

**The State of Bihar Vs Dablu @ Dabla Mandal, Sikki @ Sikia Mandal and Mannu Mandal
 Rudo Mandal and Others Vs The State of Bihar**

Court: Patna High Court

Date of Decision: April 16, 2010

Acts Referred: Arms Act, 1959 â€” Section 27

Criminal Procedure Code, 1973 (CrPC) â€” Section 366

Penal Code, 1860 (IPC) â€” Section 149, 302, 323, 34, 436

Hon'ble Judges: Dharnidhar Jha, J; Chandra Mohan Prasad, J

Bench: Division Bench

Judgement

Dharnidhar Jha, J.

The batch of four appeals and the Death Reference arise out of the judgment of conviction dated 18.12.2007 passed

by Fast Track Court - II, Banka in Sessions Trial No. 642 of 2002 by which the appellants Dablu alias Dabla Mandal, Sikki alias Sikia Mandal

and Mannu Mandal were held guilty of committing offence u/s 436/34 of the Indian Penal Code and each of them was sentenced to undergo R.I.

for life. They were also convicted u/s 27 of the Arms Act and each of them was directed to suffer R.I. for five years as also to pay a fine of rupees

two thousand. There was no order as to what could be the sentence in case of default in paying the fine. The above three appellants were

convicted also u/s 302 of the IPC and were directed to be hanged by their necks till each of them was dead. Besides, the appellants Dablu alias

Dabla Mandal and Sikki alias Sikia Mandal were also found guilty of offence u/s 323 of IPC and each of the two was directed to suffer R.I. for

one year. Having inflicted the extreme penalty u/s 302 of IPC upon the three above noted appellants, the learned trial judge made the reference u/s

366 of the Code of Criminal Procedure. They have also preferred Cr. Appeal No. 55 of 2008 to question their conviction and sentence passed on

them.

2. As regards the appellants of remaining three appeals, each of them was to suffer R.I. for life after being convicted u/s 436/34 of the IPC. One

out of the remaining 18 appellants, namely, Gopali Mandal, was found guilty also of committing offence u/s 323 of the IPC and he was directed to

suffer RI for one year. The conviction and sentence passed upon the remaining 18 appellants is being assailed in Cr. Appeal No. 54 of 2008, 107

of 2008 and 172 of 2008. During the pendency of the appeals, appellant Chhote Lal Mandal of Cr. Appeal No. 54 of 2008 and Shankar Mandal

of Cr. Appeal No. 172 of 2008 died and as such, their appeals abated as appears from order passed on 7.8.2009 in Cr. Appeal No. 54 of 2008

and on 15.10.2009 in Cr. Appeal No. 172 of 2008. The Death Reference as also the four appeals have been heard together and they are being

disposed of by this common judgment.

3. The charges related to an occurrence having taken place on the 13th of November, 2000 at about 8 A.M. at village Goradih, Police station -

Rajaun, District - Banka. The prosecution case is contained in Ext. 2, the Fardbeyan of Smt. Soma Devi (P.W. 2), mother of the three deceased

persons, namely, Sunil Mandal, Dilip Mandal and Shibal alias Shiv Narayan Mandal. The informant stated that at about 8 A.M. on 13.11.2000,

twenty five accused persons named in the FIR with 10-15 unknown others as also 8 - 10 female un-named accused came to the house of the

informant. The accused persons were armed with lathi, bhala, garasa, etc. Out of the above mob of accused persons, appellants Dablu Mandal,

Mohril Mandal and Mannu Mandal started firing shots from their country made guns, upon which the three deceased persons, i.e., the three sons

of the informant (P.W. 2), namely Shibal alias Shiv Narayan Mandal, Dilip and Sunil, in order to saving themselves, entered inside the house of one

Basudeo Singh (not examined). It is alleged that before entering into the said house of Basudeo Singh, Dilip Mandal and Shibal alias Shiv Narayan

Mandal had already been injured. In the meantime, appellant Dablu Mandal caught and fired into the temple of one of them. It is not clearly stated

as to who was shot in his temple by appellant Dablu Mandal. Appellant Gopali Mandal, Raju Mandal, Subhash Mandal and Shankar Mandal

dragged someone towards the darwaja of Kameshwar Thakur. Again the informant does not name as to who was dragged towards the darwaja of

Kameshwar Thakur by the four accused.

4. It was further alleged by P.W. 2 that all the accused persons put a ladder on the ventilator of the house of Basudeo Singh, broke the ventilator

and thereafter threw a burning ball of straw inside it. Some of the accused persons entered inside the house of Basudeo Singh and shot and killed

Dilip Mandal and Shiv Narayan Mandal.

5. The informant stated that she inferred that her two sons, i.e., Dilip Mandal and Shiv Narayan Mandal had been killed when she heard the sound

of firing and also saw appellants Mohril Mandal, Sikki alias Sikia Mandal and Mannu Mandal coming out of the house of the said Basudeo Singh.

The informant stated that she and her family members were wailing and weeping so as to seeking help of others and also called some other family

members in that behalf, upon which, appellant Mohril Mandal, Gopali Mandal, Sikki alias Sikia Mandal and Dablu Mandal and others started

dealing blows upon the informant with the butt of the gun and lathi and asked them to keep silence. Finding that the informant was raising halla,

appellant Mohril Mandal, Gopal Mandal and Sikki alias Sikia Mandal assaulted the informant P.W. 2 on her head and also smashed both her

hands with the butt of the gun. The grand daughter of the informant, namely, Archna (not examined) was assaulted on her head by Dablu Mandal

by the butt of the gun, as a result of which she was injured and fell unconscious. In the meantime, Mohril Mandal and Gopali Mandal stated to

other accused persons that the houses of the informant and her agnatic relatives be set on fire and accordingly, the accused persons set ablaze the

house of Basudeo Singh (not examined), Durga Mandal (not examined), Manik Mandal (not examined), Kailash Mandal (not examined) and also

that of the informant which was also damaged by being broken.

6. The informant stated that the villagers were mute expectators to the occurrence and did not come forward in help of the informant. The

occurrence, as per P.W. 2, was witnessed by hundreds of villagers. The informant stated that because the mob was on the killing spree of her

caste men, as such, they murdered her three sons and set the house of her agnatic relatives on fire, as a result of which their properties were also

damaged.

7. As regards the motive for the occurrence, P.W. 2 stated that in the evening of the previous day which was a Sunday, there were some quarrel

between the wife of one Shambhu Mandal and her Gotni on account of illicit relationship the wife of Shambhu Mandal was carrying with deceased

Dilip Mandal who had intervened in the quarrel which was not liked by Ram Bilas Mandal. Both Ram Bilas Mandal and Dilip Mandal had held out

threats to each other of settling scores and on the above account, the occurrence took place right from 8 A.M. to 10 A.M. on 13.11.2000.

8. Ext. 2, the Fardbeyan was recorded by S.I. Balram Prasad who was posted as Officer Incharge of Rajaun Police station in village Goradih and

he himself took up the investigation. The copy of Ext. 2 was sent to the police station and as may appear from the evidence of P.W. 4, the FIR

(Ext. 3) was drawn up on that basis by S.I. Pramod Kumar Sinha. P.W. 4 S.I. Balram Prasad, thereafter, prepared the inquest report on the three

dead bodies, i.e., of Sunil Mandal, Dilip Mandal and Sibbal alias Shiv Naryan Mandal. P.W. 4 has stated that the inquest reports were prepared

at his orders by S.I. Saif Ahmad Khan. The inquest reports have been marked Ext. 4, 4/A and 4/B. The inquest reports were prepared in

presence of witnesses.

9. P.W. 4 inspected the place of occurrence which was the house of one of the deceased persons Sunil Mandal which was in flames even at the

time of its inspection and it has been stated by P.W. 5 that the deceased persons were reportedly sitting in that particular house. Other place of

occurrence as per P.W. 4 was the pucca house of Basudeo Singh which consisted of two rooms, out of which one was facing north and others

towards east. The upper floor was half built. P.W. 4 found that the room facing north which was situated on the east of the house, was badly

guttled and the flames were still coming out of it. He found the dead bodies of Dilip Mandal and Shiv Narayan Mandal inside it, which dead bodies

were identified but by whom, has not been stated by P.W. 4. P.W. 4 found other houses of Vijay Mandal, Sudhir Mandal, Basudeo Mandal burnt

but he did not find any properties or animal burnt on account of arson. P.W. 4 found blood inside the gutted house of Basudeo Singh and seized

the same.

10. P.W. 4 recorded the statement of P.W. 2, Suma Devi, her grand daughter Archana Kumari (not examined). He further recorded the statement

of Ganga Devi (P.W. 1), Kameshwar Thakur (not examined), Shyam Sundar Paswan (not examined). He, thereafter, sent the dead bodies for

postmortem examination and recorded the statement of some independent persons, like, Arjun Sah (not examined), Subodh Paswan (not

examined), Shyam Sundar Paswan (not examined), Muskari Paswan (not examined). The seizurelist was prepared after seizure of the blood by

S.I. Saif Ahman Khan, which has been marked Ext. 5 in the case. After closing the investigation, the accused persons were sent up for trial.

11. The defence of the accused persons was that in the early morning on 13.11.2008, deceased Dilip Mandal had shot at Ram Bilas Mandal at the

darwaja of one Kameshwar Thakur, D.W. 2 when the said Ram Bilas Mandal had gone to get his beard shaved. Being faced with the atrocious

act of killing Ram Bilas Mandal by Dilip Mandal, the people of the village retaliated and killed Sunil Mandal while Dilip Mandal and Shiv Narayan

Mandal were injured who hid themselves in a house. It was suggested by the defence that the prosecution party, out of mistake, set the same

house in which Dilip Mandal and Shiv Narayan Mandal had hidden themselves, at fire and as a result of it, the two were also killed by burning. In

fact, the defence version is contained in Ext. A, the FIR of Rajaun P.S. Case No. 136 of 2000. In support of the defence, as many as nine persons

were examined.

12. The prosecution examined five witnesses in support of the charges, out of whom, P.W. 5 Jai Narayan Mandal was a witness of formal

character who proved the writings of injury reports both of Archana, the grand daughter of the informant and the informant herself. Those reports

have been marked as Ext. 6 and 6/1. Out of four remaining witnesses, P.W. 1 Ganga Devi is the wife of the deceased Shiv Narayan Mandal.

P.W. 2, as just pointed out, is the informant of the case who was allegedly injured on account of being assaulted by some of the appellants, like,

Mohril, Gopal, Sikia and Dabloo and was the mother of the three deceased. P.W. 3 Dr. Sunil Kumar Sinha had held postmortem examination on

the three dead bodies and prepared the postmortem examination reports, Exts. 1 to 1/b. P.W. 4 S.I. Balram Prasad is the Investigating Officer of

the case.

13. The learned judge who delivered the judgment in question, considered the evidence of the witnesses and without speaking a word about the

merits as regards their competence, went on to record the conviction of the appellants as indicated in the first paragraph of the present judgment.

14. Shri Surendra Singh, learned senior advocate appearing for the appellants submitted that P.Ws. 1 and 2 who were the only eye witnesses

examined by the prosecution, appear having not witnessed the occurrence. It was contended that the evidence of the above two witnesses was

contradictory to the medical evidence which clearly improbabilizes the manner of occurrence as narrated by P.Ws 1 and 2. Both the prosecution

witnesses who were the family members of the three deceased appeared concealing the real facts on account of certain motives and they have

falsely implicated the present set of appellants. It was contended that the evidence of both P.Ws 1 and 2 indicates that both of them had gone to

the police station in the early hours just after the occurrence and the police had recorded the statement of P.W. 2 as also that of P.W. 1. But, the

prosecution has suppressed the earliest version, i.e., the first report which was given by P.W. 2 to the police at the police station and that aspect of

the matter deals a death blow to the prosecution. Shri Singh took us through the evidence of the witnesses in support of the above contentions. It

was further contended that P.W. 2 does not appear an eye witness and she did not appear naming the assailants of her son Sunil Mandal. It was

contended that from the evidence of the prosecution the probability appears in favour of the defence version that after Ram Bilas Mandal had been

murdered by one of the sons of P.W. 2, a huge crowd assembled around the house of the informant, killed her son Sunil Mandal and injured her

two remaining sons Dilip Mandal and Shibbal alias Shiv Narayan Mandal who hid themselves in the house of Basudeo Singh. The mob indulged

into arson and as a result of that, the house of the said Basudeo Singh also caught fire and both Dilip and Shiv Narayan were burnt to death. It was

contended that the prosecution had miserably failed to prove the charges and the accused persons deserve to be acquitted.

15. Shri Akhileshwar Prasad Singh, Advocate, appearing for the informant and Shri Ashwani Kumari Sinha, learned APP appearing for the state,

have submitted that there was serious illegality committed by the trial court on account of not framing a charge u/s 302/149 of IPC. It was

contended that it was a fit case in which the court should direct the re-trial of the case after framing of the charge under Sections 302/149 of the

IPC. It was contended that P.Ws. 1 and 2 were rustic villagers and the omissions or contradictions appearing in their testimony was fit to be

ignored and the court embark upon an exercise of disengaging the truth from falsehood. Shri Singh, lastly, submitted that even if the story of killing

the two deceased Dilip and Shiv Narayan by fire arm was not established, the murders of the said two by burning cannot be over looked and the

accused persons must be convicted u/s 302/149 of the IPC.

16. This hardly requires to be pointed out by this Court that the prosecution has to establish the charges to the hilt, that is to say, that it should not

leave any room to doubt the veracity of its story as propounded before the court through its witnesses. While proving the charges, the prosecution

is required to establish each and every of ingredients of an offence by satisfactory, admissible evidence which should be produced through

witnesses who could inspire confidence of the court. This is an onus to be discharged by the prosecution and the degree of such onus is very high

as the proof has to be strict. It is too well known to be stated that fouler the crime, law requires stricter the proof. But, at any rate the proof

beyond all shadows of reasonable doubt does not mean that it should be foolproof, rather, the standard of proof, which is expected of the

prosecution, is also on the scale of probability. But, the probability is such that there could not be any other counter balancing probability which

could create a dent in the veracity of the prosecution evidence, as a result of which the very foundation of the prosecution could be shaken. The

defence could point out the probabilities of its version or a probability that the prosecution version appears doubtful, either by leading its own

evidence or by introducing facts through cross examination of witnesses which tilts the balance of probabilities in favour of the defence. The

defence never succeeds in getting acquittal because it had "proved" its case, rather by showing the probability of the version suggested by it, it

shakes the very foundation of the prosecution case and thereby creates a doubt in the prosecution story and gets acquittal. This is one of the

cardinal principles of our criminal jurisprudence to consider the balance of probabilities in a criminal trial so as to judging whether the prosecution

has succeeded in bringing home the charges to the accused or has failed in doing so on account of the defence having succeeded in tilting the

balance of the probabilities in its favour and thereby creating a doubt in the veracity of the prosecution story.

17. Before I consider the evidence of the witnesses on the above balance of appreciating the evidence by marshaling the facts, I want to have a

cursory glance of the evidence of the two witnesses, namely, P.W. 1 Ganga Devi and P.W. 2 Suma Devi. Both the witnesses have claimed

themselves to be eye witnesses and both are closely related to the deceased. P.W. 1 is the wife of deceased Shiv Narayan Mandal. P.W. 2 Suma

Devi, the informant of the case is, besides, the mother of the deceased Shiv Narayan Mandal, Dilip Mandal and Sunil Mandal. Both the witnesses

have stated that the accused persons variously armed and counting twenty four in number, came at their house at about 8 A.M. on the date of

occurrence, out of whom appellant Dablu, Gopali, Mohril and Bablu were armed with fire arms, like, sixers and guns whereas the remaining others

were armed with lathi, sticks and garasa. They killed Sunil Mandal and took him onto the darwaja of Kameshwar Thakur (D.W.2). P.W. 1 would,

thereafter, state that after Sunil Mandal had been murdered, appellants Dablu, Sikki and Subodh (whose name does not appear in the FIR and

whose name never appeared during investigation as well) and Bablu killed Dilip and Shiv Narayan inside the house of Basudeo Singh. The manner

of killing the two deceased Dilip and Shiv Narayan has been stated by P.W. 1. As per her evidence, the accused persons broke the doors of the

house and entered inside it and thereafter fired at the two deceased. Appellant Dablu is alleged to have given a blow with sixer on the head of the

daughter of P.W. 1 Ganga Devi. Accused Subodh (not named in the FIR nor named in the investigation) and Gopali Mandal assaulted P.W. 2 and

fractured her hand. All family members started crying, upon which appellant Dablu, Mohril, Sikki, Subodh (not named in the FIR) set fire to the

house of Tanik Lal (not examined), Durgi (not examined) and P.W. 1 and went away.

18. As regards the story told by P.W. 2 regarding the murder of her two sons, Dilip and Shiv Narayan, she stated that the accused persons chased

both the deceased, who entered inside the house of Basudeo Singh (not examined) whereafter appellant Dablu Mandal, Mohril Mandal, Sikki,

Gopal, Mannu and Surendra put up a ladder to climb on it and to shoot the two deceased hiding inside it and, thereafter, they set the same house

at fire. P.W. 2 did not state as to who had assaulted her rather stated that the accused persons assaulted her on both her hands and head, which

evidence appears a bit contrary to that of P.W. 1 who spoke only about the hand of P.W. 2 being fractured on account of being assaulted by

Subodh and Gopal. P.W. 2 also did not specify as to who had assaulted Archana, her grand daughter on her head and added that P.W. 1 Ganga

Devi was also assaulted by the accused persons, which evidence of P.W. 2 is contrary to P.W. 1 as she did not state that she was also assaulted

by any of the accused persons. As regards setting fire to the houses of different persons, P.W. 2 named the same set of accused, like, Tanik Lal

Mandal and Durgi Mandal to have set fire to the house of Basudeo and P.W. 2. P.W. 2 stated that the accused persons killed her two sons Shiv

Narayan Mandal and Dilip Mandal by setting fire to the house and thereafter both P.Ws. 1 and 2 along with the grand daughter of P.W. 2 went to

the police station.

19. P.W. 1 does not appear stating the reason for the occurrence in her evidence in examination in chief, but P.W. 2 has stated as may appear

from paragraph 3 of her evidence, that the children from the house of one Sitaram had thrown some pieces of glass into the sand of the informant

kept there which was objected to by asking the children not to do it and that had flared up into the marauding incident.

20. It appears from the evidence of P.W. 1 in paragraph 6 and P.W. 2 in paragraph 6 that the two witnesses went to the police station and the

police recorded the statement of P.W. 2 which was duly signed by P.W. 2 by putting her thumb impression. P.W. 1 has also stated that she also

gave her statement to the police. Both P.Ws. 1 and 2 have shown ignorance initially about the fact that Ram Bilas Mandal, a co- villager of theirs,

had been murdered. Both of them were cross examined in detail on that fact and were suggested that in fact, Ram Bilas Mandal was murdered by

the three deceased persons and others at the darwaja of one Kameshwar Thakur where he had gone to get his beard shaved and, as a result of

that a case was also lodged before the police. However, P.w. 1 in paragraphs 9 and 12 of her evidence also stated that the occurrence had taken

place on account of some quarrel between the children of her house and those of one Sitaram. The details come in paragraph 12 of the evidence of

P.W. 1 when she stated that a huge crowd came and attacked her house. It is further indicated that the dead body of one of the deceased persons,

namely, Sunil Mandal was found somewhere at the house of one Kameshwar Thakur. This fact is admitted by P.W. 1 in paragraph 12. She has

stated that she could not see whether Sunil Mandal was assaulted and killed at the darwaja of said Kameshwar Thakur, which, in my considered

view, raises a probability that may be that Sunil Mandal was murdered at the darwaja of Kameshwar Thakur. In her cross-examination in

paragraph 12, P.W. 1 has stated that she could not see the remaining two deceased Dilip Mandal and Shibbal alias Shiv Narayan Mandal being

assaulted by any of the accused persons and has further admitted that the accused persons did not assault or kill Dilip and Shiv Narayan by any

weapon. 21. As regards the evidence of P.W. 2, she has admitted in paragraph 11 of her evidence that she knew that Ram Bilas Mandal had been

murdered. What she has stated is that she came to know about that after ten days of the said incidence. She has also admitted as was admitted by

P.W. 1 that a huge mob of villagers had come to the place of occurrence and further that after killing Sunil, his dead body was taken to the

darwaja of Kameshwar Thakur. In paragraph 13 of her evidence, P.W. 2 admitted that at the time when Ram Bilas was killed, thousands of

villagers assembled and when she saw her younger son being killed, she became unconscious.

22. Thus, from the reading of the evidence of P.Ws. 1 and 2, what appears to me is that on the same day before the murder of the three sons of

P.W. 2, the murder of Ram Bilas Singh was committed by Dilip Mandal, son of P.W.2 and the villagers retaliated by assembling in thousands to

avenge the murder of Ram Bilas Singh. The reason for the murder appears stated in the Fardbeyan itself that in the evening previous to the

occurrence, there was a quarrel between two ladies, i.e., the wife of one Shambhu Mandal and the wife of his elder brother on account of

deceased Dilip Mandal carrying an illicit relationship with the wife of Shambhu Mandal in which Dilip Mandal, deceased, had intervened which was

not liked by Ram Bilas and there was some quarrel between the two and each of them had threatened the other to settle score and, as such, the

incident had occurred. Curiously enough, this fact was not narrated by P.W. 1 or P.W. 2 in their evidence, as a result of which the defence was

forced to cross examine P.W. 2 to her previous statement in paragraph 14 and that fact appears stated in the Fardbeyan as a motive for the

occurrence. The same motive appears the reason for the implication of the accused also.

23. On consideration of the evidence of P.W. 1 Ganga Devi, I do not find that she has named any one as the assailant of the deceased Sunil

Mandal whereas P.W. 2 has also not named any one specifically as the assailant of the deceased. There is a general statement made both by

P.Ws. 1 and 2 that the accused persons killed Sunil Mandal and took him to the darwaja of Kameshwar Thakur. P.W. 2 has specified that Sunil

was killed by fire arm. Thus, it is expected that the dead body of Sunil Mandal should bear injuries resulting from fire arm. P.W. 3 Dr. Sunil Kumar

Sinha had held postmortem examination on the dead body of Sunil and he found two injuries on it. There was an incised wound of size 6" x 3" x

bone deep on the left side of the head just behind and above the left ear. The second injury was in the form of four bruises in the size of 6" x 1

each which was on the back of deceased Sunil Mandal. There was no other injury and the cause of death was the above two injuries, out of which

injury No. 1 was caused by a sharp cutting weapon, possibly, by garasa and injury No. 2 was caused by a hard and blunt substance, like, a lathi.

Thus, there was no fire arm injury found on the dead body of Sunil Mandal by P.W. 3.

24. As regards the manner of killing the remaining two deceased, namely, Shiv Narayan and Dilip, P.W. 1 Ganga Devi has stated in paragraph 2

of her evidence that the accused persons like Dablu, Sikki, Subodh and Bablu broke into the house of Basudeo Mandal and shot at them and

killed the two deceased Dilip and Shiv Narayan who had hidden themselves inside it. As regards P.W. 2, she has stated some different names like

those of appellant Dablu Mandal, Mohril Mandal, Sikki, Gopal, Mannu Mandal and Surendral Mandal to have put a ladder to mount on it and to

fire and kill the two deceased persons. Thereafter, it was alleged that the said house, besides others, were set on fire. Thus, it is expected that the

injuries found on the two dead bodies of Dilip and Shiv Narayan should be caused by fire arms. The evidence of P.W. 3 Dr. Sunil Kumar Sinha

again appears relevant for the purpose. On holding postmortem examination on the two dead bodies of Sunil Mandal and Shiv Narayan Mandal,

he did not find any injury caused by any weapon, least to talk of a fire arm on either of the dead bodies. As per the opinion of P.W. 3, the cause of

their death was deep burns. In the case of Dilip Mandal, his left hand and both legs from the knee joint were found absent indicating a probability

as if they had been burnt in fire. The abdominal viscera of Dilip were found coming out as was the case with the dead body of Shiv Narayan

Mandal whose both legs were found absent from the knee joint.

25. The importance of the evidence of the doctor could be two fold -- - it could be used to seek corroboration of the manner of occurrence; and

at the same time, it could be used to point out to the court that the manner of occurrence as stated by the prosecution and its witnesses, was not

corroborated by the medical evidence indicating the possibilities that either the prosecution witnesses had not seen the occurrence or the manner as

stated by them could not be the real manner in the occurrence had occurred and as such, the prosecution could be guilty of withholding some

important facts as regards the assault and the assailants. In the case of the three deceased persons, the opinion of P.W. 3 appears quite contrary to

the evidence of witnesses. The dead body of Sunil Mandal was not bearing any fire arm injury whereas P.Ws. 1 and 2 stated that he had been shot

and killed. Likewise, both the witnesses were stating that Dilip and Shiv Narayan were shot inside the house and killed and thereafter their dead

bodies were burnt on account of the house being set at fire. Fire arm injuries could have appeared at any part of the two dead bodies as there

were at least six assailants to Dilip and Shiv Narayan Mandal as may appear from the evidence of P.Ws 1 and 2. But, P.W. 3 did not find any

such injury on either of the two dead bodies. This indicates that the incident might not have been seen by the witnesses. This probability is heighten

by the evidence of P.W. 2 when she was stating in paragraph 13 that when she saw her younger son being killed, she lost her consciousness. No

denying the fact that Sunil, the younger son of P.W. 2 was murdered first by the accused persons.

26. The above contradictions between the oral and medical testimony appears to me vital as regards the competence of the witnesses and their

claim of being eye witnesses to the occurrence. It, in my opinion, is a serious flaw in the prosecution case.

27. The other flaw which appears of no lesser significance is that the evidence of P.Ws 1 and 2 indicated as if both of them along with their third

family member had gone to the police station in the early hours of the day after the occurrence was over, to lodge the report. P.W. 1 in paragraph

6 has stated the above fact in her evidence (paragraph 6). She has stated that she was accompanied by P.W. 2 Suma Devi and her daughter

Archna and further that they reached the police station at about 10-11 A.M. and her mother in law (P.W. 2) got every thing written by the police

at her statement whereafter she also gave her statement. This fact is further probalitized by her evidence in cross examination in paragraph 11. She

stated that when they had gone to the police station the police came quite early. It again came at about 4 P.M. As regards P.W. 2, she has also

stated in paragraph 2 of her evidence that she along with her daughter in law P.W. 1 and grand daughter had gone to the police station. She has

further stated in paragraph 4 that she lodged her case there whereafter the police came. Paragraph 6 of P.W. 2 further indicates that whatever

statement she had given to the police, that was reduced into writing and that she had put her thumb impression over it. The above evidence of

P.Ws 1 and 2 cannot be said to be coming in a state of unconsciousness. They appear telling the court in consciousness the above facts which lead

to a conclusion that there was a report which was lodged by P.W. 2 at the police station at about 10-11 A.M. on the very day of the occurrence

and the police had come to the village for investigating it. That report was not brought before the court. Ext. 2, the fardbeyan of the case which is

the basis of Ext. 3, the FIR of the case, was recorded at the house of P.W. 2 at village Goradih and not at the police station. Thus, the contention

of Shri Singh that there was a report which was lodged earlier by P.W. 2 was suppressed by the prosecution assumes significance. In the light of

the above evidence of P.Ws 1 and 2 it has to be held that there was a FIR which was lodged by P.W. 2 at the police station just after the

occurrence and that appears suppressed by the prosecution.

28. The other defect in the prosecution case is the non-examination of Archana, the grand daughter of P.W. 2 and daughter of P.W. 1. Besides,

the prosecution also did not produce the doctor who had examined Archana and P.W. 2. The evidence of the Investigating Officer, P.W. 4 S.I.

Balram Prasad indicates that prior to the murder of three deceased persons, another incident of murder of Ram Bilas Singh had occurred and for

that Ext. A and B had been instituted by the relative of the said Ram Bilas Singh. Some witnesses were also examined by the defence. I am not

concerned about their evidence. The probability arising out of the evidence of the prosecution witnesses also suggests as may appear from the

evidence of both P.W. 1 in paragraph 11 (last line) and P.W. 2 in paragraph 11, that it could be the acts of many unknown persons who could be

the villagers of the deceased who had assembled together and attacked the three deceased persons to kill them. The manner of occurrence could

have been supported by the persons whose houses have been found set ablaze by P.W. 4, the I.O. of the case. They were also not examined

leaving a big void in the prosecution case.

29. The contention of Shri Singh, learned Counsel for the informant that the court ought to have framed charge u/s 302/149 of the IPC, to me,

appears of no avail as the evidence which was produced by the prosecution could not have been sufficient to substantiate any charge individually,

jointly or vicariously. This Court cannot order re? trial in such a case where the prosecution had miserably failed in producing evidence in support

of its version, least to talk of any charge. 30. In my view, it was a fit case in which the accused persons would have been acquitted of the charges

framed against them after being given the benefit of doubt. I accordingly, acquit all of them by answering the Death Reference in negative and by

allowing all the appeals. Appellants Dablu alias Dabla Mandal, Sikia alias Sikia Mandal and Mannu Mandal (all of Cr. Appeal No. 55 of 2008)

are in custody. They shall be released forthwith if not wanted in any other case. Other appellants of the remaining appeals are on bail. They shall be

discharged from the liabilities of their respective bail bonds.

Chandra Mohan Prasad, J.

I agree