

(2008) 10 PAT CK 0048

Patna High Court

Case No: Death Reference No. 11 of 2007, Cr. App. (DB) No. 1211 of 2007

State of Bihar

APPELLANT

Vs

Sachchidanand Singh and Others

 Sachitanand Singh @

Bhotha Singh and Others Vs

State of Bihar

RESPONDENT

Date of Decision: Oct. 24, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 147, 148, 149, 302

Citation: (2009) 1 PLJR 416

Hon'ble Judges: Syed Md. Mahfooz Alam, J; Shiva Kirti Singh, J

Bench: Division Bench

Advocate: Akhileshwar Prasad Singh and Kumar Sunil, Ashwhi Kumar Sinha, Rana Pratap Singh, Ajay Thakur, Amir Alam, Sumant Singh and Aruni Singh, for the Appellant;

Final Decision: Dismissed

Judgement

S.M.M. Alam, J.

By the judgment under appeal, the learned Additional District & Sessions Judge (Fast Track Court No.1), Nawada has been pleased to convict appellants Sachidanand Singh @ Bhotha Singh, Raja Ram Singh and Raj Kumar Singh under Sections 148 and 302 of the Indian Penal Code (hereinafter referred to as "I.P.C."). He has further been pleased to convict appellant No. 4 Mahesh Singh @ Bengu Singh for the offence under Sections 148, 302/149 of the I.P.C. and Section 27 of the Arms Act. The learned Additional District & Sessions Judge has further been pleased to award death sentence to appellant Nos. 1, 2 and 3, namely, Sachidanand Singh @ Bhotha Singh, Raja Ram Singh and Raj Kumar Singh @ Nathhu Singh for the offence u/s 302 of the I.P.C. whereas appellant No. 4 Mahesh Singh @ Bengu Singh was also awarded death sentence for the offence u/s 302/149 of the I.P.C. However, no separate sentence has been awarded u/s 148 of the I.P.C. as well as Section 27 of

the Arms Act. After delivering the judgment under appeal, the learned Additional District & Sessions Judge made reference u/s 366 of the Code of Criminal Procedure for confirmation of death penalty. Accordingly, this reference bearing Death Reference No.11 of 2007 and Criminal Appeal No. 1211 of 2007 are before us and are being disposed of together by this common judgment. The prosecution case, as per the fardbeyan of P.W. 6 Anil Kumar son of Ram Khelawan Singh (own brother of deceased Raushan Kumar) resident of village Dolla P.S. Pakribarawan District Nawada recorded by P.W.11, S.I. Vijay Kumar Singh Officer Incharge Pakribarawan on 11.8.2005 at 8.30 P.M. near the premises of Durga Mandir of village Dolla, in brief, is that on the same day at about 4.00 P.M. the buffaloes of Sachidanand Singh (appellant No. 1) were grazing the paddy crops standing in the field of the informant whereupon his younger brother Raushan Kumar (deceased) took the buffaloes to Darwaja of appellant No. 1 and made protest as to why he had left his buffaloes free for grazing the fields of others. On protest made by Raushan Kumar. Raja Ram Singh (appellant No. 2) became angry and started abusing the informant's brother. He also gave threat that within two hours he would teach lesson that nobody would find any place to conceal. At this moment the informant and his cousin brother Mahesh Singh (P.W. 5) also reached there, intervened and persuaded his brother Raushan Kumar to leave the place. Thereafter the informant came to Durga Mandir which is situated adjacent to south of his village. After some time, the informant saw appellant No. 1 Sachidanand Singh, appellant No. 2 Raja Ram Singh and appellant No. 3 Raj Kumar Singh @ Nathhu Singh all of village Dolla going towards west of his village and then within few minutes he saw Rajiv Kumar. Surendra Singh, Sagar Singh, all of village Dolla going towards north alongwith one Chiku Singh of village Dariyapur District Lakhisarai and another boy, namely. Fekan Singh of village Khutaha District Lakhisarai. The informant followed them whereupon he noticed that all the abovenamed persons were going towards village Hathyari. The informant thought that abovenamed persons might be going for some work and so, he returned back and again came back to Durga Mandir premises as it was time of evening Puja. At this stage, the informant's co-villager Mahesh Singh, son of Nand Keshwar Singh, Tripurari Kumar, Anil Singh, Nand Keshwar Singh, Pramod Singh alias Tipan Singh. Rajendra Singh, Navin Singh and Raushan Singh also joined the informant. After the evening prayer was over, some persons proceeded towards their home but the informant and abovenamed persons stayed back there and started gossiping. At about 7.30 P.M. Sachidanand Singh alias Bhootha Singh (appellant No. 1). Sagar Singh, Raj Kumar Singh, Raja Ram Singh, Surendra Singh all of village Dolla, Chiku Singh of village Dariyapur, Fekan Singh of village Khutaha District Lakhisarai, Ashok Mahto of village Barhauna, P.S. Pakribarawan, District Nawada alongwith 10 to 12 persons of his gang emerged from the back side as well as from the west of Durga Mandir. They were armed with rifles and other sophisticated weapons. On seeing them the informant alongwith Mahesh Singh, Tripurari. and Anil Singh son of Chander Singh ran towards the village in order to save their lives but others were restrained by the abovenamed persons. The

abovenamed persons opened fire upon the informant and other fleeing persons but fortunately, they remained unhurt and concealed themselves in Baithaka of Krishnandan Singh from where they saw Sanjay Kumar, Ram Balak Singh, Indradeo Singh, Manish Kumar, Manoj Kumar and Mahesh Singh alias Baiju Singh coming out from the Dalan of Bhatha Singh armed with fire-arms and joining the abovenamed criminals. The informant saw appellant No. 1 Sachidanand Singh putting his rifle at the chest of Pramod alias Tipan Singh and shouted at him to kill all the persons by firing on their chest so that no one could be left alive. The informant and the witnesses identified the voice of appellant No. 1 Sachidanand Singh then Raj Kumar Singh aimed his fire-arm at Raushan Kumar, Raja Ram Singh aimed his firearm at Nand Keshwar Singh, Rajiv Kumar pointed his firearms at Navin Singh and other culprits surrounded them from all sides and they all started doing indiscriminate firings. The informant and others were witnessing the entire occurrence in the moon light and on hearing the sound of firing the villagers started running towards Durga Mandir but the miscreants stopped them from coming to Durga Mandir by resorting firing. Due to fear, the villagers stopped near the house of Krishna Singh and saw the occurrence from that place. The miscreants did firing about 40-50 rounds and thereafter they all fled away towards west and then the informant and others rushed towards Durga Mandir and on reaching there, he saw the dead bodies of Nand Keshwar Singh, Rajendra Singh, Pramod Singh alias Tipan Singh, Navin Singh and Raushan Kumar (his own brother) lying within the premises of Durga Mandir in pool of blood. They ail had fire-arm injuries on their chest, abdomen, arms and other parts of their bodies. It has further been stated in the fardbeyan that appellant No. 1 Sachidanand Singh alias Bhatha Singh, who was hardened criminal, was involved in several cases of dacoity. He is also an associate and member of gang of veteran criminal Ashok Mahto and after the incident of grazing of the paddy field of the informant by the buffaloes, protest was lodged by informant's brother Raushan Kumar. He alongwith other associates and with the help of veteran criminal Ashok Mahto conspired to commit the heinous crime and thereafter he and his associates with the help of gang of Ashok Mahto, who were opposed to Bhumihar caste, had committed the murder of five persons.

2. After recording the said fardbeyan of Anil Kumar, S.I. Vijay Kumar Singh forwarded the same to the Officer Incharge, Pakribarawan P.S. where on receipt of the fardbeyan, Pakribarawan P.S. Case No. 91/ 05 dated 11.8.2005 under Sections 147, 148, 149, 302 of the I P.C. and 27 of the Arms Act was registered and formal F.I.R. of the said case was drawn up. Thereafter the said S.I. took up investigation of this case and submitted charge-sheet against abovenamed appellants and others, on the basis of which the learned Chief Judicial Magistrate, Nawada took cognizance of the offence under Sections 147, 148, 149. 307 and 302/120B of the I.P.C. and 27 of the Arms Act vide order dated 8.5.2006 and thereafter he committed the case to the Court of Session vide his order dated 26.5.2006. Thereafter the case was sent to the file of the learned Additional Sessions Judge for disposal.

3. The appellants have denied the charges and have claimed that they have been falsely implicated in this case at the instance of informant Anil Kumar with whom they had got old enmity and several litigations were going on between the informant side on the one hand and the appellants on the other. Further defence is that murder has been committed by some unknown criminals.

4. In support of the case, the prosecution has examined altogether 11 witnesses, namely, Umesh Singh (P.W. 1), Bipin Kumar Singh (P.W. 2), Naresh Singh (P.W. 3), Tripurari Singh (P.W. 4), Mahesh Singh (P.W. 5), Anil Kumar (P.W. 6), Dinesh Singh (P.W. 7), Dr. Nand Kishore Singh (P.W. 8), Ramanuj Singh (P.M. 9), Dr. Akhilesh Kumar Prasad (P.W. 10) and Vijay Kumar Singh (P.W. 11). Out of the said witnesses, P.W. 6 Anil Kumar is the informant of this case, P.W. 8 and P.W. 10 are two doctors who had conducted autopsy on the dead bodies of five deceased and P.W. 11 is the Investigating Officer of this case. Rest witnesses are eye-witnesses of the occurrence.

5. Besides oral evidence, the prosecution has brought on record certain documentary evidence which have been marked exhibits. These exhibits are as follows:-

Ext.1 is the affidavit sworn by P.W. 5 Mahesh Singh, Ext. 2 is the signature of informant Anil Kumar on the fardbeyan, Ext. 3 is the signature of informant Anil Kumar on the inquest report of deceased Raushan Kumar; Ext. 3/1 is the signature of informant Anil Kumar on the inquest report of deceased Rajendra Singh; Ext. 3/2 is the signature of informant Anil Kumar on the inquest report of deceased Pramod Singh; Ext. 3/3 is the signature of informant Anil Kumar on the inquest report of deceased Nand Keshwar Singh; Ext. 3/4 is the signature of informant Anil Kumar on the inquest report of deceased Navin Kumar Singh; Ext. 4 is the signature of Bhola Singh on the inquest report of deceased Raushan Singh; Ext. 4/1 is the signature of Bhola Singh on the inquest report of deceased Rajendra Singh; Ext. 4/2 is the signature of Bhola Singh on the inquest report of deceased Pramod Singh; Ext. 4/3 is the signature of Bhola Singh on the inquest report of deceased Nand Keshwar Singh; Ext. 4/4 is the signature of Bhola Singh on the inquest report of deceased Navin Kumar Singh; Ext. 5 is the signature of Anil Kumar on the seizure list; Ext. 6 is the signature of Anurag Kumar on the seizure list, Ext. 7 is the signature of Anil Kumar on the protest petition; Ext. 8 is the post mortem report of deceased Rajendra Singh; Ext. 9 is the post mortem report of deceased Pramod Singh; Ext.10 is the post mortem report of deceased Raushan Singh; Ext.11 is the post mortem report of deceased Navin Singh. Ext.12 is the post mortem report of deceased Nand Keshwar Singh; Ext.13 is the fardbeyan; Ext.14 is the signature of Vijay Kumar Singh on the fardbeyan; Ext. 15 is the formal F.I.R.; Ext.16 is the signature of P.W. 11 Vijay Kumar Singh on the formal F.I.R; Ext.17 is the inquest report of deceased Raushan Singh; Ext.17/1 is the inquest report of deceased Rajendra Singh; Ext. 17/2 is the inquest report of deceased Pramod Singh alias Tipan Singh; Ext. 17/3 is the inquest

report of deceased Nand Keshwar Singh; Ext.17/4 is the inquest report of deceased Navin Kumar Singh; Ext.18 is the signature of Vijay Kumar Singh on the inquest report of Raushan Singh; Ext.18/1 is the signature of Vijay Kumar Singh on the inquest report of Rajendra Singh; Ext. 18/2 is the signature of Vijay Kumar Singh on the inquest report of Pramod Singh alias Tipan Singh; Ext.18/3 is the signature of Vijay Kumar Singh on the inquest report of Nand Keshwar Singh; Ext.18/4 is the signature of Vijay Kumar Singh on the inquest report of deceased Navin Singh; Ext.19 is the seizure list and Ext. 20 is the signature of Vijay Kumar Singh on the seizure list.

6. Although the defence has not adduced any oral evidence but has brought certain documentary evidence on record which have been marked as exhibits which are as follows:-

Ext. A is the certified copy of F.I.R. of Pakribarawan P.S. Case No. 55/2000 lodged by Ravindra Yadav on 4.6.2000 against Akhilesh Singh alias Sardar and others; Ext. A/1 is the certified copy of F.I.R. of Warsaliganj P.S. Case No. 85/ 2000 lodged by Nilesh Kumar of village Upraur P.S. Warsaliganj against Uchhat Singh and others; Ext. A/2 is certified copy of F.I.R. of Kashichak P.S. Case No. 47/ 2000 lodged by Mahesh Prasad against Shrawan Singh and others; Ext. A/3 is the certified copy of F.I.R. of Warsaliganj P.S. Case No. 22/2003 lodged by Rajesh Kumar against Sahdeo Prasad and others; Ext. B is certified copy of the complaint petition bearing Complaint Case No. 798/01 filed by appellant No. 1 Sachidanand Singh against informant Anil Kumar, deceased Raushan Singh and others; Ext. C is the certified copy of the plaint of Title Suit No. 5/2002 of the Court of Sub-Judge, Nawada in which appellant No. 1 Sachidanand Singh, Raja Ram Singh and others figured as plaintiffs and the State of Bihar alongwith Anchal Adhikari, Pakribarawan, B.D.O., Pakribarawan and Mukhiya. Gram Panchayat, Ukaura figured as defendants.

7. The point for consideration is as to whether on the basis of the materials available on record it can be held that the prosecution has fully been able to prove the charges levelled against the appellants and whether the conviction of the appellants and death sentence awarded to the appellants are just and proper.

8. In order to find out whether the prosecution has succeeded in proving its case, I would like first to discuss the evidence of the prosecution case which is on record. First of all. I would like to refer the evidence of P.W. 6 Anil Kumar, who happens to be the informant of this case. He is also own brother of deceased Raushan Singh, who was one of the deceased and had been killed in the evening of 11.8.2005. The evidence of P.W. 6 is as follows:-

The occurrence had taken place on 11.8.2005. In the evening at about 4.30 P.M. the buffaloes of Sachidanand Singh (appellant No. 1) had grazed his paddy field whereupon his younger brother Raushan took the buffaloes to Darwaja of Sachidanand Singh and lodged protest with him whereupon Raja Ram Singh

(appellant No. 2) became enraged and started abusing Raushan Kumar. He also gave threat that within two hours he would teach lesson and then no one will get any chance to escape whereupon the informant intervened and persuaded his brother Raushan to leave the place. The informant told them (appellant No. 1 and appellant No. 2) as to why they were making a small matter as big issue. Thereafter he proceeded towards Durga Mandir. Some other persons joined him at Durga Mandir and they started discussing about the tension created in the village on small matter. In the meantime, he saw Sachidanand Singh alias Bhotha Singh. Raja Ram Singh, Raj Kumar Singh and Surendra Singh going towards west of the village and after 10-15 minutes he saw Sagar Singh, Rajiv Kumar. Chiku Kumar, Fekan Singh. Sanjay Singh, Manoj Kumar, Manish Kumar and Mahesh Singh going towards north of the village. He thought that they might be going for some work and started gossiping with other persons. At about 5.45 P.M. evening Puja (Arti) was performed and thereafter several persons left the place after taking Parsad. The informant alongwith Tripuran Singh. Anil Singh son of Chandrashekhar Singh. Pramod Singh, Raushan Singh. Nand Keshwar Singh. Navin Singh, Naresh Singh, Bipin Singh, Mahesh Singh, Ramanuj Singh and some other persons stayed back at Mandir. At about 7.30 P.M. 10-15 persons having firearms in their hands suddenly emerged from the southern and western side of temple. Amongst them, he identified Sachidanand Singh alias Bhotha Singh (appellant No. 1), Raja Ram Singh (appellant No. 2), Raj Kumar Singh (appellant No. 3), Surendra Singh, Sagar Singh, Sanjay Singh, Manoj Singh. Manish Singh, Indradeo Singh, Ram Balak Singh, Mahesh Singh alias Bengu Singh (appellant No. 4). Chiku Singh and Fekan Singh joined them from the western side of the school. Having seen them armed with firearms he alongwith other persons ran for safety and they hid themselves behind the Baithaka of Krishnandan Singh. He has further deposed that it was moonlit night and in the moon light he saw Sanchidanand Singh putting his rifle on the chest of Pramod Singh and then he fired shot from his rifle and shouted to surround all others and shoot them. He has further deposed that Manoj Singh also shot at Pramod Singh on his chest. Pramod Singh fell down and died. Then Raj Kumar Singh shot at Raushan Singh with his rifle causing injury on his chest; Surendra Singh also shot at Raushan Singn causing injury on his chest. Raushan Singh sustained injuries on his chest and other parts of his body. He has further deposed that Raja Ram Singh and Chiku Singh shot at Nand Keshwar Singh with their respective rifles. Nand Keshwar Singh sustained injuries on his armpit. He fell down and died. Raj Kumar Singh and Fekan Singh shot at Navin Singh with their respective rifles who sustained injuries on his chest and fell down and died. Other persons also opened fire in the air. Amongst them, he identified Mahesh Singh, Manish Kumar, Ram Balak Singh and Indradeo Singh. They all fled away towards west by firing in the air. He has further deposed that the villagers also rushed towards the place of occurrence but due to fear, none dared to go near the place of occurrence but when the sound of firing was stopped then after 5 to 10 minutes he alongwith others came out from Dalan of Krishnandan Singh and with several persons of his village went to Durga Mandir premises where

he and other persons saw Pramod Singh alias Tipan Singh, Raushan Singh, Rajendra Singh, Nand Keshwar Singh and Navin Singh lying dead having bullet injuries on their chest. He has further deposed that on arrival of the police he gave his fardbayan over which he put his signature (Ext. 2). He has further deposed that the police officer prepared inquest report of the dead bodies and he put his signatures on all the inquest reports. Signatures of P.W. 6 are Exts. 3, 3/1, 3/2, 3/3 and 3/4. He has further deposed that Bhola Singh had also put his signatures on all the inquest reports. The signatures of Bhola Singh are Exts. 4, 4/1, 4/2, 4/3 and 4/4. At paragraph 7 P.W. 6 has deposed that Sagar Singh and Sanjay Singh also shot at Rajendra Singh who had sustained injuries on his chest and died. He has further deposed that the police officer had seized the blood-stained earth as well as empty cartridges from the place of occurrence and had prepared the seizure list and on that seizure list he had put his signature alongwith Anurag Kumar Ext. 5. He has further deposed that the cause of occurrence was that there is a Gairmazarua Aam land of the State of Bihar over which school building, Durga Asthan, Samudayik Bhawan are standing but on the remaining part of the land, the appellants and others had intention to take forcible possession and due to that, the occurrence had taken place. P.W. 6 has further deposed that he had filed protest petition in this case and on his identification, the protest petition has been marked Ext. 7. P.W. 6 has also identified all the accused present in the dock except accused Ravi Shankar Kumar, who has been acquitted by the trial court.

9. In paragraph 15 of his cross-examination, P.W. 6 has deposed that the police had arrived at the place of occurrence at about 8 P.M. At paragraph 16 he has deposed that D.M., Nawada and S.P., Nawada also reached at the place of occurrence but cannot say at what time they had arrived. At paragraph 15A P.W. 6 has deposed that he was the first man who had given his statement before the police and again said that the police had recorded his statement at about midnight and from 8 P.M. upto midnight he always remained present at the place of occurrence. At paragraph 16A he has deposed that on arrival of police, about 400-500 persons assembled at the place of occurrence but the police did not make any enquiry from them prior to recording his evidence. At paragraph 17 he has deposed that his statement was recorded by the police in absence of D.M. and S.P., Nawada. At paragraph 18 P.W. 6 has deposed that Durga Mandir premises consists of an area of 1.95 acres of land and on the northern and western side of Durga Mandir premises there are boundary walls. P.W. 6 has again reiterated at paragraph 19 that he alongwith Mahesh Singh, Tripurari Singh and Anil Singh ran for safety from Durga Mandir and hid themselves in the Baithaka of Krishnandan Singh which is situated towards the north of Durga Mandir premises, after northern boundary wall of Durga Mandir. He again said that from the boundary wall of Durga Mandir, the Baithaka of Krishnandan Singh is situated towards north-east corner at a distance of 50 yards and in between the boundary wall and Baithaka no other Baithaka or house is situated. At paragraph 20 he again reiterated that on hearing the sound of firing,

the villagers had rushed to the place of occurrence but due to fear they also stopped behind Baithaka of Krishnandan Singh. At paragraph 22 he has said that after the occurrence Ramanuj Singh, Ragho Yadav, Vijay Singh, Kamlesh Singh, Ghanshyam Kumar, Sukhdeo Singh and several other villagers had gone to the place of occurrence, besides Mahesh, Tripurari and Anil Singh. At paragraph 23 P.W. 6 has deposed that the house and Baithaka of Sachidanand Singh (appellant No. 1) stand over the land of Durga Mandir and the same are there for the last 15-20 years ago. This witness has also admitted at paragraph 24 that Sachidanand Singh (appellant No. 1) and Raja Ram Singh (appellant No. 2) and others had brought a title suit in respect of the land of Durga Mandir bearing Title Suit No. 5/2002. He has also admitted that Ram Sagar Singh, Raja Ram Singh, Surendra Singh, Sachidanand Singh, Mahesh Singh and Raj Kumar Singh (all are accused in this case) are plaintiffs of the said suit and the suit was brought against the State of Bihar. He also admitted that during the pendency of the said suit, Anchal Adhikari with the help of some villagers constructed school, community hall and Mandir over the land in dispute. At paragraph 25 P.W. 6 has admitted that Sachidanand Singh (appellant No. 1) had instituted a criminal case bearing Complaint Case No. 793/2001 against 17 accused persons and in that very case, he was also one of the accused alongwith his brother Raushan Singh (deceased). He also admitted that Dinesh Singh (P.W. 7), Umesh Singh (P.W. 1), Mahesh Singh (P.W. 5), Ramanuj Singh (P.W. 9) were also accused in the said complaint case. He also admitted that in that very case Raja Ram Singh (appellant No. 2), Raj Kumar Singh (appellant No. 3), Vakil Singh son of Ram Balak Singh and Sadhu Sharan Singh son of Rajo Singh were witnesses of that case. He has deposed that the said complaint is still pending. At paragraph 26 he has admitted that all the five accused who were put on trial, belonged to one family. At paragraph 27 P.W. 6 had admitted that witnesses Dinesh Singh, Umesh Singh, Mahesh Singh and Anuj Singh all belonged to one family. At paragraph 28 he has denied the suggestion that the occurrence took place due to caste rivalry. At paragraph 30 of his cross-examination P.W. 6 has deposed that in his fardbeyan he had not stated that Ashok Mahto with the help of member of his gang had committed the murder of abovementioned deceased belonging to Bhumihar caste. At paragraph 31, he has admitted that Ashok Mahto belongs to extremist group who is wanted in several criminal cases and he also had made him accused in this case. At paragraph 32, he has admitted that similar type of carnage which took place in his village, had taken place in villages Upraur, Bailor, Dariyapur, Raje Bigha, Bhualchak and Konch Gaon out of which Raje Bigha is situated in Pakribarawan P.S. At paragraph 39, P.W. 6 has denied the suggestion that the murder had been committed by Ashok Mahto and his gang due to caste rivalry and on account of previous enmity he had falsely implicated the appellants and other accused persons. 10. From the evidence of P.W. 6 (informant) it appears that he has given clean chit to Ashok Mahto against whom he has stated in his fardbeyan that the said carnage, in which five persons were done to death, had been committed by the appellants with

the help of veteran criminal Ashok Mahto and members of his gang. It further transpires from the evidence of P.W. 6 that all the prosecution witnesses come from one family whereas all the accused persons of this case come from the same family and there is long standing enmity between the informant and the prosecution witnesses on the one hand and the appellants and other accused persons on the other and in between them, complaint case bearing Complaint Case No. 793 of 2001 was pending. However, it appears that on the point of occurrence P.W. 6 has corroborated his fardbeyan although with some exaggeration.

11. P.W.1 Umesh Singh is another eye-witness of the occurrence. He is the son of deceased Nand Keshwar Singh. According to his evidence, he had seen the occurrence within Durga Mandir premises standing by the side of the wall of Durga Mandir. He has deposed that occurrence took place on 11.8.2005 at about 7.30 P.M. At that time he was sitting behind Durga Mandir. In the meantime, he saw Sagar Singh and Sanjay Singh doing firing with their respective rifles causing injuries to Rajendra Singh in his chest and other parts of his body who fell down and died at the spot. He also saw Sachidanand Singh alias Bhotha Singh and Manoj Singh doing firing with their rifles causing injuries to Pramod Singh in his chest and other parts of his body, who fell down and died. He also saw Raj Kumar Singh and Surendra Singh doing firing with their rifles causing injury to Raushan Singh in his chest and other parts of his body who fell down and died. He also saw Raja Ram Singh and Chiku Singh of village Dariyapur, District Lakhisarai doing firing with their rifles causing injury to Nand Keshwar Singh in his chest who fell down and died. He also saw Rajiv Kumar and Fekan Singh of village Khutaha, District Lakhisarai doing firing with their rifles causing injury to Navin Singh in his chest who fell down and died at the spot. He has further deposed that other accused persons also opened fire and they fled away doing firing. He has further deposed that the occurrence took place due to dispute with regard to Gairmazarua Aam land on which Durga Mandir was established. At paragraph 29 of his cross-examination, this witness has admitted that appellant No. 1 had instituted a complaint case against informant Anil Kumar and others. At paragraph 50 of his cross-examination, this witness has deposed that when the first firing was done then at that time he was only 10 steps away from the place of firing but even then accused persons did not shoot him. At paragraph 51 he has deposed that he remained standing by the side of the wall of Durga Mandir for about 10 minutes and only after fleeing away of the accused persons he left that place. During course of argument, the learned Advocate of the appellants pointed out that in the fardbeyan the name of this witness has not been mentioned by the informant and, therefore, his presence at the place of occurrence and at the time of occurrence is very doubtful. He further submitted that the evidence of this witness that he had seen the occurrence from the distance of 10 steps from the actual place of occurrence within Durga Mandir premises makes his presence at the place of occurrence highly improbable as in that situation the assailants could not have left him alive. I am also of the view that the presence of this witness at the place of

occurrence and at the time of occurrence is very doubtful and it was practically impossible for him to witness the occurrence from a distance of merely 10 steps away from the actual place of occurrence and in that situation he could not have been left alive. I am of the view that since this witness was not present at the time of actual occurrence and that is why his name did not figure as witness in this case in the fardbeyan of the informant. In such situation, I am of the view that P.W.1 is not a reliable witness and he being the son of deceased Nand Keshwar Singh has come to depose as an eye-witness of the occurrence due to previous enmity.

12. P.W. 2 Bipin Kumar Singh is also one of the eye-witnesses of the occurrence. His evidence is that the occurrence took place on 11.8.2005 in the evening at about 7.30 P.M. It was moonlit night and at that time he alongwith some other persons was at Durga Mandir. He saw many persons coming from southwest direction of Durga Mandir armed with rifles and due to fear he hid himself. He saw Sagar Singh and Sanjay Singh doing firing with their rifles causing injury to Rajendra Singh in his chest and other parts of his body who fell down and died. He also saw Sachidanand Singh alias Bhotha Singh and Manoj Singh doing firing with their rifles causing injury to Pramod Singh in his chest and other parts of his body. He fell down and died. Thereafter he also saw Raj Kumar Singh and Surendra Singh doing firing with their rifles causing injury to Raushan Singh in his chest right ribs and finger. Raushan Singh also fell down and died. He also saw Raja Ram Singh and Chiku Singh doing firing with their respective rifles causing injury to Nand Keshwar Singh in his chest and ribs who also fell down and died- He saw Rajiv Kumar and Fekan Singh doing firing with their rifles causing injury to Navin Singh on his chest who also fell down and died. He has further deposed that other accused persons, namely, Ram Balak Singh, Indradeo Singh, Manish Singh and Mahesh Singh also opened fire and after firing they fled away. He has further deposed that the occurrence had taken place due to dispute with regard to Gairmazarua Aam land over which Durga Mandir is standing. At paragraph 5 of his cross-examination he has admitted that about 10 years ago Birendra Singh, own brother of appellant No. 1 Bhotha Singh, had been murdered and in connection with the said murder, his own brother had remained in jail. At paragraph 19 of his cross-examination P.W. 2 has admitted that towards north of Durga Asthan there is a boundary wall of height of 6" and towards west of Durga Asthan the height of boundary wall is 4 1/2". At paragraph 20 he has deposed that Baithaka of Krishnandan Singh is situated at a distance of 250-300 yards from Durga Asthan. Relying upon the evidence of P.W. 2 it has been argued by the learned Advocate of the appellants that it was impossible for the prosecution witnesses to see the occurrence from the Baithaka of Krishnandan Singh which was at a distance of 250-300 yards from the actual place of occurrence and in between Durga Asthan and the said Baithaka there was boundary wall of Durga Mandir. I am of the view that this argument of the learned Advocate of the appellants is not acceptable in view of the fact that night of the occurrence was moonlit night and towards east of the Mandir there was no boundary wall. Admittedly, the Baithaka of

Krishnandan Singh was situated towards North-West corner of Durga Mandir and, therefore, the boundary wall which was on the northern side of Durga Mandir, could not be an obstacle for the witnesses to witness the occurrence.

13. P.W. 3 is Naresh Singh. His evidence is that on 11.8.2005 at 7.30 P.M. he was sitting near the Durga Mandir. He saw 10 to 15 persons having rifles in their hands emerging from south of Durga Mandir. Amongst them, Sagar Singh and Sanjay Singh shot at Rajendra Singh in his chest who fell down and died. Sachidanand Singh alias Bhotha Singh and Manoj Singh shot at Pramod Singh in his chest from their respective rifles who fell down and died. Raj Kumar Singh alias Nathhu Singh and Surendra Singh shot at Raushan Singh who fell down and died. Raja Ram Singh and Chiku Singh shot at Nand Keshwar Singh who also fell down and died. Rajiv Kumar and Fekan Singh shot at Navin Singh who also sustained injuries and died. Other accused persons also opened fire. Amongst them, he identified Ram Balak Singh, Indradeo Singh, Mahesh Singh and Manish Kumar. He has further deposed that the motive behind the occurrence was that accused persons were trying to forcibly take possession of Gairmazarua Aam land and in paragraph 5 of his cross-examination, this witness has deposed that he only saw the accused persons aiming their weapons on the chest of all the deceased but he did not see in what manner the accused persons did firing because at the time of actual firing he fled away from the said place and only after arrival of S.P. and D.M. he again came back to Durga Mandir. Relying upon the evidence of P.W. 3 made at paragraph 15 of his deposition, the learned Advocate of the appellants has argued that the above evidence of P.W. 3 shows that he cannot see the actual firing done by the appellants and other accused persons and so, his evidence that Sagar Singh and Sanjay Singh shot fired at Rajendra Singh, Sachidanand Singh alias Bhotha Singh and Manoj Singh shot fire at Pramod Singh, Raj Kumar Singh alias Nathhu Singh and Surendra Singh shot fire at Raushan Singh; Raja Ram Singh and Chiku Singh shot fire at Navin Singh, cannot be a true statement. I am of the opinion that this argument of the learned defence counsel has got some weight and, therefore, I am of the view that P.W. 3 cannot be said to be eye-witness of the actual firing done by the appellants and other accused persons. However, his evidence that he had seen the appellants and accused persons coming with rifles and aiming at five deceased appears to remain intact.

14. P.W. 4 Tripurari Singh is also an eye-witness of the occurrence. He is the nephew of deceased Nand Keshwar Singh. His evidence is that on 11 August. 2005 at about 7.30 P.M. he was present at Durga Mandir alongwith Anil Singh son of Chandrashekhar Singh, Anil Singh son of Ram Khelawan Singh, Mahesh Singh, Navin Singh, Rajendra Singh, Pramod Singh alias Tipan Singh, Raushan Singh and Nand Keshwar Singh. In the meantime, 15-16 persons variously armed with fire-arms emerged from behind Durga Mandir. On seeing them, he alongwith both Anil Singh and Mahesh Singh fled to Dalan of Krishnandan Singh and hid themselves and from there he saw Sagar Singh and Sanjay Singh firing shot at Rajendra Singh with rifles

causing injuries in his chest and other parts of his body who fell down and died. He saw Sachidanand Singh alias Bhotha Singh and Manoj Kumar firing at Pramod Singh with their respective rifles who also sustained injuries in his chest and other parts of his body and died. He has further deposed that he saw Raj Kumar Singh alias -Nathhu Singh and Surendra Singh firing shot at Raushan Singh with their rifles who also sustained injuries and died at the spot. He saw Raja Ram Singh and Chiku Singh firing shot at Nand Keshwar Singh who also fell down and died. He saw Rajiv Kumar and Fekan Singh firing shot at Navin Singh who also sustained injuries in his chest and other parts of his body and died at the spot. He has further deposed that Indradeo Singh, Manish Kumar, Mahesh Singh alias Bengu Singh and Ram Balak Singh were doing indiscriminate firing and after doing firing, they fled away. Commenting upon the evidence of this witness, the learned defence counsel advanced the same argument that it was not possible from the Baithaka of Krishnandan Singh to witness the occurrence but I have already opined above that from Baithaka of Krishnandan Singh, the place of occurrence was visible and in the moonlit night there was every possibility to witness the entire occurrence and identify the accused persons. I do not find any such contradiction in the evidence of P.W. 4 which affects the credibility of this witness.

15. P.W. 5 Mahesh Singh is also an eye-witness of the occurrence. He is the son of deceased Nand Keshwar Singh and brother of P.W.1. His evidence is that on 11.8.2005 at 7.30 P.M. he was sitting in the field situated north of Durga Mandir alongwith Anil Singh son of Ram Khelawan Singh, Anil Singh son of Chandrashekhar Singh, Tripurari Singh and others. Suddenly 10 to 15 persons from behind Durga Mandir emerged. They were armed with rifles. Amongst them, he identified Sachidanand Singh alias Bhotha Singh, Raja Ram Singh. Raj Kumar Singh alias Nathhu Singh, Rajiv Kumar, Surendra Singh, Sagar Singh, Sanjay Singh, Manoj Singh. Indradeo Singh, Ram Balak Singh, Mahesh Singh alias Bengu Singh, Manish Kumar. Chiku Singh and Fekan Singh. He alongwith others fled away to Baithaka of Krishnandan Singh and hid themselves and from there he saw Sagar Singh and Sanjay Singh firing shot at Rajendra Singh in his chest and other parts of his body with their rifles who fell down and died; Sachidanand Singh alias Bhotha Singh and Manoj Singh firing shot at Pramod Singh alias Tipan Singh causing injury in his chest and other parts of his body who also fell down and died; Raj Kumar Singh alias Nathhu Singh and Surendra Singh firing shot at Raushan Singh in his chest and other parts of his body who also fell down and died and Raja Ram Singh and Chiku Singh firing shot at Nand Keshwar Singh who also sustained injuries and died. He also saw Rajiv Kumar and Fekan Singh firing shot at Navin Singh who also fell down and died. He has further deposed that Indradeo Singh, Ram Balak Singh, Manish Kumar, Mahesh Singh alias Bengu Singh also fired indiscriminately and thereafter they all fled away. He has further deposed that after fleeing away of the accused persons he alongwith others went to the place of occurrence and found Rajendra Singh, Pramod Singh alias Tipan Singh, Raushan Singh, Nand Keshwar Singh and

Navin Singh lying dead. Paragraphs 11, 12, 13 and 14 of his cross-examination show that this witness was confronted with the question that before the police he had not given any specific statement that particular accused had caused fatal injury to a particular deceased and it appears that Investigating Officer (P.W.11) has admitted in his deposition that no such statement has been made by this witness that particular accused had caused injury to particular deceased which goes to show that the witness has made improvement in his evidence before the court but I am of the view that only because of this fact, his evidence cannot be thrown out when on other points this witness has fully stood the test of cross-examination.

16. P.W. 7 Dinesh Singh is the son of deceased Nand Keshwar Singh. According to his evidence, at the time of occurrence he was at Durga Mandir premises. At about 7.30 P.M. he saw 20 to 25 persons having rifles and guns in their hands coming from west of the Mandir. Seeing them he fled away towards east and hid himself behind the ridge (Aari) of the field. Amongst the miscreants he identified Sachidanand Singh alias Bhotha Singh, Sagar Singh, Mahesh Singh, Raj Kumar Singh, Surendra Singh, Rajiv Kumar, Chiku Singh, Fekan Singh and others. They all had rifles in their hands. He has further deposed that he saw Sagar Singh and Sanjay Singh firing from their rifles causing injury to Rajendra Singh in his chest and other parts of his body, Sachidanand Singh alias Bhotha Singh and Manoj Singh firing from their rifles causing injury to Pramod Singh in his chest, Raj Kumar Singh and Surendra Singh firing from their rifles which hit Raushan Singh and Raja Ram Singh and Chiku Singh firing from their rifles causing injury to Nand Keshwar Singh and Rajiv Kumar and Fekan Singh firing from their rifles causing injury to Navin Singh. He has further deposed that due to gun shot injuries, all the abovementioned persons died. He has further deposed that after the occurrence all the abovementioned persons fled away doing firing. He has further deposed that when he alongwith other persons again went to the place of occurrence he saw five persons lying dead with bullet injuries. There is nothing in his cross-examination which can demolish the statements made in his examination-in-chief.

17. P.W. 9 Ramanuj Singh is also said to be eye-witness of the occurrence. His evidence is that on 11.8.2005 at 7.30 P.M. he was present near Durga Mandir when he saw about 20-25 persons having gun and rifles in their hands emerging from west of Durga Mandir. Amongst them, he identified Sachidanand Singh alias Bhotha Singh, Sagar Singh, Indradeo Singh, Ram Balak Singh, Sanjay Singh, Manoj Singh, Rajiv Singh, Raj Kumar Singh, Raja Ram Singh, Surendra Singh and Mahesh Singh. He also identified Chiku Singh and Fekan Singh. Due to fear he fled away towards the Baithaka of Krishnandan Singh and hid himself. He saw Sachidanand Singh alias Bhotha Singh and Manoj Singh firing shot with their rifles to Pramod Singh in his chest and other parts of his body; Sagar Singh and Sanjay Singh firing shot at Rajendra Singh causing injury in his chest, abdomen and other parts of his body; Raj Kumar Singh and Surendra Singh firing shot at Raushan Singh causing injury in his chest and abdomen; Raja Ram Singh and Chiku Singh firing shot at Nand Keshwar

Singh causing injury in his chest and abdomen; Rajiv Kumar and Fekan Singh firing shot at Navin Singh causing injury in his chest, abdomen and other parts of his body. He has further deposed that after the occurrence, the accused persons fled away doing firing. He has further deposed that after fleeing away of the criminals he alongwith other persons again went to Durga Mandir and found five persons lying dead with gun shot injuries. Paragraphs 6, 7, 8 and 9 of his cross-examination show that he was confronted with the question that before the police he had not made any such statement that particular accused had caused the death of particular deceased and the evidence of the Investigating Officer shows that he has admitted this fact that this witness had not made any such statement specifying that particular accused had caused injury to particular deceased. So, in my view, the statement of this witness that he had seen particular accused causing injury to particular deceased is an improvement but in my view, it does not make the entire evidence of this witness wholly unbelievable. From the evidence of the abovesaid witnesses it appears that sufficient materials have come on record to come the conclusion that on 11.8.2005 at about 7.30 P.M. the appellants alongwith other accused persons came to Durga Mandir of village Dolla having armed with rifles and guns did indiscriminate firing as a result of which five persons received gun shot injuries and died at the spot.

18. Let me see-whether the ocular evidence of the prosecution witnesses finds support from the medical evidence or not. P.Ws. 8 and 10 are two doctors who had conducted post mortem examination on the deceased persons. P.W. 8 Dr. Nand Kishore Choudhary had conducted autopsy on the dead body of deceased Rajendra Singh, Pramod Singh and Raushan Singh. As per his evidence, he had found the following injuries on the deceased Rajendra Singh:-

- (i) One gun shot wound over left side of back of chest about 1" x circular x deep cavity entry wound, margin charred and blackened.
- (ii) One lacerated wound over anterior surface of chest at the level of xyphisternum about 3" x 2" x deep cavity. Momentum budge out.

He has further deposed that on dissection of the dead body, he found the following:-lung left side lacerated and right side pale & intact. Both chambers of heart were empty. Stomach & bladder were empty. All organs were pale and intact. Chest cavity was full of blood & blood clots. 7th ribs of back fractured. Cause of death was shock and haemorrhage due to abovementioned injuries caused by firearms. He has proved his post mortem report which has been marked Ext. 8.

19. P.W. 8 has further deposed that on post mortem examination of dead body of Pramod Singh alias Tipan Singh, he had found the following ante mortem injuries on his person:-

- (i) One gun shot wound over back about 1"x circular x deep cavity. Margin charred and blackened & tattooed (entry wound).

(ii) One lacerated wound of chest left side at the level of nipple about 4" x 3" x deep cavity.

On dissection of the dead body, he found the heart lacerated and lungs of (left lobe) lacerated, 6th and 7th anterior ribs were fractured and right lung pale and intact. All organs of cavity were pale and intact. Chest cavity was full of blood and blood clot. Stomach and bladder were empty. Cause of death was shock and haemorrhage due to abovenoted injuries caused by firearms. He has proved the post mortem report which has been marked Ext. 9.

20. P.W. 8 has further deposed that on post mortem examination of dead body of Raushan Singh, he had found the following ante mortem injuries on his persons:-

(i) One gun shot injury over auxiliary region left side about 1" x circular x deep cavity; margin charred and blackened.

(ii) One lacerated wound on the chest at the level of mid chest about 2" x 1" x deep cavity (exit wound).

(iii) One gun shot injury over back "right side at the level of lower scapula about 1" x circular x deep cavity. Margin charred and blackened (entry wound).

(iv) One lacerated wound over chest right side about 2" x 1 1/2" x deep cavity (exit wound).

(v) Lacerated wound of middle and ring finger. Wound caused and blackened.

He has deposed that on dissection he found the heart chambers empty. Both lungs lacerated. 6th rib of the left side fractured and 7th rib of left side fractured. All internal organs were pale and intact. Stomach and bladder are empty. The cause of death was shock haemorrhage due to abovenoted injuries caused by firearm. He has proved the post mortem report which has been marked Ext. 10.

21. P.W.10 is Dr. Akhilesh Kumar Prasad who has conducted post mortem examination on the dead body of Navin Kumar Singh and found the following ante mortem injuries on his person:-

(i) One gun shot injury lacerated in nature 1/2" circular with inverted margin x cavity deep (i.e. entry wound) over left side, of back near lower left scapular angle.

(ii) One lacerated wound 2" x 1" x cavity deep over front of chest in midline over middle of sternum; margin of wound inverted (exit wound).

He has deposed that on dissection he found brain, liver, right lung, kidney, spleen pale and intact. Heart was punctured. Left lung was lacerated. Sternum and ribs 6th and 7th were fractured. Stomach and urinary bladder were empty. Cause of death was shock and haemorrhage due to abovementioned injuries caused by firearms such as rifles. He has proved the post mortem report which has been marked as Ext.11.

22. P.W.10 has also conducted post mortem examination on the dead body of Nand Keshwar Singh and found the following ante mortem injuries on his person:-

(i) One gun shot lacerated wound 1/2" circular with inverted margin at the posterior side of the right upper arm (entry wound).

(ii) Lacerated wound 3" x 2" x cavity deep with inverted margin over the right side of lower abdomen (exit wound).

He has further deposed that on dissection he found right lung, right part of the liver, loops of intestine lacerated, ribs, first and second on the right side were fractured. Brain, left lung, spleen and kidney were pale and intact. Stomach and urinary bladder were empty. The cause of death was shock and haemorrhage due to abovementioned injuries caused by firearm such as rifles. He has proved the post mortem report which has been marked as Ext. 12.

23. From the evidence of abovementioned two doctors coupled with the evidence of the Investigating Officer, post mortem reports (Exts. 8, 9, 10, 11 and 12) and the inquest reports (Exts. 17, 17/1, 17/2, 17/3 and 17/4) it is established that all the dead bodies had firearm injuries and due to firearm injuries all the deceased had died. Thus, there are ample materials on record to hold that deceased Nand Keshwar Singh, Rajendra Singh, Pramod Singh alias Tipan Singh, Navin Singh and Raushan had died due to gun shot injuries.

24. It has been argued on behalf of the appellants that from the evidence of the two doctors it does not establish that the occurrence had taken place in the manner, as alleged by the prosecution witnesses and so, all the prosecution witnesses are liar and on the basis of their testimony, the appellants cannot be convicted. In this regard the learned defence counsel has submitted that according to the evidence of the so-called eye-witnesses i.e. P.Ws. 1, 2, 3, 4, 5, 6, 7 and 9, each of the deceased persons was shot at, at least by two persons and according to their evidence, each of the deceased had sustained at least two firearm injuries on their persons. He submitted that there is specific evidence that Sagar Singh and Sanjay Singh caused injury to Rajendra Singh in his chest and other parts of his body; Sachidanand Singh alias Bhotha Singh and Manoj Singh caused injuries from their rifles to Pramod Singh in his chest and other parts of his body, Raj Kumar Singh and Surendra Singh caused injury to Raushan Singh in his chest and other parts of his body, Raja Ram Singh and Chiku Singh caused injury to Nand Keshwar Singh in his chest and other parts of his body and Rajiv Kumar and Fekan Singh caused injuries to Navin Singh in his chest. He submitted that the above evidence of the prosecution witnesses establishes beyond doubt that each of the deceased had at least two firearm injuries on his person but the evidence of P.Ws. 8 and 10 (both doctors), except deceased Raushan Singh, all other four deceased, namely, Rajendra Singh, Pramod Singh alias Tipan Singh, Navin Singh and Nand Keshwar Singh had only one gun shot injury on their persons. According to P.W. 8, only deceased Raushan Singh had two gun shot

injuries on his person. He further submitted that the evidence of all the doctors contradicts the ocular evidence of the prosecution witnesses that all the five deceased were shot at from the front causing injuries in their chest. The evidence of both the doctors shows that all the deceased persons had wound of entrance in their back. The argument of the learned defence counsel has got much weight as from perusal of the evidence of both the doctors it appears that except deceased Raushan Singh, no other deceased had two gun shot injuries on his person. Moreover, it appears that wound of entry on the body of each of the deceased was in the back and the wound of exit was from the front side of the body. Only deceased Raushan Singh had one gun shot injury over auxiliary region on left side of the body. Thus, the evidence of P.Ws. 8 and 10 fully contradicts ocular evidence of the prosecution witnesses that each of the deceased was shot at, at least by two of the accused persons and that each of the deceased was shot at from the front receiving injuries in his chest. Under the circumstance. I have no hesitation to hold that the medical evidence of P.Ws. 8 and 10 fully contradicts the ocular evidence regarding the manner in which occurrence had taken place.

25. It has been argued by the learned defence counsel that since the medical evidence does not support the ocular evidence regarding the manner of occurrence, as such the entire evidence of the prosecution witnesses should be thrown out and this Court should hold that all the prosecution witnesses are liar and on that ground alone, the appellants should be acquitted. As I have already held above that the medical evidence has fully contradicted the ocular evidence of the prosecution witnesses with regard to the manner of occurrence but the question is whether on this ground alone the appellants should be acquitted, I am of the view that the answer is in the negative because of the fact that the earliest version of the occurrence as disclosed in the fardbeyan was that the appellants alongwith other accused persons surrounded all the deceased persons from all sides and Sachidanand Singh (appellant No. 1) pointed his rifle at Pramod Singh, Raj Kumar Singh (appellant No. 3) pointed his weapon at Raushan Singh, Raja Ram Singh (appellant No. 2) pointed his weapon at Nand Keshwar Singh, Rajiv Kumar pointed his weapon at Navin Singh and then on the order of Sachidanand Singh to shoot all the persons in their chest, the appellants and other accused persons started indiscriminate firing from all the directions. This averment in the fardbeyan shows that it was not the earliest version of the prosecution that Sagar Singh and Sanjay Singh caused injury to Rajendra Singh in his chest, Sachidanand Singh alias Bhotha Singh and Manoj Singh caused injury to Pramod Singh, Raj Kumar Singh and Surendra Singh caused injuries to Raushan Singh in his chest, Raja Ram Singh and Chiku Singh caused injury to Nand Keshwar Singh in his chest and Rajiv Kumar and Fekan Singh caused injuries to Navin Singh in his chest rather earlier the prosecution was not specific that who had caused the murder of whom. Moreover, from paragraphs 42, 47, 48, 49, 64, 65 and 66 of P.W. 11 (I.O.) it appears that P.W. 11 has deposed that the prosecution witnesses have not pointed out any specific role

to any of the accused naming that particular accused had caused murder of particular deceased. These facts establish that the evidence of the prosecution witnesses with regard to giving particular role to particular accused in causing murder of particular deceased is definitely an improvement made in the statements of the prosecution witnesses in the trial which may be termed as "exaggeration" and therefore, I am of the view that only on the basis that the prosecution witnesses have made some improvement in their evidence during trial, their entire testimony cannot be disbelieved and on this ground alone, the appellants cannot be acquitted.

26. It has further been argued by the learned defence counsel that in this case not a single independent witness has been examined on behalf of the prosecution and all the witnesses are related either to the deceased persons or to the informant and so, in the absence of independent witnesses, their testimony should not be relied upon. It is true that all the prosecution witnesses are closely related to each other and they are also related to deceased persons but I am of the view that only on the ground of close relationship, their testimony cannot be disbelieved as in several decisions, the Apex Court has held that the near relatives of the deceased are important witnesses as they would not allow the real culprits to escape from punishment. In such view of the matter, I am of the view that in such incident where five persons were done to death and the entire villagers were terrorized, coming forward of the relations of the deceased in naming the real culprits at the risk of their life is an act to be appreciated and not to be deprecated. Under such circumstance, I hold that close relationship of the witnesses with the informant and the deceased persons is not an obstacle in coming to the conclusion that the witnesses are telling truth. The learned defence counsel has argued that admittedly, the occurrence had taken place in the month of August at about 7.30 P.M. which goes to establish that the occurrence took place when it was dark. He submitted that the evidence of the prosecution witnesses shows that most of the prosecution witnesses had seen the occurrence from Baithaka of Krishnandan Singh and according to the evidence at paragraph 20 of P.W. 2, the said Baithaka of Krishnandan Singh is situated at a distance of 250 to 300 yards from Durga Mandir and so, in the dark night it was practically impossible for the witnesses to witness the entire occurrence from a distance of 250 to 300 yards and also to identify each of the appellants. He further argued that the prosecution witnesses have admitted that towards north of Durga Mandir there is a boundary wall of about 5-6" high and this boundary wall lies between Baithaka of Krishnandan Singh and Durga Mandir and so, due to distance and intervening boundary wall of Durga Mandir, it was impossible for the prosecution witnesses to witness the occurrence which goes to establish that the prosecution witnesses are not reliable. I am not in a position to accept this argument of the defence counsel in view of the fact that admittedly, there is no boundary wall towards east of Durga Mandir and the evidence shows that Baithaka of Krishnandan Singh is situated towards north-east side from Durga Mandir and therefore, the boundary wall towards north of Durga Mandir cannot be an obstacle for seeing any occurrence

taking place within the premises of Durga Mandir from the Baithaka of Krishnandan Singh.

27. As regards the argument that since it was dark night and there was no means of identification, I am to say that it is the case of the prosecution from the very beginning that the witnesses had seen the occurrence in moonlit night and there is finding of the Apex Court in several cases that ocular sense of the persons coming from villages is very strong in comparison to the persons living in town and even in dim light they can identify the known persons very well. In this regard I place reliance upon the decision of the Apex Court given in the case of Kalika Tiwary and Others, Appellants vs. State of Bihar, Respondent reported in 1997(2) PLJR (SC) 1. In this regard I would like to quote the observation of the Hon"ble Judges of the Apex Court made at paragraph 16 of the decision :-

"...The visibility capacity of urban people who are acclimatized to fluorescent lights or incandescent lamps is not the standard to be applied to villagers whose optical potency is attuned to countrymade lamps. Their visibility is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such light."

28. The above observations clearly establish that the Hon"ble Supreme Court is also of the opinion that even in dim light persons belonging to villages can identify the known persons. In such view of the matter, if the witnesses claimed to have identified the appellants and other accused in moonlit night, it cannot be held that since no means of identification has been mentioned in the fardbeyan except moonlit night, the identification of the appellants and of other accused persons by the witnesses is doubtful. I, therefore, reject the argument of the defence counsel in this regard.

29. It has further been argued by the learned defence counsel that earlier motive of committing murder, as disclosed in the fardbeyan, was that appellant No. 1 Sachidanand Singh alias Bhotha Singh is a veteran criminal and being accused of several dacoity and other criminal cases and a supporter of dreaded criminal Ashok Mahto and due to quarrel which had taken place in the evening on the question of grazing the field of the informant by the buffaloes of Sachidanand Singh, said Sachidanand Singh alias Bhotha Singh (appellant No. 1) with the help of dreaded criminal Ashok Mahto and his gang who are opposed to Bhumihar caste, had committed the murder of five persons. The learned defence counsel submitted that this earlier motive was intentionally drawn by the prosecution side in the evidence of the prosecution witnesses which was substituted by the motive that the appellants and other accused persons were trying to forcibly grab Gairmazarua Aam land of Durga Mandir and the prosecution side was opposing the act of forcible possession of Gairmazarua Aam land by the appellants and as such, the appellants and other accused persons had committed the offence. The learned defence counsel submitted that the first motive that due to caste rivalry the dreaded criminal

and his group which was opposed to Bhumihar community had committed the murder of five persons of Bhumihar community, was suppressed by the prosecution because of the fact that during investigation, this fact came in light that the entire area was infested with caste rivalry and in several villages, several persons of Bhumihar community were done to death by the extremist group. In this regard, learned defence counsel has placed reliance upon the evidence of the Investigating Officer (P.W. 11) at paragraph 34 in which he has deposed that villages Dolla, Rajebigha and Upsarh are not extremist infested areas and the said villages are infested with caste rivalry. He again deposed that Kowakol, Maskaur, Govindpur, Sirdallaha and Rajauli lying adjacent to Pakribarawan Police Station are extremist infested areas and also affected with caste rivalry. The learned defence counsel submitted that the above evidence of the Investigating Officer establishes that the murder of five persons of Bhumihar community had taken place due to caste rivalry at the hands of extremists specially Ashok Mahto and his gang who were opposed to Bhumihar community and taking advantage of the murder of five persons, the informant side falsely implicated the appellants in this case due to enmity and that is why the informant side dropped the first motive as disclosed in the fardbeyan. I am of the view that to some extent it may be true. In the evidence stage, the earliest motive is that the crime of murder was perpetrated by Ashok Mahto and his gang due to his caste bias against Bhumihar community and during the trial all the witnesses described the motive as dispute with regard to forcible possession of Gairmazarua Aam land appertaining to Durga Mandir but in my view, this change of motive does not materially affect the prosecution case as the informant side as well as the accused side belonged to same Bhumihar community and if the argument of the learned defence counsel is accepted that due to caste bias Ashok Mahto and his gang alone committed murder of five persons belonging to Bhumihar community then in that situation the accused side should also have suffered casualty. The evidence on record shows that the appellants alongwith other accused persons had come to the place of occurrence armed with rifle and gun alongwith the company of Ashok Mahto and did indiscriminate firing causing death of five persons of Bhumihar community and as such, the incident cannot be termed as the result of caste rivalry prevailing between Bhumihar community of the locality and the said criminal Ashok Mahto and his gang who belonged to another community. This circumstance alone establishes that the motive was something else and that motive which has been disclosed in the evidence of the prosecution witnesses that as the appellants and other accused persons had intention to forcibly occupy the entire Gairmazarua Aam land of Durga Mandir which were opposed by the informant and the deceased persons and due to that the occurrence took place. The evidence on record shows that the appellants have already occupied the Gairmazarua Aam land belonging to Durga Mandir and have also constructed their Baithaka etc. over portion of the said land and on that basis they are claiming title of the land for which appellants Sachidanand Singh, Raja Ram Singh and others had instituted Title Suit No. 5 of 2000 before the Sub-Judge, Nawada against the State of Bihar. The plaint of

the said title suit has been brought on record on behalf of the defence which has been marked Ext. C in this case. This document of the defence itself proves beyond doubt that the appellants and other accused persons had greedy eye over the Gairmazarua Aam land of Durga Mandir and the evidence shows that the informant side was opposing the attempt of forcible grabbing of the land by tooth and nail. I am of the view that in the facts and circumstance of the case, the motive as alleged by the prosecution witnesses in their evidence seems to be acceptable.

30. The learned defence counsel has further argued that the informant as well as the prosecution witnesses are inimical to the appellants specially with appellant Sachidanand Singh and several criminal cases are pending in between them and in support of his argument, he has placed reliance on Exts. A, A/1, A/2 and A/3 and Ext. B. It is true that from perusal of Ext. A series and Ext. B it appears that some litigation is going on between the informant and some of the witnesses on the one hand and appellant Sachidanand Singh and others on the other hand but I am of the view that enmity cuts both the ways and on this ground the evidence of the prosecution witnesses cannot be disbelieved.

31. It has also been argued by the learned Advocate of the appellants that there was delay in lodging the first information report and F.I.R. is ante dated as endorsement on the F.I.R. shows that the same was received in court on 13.8.2005 although the occurrence had taken place on 11.8.2005. I am of the view that this argument is not tenable in view of the fact that the occurrence had taken place on 11.8.2005 in the evening at 7.30 P.M. and the fardbeyan was recorded at 8.30 P.M. and thereafter F.I.R. was received in the police station at 11.30 P.M. on the same day and only one day was intervened in sending the F.I.R. to the Court of A.C.J.M, as the endorsement on F.I.R. shows that it was received on 13.8.2005 in the office of the A.C.J.M., so there appears no delay in sending the F.I.R. or ante dating the same. Only because of the some cutting in the date and timing in the column of formal F.I.R. it cannot be held that F.I.R. is ante dated and so, I reject the argument of the learned Advocate of the appellants in this regard.

32. To sum up my discussion, I am of the view that there are sufficient materials on the record to hold that on the alleged date of occurrence, the appellants alongwith other accused persons of this case after forming an unlawful assembly with common object to commit murder of the abovementioned five deceased came to Durga Mandir premises of village Dolla and did indiscriminate firing as a result of which abovementioned persons sustained firearm injuries and died on the spot. However, I find and hold that the evidence of the prosecution witnesses that particular accused committed murder of particular deceased is an improvement made during the trial, so no specific liability for the murder of any particular deceased can be fixed upon any particular appellant. Under this circumstance, I am of the opinion that it would be proper and legal to convict the appellants u/s 302 with the aid of Section 149 of the Indian Penal Code. Accordingly, I convict all the

four appellants u/s 302 read with Section 149 of the I.P.C. instead of Section 302 of the I.P.C. and uphold the conviction of the appellants under the abovementioned sections of the Indian Penal Code. I also uphold the conviction of all the four appellants u/s 27 of the Arms Act as there is sufficient evidence on record that at the time of occurrence they all were armed with firearms. Since all the appellants have been convicted under Sections 302/149 of the I.P.C. as such the conviction of the appellants u/s 148 of the I.P.C. is not necessary.

33. Now the question is-whether the sentence of death passed against the appellants should be confirmed or not. I have already found above that the prosecution witnesses have not come with clean hands and during the trial they have made material improvement in their evidence by attributing specific role to each of the appellants in committing the murder of particular deceased which was not the earliest version of the prosecution. Moreover, the improved version of the occurrence, as disclosed by the prosecution witnesses, does not stand corroborated by the medical evidence. In this view of the matter, I am of the view that it is not a fit case in which death sentence can be awarded although it is true that in the instant case, five innocent persons had lost their lives. Under the circumstances, I am of the view that the ends of justice will be served by awarding life imprisonment to each of the appellants for the offence u/s 302 read with Section 149 of the Indian Penal Code. Accordingly, the death sentence awarded to the convicts under Sections 302 and 302/149 of the Indian Penal Code is converted into life imprisonment and relying upon the decision of the Supreme Court in the case of [Swamy Shraddhananda @ Murali Manohar Mishra Vs. State of Karnataka](#), I direct that all the convicts, namely, Sachidanand Singh alias Bhotha Singh, Raja Ram Singh, Raj Kumar Singh and Mahesh Singh @ Bengu Singh, shall not be released till they complete 20 years of actual imprisonment. In the result, I find no merit in this appeal and as such, this appeal is dismissed with above modification in the order of conviction and sentence of death passed against the appellants by the trial court. Accordingly, the death reference is answered in the negative and the appeal preferred by the abovementioned four appellants stands dismissed.

Shiva Kirti Singh, J.

34. I agree.