

(2011) 05 PAT CK 0088

Patna High Court

Case No: Criminal Appeal No. 981 of 2007

Chhuna Rai

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: May 17, 2011

Acts Referred:

- Arms Act, 1959 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164, 313
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 307

Citation: (2011) 59 BLJR 3183

Hon'ble Judges: Shiva Kirti Singh, J; Gopal Prasad, J

Bench: Division Bench

Judgement

Gopal Prasad, J.

All the criminal appeals have been heard together and being disposed of by the common judgment and order as all the Appellants have preferred appeals against the order of conviction and sentence recorded in Sessions Trial No. 85 of 1996/100 of 2006 arising out of Tariyani P.S. Case No. 16 of 1994 (G. R. No. 60 of 1994). [Originally there were 21 named accused persons in the First Information Report out of which one accused Chandeswar Rai, son of Jainandan Rai died during the course of investigation. The co-accused Dukhit Rai, son of Pyare Rai and Kishori Rai, son of Bishundayal Rai died during the course of sessions trial at the stage after recording their statements u/s 313 of the Code of Criminal Procedure and so the case abated against them. Rest 18 accused persons on trial convicted have preferred the appeals as aforesaid. However, during the pendency of the appeal, the Appellants, Ram Sneh Rai and Ram Faresh Rai of Cr. Appeal (DB) No. 868 of 2007 died and hence appeal preferred by them held to have been abated by order dated 31.03.2011 passed in analogous appeals in Cr. Appeal (DB) Nos. 981 of 2007.]

2. Appellants Binda Rai, Dharmendra Rai, Jitendra Rai, son of Ram Lagan Rai, Ramanand Mahto and Chunna Rai have been convicted u/s 302 of the Indian Penal Code for the alleged murder of deceased Buni Lal Rai and have been sentenced to undergo rigorous imprisonment for life. Accused Ram Binod Mahto @ Bittan Mahto, Ajablal Rai, Raj Kumar Rai, Ram Swarth Rai, Vishwanath Rai, Ram Lagan Rai, Shyam Nandan Rai, Mauje Rai, Kishore Rai, Jitendra Rai, son of Kishori Prasad Yadav, Raja Ram Rai have been convicted u/s 302/149 of the Indian Penal Code and have been sentence to undergo rigorous imprisonment for life and further Ram Binod Mahto, Ajablal Rai, Raj Kumar Rai, Ram Swarath Rai, Vishwanath Rai, Mauze Rai, Ram Lagan Rai, Binda Rai, Jitendra Rai, son of Kishori Prasad Rai, Dharmendra Rai, Ramanand Mahto, Chhuna Rai, Kishori Rai, Jitendra Rai, son of Ram Lagan Rai, Raja Ram Mahto have further been convicted u/s 148 of the Indian Penal Code and have been sentences to undergo rigorous imprisonment for two years and further Shyam Nandan Rai has been convicted u/s 147 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year. Accused Ram Binod Mahto, Ajablal Rai, Raj Kumar Rai, Jitendra Rai, son of Ram Lagan Rai, Raja Ram Mahto have been convicted u/s 307 of the Indian Penal code and sentenced to undergo rigorous imprisonment for seven years and further Ram Binod Mahto @ Bittan Mahato, Ajablal Rai, Raj Kumar Rai, Mauje Rai, Binda Rai, Jintendra Rai, son of Ram Lagan Rai, Ramanand Mahto and Chhuna Rai have been convicted u/s 27 of the Arms Act and have been sentenced to undergo rigorous imprisonment for three years and further Appellants, namely, Ram Binod Rai, Bittan Rai, Ajablal Rai, Raj Kumar Rai, Snehi Rai, Ram Swarath Rai, Viswanath Rai, Ram Faresh Rai, Mauje Rai, Ram Lagan Rai, Binda Rai, Jitendra Rai, Son of Kishori Rai, Dharmendra Rai, Jitendra Rai, Son of Ram Lagan Rai, Ramanand Mahto, Rajaram Mahto, Chunna Rai and Kishor Rai convicted u/s 148 of the Indian Penal Code and Appellant, namely, Shyamnandan Rai convicted u/s 147 of the Indian Penal Code and sentence to undergo rigorous imprisonment for two years and one year respectively. However, it has been ordered that sentences shall run concurrently.

3. The prosecution case as alleged in the fardbeyan of the informant, Raj Kali Devi, wife of deceased Bunilal Rai is that she was sleeping in the night in between 03.03.1994/04.03.1994 at her Bathan where her husband Bunilal Rai (deceased) and her sons Upendra Rai (P.W. 4), Prabhu Rai (P.W. 2) and Kashi Kumar Rai (P.W. 1) were also sleeping. She got up on the sound of crying in the mid-night. She along with her son Upendra Rai came out of the house. In the moon-light as well as in the light of Lantern she identified Snehi Rai armed with Fersa, Binda Rai armed with gun, Chunna Rai armed with gun, Jitendra Rai, son of Kishori Rai armed with gun, Ram Lagan Rai, son of Baidyanath Rai armed with Fersa, Ram Swarath Rai armed with Fersa, Jitendra Rai, son of Ram Lagan Rai armed with gun, Shyam Nandan Rai, son of Jay Mangal Rai armed with Fatta, Dharmendra Rai, son of Ram Swarath Rai armed with pistol, Vishwanath Rai, son of Banshidhar Rai armed with Fersa, Rama Nand Mahto, Son of Nandu Mahto armed with gun, Raja Ram Mahto, son of Binod Mahto

armed with gun, Kishori Rai, son of Bishun Dayal Rai armed with Fatta, Chandeshwar Rai armed with gun, Raj Kumar Rai armed with gun, Ajab Lal Rai armed with gun, Mauje Rai armed with pistol, Dhukit Rai armed with Fersa, Kishore Rai armed with gun and Ram Faresh Rai armed with gun. Snehi Rai commanded to shoot at the old man as he does not transfer the land. On the command Vishwanath Rai entered into the house and started dragging Bunilal Rai the husband of the informant. Then Bindra Rai, Chhuna Rai, Ramanand Mahto, Jitendra Rai and Dharmendra Rai fired one shot each at her husband causing injury to him.

4. The further case is that on receiving the gun shot injury by the five accused persons Bunilal Rai the husband of the informant fled away to adjoining room by the side of that room and there he fell down and died.

5. Further the case of the informant in the fardbeyan is that in the mean time Chandeshwar Rai caught the hand of the informant and dragged her and gave two slaps and got her seated near him. The son of the informant Upendra Rai (P.W. 4) ran to rescue his father (deceased) then accused Jitendra Rai, Raja Ram Mahto, Ram Binod Mahato, Raj Kumar Mahto and Ajablal Rai fired at Upendra Rai (P.W. 4) by which he got badly injured and fell down then Kishori Rai assaulted him by Farsa.

6. Further case of the informant in the fardbeyan is that her son Prabhu Rai (P.W. 2) was assaulted by Dhukit Rai with back of Farsa. On the sound of firing and Halla villagers rushed to the place of occurrence then the accused persons fled away towards the east.

7. The further case of the prosecution is that the motive for the occurrence is land dispute between the deceased Bunilal Rai and accused Shyam Nandan Rai, Chhuna Rai and others and litigations are going on between the parties.

8. The fardbeyan of the informant, Raj Kali Devi (P.W. 3) was recorded by the Investigating Officer, Bharat Kant Jha, S.I., P.W. 7, (Investigating Officer) on 04.03.1994 at about 3:30 A.M. at her Bathan at village Tulsi Nagar under Tariyani Police Station. The occurrence is alleged to have occurred on 04.03.1994 at 12:00 in the mid night. The said fardbeyan was forwarded to the Officer-In-Charge, Taryani to institute a case under Sections 302, 307, 324, 323 and 34 of the Indian Penal Code and 27 of the Arms Act on which First Information Report was lodged bearing Tariyani Police Station Case No. 16 of 1994 and Mr. B. K. Jha, S.I. took up the investigation of the case.

9. After investigation the charge-sheet was submitted, cognizance taken under various Sections under Sections 302, 302/149, 307, 323, 307, 148, 147 the Indian Penal Code and 27 of the Arms Act and case was committed to the court of Sessions. After hearing the parties the charges were framed against accused persons.

10. However, during trial 11 witnesses were examined by the prosecution. The witness examined are P.W. 1 Kashi Kumar Rai, P.W. 2 Prabhu Rai, both sons of the

informant, P.W. 3 is Raj Kali Devi (informant) wife of the deceased Bunilal Rai, P.W. 4 Upendra Kumar, the son of the informant and the deceased, P.W. 5 Sia Devi a co-villager, P.W. 6 Dr. Vairo Singh who examined the injured P.W. 2, P.W. 7 is Bharat Kant Jha, the Investigating Officer, P.W. 8 Dr. Rajib Bhusan Sinha who proved the post-mortem report of deceased, P.W. 9 Yogendra Mahto who proved the post-mortem report of the dead body of Bunilal Rai deceased, P.W. 10 Dr. Basant Kumar Sinha who examined P.W. 4.

11. The documentary evidence adduced on behalf of the prosecution as Ext. 1 injury report of Prabhu Rai, Ext. 1/1 injury report of Upendra Rai, Ext. 1/2 is injury report of Upendra Rai dated 04.03.1994, Ext. 2 is the fardbeyan of Raj Kali Devi informant, Ext. 3 is the carbon copy of the inquest report, Ext. 4 is the dead body challan, Ext. 5 is the seizure list of the blood stain earth and Ext. 6 is the post-mortem report.

12. The defence has also adduced both oral and documentary evidence. The oral evidence adduced on behalf of defence as D.W. 1 Ram Chandra Rai, Chaukidar and the documentary evidence adduced on behalf of the defence is Ext. A fardbeyan of Upendra Rai recorded by the S.I., B. K. Jha of Tariyani P.S. on 04.03.1994 at 3:00 A.M. at Narwara Hospital, Ext. B is para 81 of the case diary, Ext. C is page No. 75 of the case diary, Ext. D is the heading of the fardbeyan in English, Ext. E is the certified copy of the charge-sheet of Tariyani P.S. Case No. 221 of 1993 and Ext. 7 is the certified copy of the power of Tariyani P.S. Case No. 23 of 1993.

13. The defence of the accused persons as apparent from the suggestions made and the trend of cross-examination is that the Appellants have falsely been implicated and the witnesses are tutored and have given false and fabricated statements due to the enmity or interestedness with the deceased and his son Upendra Rai. The further case of the defence is that the deceased and his son Upendra Rai (P.W. 4) were in company of the criminals and the villagers used to protest the criminal activity of the deceased and Upendra Rai. There was a fight amongst the group of criminals in which the deceased and his son got injured. The informant has not seen the occurrence and her statement were not recorded at her Bathan. The fardbeyan has been recorded much after the occurrence. Upendra Rai has criminal antecedent and is serving sentence in jail on his conviction in a murder case and the accused persons have been falsely implicated out of the enmity due to the previous litigation between the parties.

14. After considering the oral and documentary evidence and considering the defence as well as submissions of the parties the trial court convicted and sentenced the Appellants as stated above and hence this appeal.

15. Learned Counsel for the Appellants has challenged the judgment and order of conviction and sentence and has contended that the earliest version of the prosecution case has been withheld by the prosecution. The station diary entry on the statement of Chaukidar, on the basis whereof the police proceeded, has not

been proved. Neither the Chaukidar has been examined during trial by the prosecution, nor the witness in the neighbourhood who came to the place of occurrence just after the occurrence have been examined nor even the witnesses named in the charge-sheet having residence and Bathan adjacent to the place of occurrence have been examined. The prosecution case has been developed from stage to stage. According to the Chaukidar, the name of the accused was not disclosed by the prosecution just after the occurrence when he reached to the place of occurrence. Ext. A, the fardbeyan of Upendra Rai (P.W. 4) recorded at 3:00 A.M. mentions the name of 10 accused persons without any description of role attributed to accused where as the fardbeyan of Raj Kali Devi recorded at 3:30 A.M. mention the name of 21 accused persons in more detail. The First Information Report on the basis of fardbeyan of Raj Kali Devi lost its significance in view of Ext. A, as hit by Section 161 of the Code of Criminal Procedure It has further been contended that the witnesses are interested and inimical and their evidence suffer from inherent improbabilities, contradiction and development from stage to stage. There is no corroboration to the prosecution story either about manner of occurrence or about implication of accused persons and no independent witness has come forward to support the prosecution case on any part of the prosecution story. Hence the prosecution has not been able to prove the charges beyond reasonable doubts by cogent, reliable, reasonable and unimpeachable evidence.

16. Learned Counsel for the State and the learned Counsel for the informant, however, contended that the witnesses has supported the prosecution case in material particular and merely because the witnesses are interested and inimical their evidence cannot be outright rejected and Ext. A itself appears to be doubtful in view of the evidence of Investigating Officer and 3:00 A.M as mentioned in recording Ext. A may be a mistake for 8:00 A.M. Subsequent evidence of the Investigating Officer on recall rectified the mistake that 3:00 A.M. wrongly mentioned in Ext. A for 8:00 A.M. and hence the prosecution has proved the charges beyond reasonable doubts.

17. Hence, on the respective submissions of the parties, the question for consideration is whether the prosecution has proved the charges beyond reasonable doubts.

18. P.W. 3 is the informant and in her evidence has stated that the occurrence took place on 04.03.1994 at 12:00 P.M. in the mid-night. She was sleeping in a house at her Bathan along with her son Upendra Rai (P.W. 4), Prabhu Rai (P.W. 2) and Kashi Rai (P.W. 1). Her husband Bunilal Rai was sleeping in the adjoining room. On the sound of firing and cry she got up. At that time the lantern was lighting at her house and it was a full moon night. All the four persons (informant and her sons) ran to the room of her husband. She saw Chhuna Rai armed with gun, Binda Rai armed with gun, Ramanand Mahto armed with gun, Jitendra Rai, son of Kishori Prasad Yadav armed with gun, Raja Ram Mahto armed with gun, Binod Mahto armed with gun,

Mauje Rai armed with pistol, Dharmendra Rai armed with pistol, Jitendra Rai, son of Ram Lagan Rai armed with gun, Ajablal Rai armed with gun, Kishori Rai armed with gun, Ram Faresh Rai armed with gun, Snehi Rai armed with Farsa, Ram Lagan Rai armed with Farsa, Ram Swarth Rai armed with Farsa, Kishori Rai armed with Farsa, Vishwanath Rai armed with Farsa, Chandeshwar Rai armed with Garasa, Dhukhit Rai armed with Farsa. Snehi commanded to kill Bunilal Rai by firing as he does not execute deed with regard to the land. On the command, Vishwanath Rai caught hold of the husband of the informant to drag then the husband of the informant caught hold of pillar in the room. Then Chandeshwar Rai gave a Garasa blow on the nose of the husband of the informant due to which his hold on the pillar was lost. Thereafter, Chhuna Rai, Binda Rai, Ramanand Mahto, Dharmendra Rai, Jitendra Rai son of Kishori Prasad Yadav at once fired at her husband by which he got injury and then he ran from that room to the adjoining room and fell down. When the informant rushed to save her husband then Chandeshwar Rai caught hold of her hand and got her seated and commanded not to make Hulla. When her son Upendra Rai rushed to save his father then accused Ram Binod Mahto, Raja Ram Mahto, Jitendra Rai, son of Ram Lagan Rai, Ajablal Rai, Raj Kumar Rai fired at Upendra Rai by which Upendra Rai got injured and fell down and thereafter Kishore Rai gave a Farsa blow on the left ear of Upendra Rai and Shyam Nandan Rai assaulted Upendra Rai by Farsa on his head and further Shyam Nandan Rai injured the abdomen of Upendra Rai by dagger and Dhukhit Rai assaulted her son Prabhu Rai with the back of the Farsa below his knee and when on the sound of firing the villagers rushed to the place of occurrence then the accused persons fled away towards the east and she claims to have identified in the moon-light as well as the light of lantern.

19. P.Ws. 1, 2 and 4 have also deposed verbatim, as P.W. 3 stated in her evidence, in a parrot like manner, to support the prosecution case. They also claims to be the eye witness with specific details as deposed by the informant P.W. 3. In the cross-examination of these witnesses it is admitted that there was prior enmity between the prosecution and accused persons as both civil and criminal litigations are going on. Hence, the enmity is admitted.

20. The attention of P.W. 1 has been drawn for taking contradiction with regard to his earlier statement before the police. He has denied to have stated before the police that one person told to kill the old man then someone fired which hit his father and when his elder brother Upendra Rai was going to his father then someone fired at him by which he got injury and the contradiction has been taken from the Investigating Officer (P.W. 7) in para 21 that P.W. 1 Kashi Kumar stated before him that one person told to fire at the old man then someone fired by which his father received injury and died and had also stated before him that his elder brother Upendra Rai was going to his father then he was also injured by firearm by some one. Hence, the evidence of P.W. 1 is contradictory in material particulars about the involvement of accused persons. It is well settled the contradiction is a

mode of discrediting a witness by drawing his attention with regard to his earlier statement before the police. Hence the evidence of P.W. 1 suffers from contradiction and hence evidence suffers in credibility.

21. P.W. 4 has also supported the prosecution case in parrot like statement as deposed by the P.W. 3. This witness has also stated that he was taken to Narwara Hospital but at Narwara Hospital he was not fully conscious and at that time police wanted to record his statement by force but he was not in a position to give his statement but the police got his signature by catching hold of his hand. He has further deposed that he found himself in full consciousness at S.K.M.C.H. His statement was recorded u/s 164 of the Code of Criminal Procedure when he got full consciousness. However, the attention of this witness has been drawn in para 17 of his deposition with regard to his earlier statement before the police and the contradiction has been taken from the Investigating Officer in para 31 of the evidence of the Investigating Officer, P.W. 7. His evidence is found to be in contradiction of his earlier statement before the police. The claim of this witness that he was unconscious at Narwara Hospital stands falsified in view of Ext. A. However, this witness reluctantly admits in his evidence that he gave some statement to police and police got his signature by catching hold of his hand. However, the Investigating Officer has proved Ext. A his signature as well as the signature of witnesses including the brother of P.W. 4 but that witness of Ext. A has been withheld by the prosecution.

22. In Ext. A it has been stated that he is giving his statement in injured state before the Daroga of Tariyani Police Station that today in the night he along with his two brothers Prabhu Rai and Kashi Rai was sleeping in the eastern room of the Bathan and his father was sleeping at another room of the Bathan then he got up as 12:15 A.M on the sound of firing and then heard the cry of his father "Upendra Rai get up someone has shot me" on which he came out of the house and identified Ramanand Mahto who fired at him in his right leg and fired again hitting on his left hand. In the meantime someone assaulted him on his chest and head and in the moon-light he identified Ramanand Mahto, Bitan Mahto, Chhuna Rai, Raja Ram Mahto, Shyam Nandan Rai, Raj Kumar Rai, Haribansh Rai, Jitendra Rai, son of Ram Lagan Rai, Binda Rai, son of Snehi Rai and on his cry the neighbourers came then the accused persons fled away. However, during evidence he gave up this story as impounded in Ext. A, that was stated before the police which was signed by him and other witnesses but has come to support the prosecution case verbatim as deposed by P.W. 3. This witness has stated in paras 5, 10 and 14 that he was not fully conscious at Narwara Hospital and he was not in a position to give evidence though admits that he spoke out but he does not remember. He claims full consciousness at S.K.M.C.H. He remained in S.K.M.C.H for more than a month. During the period police came at S.K.M.C.H but he did not gave any statement till he was in S.K.M.C.H and his statement u/s 164 of the Code of Criminal Procedure was recorded after 1-1/2 month. However, there is no documentary evidence brought on record that

this witness remained admitted in S.K.M.C.H and was unconscious for 1-1/2 month. Neither the bed head ticket nor any document about his treatment and prescription during his treatment for 1-1/2 month has been brought on record nor his statement u/s 164 of the Code of Criminal Procedure has been proved in evidence. There is no documentary evidence that he was unconscious or remained admitted in S.K.M.C.H for more than a month and injury report Ext. 1/2 marked exhibit with objection does not indicate about his admission in S.K.M.C.H or about his unconsciousness.

23.P.Ws. 1, 2, 3 and 4 claimed to be injured during the occurrence. But there is no injury proved on the person of P.W. 1. and P.W. 3. However, P.W. 6 has come to prove injury report Ext. 1, the injury on the person of Prabhu Rai (P.W. 2) as simple, which is only "tenderness" without any dimension of "tenderness" and hence the injury on the person of P.W. 2 is doubtful.

24. However, so far the injury on the person of Upendra Rai (P.W. 4) is concerned P.W. 6 the doctor who examined P.W. 4 at Narwara Hospital has proved the injury report and has deposed that injury Nos. 1, 2 and 3 on the person of Upendra Rai was by hard and blunt substance which was simple in nature and with regard to injury Nos. 4, 5 and 6 the patient was referred to S.K.M.C.H. However, the injury Nos. 1, 2 and 3 are lacerated wound on the scalp on the left portion of the left side of the neck. Injury No. 4 is lacerated wound on the left side of the chest. Injury No. 5 is lacerated wound of left forearm below elbow and injury No. 6 lacerated is lacerated wound on the mid portion of the calf muscle and hence there is nothing in his evidence to suggest that injuries were serious in nature. P.W. 10 is the evidence of Dr. Basant Kumar Sinha, who examined Upendra Rai at S.K.M.C.H and has stated that he only examined the injury No. 3 an incised wound over the anterior abdominal wall 1" long tear in interior wall of stomach. However, the injury report has been marked as Ext. 1/2 with objection as the injury report was a copy of original injury report and he has not mentioned that it is the copy copied by him from the original report and the injuries were said to be written in injury register at S.K.M.C.H but he has not written the injury from that injury register. However, P.W. 4 claims to be seriously injured and assails Ext. A on the ground that he was seriously injured and was unable to speak out but there is no corroborating evidence about his being unconscious and about his remaining admitted in S.K.M.C.H. for 1-1/2 months and hence his evidence is only an attempt to reconcile the inconsistency in prosecution case and to explain away Ext. "A" which bears his own signature and signature of his brother as witness. The evidence of P.W. 2 suffers from contradiction and development.

25. Moreover, Ext. A, the alleged fardbeyan of Upendra Rai (P.W. 4) recorded by police at 3:00 A.M on 04.03.1994 as apparent on the face of it, mentions that Upendra Rai along with his two brothers were sleeping at the Bathan. However, the name of the mother does not find place amongst the persons sleeping at Bathan and this creates a great doubt about the presence of P.W. 3 Ram Kali Devi at the

time of occurrence.

26. However, so far the manner of occurrence is concerned the prosecution case as developed during evidence is that on the command of accused Snehi Rai, accused Vishwanath Rai caught hold of the leg of the deceased to drag him out of the room then the deceased caught hold of a pillar in the room then Chandeshwar Rai gave a Farsa blow on the nose of the deceased and then deceased loosened his hold of pillar and then five accused persons shot at the deceased and deceased received the gun shot injury and then the deceased ran from one room to another and fall down in second room. But the prosecution case is not corroborated by the evidence of doctor who conducted autopsy on deceased.

27. P.W. 9 is the Doctor, who conducted the post-mortem examination on the deceased Bunilal Rai. The doctor has found five firearm injuries on the person of the deceased. However, out of those five injuries he found that the injury Nos. 1 and 2 passing through right side of the neck floor of mouth and nasal cavity fracturing bone of the floor of the moth and nasal bone in neck muscle and the blood vassal danger drawing esophagus intact and in cross-examination has opined that is difficult to move a person who has received injury like 1 and 2. Hence, the medical evidence negates the prosecution case that the deceased after receipt of the injury ran from one room to another and then fell down and further the prosecution case is that the deceased caught hold of pillar in the room and on receiving Farsa injury on nose loosened hold on pillar but this part is also not corroborated as no corresponding Farsa injury was found by the doctor on the nose of the deceased. Hence the manners of occurrence is not substantiated or corroborated by the medical evidence.

28. P.W. 7 is the I.O. and he has stated in his evidence that on 04.03.1994 he was posted as Officer-In-Charge of Tariyani Police Station at 2:30 A.M the Chaukidar 7/3, Ramchander Rai (D.W. 1) came to the Police Station and gave information which was recorded as Sanha Entry No. 61 dated 04.03.1994. The I.O. (P.W. 7) proceeded towards place of occurrence at village Tulsi Nagar and he reached at the place of occurrence and he recorded the fardbeyan of the informant Raj Kali Devi (P.W. 3), the wife of the deceased Bunilal Rai. Devendra Yadav (not examined) and Ram Kaleber Rai (not examined) signed on the fardbeyan which has been marked as Ext. 2. He prepared the inquest report of deceased Bunilal Rai at 6:00 A.M. on 04.03.1994 (both not examined). He has further stated that he prepared the dead body Challan inspected the place of occurrence the Bathan of informant at Tulsi Nagar. He found house of straw facing east in the south. There is one room which contains a Chauki, fitted with a bamboos gate and he found blood on the said bamboo gate and to the adjoining north of this room there is a room for cattle and there is no gate in this room and he found the dead body of the deceased in this room on the earth. He found large number of blood fallen there. He seized the blood stain earth, prepared the seizure list marked as Ext. 5. He has further stated that in front of this house

there is Sahan for Khalihan and to the south of this Khalihan there is also a hut of straw having a room and there is no gate in this room (in which it was stated that the informant (P.W. 3) and his son Upendra Rai (P.w. 4) and Prabhu Rai (P.W. 2) were sleeping). There is a Kadam tree in the eastern part of the Khalihan and a boring in southern part. He has further stated that to the north of the Bathan there is a Bathan of Ram Kaleber Rai (witness in charge-sheet but not examined), in the south there is land of informant Raj Kali Devi and in the east there is a field of informant and in the west there is a field of informant Raj Kali Devi. Hence, from the evidence of the Investigating Officer it is apparent that the prosecution case as disclosed by the informant in fardbeyan that she was sleeping in a room adjacent to the room in which her husband was sleeping is belied.

29. The Investigating Officer found the house of Ram Kaleber Rai adjacent to the place of occurrence, the Bathan of the informant. P.W. 1 in his evidence has also stated that to the northern side of the said Bathan there is a house of Ram Kaleber Rai and Jay Narayan Rai and has further clarified that house means Bathan but Ram Kaleber Rai who is also an witness of fardbeyan was not examined and was given up by prosecution. He has further stated that to the west of the place of occurrence after his field there is Bathan of Raja Rai, Jocki Lal Rai, Ram Prakost Rai, Ram Saber Rai and hence it indicates that at the place of occurrence there were several houses and Bathan but none was examined. Amongst them Ram Kaleber Rai is one of the charge-sheet witness but has not been examined and further four witnesses in the charge-sheet have also been given up and their evidence has been withheld without any reason.

30. The I.O. in his evidence has further stated that he learnt that one of the son of the informant, i.e., Upendra Rai (P.W. 4) is injured and is in Narwara Hospital for treatment and he proceeded to Narwara Hospital and took the injury report of the injured Upendra Rai (P.W. 4) at 8:00 A.M on 04.03.1994 which has been marked as Ext. 1/1. Again he proceeded from Narwara Hospital and reached the place of occurrence at 9:30 A.M. and recorded the further statement of the informant and thereafter recorded the statement of Prabhu Rai (P.W. 2), Kashi Rai (P.W. 1) and Surendra Rai (not examined) and others and submitted the charge-sheet after due investigation on receipt of the post-mortem report and the injury reports.

31. However, in his cross-examination P.W. 7, I.O. has proved Ext. A fardbeyan of Upendra Rai recorded by this witness in his writing and has stated that on 04.03.1994 at 3:00 A.M in the morning he recorded the statement of Upendra Rai son of Bunilal Rai at village Tulsi Nagar at Narwara Hospital and this Upendra Rai is injured of this case and has stated that the fardbeyan is in his writing and signature and after recording the fardbeyan he read it over to Upendra Rai who signed on his fardbeyan which bears the signature of witnesses Gajendra Rai, and Surendra Rai and Harendra Rai (not examined). He has stated he did not institute the case on the basis of this fardbeyan of Upendra Rai (P.W. 4) and has stated that he has recorded

the fardbeyan of Raj Kali Devi on 04.03.1994 at 3:30 A.M at village Tulsi Nagar. He has further stated that on 04.03.1994 at 2:30 A.M the Chaukidar 7/3 Ramchandra Rai informed that someone has killed Bunilal Rai. He has recorded the statement of the Chaukidar 7/3 Ramchandra Rai in paragraph 81 of the case diary (marked as Ext. B) and he has further stated that on the statement of the Chaukidar he had been to the place of occurrence and seen the deceased and injured and then came to the Police Station. He has also mentioned that the distance of the Police Station and the Narwara Hospital is about two kilometers south connected with a pitch road and distance from Narwara Hospital to the Bathan of Bunilal Rai is about two Kilometer south west and the distance between the place of occurrence and police station is about one Kilometer.

32. Investigating Officer (P.W. 7) has again been examined on recall by the prosecution and has stated that on 04.03.1994 he went to the Narwara Hospital and recorded the fardbeyan of Upendra Rai at 8:00 A.M but in his cross-examination he has stated that in case diary he has only mentioned about the recording of the statement of Upendra Rai and not about recording of the fardbeyan.

33. Hence, from the evidence of P.W. 7 it is apparent that the police proceeded on the information received from the Chaukidar 7/3 Ramchandra Rai after recording the information in station diary entry as entry No. 61 dated 04.03.1994. However, neither the Chaukidar has been examined as prosecution witness nor the station diary entry 61 dated 04.03.1994 has been proved or brought in evidence which is earliest version.

34. However, Ramchandra Rai has been examined as D.W. 1 by the defence and his statement recorded by the police has been proved as Ext. B (para 81 of the case diary). D.W. 1 has stated that on the sound of firing he went to the Bathan of Bunilal Rai and then saw Bunilal Rai lying dead and Upendra Rai injured by firearm. He has further stated that Upendra Rai disclosed that he did not identify anyone who fired and then he came to the police station. In cross-examination, he has stated that Upendra Rai was injured by firearm and was speaking, though he was speaking less and he was immediately taken to hospital and his statement recorded in para 81 of the case diary is also to that effect. Hence, from evidence it is apparent that D.W. 1 reached at the place of occurrence just after the occurrence and found Upendra Rai in injured stage. Neither Upendra Rai nor any person disclosed the name of any of the accused persons and he rather stated that he did not identify the culprits.

35. P.W. 1 in para 6 of his evidence has stated that the Chaukidar of this village is Ramchandra Rai and just after an hour of the occurrence he came at the place of occurrence but none of the family members disclosed him about the occurrence. P.W. 3 also in her evidence in para 19, 20 and 21 has stated that Ramchandra Rai was the Chaukidar at the time of occurrence and she did not disclose anything to Ramchandra Rai prior to coming of Daroga. P.W. 3 has further stated in her evidence that after the occurrence 5-10 persons of the villager had come on Halla

but she did not disclose the name of accused person to anyone prior to the arrival of police at the place of occurrence and hence the prosecution version also supports the version of the defence witness D.W.1 that the prosecution party did not disclose the name of the accused persons either to Chaukidar or to any of the person who reached the place of occurrence. Hence, the prosecution case about manner of occurrence and implication of accused has not been corroborated by any independent or reliable evidence.

36. P.W. 5 is Sia Devi a co-villager. She has deposed that in the evening on the date of occurrence she was going to meet the call of nature then saw Chhuna Rai, Vishwanath Rai, Kishori Rai, Jitendra Rai and Dharmendra Rai were going on three motorcycles towards the house of Chandrashekar Rai. However, she has further stated that soon thereafter she heard the sound of firing of one shot and then she went there and found Bunilal Rai dead and his son Upendra Rai in injured state and she also saw there Raj Kali Devi and her two other sons.

37. However, the evidence of this witness is not of much significance. As per her evidence the time of occurrence has not been corroborated and although she claims to have gone to the place of occurrence after hearing the sound of firing but she has not stated that any of the family members of the deceased disclosed the name of the accused persons.

38. Hence, taking into consideration the entire evidence, i.e., P.Ws. 1, 2, 3 and 4, who have come forward to support the prosecution case as mentioned in the fardbeyan of the informant P.W. 3, it is noticed that the evidence of the four witnesses are verbatim the same in their Examination-In-Chief and they deposed in a parrot like manner and are not reliable. Whereas the evidence of P.W. 1 suffer from contradiction as he has not stated the name of any of the accused persons rather stated that he did not identify any person and someone has killed his father, the evidence of P.W. 4 also suffer from contradiction. Moreover, the prosecution in this case has drawn two fardbeyans. The fardbeyan Ext. A was recorded at 3:00 A.M but the First Information Report has not been drawn on the said fardbeyan. However, during trial the prosecution developed an explanation that this fardbeyan was really recorded at 8:00 A.M when the police reached at the Narwara Hospital after recording the fardbeyan of Ram Kali Devi P.W. 3 at the place of occurrence. However, it does not stand to reasons that when the Investigating Officer recorded the fardbeyan of Ram Kali Devi at 3:30 A.M which was sent for lodging the First Information Report then what was the occasion to record Ext. A, the further fardbeyan of Upendra Rai (P.W. 4). Hence, the plea that Ext. A was recorded at 8:00 A.M is not acceptable. It is an attempt to reconcile the inherent improbability in the prosecution case which casts a serious doubt about prosecution case. If the fardbeyan Ext. A was recorded at 3:00 A.M prior to the recording of the Ext. 2, the fardbeyan of Raj Kali Devi then the fardbeyan of Raj Kali Devi on the basis of which First Information Report was drawn becomes doubtful and is hit by Section 161 of

the Code of Criminal Procedure Moreover, the presence of P.W. 3 at the time of occurrence becomes doubtful in view of Ext. A in which Upendra Rai stated that he was sleeping at Bathan along with his two brothers but does not mention that P.W. 3 was also sleeping with them. Hence, the prosecution case in fardbeyan Ext. 2 becomes doubtful.

39. Moreover, recording of the two fardbeyans in the same case itself creates a doubt that there is some hanky panky in the investigation of the prosecution case. It is apparent that the police proceeded at the place of occurrence on the information received from the Chaukidar 7/3 Ramchandra Rai D.W. 1, who had given the statement after due verification of the occurrence by himself going at the place of occurrence but the said statement of Ramchandra Rai which was recorded in the station diary has not been proved or brought on record. The said Ramchandra Rai has not been examined as a witness by the prosecution but by the defence as D.W. 1 who has stated that after the occurrence he went to the place of occurrence and found the deceased and the injured Upendra Rai and Upendra Rai did not disclose the name of the any accused persons and rather disclosed that he (Upendra Rai P.W. 4) did not identify the culprits. Witnesses in the fardbeyan of Upendra Rai, Ext. A, who are also charge-sheet witnesses were not examined. The I.O., P.W. 7 has proved Ext. A with specific assertion that the fardbeyan of Upendra Rai P.W. 4 was recorded at 3:00 A.M. at the Narwara Hospital. Ext. A mentions the name of only ten accused persons whereas the fardbeyan of P.W. 3 recorded at 3:30 A.M on same mentions the name of 21 persons with specific roles attributed to some of them.

40. Hence, it is apparent that at the earliest point of time just after the occurrence the Chaukidar and the villagers reached to the place of occurrence but none disclosed the name of any of the accused persons and thereafter through Ext. A development was made and ten persons were named as accused at 3:00 A.M. Thereafter the fardbeyan of P.W. 3 at 3:30 mentions the name of 21 persons with specific roles attributed to some of the accused persons. The prosecution case has further developed giving more specific role. Hence, the prosecution story developed from stage to stage and there is no corroboration to the evidence of P.Ws. 2 and 3 in any material particular either about the manner of occurrence or about the implication of accused persons. Even the medical evidence does not corroborate the prosecution case as no corresponding Farsa injury was found on nose of deceased. The prosecution case is that the deceased on receiving firearm injuries ran from one room to another and then fell down but there is serious doubt that person receiving such injury cannot move. Prosecution case is, thus, clearly not reliable.

41. It is a matter of great concern and regret that a cold blooded murder has to go unpunished but it is well established that there is much distance between may be proved and must be proved and the prosecution must corer this distance by cogent, reliable, credible and unimpeachable evidence. However, the prosecution has not been able to prove the charges beyond reasonable doubt by cogent, reliable,

trustworthy and unimpeachable evidence. Hence, for the reasons mentioned above the Appellants are entitled to be acquitted of all the charges.

42. Having regard to all the facts and circumstances, I find and hold that the prosecution has not been able to prove the charges beyond reasonable doubts and the accused persons are entitled for acquittal. The learned lower court has not gone into several important aspect of the matter noticed earlier and hence the order of conviction and sentence recorded by the learned lower court is hereby set aside and the Appellants are acquitted of all the charges leveled against them. Appellants, namely, Ramanand Mahto, Binda Rai, Dharmendra Rai and Chhuna Rai who are in custody are ordered to be released forthwith, if not required in any other case and rest of the Appellants are discharged from all the liabilities of the bail bonds, if any.

Shiva Kirti Singh, J.

43. I agree.