Bengali. This circumstances by itself appears to be a sufficient guarantee of the truth and authenticity of the recovery of fire-arms from the said place. As noticed above, the weapons were recovered at the instance of accused Surendra Singh Bengali and seizure list to that effect was prepared which has been brought on record and the police officers who were witnesses to the recovery have been examined as witnesses. In these circumstances therefore, non examination of any other persons on the point of recovery by itself does not introduce any serious infirmity in the evidence. In this connection reference may be made to the decision of Apex Court in the case of Mst. Dalbir Kaur and Others Vs. State of Punjab,

23. The last contention of Mr. Bajaj was that the occurrence alleged to have taken place in a public place at Military Chowk near the residence of Senior Superintendent of Police, Ranchi which is a very busy place but no independent witness has been examined by the prosecution. The submission of the learned counsel has now weight in the facts and circumstances of the present case, it has come in evidence that Surendra Singh Bengali has already been convicted and sentenced to life imprisonment in Sessions Trial No. 46/89. It has also come in evidence that 22 Sessions Cases are pending against the said accused and out of that 11 cases are of the year 1996 and 2 cases are of the year 1999. It has also come in evidence that the accused Surendra Singh Bengali used to demand Rangdari Tax and involved in the commission of various other crimes. The said accused is a terror and has terrorised the people of the locality. Normally in such circumstances the ordinary citizen and people of the locality do not dare to go against the accused as they might be afraid of deposing against such accused-persons. The prosecution case therefore cannot be thrown out or doubted on that ground. This question was considered by the Apex Court in the case of Appabhai and Anr. v. State of Gujarat 1988 SCC 228 . Their lordship observed :

"In the light of these principles, we may now consider the first contention urged by the learned counsel for the appellant. The contention relates to failure of prosecution to examine independent witnesses. The High Court has examined this contention but did not find any infirmity in the investigation. It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus-stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that

civilized people are generally insensible when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between/two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate but is there every where whether it is village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court therefore instead of doubting the prosecution case for want of independent Witness must consider the broad spectrum or the prosecution version and the search for the nugget of truths with due regard to probability if any, suggested by the accused.

24. Lastly, learned counsel for the appellants high-lighted some contradictions and discrepancies in the evidence of prosecution witnesses. Minor discrepancy in evidence cannot be a ground to reject the entire testimony. It is well settled that the Court while appreciating the evidence must not attack undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal error, perception or observation should not be given importance. It is equally well settled that when a doubt arises in respect of certain facts alleged by witness, proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story.

25. In a recent decision, the Apex Court in the case of State of Himachal Pradesh Vs. Lekh Raj and Another, while considering the similar question observed :

"In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancies has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution"s case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the Courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in Ousu Varghese v. State of Kerala, held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In Jagdish v. State of M.P., this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. More congruity or consistency is not the sole test in the depositions. This Court again in State of Rajasthan v. Kalki, held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental

disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal persons".

26. Taking into consideration the entire facts and circumstances of the case and analysing and scrutinising the entire evidence, we do not find any error in the judgment and order of conviction passed by the trial court. We therefore, up- hold the conviction and sentence passed by the trial court whereby both the accused-persons have been sentenced to life imprisonment u/s 302, 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act.

27. Now I, shall consider the question of confirmation of death sentence of one of the accused Surendra Singh Rautela alias Bengali for the offence committed u/s 27 Sub-section 3 of the Arms Act

28. Mr. T.R. Bajaj learned counsel for the appellants on this point submitted that even if it is found that death had been caused by prohibited fire-arms and ammunitions, sentence of death can not be awarded for the reason that similar provisions u/s 303 of the Indian Penal Code has been declared ultra-virus and unconstitutional. Learned counsel further submitted that in absence of established and cogent evidence that only Sten-gun was used and no other fire-arms were used the sentence of death is bad in law and unjustified. The trial court after coming to a finding that the bullet which had been found in the chest of the deceased Dhananjay Singh in the post-mortem examination was fired from the Sten-gun by the accused Surendra Singh Rautela alias Bengali held that Sten-gun is a prohibited ammunition under the Arms Act and also in view of the notification of the Central Government it is a prohibited arms. The only sentence provided under the Act is death penalty. Hence the trial court sentenced the said accused Surendra Singh Rautela alias Bengali to be hanged till death for the offence u/s 27, Sub-section 3 of the Arms Act subject to confirmation of this sentence by this court.

29. For better appreciation Section 27 of the arms Act is worth to be looked into which reads as under :

"27. Punishment for using arms etc.--(1) whoever uses any arms or ammunition in contravention of Section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) Whoever uses prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of Section 7 and such use or act results in the death of any other person, shall be punishable with death."

30. Prohibited arms has been defined u/s 2(i) of the Act. From the definition it is manifest that prohibited arms includes those arms also which have been notified by the Central Government by notification in official gazette specify any arms as prohibited arms. It has not been disputed by the appellants that Sten-gun is not a prohibited arm. In that view of the matter in terms of Sub-section 3 of Section 27, if any person uses, any prohibited arms or ammunition and causes death of any person is liable to be punished with death. In view of this provision the trial court took the view that the court has no option but to pass an order of sentence of death and under that provision the court was left with no option but to sentence the accused to death. I am not in agreement with the view taken by the trial court. If the court on appreciation of evidences comes to a finding that the crime indulged was gruesome/ cold blooded, heinous, atrocious and cruel then the accused can be sentenced to death. In such circumstance, conviction and death sentence u/s 27(3) of the Arms Act is unwarranted.

31. Before discussing the question, I would first like to refer some of the decisions of the Apex Court dealing with the death sentence. In the case of Bachan Singh v. State of Punjab, 1980 SC 898, a Constitution Bench of the Apex Court while considering the question whether death penalty is violative of Article 21 of the Constitution, held as under:--

"With great respect, we find ourselves unable to agree to this enunciation, as we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors depends on the facts and circumstances of the particular case. More often than not, these two aspects are so entertained that it is difficult to give a separate treatment to each of them. This is so because style is the man. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist."

32. In the case of Balwant Singh v. State of Punjab 1976 SC 230, the Apex Court holding that death sentence can be awarded only under special reasons held as under :

"It would thus be noticed that awarding of the sentence other than the sentence of death is the general rule now and only special reasons, that is to say, special facts and circumstances in a given case, will warrant the passing of the death sentence. It is unnecessary nor is it possible to make a catalogue of the special reasons which may justify the passing of the death sentence in a case. But we may indicate just a few, such

as, the crime has been committed by a processional or a hardened criminal, or it has been committed in a very brutal manner or on a helpless child or a woman or the like. On the facts of this case, it is true that the appellant had a motive to commit the murder and he did it with an intention to kill the deceased. His conviction u/s 302 of the Penal Code w as justified but the facts found were not such as to enable the court to say that there were special reasons for passing the sentence of death in this case."

33. In the case of Ediga Anamma v. State of Andhra Pradesh 1974 SC 799, their lordships observed as under :

"Let us crystallise the positive indicators against death sentence under Indian Law Currently. Where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to down-grade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciating. It long, may persuade the Court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being u/s 302 read with Section 149, or again the accused has acted suddenly under another''s instigation, without premeditation, perhaps the court may humanely opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the crime. On the other hand, the weapons used and the manner of their use, the horrendous features of the crime and hapless, state of the victim and the like, steel the heart of the law for a sterner sentence. We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. A legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectify to the extent possible, abandoning retributive ruthlessness, amending the deterrent creed and accepting the trend against the extreme and irrevocable penalty of putting out life."

34. In the case of Machhi Singh and Ors. v. State of Punjab 1983 SC 957, the Apex Court while laying down the guidelines for imposing the punishment of death sentence held as under :

"In this background the guidelines indicated in Bachan Singh''s case (supra) will have to be called out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh''s case :

(i) The-extreme penalty of death need not be inflicted except in gravest cases of extreme culpability ;

(ii) Before opting for the death penalty the circumstances of the "offender" also require to be taken into consideration along with the circumstances of the "crime".

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided and only provided, the option to impose sentence of imprisonment for life can not be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be a struck between the aggravating and the mitigating circumstances before the option is exercised."

35. In a case of State of Tamil Nadu Vs. Rajendran, the Apex Court has held that in a reference case made to the High Court under Aricle 366 of the Cr PC by the Session Judge passing a sentence of death, the High Court has to satisfy itself whether the case beyond reasonable doubt has been made out against the accused for infliction of extreme penalty of death. Proceeding before the High Court in such cases require appraisal and reassessment of the entire facts and law so that it may come to its independent conclusion.

36. In the case of Earabhadrappa v. State of Karnataka , their lordship observed that death sentence should not be passed except in the rarest of rare cases. Their lordships further held that a sentence or pattern of sentence which fails to take due account of the gravity of the offence can seriously undermine respect for law. It is the duty of the court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment as a measure of social necessity as a means of deterring other potential offenders. Failure to impose a death sentence in such grave cases where it is a crime against the society particularly in cases of murders committed with extreme brutality will bring to caught the sentence of death provided by Section 302 of the Penal Code.

37. In the case of Shankar @ Gauri Shankar and Others Vs. State of Tamil Nadu, , the Apex Court held that the choice as to which one of the two punishments provided for murder is the proper one in a given case will depend upon the particular circumstances of the case and the court has to exercise discretion judicially and on well recognised principles after balancing all the mitigating and aggravating circumstances of the crime. The Court has also to see whether there is something uncommon about the crime which renders sentence of imprisonment of life inadequate and call for death sentence. The nature of the crime and the circumstances of the offender should be so revealing that the criminal is a menace to the society and the sentence of imprisonment of life would be inadequate.

38. Coming back to the instant case, as noticed above, the offence has been committed in broad day light by firing with Sten-gun and other fire-arms causing death of Dhananjay Singh and injuries to the informant, Ranjan Singh. It is also clear from the evidence that the accused, Surendra Singh Bengali committed pre-planned cold blooded murder for greed in achieving his object of collecting Randari tax. It is well settled that what circumstances bring a particular case under the category of rarest of rare cases vary from case to case depending upon the nature of the crime, weapon used and the manner in which it is perpetrated etc.

39. It has not been disputed by the appellant, Surendra Singh Bengali that 22 Sessions cases of murder, robbery, dacoity etc, are pending against him and even after the instant case 11 cases have been instituted against him in the year, 1996 and two cases have been instituted in 1999. It has also not been disputed by the appellant that in one Sessions case the accused, Surendra Singh Bengali has been convicted and sentenced to life imprisonment. It is, therefore, evident that the nature of the crime which the accused, Surendra Singh Bengali has committed is uncommon and the circumstance is so revealing that the accused, Surendra Singh Bengali has become a menace to the society and for that the sentence of imprisonment of life u/s 302, IPC would not be adequate. It is also proved that the offence committed by accused, Surendra Singh Bengali was gruesome, cold blooded, heinous, atrocious and cruel and he has proved to be ardent criminal and thus a menace to the society. It is, therefore, an exceptional and rarest of rare cases where sentence of death against the accused, Surendra Singh Bengali would be adequate punishment.

40. The evidence on the record leaves no room for doubt that the appellant had, on several occasions, tried to take law on his own hand and that led up to the murder which was committed after premeditation with lethal weapons and in broad day light when there was really no occasion for any (sic) vocation. There was no justification for murdering Dhananjay Narayan Singh for he had not even a contractor or got any contract in his name. There is, therefore, no extraneous circumstances to justify the lesser sentence.

41. For the reasons aforesaid, judgment of conviction and order of sentence of tlie trial Court is modified to the extent that the accused, Surendra Singh Bengali, shall be sentenced to death under Sections 302 and 307 of the Penal Code and further we confirm the conviction of life imprisonment of the appellant, Md. Anis under Sections 302, 307 read with Section 34 of the Penal Code. Accordingly both the Criminal Appeal Nos. 115/2000 (R) and 130/2000 (R) filed by the appellants and the Govt. appeal No. 17/2000 (R) filed by the state are dismissed. Consequently, the death reference No. 1/2000 is answered accordingly.

Vinod Kumar Gupta, C.J.

42. I have the privilege of going through the elaborate, lucid and very well reasoned judgment of my learned brother M.Y. Eqbal, J and I fully agree and concur with the same.

However, I do wish to add a few words of my own with regard to the question : whether conviction of appellant Surender Singh Rautela @ Bengali u/s 27 (3) of the Arms Act and death sentence for the same should be upheld or not?

43. The learned Sessions Judge convicted the appellant Surender Singh Rautela u/s 302, IPC and sentenced him to life imprisonment. He simultaneously convicted him u/s 27(3) of the Arms Act and passed death sentence against him for this offence.

44. The question which requires our consideration is whether it is permissible in law to try and accused-person simultaneously for offences u/s 302, IPC as well as Section 27(3) , Arms Act, even if it is the allegation of the prosecution that the accused caused the death of the deceased by using a prohibited arm or ammunition. Section 27 has been extracted by my learned brother Eqbal, J in the body of his judgment. It clearly stipulates a situation where an accused uses a prohibited arm or a prohibited ammunition and such use results in the death of a person and if that happens, the accused is punishable with death sentence. Section 302, IPC lays down that whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine. Section 299, IPC defining culpable homicide says that whoever causes death by doing, an act with the intention of causing death or with the intention-of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Culpable homicide becomes the offence of committing murder, as per Section 300, IPC which says that culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death or with such other intention or knowledge as are mentioned in clauses secondly, thirdly and fourthly of the said section and subject to such exceptions as are contained therein. When, therefore, a person is charged with committing an offence u/s 302, IPC, that is, committing the offence of murder, it has direct relation with all the necessary ingredients of Section 299 read with Section 300, IPC which clearly provide that the act of causing death with the intention of causing death or the intention of causing such bodily injury, as is likely to cause death or with the knowledge that the accused is likely to cause death etc. etc., the intention and knowledge, popularly called as "mensures" therefore being essential ingredients of offence for committing murder u/s 302, IPC, can it be said that despite charging such an accused u/s 302, IPC, he can also be charged simultaneously for committing an offence punishable u/s 27(3) of the Arms Act? In our opinion, this is not permissible in law.

45. All that Section 27(3) says is that a person will be sentenced to death if he uses a prohibited arm or prohibited ammunition and the use of such arm or ammunition results in the death of another person. A person causing the death of another by using a prohibited arm may be accused of, or can be held guilty of committing an offence u/s 302, IPC as well or there can be a situation where his use of prohibited arm or prohibited ammunition and death being caused of someone by the use of such arm or ammunition may not amount to his committing an offence of murder. Both sets of situations are different. In the latter case, there being no question of his being charged u/s 302, IPC, charge u/s 27(3)

Arms Act may be sustainable. But if in a situation and on certain facts and circumstances a person is accused of causing murder punishable u/s 302, IPC, full with the ingredients of murder offence as discernible from a combined reading of Sections 299 and 300, IPC and even if that accusation says that the murder was committed through the use of a prohibited arm or prohibited ammunition, charge u/s 302, IPC by itself is sustainable and is sufficient, and in such a situation charging an accused additionally u/s 27(3) Arms Act will be totally superfluous and not required at all. As I have indicated above, charge u/s 27(3) of the Arms Act can be sustained and might be permissible only if there is no further charge or accusation that the accused by the use of prohibited arm which resulted in the death of someone, had the intention or the knowledge of causing such death and therefore was guilty of committing murder.

46. Viewed thus, I am of the firm opinion that the conviction of appellant Surendra Singh Rautela alias Bengali u/s 27(3) of the Arms Act cannot be sustained because even the framing of the charge under this section was not either required or even permissible under law. His conviction and sentence, accordingly, u/s 27(3) of the Arms Act is set aside with all the consequences.

47. Death reference accepted after modification and appeals dismissed.