

(2004) 11 PAT CK 0073

Patna High Court

Case No: Criminal Appeal (DB) No. 108 of 2001

Sukhu Beldar @ Sukan Beldar
and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Nov. 5, 2004

Acts Referred:

- Arms Act, 1959 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 157, 161
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 307

Citation: (2005) 3 PLJR 495

Hon'ble Judges: P.N. Yadav, J; Mridula Mishra, J

Bench: Division Bench

Advocate: Ram Suresh Roy, Pramod Kumar and Satyendra Prasad, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Final Decision: Dismissed

Judgement

Mridula Mishra, J.

All five appeals have been preferred by the appellants against the judgment and order of conviction dated 17.2.2001 passed by 2nd Addl. Sessions Judge, Hilsa, Nalanda, in Sessions Trial No. 190 of 1989. Appellants Barho Beldar and Jawahar Beldar in Criminal appeal No. 209 of 2001 have been convicted u/s 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. They have further been sentenced rigorous imprisonment for one year for offence u/s 148 of the Indian Penal Code and they have also been sentenced for three years rigorous imprisonment for offence u/s 27 of the Arms Act. Rest of the appellants in all other four appeals have been convicted u/s 302/149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life as well as u/s 147 of the Indian Penal Code and have been sentenced simple imprisonment for one year. Caste

rivalry between Dushadh and Beldars of village Goraipur as well as adjacent villages was the reason behind the occurrence which took place on 28.1.1989 at 10 A.M. at village Goraipur. Upendra Paswan (P.W. 4) recorded his fardbeyan, before the A.S.I. Chandi (Nagar Nausa) police station on 28.1.1989 at 1-20 P.M. alleging therein that the mob of 500 persons started surrounding the village Goraipur at about 10 A.M. The members of the mob started hurling abuses and exhorting the villagers to come out. In the meantime, one unknown person, while fleeing towards the south-east was caught hold of in the corner of Machharhatta Mahua Khandha and was shot at by Barho Beldar. This unidentified man was later on identified as Ram Chandra Paswan. Another unknown person was shot at by Jawahar Beldar. One person belonging to village Kaila was assaulted with lathi and Garasa by the members of the mob. He fell down in the Pyne south of the village and became unconscious. In the meantime, police also arrived and on their arrival members of the mob, armed with lathi and garasa started fleeing away but those who were armed with rifle started firing. Counter firing was made from the side of the police and the accused thereafter fled towards village Chistipur. The unidentified injured person of village Kaila was sent to hospital for treatment by the police. The accused persons were the villagers of Chistipur, Sulemanchak, Sone Bhadra and other adjacent villages. The motive for the occurrence is that tension prevailed between Dushadh and Beldar community of the locality as persons belonging to Beldar community of village Netar and Telpar had been killed some days ago. Earlier also one person from Dushadh community of village Jagatpur was killed by Beldars. Occurrence was witnessed by Ramdeo Paswan, Raj Kumar Paswan, Chandrashwar Paswan, Rambabu Paswan and others. Occurrence took place because of caste rivalry.

2. On the basis of the fardbeyan Chandi (Nagar Nausa) P.S. case No. 136 of 1989 was instituted for offence under sections 147, 148, 149, 302/34 of the Indian Penal Code as well as u/s 27 of the Arms Act. Case was instituted against 17 named accused persons who are all residents of village Goraipur. The police started investigation in the case and during investigation some unnamed persons were also made accused on the basis of the statement of the witnesses. Test Identification Parade was held and on account of identification made in the Test. Identification Parade, subsequently, 12 more persons were impleaded in the category of accused who were identified by five witnesses in the Test Identification Parade. The police after investigation submitted chargesheet against 25 persons. Out of whom two persons died. On receipt of chargesheet cognizance was taken and case of 23 accused persons was committed to the court of sessions for trial. On conclusion of trial the accused persons were convicted as stated above.

3. Defence of the accused/appellants was of innocence and false implication on account of previous litigation and caste rivalry between the Beldar and Paswan of other villages. Specific defence of accused Karmu Beldar was of alibi, which he did not pursue or prove.

4. The prosecution examined eight witnesses in order to prove its case. P.W. 1 Ganesh Shankar Pd. Singh, is the medical officer, who conducted post mortem examination on the dead bodies of three deceased. P.W. 2 Ramdeo Paswan, P.W. 3 Raj Kumar Paswan, and P.W. 4, Upendra Paswan are the villagers of village Goraipur, who claimed to be eye witnesses of the occurrence. PW. 4 is informant of the case as well. P.W. 2, P.W. 3 and P.W. 4 have also" participated in Test Identification Parade, and identified some unnamed accused persons. P.W. 5, Arun Kumar Gupta, is the Judicial Magistrate, who conducted Test Identification Parade of the suspected accused" persons. P.W. 6, Upendra Singh is an advocate clerk and a formal witness. P.W. 7 Bilyati Singh, is A.S.I. and Officer-in-charge on Nagar Nausa police station who investigated the case. P.W. 8 Shrawan Kumar is another police official who also partly investigated the case and submitted chargesheet in the case.

5. P.W. 4 is the informant. He has stated that on the date of occurrence he was at his village. At about 10 A.M. he saw group of 500 persons coming towards the village Goraipur, hurling abuses to the .Dushadhs of village Goraipur. The members of the mob were chasing three persons. One of the member of the mob Barho Beldar caught hold of one person and shot him. Later on that person was identified as Ram Chandra Paswan, a resident of village Salalpur. Jawahar Beldar shot at another person who was identified as Ram Pravesh Paswan of village Telpar. These two persons were shot at Mahua Machharhatta Khanda. Other persons of the mob were chasing another person to the south of pyne who was caught and assaulted with lathi and danda. That person fell down after receiving injury and he was identified as Rudal Paswan of village Kaila. The members of the mob were armed with gun, chura and lathi and garasa. P.W. 4 identified 17 persons and claimed to identify other person by face. The group of 500 persons were coming towards the village Goraipur and villagers started fleeing away from the village. In the meantime, police party reached there and members of mob who were armed with lathi, sticks and garasa, started fleeing away. But those members of a mob who were armed with gun started firing at police party and counter-firing was started from the side of the police. The accused persons thereafter started fleeing away toward north-east direction. Two dead persons Ram Chandra Paswan and Ram Prabesh Paswan as well as injured were carried upto Sulemanchak School. Police party came there and the injured was sent to hospital. His statement was recorded by the police, which was read over to him. He put his L.T.I. finding it to be correct. Occurrence was seen by him, P.W. 2 and P.W. 3 Ram Babu Paswan (not examined) and Kailash Paswan (not examined). One of the accused Gorakh Beldar is dead. Person, who was assaulted by lathi, died later on. Fifteen days prior to this occurrence some incident had taken place at village Telpar. He had heard about it. In village Netar and Jagatpur also incident had taken place four to five days prior to the present occurrence. The reason for the occurrence is the caste rivalry in between Dushadh and Beldar of the locality. There was enmity in between these two castes as one Beldar of village Telpar was earlier killed by Dushadh people of village. As a counter-blast the Beldar

and Dushadh people of village Jagatpur was also murdered. The present occurrence was also an offshoot of the earlier enmity. P.W. 4 in his cross-examination admitted that he is resident of village Salalpur which is at a distance of some yards from village Goraipur. P.W. 4 in para-6 of his cross-examination has stated that on the date of occurrence he did not notice or identify any one from village Sulemanchak and Goraipur in the mob. He also admitted that enmity in between Beldar and .Dushadh was due to previous dispute relating to institution of criminal cases against each other. P.W. 4 denied that the police party had reached at the place of occurrence prior to the occurrence. He specifically stated that the police came at the place of occurrence after . 15/20 minutes of the occurrence. According to P.W. 4, the police party remained present at the place of occurrence just for 15/20 minutes and thereafter, they left the place. The police also seized fire arms from Khanda which the members of the mob had thrown at the time of decamping. Raja Beldar had caught Ram Chandra Paswan at the time of firing. Lakhan Beldar, Mahangu Beldar, Badri Beldar had assaulted Ram Chandra with chura and Garasa. He denied suggestion that Sukhu Jamadar, Barho Beldar, Lakhan Beldar and other accused persons have been falsely implicated in this case on account of previous enmity and long drawn litigation.

6. P.W. 2 has also supported the statement of the informant P.W. 4 and said that on the date of occurrence he saw a mob of 500 persons coming from east. At that time he was irrigating his maize field. He identified 17 persons in the mob. People" in the mob caught hold of Ram Chandra Paswan. They also caught hold of Ram Prabesh Paswan. The mob was firing towards village Goraipur and the villagers started fleeing towards village Sulemanchak. In the meantime, police arrived and the mob started firing at the police. On arrival of police some of the members of the mob started fleeing towards village Chistipur. After decamping of the mob, the female folks of the village brought two dead bodies and kept them at Sulemanchak school. Injured Rudal Paswan was sent to hospital by the police. He admitted his participation in the Test Identification Parade at Hilsa jail in which he identified seven persons, namely, Baleshwar Jamadar, Karmu Jamadar, Lala Prasad, Jhalandhar Beldar, Raja Ram Beldar, Dhanraj Jamadar and Mahangu Jamadar. P.W. 2 failed to identify Ramji Beldar in the dock. He also admitted that enmity in between Beldars and Dushadhs is the reason behind the occurrence. P.W. 2 stated that except those three persons, who were assaulted and killed.the members of the mob were not chasing any person. Though he was present at the place of occurrence but the members of the unlawful assembly did not fire at him. After the occurrence he himself flee away to village Sulemanchak and on the next day he returned to his village. He admitted that though there is rivalry in between Beldars and Paswans of other villages but there was no tension in between Beldars and Paswans of village Goraipur. P.W. 2 denied the suggestion that Sukhu Beldar, Lakhan Beldar and Upendra have been implicated as Upendra had instituted a case against him u/s 307 of the Indian Penal Code and sessions trial No. 237 of 1987 is pending against him.

7. P.W. 3 is also resident of village Goraipur. He was cutting grass at Gorha Khanda at about 10 A.M. when a mob of 500 people came chasing three persons. They were armed with gun, bhala, garasa and lathi. He identified 17 persons among the mob of 500 persons. The people in the mob caught hold of one person and Barho Beldar fired at that person, who fell down and thereafter several other persons in the mob assaulted him with lathi, bhala and garasa. Subsequently, he came to know that the person, who was shot and assaulted, was Ram Chandra Paswan. Some people in the mob then caught another person. He was shot by Jawahar Beldar and died. Several persons thereafter assaulted that person with lathi, bhala and garasa. Later on the deceased was identified as Ram Pravesh Paswan. Third person was also caught and assaulted, he became injured but did not die. The mob was giving exhortation to villagers and they were also firing towards the village. He participated in Test Identification Parade and identified five persons. The police arrived at the place of occurrence when the members of the mob were firing at village. The accused persons fled away towards village Chistipur and Sulemanchak. The female folks of the village brought the dead bodies and kept at Sulemenchak school. The injured was sent by the police to the hospital. He had identified some, persons in the mob by face and subsequently, he identified them in Test Identification Parade. They were Raja Ram, who had assaulted Ram Chandra Paswan with lathi. He identified Maulvi Beldar, Barho Jamadar, Baleshwar Jamadar, Raja Beldar and Bhajju Jamadar. All three persons were assaulted and killed by three separate groups. He was not chased by any member of the unlawful assembly. After the occurrence he went to village Sulemanchak and stayed there in the night and came back on the next day. His statement was recorded by police near school in Sulemanchak and thereafter, again his statement was recorded after 10/12 days. He did not see police seizing empty pilletes and arms from Khanda in between village Goraipur and Sulemanchak.

8. P.W-1 is the doctor who conducted post mortem on the dead bodies of three persons on 29.1.1989. He conducted post mortem on the dead body of an unknown person aged about 35 to 40 years at 3-10 on 29.1.1998 and found following antimortem injuries. Rigor mortis was present in all four limbs. On external examination he found:--

(1) Abrasion in one number of size 2" x 1" over lower part of right arm.

(2) Abrasion 3" x 1/4" on right forearm.

(3) Swelling 3" x 2" over left elbow.

(4) Abrasion 3" x 1/2" over 1" above right eye-brow.

(5) Abrasion 2" x 1" over left knee. In the opinion of P.W. 1 the cause of death could not be ascertained as the injures were not sufficient for causing death in ordinary course of nature. On the same date at 3-25 P.M. he conducted post mortem on the dead body of Ram Chandra Paswan and found the following ante-mortem injures.

Rigormorties was present in all the four limbs.

(1) Right upper molar and pre-molar teeth absent.

(2) Wound of entry, one lacerated wound 1/2" x 1/2" x vacity deep at 1/2" above the lateral side of right eye-brow in right side of forehead with charring of skin and forehead. Inverted margin and blackened.

(3) Wound of exit, lacerated wound 2 1/2" x 2" brain matters extracted out and communicated fracture of occipital bone on back skull with inverted margin.

(4) Incised wound 4" x 3" x 1/2" on left forearms.

(5) Incised wound 1/2" x 1/2" into muscle deep on right thigh.

(6) Incised wound 1" x 1/2" skin deep on right cheek.

He also found three other injuries caused by sharp cutting weapons. Time elapse since death between 12 to 24 hours. He also recovered one pillette from wound No. 2 which was handed over to the accompanying constable. All injuries were ante-mortem and sufficient to cause death in ordinary course of nature. On the same day at 3-45 P.M. he also conducted postmortem examination on another unknown body and found the following anti-mortem injuries. Rigor mortis present in all four limbs. On external examination the following injuries were found:--

(1) Lacerated wound 1/2" x 1/2" x 3" at medial posterior auxiliary line on back of 6th intercostals space on right side with blackened and inverted margin (wound of entry).

(2) Lacerated wound 3" x 2" at 5th intercostal space on posterior auxiliary line on left side with everted margin.

(3) Fracture of left arm.

(4) Incised wound 3" x 1/2" x bone deep on left mandible at left angle of mouth with fracture of mandible.

(5) Incised wound 2" x 2 1/2" x bone deep lateral part of left leg with fracture of neck of fabula.

(6) Lacerated wound 1" x 1/2" x skin deep over left cheek.

(7) Lacerated wound on upper jaw 1" x 1/2" with uprooted right upper both incisor and one left medial incisor.

(8) Lacerated wound 1" x 1/2" cavity deep with inverted blackened skin margin on 3rd intercostal space lateral to sternum (wound of entry).

The doctor also recovered one bullet at 6th intercostal space in muscle with fracture of 6th-7th ribs at infra scapular region on right side of back. In his opinion the death occurred due to shock and haemorrhage. He has further opined that injuries Nos. 1,

2 and 8 were sufficient to cause death.

9. P.W. 6 is the advocate clerk who proved fardbeyan (Ext. 3), seizure list (Ext. 5) and inquest reports (Ext. 4 series).

10. At the relevant time PW. 5 was posted as Judicial Magistrate, on 15.2.1989 at Hilsa Sub-divisional court, under his supervision the Test Identification Parade was conducted at Hilsa Jail in connection with Nagarnausha P.S. case No. 136 of 1989. Upendra Paswan (P.W. 4), Raj Kumar Ram (P.W. 3), Ramdeo Paswan (P.W. 2), Indradeo Paswan (not examined), Kailash Paswan (not examined) had participated in the Test Identification Parade. P.W. 4 identified Moulvi Beldar, Dhananjay Beldar, Baleshwar Beldar, Raja Ram Beldar, Jhalandhar Beldar, Lala Prasad, Ramji Beldar and Karmu Beldar. He stated that at the time of Test identification Parade the accused persons were produced in 1:9 ratio. Test Identification Parade was conducted in presence of Assistant Jailor. He denied the suggestion that Test Identification Parade was not conducted as per rule.

11. P.W. 7 Bilyati Singh had deposed that on 28.1.1989 he was posted at Nagarnausha police station. He refused to prove the contents of the fardbeyan taking the plea that because of poor eyesight, on account of cataract, he is unable to read. From his memory he recalled the fardbeyan of Upendra Paswan. P.W. 7 stated that since no other police official was present at the police station on the date of occurrence, he had gone to the place of occurrence for recording the fardbeyan of the informant. He prepared the inquest report of dead bodies. He also prepared seizure list and deadbody Chalan. He sent the dead body for post mortem, recorded the statement of the witnesses and inspected the place of occurrence. After two days of the occurrence, he handed over the investigation of the case to the then Officer-in-charge, Mithilish Kumar Singh. He stated that he is unable to read the inquest report, seizure list and the case diary due to poor eye-sight. In his cross-examination P.W. 7 stated that he proceeded to the place of occurrence at 8-30 P.M. along with other constables. He covered some distance on jeep and thereafter, he walked up to the place of occurrence. Within 15 to 20 minutes he reached at the place of occurrence. On reaching there he saw that there was assemblance of two groups, 2000 people in each side. Persons of the mob on each side were armed with gun, garasa and other lethal weapons. The mob consisting of Beldars started firing on police party but no one received any injury. The Beldar did not leave the place even after arrival of the police but the group of Paswans decamped. He identified the group of Beldars and Paswans just by seeing them. In the presence of police party none of the group opened fire on each other but subsequently Beldars opened fire at Paswans and they fled away from the place of occurrence. The police party also in order to save their lives hid themselves in a Payeen. The occurrence was also witnessed by the villagers of Sulemanchak. Beldar people remained at the place of occurrence till 3 P.M. He could not identify any of the person who opened fire. After Beldars left the place he inspected the Khanda. In

course of inspection he recovered and seized two country made guns, cartridges, bhala and garasa. On the basis of his own statement he instituted Nagarnausha P.S. case No. 36 of 1989.

12. P.W. 8 is also a police personnel and he has stated that on 28.1.1989 he was posted as Officer-in-charge of Nagarnausha police station. At the relevant time Nagarnausha was a subsidiary police station and cases relating to Chandi police station used to be registered there. He has proved the writing and signature of Rameshwar Singh, the then Officer-in-charge of Chandi Police station, who had instituted the formal F.I.R. of Nagarnausha P.S. case No. 36 of 1989 which has been marked as Ext. 6. He has also stated that A.S.I. Bilyati Singh was at the relevant time posted at-Nagarnausha police station. On 1.2.1989 he took over the investigation of the case from the then Officer-in-charge, Mithilish Kumar Singh and recorded statement of witnesses, namely, Chandreshwar Paswan, Ramdeo Paswan, Kailash Paswan, Rambabu and Raj Kumar Paswan. He arranged for holding Test Identification Parade and on the direction of superior authority submitted chargesheet. He further stated that paras-1 to 58 of the case diary is in the handwriting of Bilyati Singh (P.W. 7) which has been marked as Ext. 7. This witness was asked by the court to explain the delay in recording the statement of the villagers and in reply he has stated that the villagers had left the village after the occurrence, as such, their statement could not be recorded. He denied the suggestion that without examining the witnesses he has noted their statement in case diary simply on the basis of the F.I.R. P.W. 8 has stated that Ramdeo Paswan (P.W. 2) did not state before him that the mob of 500 persons was at the eastern side of the village rather he had stated that a mob of 500 persons was chasing three persons. This witness had also not stated that the deceased Ram Pravesh was caught by the members of the mob. He had simply stated that he saw Ram Chandra Paswan being shot by the members of the mob. This witness had not stated before him that the deceased Ram Chandra and Ram Pravesh were assaulted by the members of the mob with bhala, garasa and talwar and thereafter they fell down receiving gun shot injury. P.W. 8 has further stated that P.W. 3 did not state before him that he was cutting grass at the time when unlawful assembly came. This witness had not stated that the occurrence took place at 10 O'clock. P.W. 8 has also stated that Raj Kumar Paswan had not stated before him that the members of the mob were firing towards the village. He denied the suggestion that the investigation of the case was faulty and on the basis of imagination he has recorded the statement of the witnesses and on that basis submitted the chargesheet.

13. Learned counsel appearing for the appellants has challenged the conviction of the appellants on the ground that the prosecution has not come out with the correct version of the occurrence. They have concealed the real prosecution story. Time, place and manner of occurrence have wrongly been given in the F.I.R. which is indicated from Ext. 7 (paras-1 to 58 of the case diary) and the evidence of P.W. 7, Bilyati Singh the first investigation officer. It is the case of the prosecution that at 10

A.M. the mob of 500 people came towards village Goraipur from eastern direction. The mob was chasing three persons. One of them was caught by Barho Beldar and thereafter, he was shot by him. Another person was shot by Jawahar Beldar and the third person was assaulted with lathi, paina and other weapons by another group of the members of the unlawful assembly. Third person after receiving injury fell down and subsequently died at the hospital. Other two persons, who were fired at, were identified as Ram Chandra Paswan and Ram Pravesh Paswan. According to the prosecution witnesses, the occurrence took place at 10 A.M. and in an assemblance of 500 people they identified 17 persons who were named in the F.I.R. and subsequently identified 12 more persons in the Test Identification Parade who were also put on trial. The prosecution case has totally been contradicted by the evidence of P.W. 7 and also by Ext. 7.

14. P.W. 7 has given totally a different story. As per his evidence he started from the police station at 8-30 A.M. receiving some information and within 10 to 15 minutes he reached at the place of occurrence. When he came at the place of occurrence at village Goraipur near Machharhatta Mahua Khandha he found assemblance of mob in two groups, each side consisting of 2000 people. Both groups were armed with lethal weapons. He identified the groups as Beldars and Paswans. The Paswan group left the place immediately after the arrival of the police party but the mob of Beldar remained there. Neither the Beldar nor the Paswan group were firing at that time on each other. The mob of Beldar started firing at the police party and to encounter them the police also started firing at them. The police party did not witness that Ram Pravesh Paswan or Ram Chandra Paswan were caught and fired at by the members of the Beldar group. P.W. 7 did not identify any of the assailants. Subsequently, the Beldar group also left the place and went towards the village Chistipur. After Beldars decamped the police party went at the place from where they were firing and seized some of the weapons left by them. If the evidence of P.W. 7 is believed then the prosecution story is totally different than the case revealed in the F.I.R. as well as in the evidence of P.W. 2, P.W. 3 and P.W. 4. According to P.W. 7, the occurrence took place much before 10 A.M. The prosecution witnesses have totally concealed this fact in their deposition that police arrived at the place of occurrence much before 10 A.M. which is the time of occurrence according to them. According to evidence of P.W. 7, the Paswan group left the place just after arrival of the police party and before firing was started from Beldar side. In this circumstances, the claim made by the prosecution witnesses that in their presence the occurrence took place and firing was made is totally falsified.

15. Another ground on which the appellants' counsel has challenged the judgment of conviction is that the genesis of the occurrence has not been proved by the prosecution. P.W. 4 has stated in the F.I.R. as well as in his evidence that the motive and reason behind the occurrence was a dispute and rivalry in between the Beldars and Dushadhs (Paswan) in the locality as feud in between Beldar and Dushadh group of village Telpar, Netar and Jagatpur were prevailing prior to the occurrence.

If the genesis of occurrence was the rivalry in between the Dushadh and Beldar people, in that case the mob consisting of Beldar should have attacked on the people belonging to Paswan community. They should have entered into the village. P.W. 2, P.W. 3 and P.W. 4 have specifically admitted in their evidence that though they were at a distance of 10 to 15 bamboos from the place where the mob of 500 people had assembled, they did not open any fire at them. None of them had received any injury. The members of the unlawful assembly did not enter into the village and they did not fire towards the village. The persons, who were killed did not belong to Dushadh community of village Goraipur. The evidence brought by the prosecution totally failed to prove the genesis of the occurrence. It is a fact that if the presence of P.W. 1, P.W. 2 and P.W. 3 is admitted at the place of occurrence they it is unbelievable that no attempt was made by the members of the unlawful assembly to fire at them when the firing was being made indiscriminately. Only three people who were being chased by the mob from the distant village were shot by the members of the unlawful assembly. Certainly, if the genesis of occurrence as stated by the prosecution is believed then the rivalry in between the members of Dushadh and Beldar group is the reason behind the occurrence. One of the reason for disproving the genesis is that the prosecution witness P.W. 2 has stated in his evidence that Beldar and Paswan people in village Goraipur had no dispute between each other. P.W. 2 has also admitted that there are 10 to 15 families of Beldar in village and none of the Beldars of village Goraipur were there in the mob. But in the next breath the prosecution witnesses have named the appellants as accused who belonged to the village Goraipur. In the F.I.R. also it is specifically stated that accused persons belonged to village Keshoura, Bhadradeeh, Ahiyarpur Khanda, Gouri Bigha and Sindhua. Nowhere it is stated that Beldars of village Goraipur also participated in the offence. Therefore, the participation of these appellants in the alleged occurrence is doubtful once it is admitted by witnesses that there was no ill-feeling in between the people of Beldars and Paswans in village Goraipur and also that the villages of other adjacent villages participated in the offence, naming the appellants as accused indicates false implication in this case as they belonged to village Goraipur and there is specific admission by the prosecution witnesses that Beldars of village Goraipur did not participate in the offence.

16. Another point raised by the defence counsel is the delay on the part of the prosecution in production of F.I.R. before the Magistrate. It has been submitted that it is fatal for the prosecution. The occurrence took place on 28.1.1989 at 10 A.M. and fardbeyan was recorded on the same day at 1-20 P.M. at village Sulemanchak which is adjacent to the place of occurrence. The police party was present there. Jeep was also available as per evidence of P.W. 7, but the F.I.R. was produced before the Magistrate on 30.1.1989. No explanation has been given by the prosecution for such delay. u/s 157 of the Code of Criminal Procedure it is imperative that the F.I.R. should be dispatched immediately without any delay by the investigating officer to the Magistrate and the exact time and date of such dispatch of the document

should be noted. Where delay in sending copy of F.I.R. to the Magistrate has not been explained, such delay is certainly fatal for the prosecution. On the other hand, the counsel for the State has submitted that the delay in dispatch of F.I.R. is not a ground for throwing the prosecution in its entirety when the F.I.R. was recorded by the police at the spot and investigation was also started immediately thereafter. In such cases, if some delay is there in sending the F.I.R. it would be prudent to seek corroboration of the prosecution story with other material aspect of the prosecution story. In the present case the delay might have caused on account of caste rivalry and the tension prevailing in the area concerned. The prosecution witnesses i.e. the investigating officer (P.W. 7) was not cross-examined by the defence on the point of delay. P.W. 8 is another investigating officer of the case, who was questioned by the court for explaining the delay in recording the evidence of the witnesses and he replied that the villagers and the witnesses had left the village after the occurrence and on their return -their statement could be recorded. u/s 157 of the Code of Criminal Procedure it is required that immediately the F.I.R. should be dispatched to the concerned Magistrate but in all cases the delay in sending the F.I.R. is not fatal for the prosecution if delay is explained by prosecution. In the present case, no explanation has been assigned by prosecution for delay in producing the F.I.R. before the concerned Magistrate.

17. The appellants have challenged the Test Identification Parade which was held after much delay, after 39 days. It has been submitted that P.W. 2 Ramdeo Paswan have identified seven accused persons simply as members of the mob who were standing with the mob in the crowd of 500 people specially when there was indiscriminate firing. Such type of identification from a distance is not possible. The accused who have been identified in Test Identification Parade are villagers of Ahyatpur and Musnapur. It has come in the evidence of witnesses that these villages are adjacent to village Goraipur. The villagers of Goraipur are known to the villagers of Ahyatpur. This has not come in the evidence of prosecution witnesses that they knew the persons residing in these villages. In such circumstances, identification of the accused in the Test Identification Parade after 39 days is just any eye-wash. No evidentiary value can be given to such identification and their conviction on that account is bad.

18. Besides Barho and Jawahar other appellants have also challenged their conviction u/s 302/149 of the Indian Penal Code. It has been submitted that unless prosecution proves their presence in the mob as members of unlawful assembly by a reliable, trustworthy and consistent evidence, they cannot be held to be guilty of sharing common object of that unlawful assembly. In the F.I.R. P.W. 4 has stated that Ram Chandra Paswan and Ram Pravesh Paswan were assaulted by Baho and Jawahar. P.W. 2, P.W. 3 and P.W. 4 in their statement u/s 161 of the Code of Criminal Procedure have stated before the Investigating Officer that only Jawahar and Barho fired at Ram Chandra and Ram Pravesh. P.W. 7 had specifically stated that none of the witnesses have stated before him that any other persons except Barho and

Jawahar fired at Ram Chandra and Ram Pravesh. They did not state about assault made by any accused by bhala, garasa and lathi on the deceased. In the F.I.R. also there is no mentioning about the assault made by these appellants on the deceased. Subsequently, after knowing the contents of post mortem report the prosecution witnesses developed such story that deceased Ram Chandra and Ram Pravesh were assaulted by other accused with lathi, danda and Farasa. The version of witnesses given in the F.I.R. and statement made u/s 161 of the Code of Criminal Procedure have been changed in the court. The deliberate change during trial to suit medical evidence makes the prosecution case doubtful and credibility of the prosecution witnesses sufficiently impeached. Reliance has been placed by the appellants on [Shingara Singh Vs. State of Haryana and Another](#), - It has also been submitted that Rudal Paswan is said to have been assaulted by some of the members of the unlawful assembly who were armed with lathi and paina but name of those persons have not been disclosed by the prosecution witnesses. P.W. 1 who conducted the post mortem report on the dead body of Rudal Paswan has found injuries on his person which were not sufficient for causing death and, as such, he could not ascertain the cause of death of Rudal Paswan. The act done by Jawahar and Barho being their individual act, other persons, whose presence as members of unlawful assembly have not been proved by trustworthy and reliable evidence, cannot be convicted under sections 302/149 of the Indian Penal Code for sharing common object of the unlawful assembly.

19. Finally it is submitted that besides appellants Barho and Jawahar, who are convicted u/s 302 of the Indian Penal Code, the conviction of other appellants under sections 302/149 is not maintainable. If the prosecution story is believed then where was the mob of 500 people. The witnesses were watching the mob from a distance of 20 to 25 bamboos. The mob was firing indiscriminately, as stated by P.W. 4 50 rounds were fired by them. All three witnesses have deposed that they saw three persons coming runningly from south-east direction who were being chased by the mob and Barho caught hold of Ram Chandra Paswan and fired at him. Jawahar fired at Ram Pravesh and other persons assaulted Rudal with lathi and paina, whose names have not been disclosed. In a mob of 500 people, specially when the situation was aggressive, it is not possible for any one to identify those accused who have not done any specific act attracting the attention of the witnesses. The story of other injuries found on the deceased have specifically been developed by the witnesses in court. In the F.I.R. nothing is there to show that they had seen other accused persons assaulting the deceased persons. The story as in the F.I.R. is that Barho and Jawahar fired at two persons.

20. It has further been argued that identification of those appellants by the witnesses in a mob of 500 people is not believable. In the F.I.R., as per prosecution story, a mob of 500 people came chasing three people towards village Goraipur. According to P.W. 7, there were assem- blence of 2000 people in two groups at the place of occurrence. P.W. 7 has also stated that prosecution witnesses in their

statement u/s 161 of the Code of Criminal Procedure have not named or assigned any overt act against any other accused except Barho and Jawahar. For the first time in the court the prosecution witnesses have developed this story in order to prove the medical evidence. It has also been submitted that in a village background when there is admitted group rivalry and enmity, there is general tendency to rope in as many people as possible as having participated in an assault. In such circumstances, the court must scrutinize evidence carefully and if there arises any doubt, benefits should be given to the accused. Reliance has been placed on AIR 1972 (SC) 464 (Baldeo Singh & Ors. vs. State of Bihar). This court finds substance in the argument. In a melee when several people give blows at one and same time, eyewitnesses are not able to give correct version as to who gave which blow to the deceased and there are serious discrepancies in the evidence of eye witnesses, there is good reason to doubt evidence of prosecution witnesses. In the present case, the prosecution witnesses have contradicted with each other on the point of participation of all other appellants in the offence except Barho and Jawahar. In this case, the prosecution witnesses have consistently stated that Barho and Jawahar fired at Ram Chandra and Ram Pravesh. In this circumstance, probably on account of group rivalry and enmity other appellants have been roped in subsequently in this case.

21. After going through the evidence on record and submission made by the learned counsel appearing for the appellants, we are of the view that the claim of the witnesses regarding identification of rest of the appellants besides Barho and Jawahar does not inspire confidence. The situation in which the witnesses have claimed to have identified the appellants in a mob of 500 people, specially when there was indiscriminate firing by the mob is not convincing. The evidence shows that intensity of firing was so grave that even the police party had to take shelter in a ditch to save their lives. P.W. 7 has stated that he could not identify any one who killed the deceased. P.W. 7 has also stated that Beldar ran away from the place of occurrence before firing had started. It is also on the record that prosecution witnesses have changed the version to suit the medical evidence. As such, their credibility and reliability are also seriously impeached. In these circumstances, the claim of the witnesses that they have identified the appellants, besides Barho and Jawahar, is highly improbable. Since the presence of the appellants other than Braho and Jawahar as well as their identification itself is doubtful as a member of unlawful assembly, their sharing the common object of that unlawful assembly is also not proved. The conviction of appellants under sections 302/149 of the Indian Penal Code is not sustainable. The claim of the witnesses regarding identification of appellants, namely, Sukhu Beldar @ Sukan Beldar, Lakhan Beldar, Badri Beldar, Ramashish Beldar, Pravesh Beldar, @ Ram Pravesh Beldar, Anant Beldar @ Natha Beldar, Raja Beldar, Jagga Beldar, Ramji Beldar, Balo Beldar, Sukhnandan Beldar of Cr. Appeal No. 108 of 2001, Molavi Beldar, Dhanraj Beldar, Baleshwar Beldar, Raja Ram Beldar, Karmu Beldar & Jalandhar Beldar of Cr. Appeal No. 109 of 2001, Ramji

Beldar and Lala Jamadar @ Lala Prasad of Cr. Appeal No. 119 of 2001, Upendra Beldar @ Omindra Beldar and Mahgu Beldar @ Mahabir Beldar of Cr. Appeal No. 181 of 2001 is doubtful. Their conviction u/s 302/149 of the Indian Penal Code is set aside and they are acquitted of their charges u/s 302/149 as well as section 147 of the Indian Penal Code. The appellants above named are already on bail and, as such, they are discharged from the liability of their bail bonds. So far conviction of appellants Barho Beldar @ Balo Beldar and Jawahar Beldar of Cr. Appeal No. 209 of 2001 is concerned, they have been assigned a specific role by the prosecution witnesses. All the three witnesses have claimed that they have killed Ram Chandra Paswan and Ram Pravesh Paswan by firing at them. P.W. 1 has also corroborated that the deceased sustained fire arm injury which caused their death. These two appellants have also been named in the F.I.R. as well as witnesses in their statement u/s 161 of the Code of Criminal Procedure have also stated regarding firing and killing of the deceased Ram Chandra and Ram Pravesh by them. P.W. 7 has also submitted that witnesses in their statement u/s 161 of the Code of Criminal Procedure did name these two appellants as assailants and killers of Ram Chandra and Ram Pravesh. In the facts and circumstances, their conviction u/s 302 of the Indian Penal Code is affirmed and their conviction u/s 148 of the Indian Penal Code as well as u/s 27 of the Arms Act is also upheld. The appellants, namely, Barho Beldar @ Balo Beldar and Jawahar Beldar are in jail and they will remain in custody till the remaining period of their sentence. Cr. Appeal Nos. 108,109,119 and 181 of 2001 are allowed. Cr. Appeal No. 209 of 2001 is dismissed.

P.N. Yadav, J.

I agree.