
(2012) 05 PAT CK 0080

In the Patna High Court

Case No : Criminal Appeal (DB) No. 391 of 1989

Chandra Keshwar Choudhary and Subas @ Subhas Choudhary APPELLANT
Vs

The State of Bihar RESPONDENT

Date of Decision : 16-05-2012

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 157, 162, 307, 313
Evidence Act, 1872 — Section 134
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2012) 05 PAT CK 0080

Hon'ble Judges : Shyam Kishore Sharma, J; Aditya Kumar Trivedi, J

Bench : Division Bench

Advocate : Akhileshwar Pd. Singh and Mr. Rabindra Kumar, in CR. app DB No. 391 of 1989 and Mr. Akhileshwar Pd. Singh and Mr. Rabindra Kumar, in CR. app DB No. 405 of 1989, for the Appellant; Shashi Bala Verma, in CR. APP (DB) No. 391 of 1989 and Mrs. Shashi Bala Verma, in CR. APP (DB) No. 405 of 1989, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Aditya Kumar Trivedi

1. In Cr. Appeal No. 391 of 1989, Chandra Keshwar Choudhary and Subas @ Subhash Choudhary happen to be appellants out of whom Chandra Keshwar Choudhary died and accordingly vide order dated 19.03.2012 the instant appeal against him has been held to be abated. In Cr. Appeal 405 of 1989, Jagdish Choudhary, Surendra Choudhary and Birendra Choudhary @ Bijendra Choudhary happen to be appellants. Both the appeals have been preferred against the common judgment of conviction and sentence dated 29th August 1989 delivered by 2nd Additional Sessions Judge, Bhojpur at Ara, hence there has been analogous hearing and are being decided by a common judgment with the consent of the respective counsels.

2. All the appellants, namely, Bijendra Choudhary, Surendra Choudhary, Subhash Choudhary, Jagdish Choudhary, Chandra Keshwar Choudhary (since deceased) have been found guilty for an offence punishable under Sections 302/ 149, 148 of the IPC. Appellant, Jagdish Choudhary, Bijendra Choudhary, Surendra Choudhary have been found and held guilty for an offence punishable u/s 307 of the IPC. Accordingly, all the appellants were sentenced to undergo RI for life under Sections 302/149 IPC while RI for one year u/s 148 of the IPC. Further, appellants-convict, Jagdish Choudhary, Bijendra Choudhary, Surendra Choudhary were directed to undergo RI for seven years u/s 307 of the IPC. The sentences were further directed to run concurrently.

3. PW-2, Tipan Choudhary gave his fardbeyan (Ext-4) on 25.01.1980 at about 9 P.M. near the hut of Sabha Choudhary at village, Belaur before the O/C Udwant Nagar P.S. to the effect that on the same day at about 3:00 P.M. he along with Ramraj Choudhary, Jagropan Choudhary, Lalmohar Choubey were going to purchase cloth. As soon as, they reached near hut of Sabha Choudhary, they saw their villagers, Chandra Keshwar Choudhary, his brother, Jagdish Choudhary, Subhash Choudhary, Bijendra Choudhary, Surendra Choudhary near the house of Lakhan Kahar. At that very time, Chandra Keshwar Choudhary and Subhash Choudhary were armed with Bhala while remaining were armed with gun. On an order of Chandra Keshwar Choudhary, Jagdish Choudhary, Bijendra Choudhary, Surendra Choudhary made indiscriminate firing from their gun causing injury to Ramraj Chodhary, Lalmohar Choubey and he himself. Ramraj Choudhary died instantaneously. Lalmohar Choubey became unconscious while he happens to be in injured condition. He cannot say whose firing struck whom. Ramraj Choudhary had sustained injury over his forehead, stomach, arm while Lalmohar Choubey sustained injury over his neck, right hand, right leg. Kameshwar Choudhary, Dev Kumar Choudhary came on alarm raised by them and have seen the occurrence apart from others. The motive for occurrence has been shown as grandmother of deceased, Ramraj Choudhary had taken land of Chandra Keshwar on mortgage. Now, a days Chandra Keshwar was insisting that as seven years have already expired therefore, she should return back the land. About 25 to 30 days ago there was dispute over harvesting of paddy crop. Chandra Keshwar Choudhary was insisting that if they will not relinquish the land, they will be murdered. They have not gone to the P.S. out of fear that the accused might commit another offence. Then thereafter the accused persons lit fire in the Palani of Lakhan Kahar, who happens to be their own man. Choukidar, Jagdish Yadav, Ambika Sah came and put vigilance over the situation. On the basis of the aforesaid fardbeyan, Udwant Nagar P.S. Case No. 13 of 1980 was registered and subsequently thereof investigation was taken thereupon which ultimately concluded by filing of charge-sheet leading to taking of cognizance followed with commitment and trial which ultimately concluded in conviction of the appellant/ accused which happens to be the basis for filing of instant two appeals.

4. The defence case as is evident from mode of cross-examination, suggestion, statement recorded u/s 313 Cr.P.C. is that accused persons are innocent and

they have been falsely implicated in this false and concocted case. It has further been submitted that no occurrence as alleged had taken place rather the prosecution party after forming an unlawful assembly raided the house of Lakhan Kahar for realization of due amount. After apprehending some foul play, accused were called upon by the wife of Lakhan Kahar and after whose appearance, the prosecution party on their own began to fire upon the accused persons as a result of which one of the accused, Jagdish Choudhary had sustained fire arm injury. During course of aforesaid firing the prosecution party themselves sustained injury as a result of which, Ramraj Choudhary died. Accused, Chandra Keshwar Choudhary had already instituted a case bearing Udwant Nagar P.S. Case No. 12 of 1980. After coming to know about the same, the instant case has been filed by way of counter blast. Also examined four defence witness in support of their plea.

5. In order to substantiate its case, the prosecution had examined altogether nine PWs out of whom PW-1 is Lalmohar Choubey one of the injured, PW-2, Tipan Choudhary another injured as well as informant, PW3, Kameshwar Choudhary the FIR named witness but not an eyewitness, PW-4, Ranglal Choudhary, brother of informant, FIR attesting witness but not an eye witness to the occurrence, PW-5, Janeshwar Choudhary, not named, not an eye witness to the occurrence, PW-6, Ramnagina Choudhary, seizure witness, PW-7, Shubhdayal Choudhary, father of deceased but not an eye witness, not named in the FIR, PW-8, Bindeshwari Pd. Singh, I.O, PW-9, Dr. Akhilesh Sharma who held post-mortem as well as examined both the injured. Side by side also exhibited Ext-1, signature of PW-2, over fardbeyan, Ext-2, inquest report, Ext-3 series, signature of witnesses over seizure list, Ext-4, Fardbeyan, Ext-5, a formal FIR, Ext-6, sketch map, Ext6/1 note of I.O., Ext-7 series, injury report of two injured and Ext-8, postmortem report. Side by side defence had also exhibited Ext-A, formal FIR, A/1, signature, Ext-B, written report, Ext-C, x-ray report, Ext-D, X-ray plate, Ext-E, injury report, Ext-F, bed head ticket and had examined DW, to DW-3 formal witness while D-4 as material witness.

6. Many fold arguments have been advanced on behalf of appellant-convict while assailing the judgment of conviction and sentence. The first and foremost ground is that the alleged occurrence has been shown on 25.01.1980 at about 3:00 P.M. and none of the injured nor their family members have tried to contact the police officials. It is evident from the evidence of PW-8, I.O that after registration of Udwant Nagar P.S. Case No. 12 of 1980, he came at P.O. and during inspection of the P.O. he met with injured and got Fardbeyan recorded. So submitted that remaining at place of occurrence for six hours without approaching the police as well as without seeking any medical aid makes the whole situation, un-kempt, umbrageous more particularly in the background of the facts that informant, P.W-2 had clearly stated that the condition of Lalmohar Choubey was critical and was unconscious. At this moment, It has further been added that the FIR was received at the office of Chief Judicial Magistrate on 28.01.1980 without having any explanation at the end of the prosecution. This aspect is going to suggest

that the FIR is ante-dated and been registered only to make out a defence case to counter meet with Udwant Nagar P.S. Case No. 12/1980 registered at the behest of one of the appellants.

7. Then submitted that presence of Udwant Nagar P.S. case No. 12/1980 which was registered for murder of Ramraj Choudhary along with injury of Jagdish Chaudhary makes the presence of instant case unacceptable, illegal, and non recognizable in the eye of law because of the fact that for the same cause second FIR is not permissible apart from the fact that it is hit by Section 162 of the Cr.P.C. To support its plea, not only documentary evidence has been brought up on record under Ext-A to F rather DW-4 had also been examined on the fact. The PW-8, the I.O. had apart from accepting presence of Udwant Nagar P.S. Case No. 12/80 also found appellant, Jagdish Choudhary admitted to hospital wherefrom he was taken to judicial custody.

8. Because of the fact that by consistent oral as well as documentary evidence the appellants-convict have legally conclusively brought up on record prior institution of a case at their behest and further having been admitted by the prosecution witnesses itself more particularly by PW-8 regarding admission of appellants-convict Jagdish Choudhary at the hospital, then thereafter it was incumbent upon the prosecution to explain the injury sustained by the accused. Having failure on the part of the prosecution, it traduce the conduct as well as sully prosecution version over genesis of occurrence, manner of occurrence leading to an adverse inference against the prosecution that it has not come with clean hand rather knowingly and intentionally suppressed the real manner and genesis of occurrence. The aforesaid failure on the part of the prosecution is indicative of the fact that there has been suppression of real material facts and in the aforesaid background, the judgment of conviction and sentence recorded by the learned lower court happens to be perverse. To support the aforesaid contention, Mohar Rai and Bharath Rai Vs. The State of Bihar, , State of Rajasthan Vs. Madho and another, have been referred.

9. Further elaborating his argument, learned counsel for the appellants-convict submitted that there has been absence of eye witness to occurrence, there happens to absence of presence of independent witness and whoever been examined, apart from having interested, related, partisan witnesses, they are not at all to the occurrence. To buttress such plea, our attention have been drawn towards their testimony to suggest that the evidence of PW-3 to 7 are worthless as they are not going to support the case of the prosecution. Not only this, the two injured along with other witnesses are also accused in Udwant Nagar P.S. Case No. 12/1980. Therefore, the testimony has to be accordingly subject to close scrutiny. Now, coming to the evidence of remaining two witnesses, PW-1 and 2 the injured one, it has been submitted that PW-2 had tried unsuccessfully to develop the prosecution version from its initial stage over which his attention has been drawn up. In likewise manner, the evidence of PW-1, another injured happens to be. How the four persons without any pre planning one by one joined

for purchasing of clothes and without disclosing that there was any lane passing through the house of Lakhan Kahar to market, their presence at the house of Lakhan Kahar supports the case of the defence in stead of prosecution that they along with other having been variously armed with gun to teach a lesson to the inmates of Lakhan Kahar raided his house during course of which an occurrence was committed. Then coming to the evidence of PW-8, it has been submitted that right from beginning, the I.O. had gone to the camp of prosecution. In his evidence, he had clearly admitted that when he came to the place of occurrence for conducting investigation of Udwant Nagar P.S. Case No.12/1980, then he met with injured and subsequent steps taken by him brushing aside and ignoring presence of earlier version of occurrence through Udwant Nagar P.S. Case No. 12/1980, is sufficient to demolish the case of the prosecution and for that referred 1989 CrL. LJ, NOC 151, AIR 1999 SC 1229, Ranbir Yadav Vs. State of Bihar, .

10. It has further been argued that all the incriminating article whatever been adduced by the prosecution and is available on the record have not been confronted during course of statement u/s 313 of the Cr.P.C. By such lapse on the part of the court caused prejudiced to the appellants-convict and on this score alone the finding recorded by the learned lower court is fit to be unsettled. In support of such plea Sajjan Sharma Vs. State of Bihar, have been referred.

11. It has further been submitted that on account of non compliance of Section 157 of the Cr.P.C. as well as on account of lapses on the part of prosecution coupled with presence of counter case which was registered earlier to registration of instant case makes the whole prosecution case doubtful, unacceptable. To support such plea referred Ishwar Singh Vs. State of U.P., , Thanedar Singh Vs. State of Madhya Pradesh, .

12. So, it is the submission on behalf of the learned counsel for the appellant-convict that neither on factual aspect nor on legal aspect the case of the prosecution substantiate, hence the finding of guilt and sentence recorded by learned lower court happens to be non supportive as well as bad and illegal.

13. Counter meeting with arduous submission raised on behalf of appellant-convict, learned APP submitted that there is no prohibition under Cr.P.C. for registering a counter case more particularly when there happens to be different narration of genesis of manner of occurrence as well as having the names of the accused different. The presence of case and counter case has been recognized since time immemorial. As such, submission on this score made on behalf of appellant-convict is not at all tenable. In likewise manner, It has further been submitted that presence of counter case or the non explanation of injury sustained by accused is not going to hamper the case of prosecution more so when the accused had sustained simple injury. So far facts of the present case is concerned, it is true that four witness have been examined on behalf of defence as well as series of documents have been exhibited on their behalf but those documents are itself sufficient to support the case of the prosecution. Soon after

occurrence, there has been presence of legal expert who himself drafted the FIR as is evidence from the evidence of DW-1 and tendering the same through third person is indicative of the fact that all things were carried out to make a plausible defence case. That means to say after occurrence the accused became vulnerable as well as apprehensive and on account thereof consulted legal expert and consequent thereupon, written report were drafted and was placed before O/C Udwant Nagar P.S. by a stranger. None of the members of the appellant-convict had approached Udwant Nagar P.S. and this theme is suggestive of the fact that appellant-convict was taking every precaution to counter meet with the occurrence what they had committed and further strengthen their plea for protection of their interest. This part is further evident from the fact that when PW-8 had gone to the hospital where Jagdish Choudhary was said to be admitted, did not find Jagdish Choudhary there.

14. It has further been submitted that the prosecution has not tried to bring or develop its case rather by natural evidence had supported its case. It has further been submitted that there was no occasion for PW-1 and 2 to implicate others and will spare the real culprit. With regard to status of other PWs, it has been submitted that they had corroborated the prosecution version. The evidence of doctor supports the manner of occurrence along with objective finding of the I.O. Hence, the appeal is fit to be dismissed.

15. For better appreciation of factual as well as legal aspect so raised on behalf of the rival parties, it looks better to go through the evidence of the respective witnesses.

16. The nature of evidence so adduced on behalf of the prosecution does suggest falling under two categories. The first one happens to be the evidence of PW-1 and 2, eyewitness as well as injured one while from PW-3 to 7 hearsay as well as corroborative in nature. As such, first of all the evidence of PW-3 to 7 is dealt with.

17. Before coming to their evidence, their status is also to be taken into consideration by having their presence as an accused in counter case. Therefore, somehow or other their presence at the place of occurrence is admitted one though as per prosecution they do not carry status of an eyewitness to occurrence.

18. PW-3 had said that on 25.01.1980 at about 3:00 P.M. while he was at his house, he heard sound of firing over which he came and proceeded in Gali where he saw Chandra Keshwar, Jagdish, Vijendra, Surendra and Subhash fleeing towards northern Gali. At that very time, Chandra Keshwar and Subhas were armed with Bhala while remaining were armed with gun. After coming to the hut of Sabha Choudhary, he found Ramraj Choudhary dead while Lalmohar Choubey was lying east to him in unconscious state. Tipan Choudhary was sitting three to four hand away from there. Jagropan Choudhary was also standing there who is now dead. On query, Tipan, Jagropan narrated the whole incident to the effect

that all the family members of Chandra Keshwar Choudhary have shot at. During cross-examination, had said that just about a minute after hearing the sound of firing, he rushed to the spot. He reached at the spot first of all. He had seen so many persons who have had witnessed the occurrence from Kotha but he cannot name them. The Gali had become lonesome. He made query from Tipan regarding the occurrence. At paragraph-3 had said that house of Hansdeo Choudhary, Shyam Narayan Choudhry, Paramhans Choudhary, Jhandi Choudhary lie near the place but at that time no one was present. He remained there for 10 minutes during midst of which so many persons have assembled. In para-4 had said that Jagdish Yadav had gone to inform the P.S. In para-6, there happens to be contradiction to the effect that he had not named Vijendra and Surendra before police. He has also admitted his status along with his brother, Janeshwar Choudhary as an accused in counter case.

19. PW-4 is Ranglal Choudhary. While he had deposed that while he was at his Darwaza, he heard firing sound over which he ran to the place where he found Ramraj dead. Lalmohar Choubey was unconscious. Tipan was standing near. He has not seen any of the accused. On query, Tipan and Jagropan narrated the incident. Then had exhibited his signature over inquest report. In para-4, he had said that he heard 3-4 rounds of firing sound which was one by one. At that very time Bhola and Oka Kahar were engaged in work. Then had said that Tipan and Ramraj had left his Darwaza about 15 minutes ago to purchase clothes. The labourers who were working there had not gone to the spot. When he reached at the spot he has found Chattu Choudhary, Tipan and Kameshwar Choudhary there. He had remained there for 5-6 minutes. When I.O. came, he had gone back to the place. He had not managed to get the injured admitted. Then at para-5 had admitted his status as an accused in counter case.

20. PW-5 is Janeshwar Choudhary. He had deposed that on 25.01.1980 at about 3:00 P.M. while he was at his Khalian, he heard sound of firing over which he rushed to the place of occurrence and found Ramraj dead and Lalmohar Choubey was lying unconscious. Tipan Choudhary was sitting in injured condition. On query Tipan had disclosed that firing caused by Surendra Choudhary proved fatal on account of which Ramraj died. The firing made by Vijendra, Jagdish and Surendra caused injury to Lalmohar Choubey and he himself. Tipan also disclosed that Chandra Keshwar and Subhash were armed with Bhala. During course of examination had said that after instant occurrence, both the parties have fought u/s 307. In para-3 of the cross-examination had said that his Khalian lies 500 yards away from the place of occurrence. He heard 5-6 rounds of firing. In midst of way he had met with some persons but he cannot name. At para-4 said that he came at the place of occurrence alone. He remained there for 15 to 20 minutes. During midst of which Subhdayal Choudhary came. Sister and other family members of Ramraj Choudhary had also come. He cannot say who out of Jagdish or Ambika had gone to inform the police. In para-5 had said that Tipan had gone to hospital in his presence. In para-6 had said that he happens to be accused in counter case. Then had denied the suggestion with regard to

counter case.

21. PW-6 had simply exhibited his signature over seizure list which was prepared by the I.O. on the following day after seizure of empty shells from the place of occurrence. During cross-examination, he had clearly stated that at that very time 15-20 persons were present. In para-4 had said that the fired cartridges were seized near the Darwaza of Lakhan Kahar. Pillet was also carved out on account of having been embedded on the wall.

22. PW-7 is Subhdayal Choudhary. He had said that on 25.01.1980 at about 7:00 P.M. while he was at his Khalihan heard firing sound over which he rushed to the place of occurrence and found Ramraj Choudhary dead. Lalmohar Choubey was lying in unconscious condition. Tipan was also injured. He inquired from Tipan who narrated the whole incident. Then had disclosed with regard to motive disclosing that they have taken a land of Chandra Keshwar on mortgage for which they were insisting for return. During cross-examination at para-3 had elaborately detailed the event of mortgage. At para-4 had said that after coming to place of occurrence he also became unconscious. He was taken to his house. When the police came, he was produced before police in the same state. Then there happens to be contradiction which he admitted to the extent that he had not disclosed before the police that the time of hearing of firing sound he was at Khalihan from where he reached to the place of occurrence. The had denied the suggestion.

23. So from the evidence of the aforesaid PWs, it is evident that save and except PW-3 who has had seen the accused persons fleeing from the place of occurrence armed variously, none have had alleged so. They have not even disclosed what they had taken from the mouth of Tipan.

24. Now, coming to the evidence of remaining two material witnesses who are not only an eyewitness rather an injured one. PW-1 happens to be Lalmohar Choubey. He had deposed that on 25.01.1980 at about 3:00 P.M. he along with Ramraj, Jagropan, Tipan were going towards west to his village to purchase cloth. As soon as they came in lane near hut of Sabha Choudhary, they saw Chandra Keshwar Choudhary, Subhash Choudhay, Jagdish Choudahry, Vijendra Choudhary, Surendra Choudhary near the house of Lakhan Kahar out of whom, Chandra Keshwar and Subhash were armed with Bhala while remaining were armed with gun. As soon as Chandra Keshwar saw them, ordered, over which the accused who were armed with gun began to fire indiscriminately. The firing made by Surendra Choudhary caused injury over the person of deceased, Ramraj Choudhary who died instantaneously. The firing made by the Jagdish Choudhary caused injury to him over his neck, hand and both thighs. Tipan also sustained gun shot injury. He became unconscious. Chandra Keshwar Choudhary had mortgaged the land in favour of Ramraj Choudhary which he was insisting for return on account of expiry of seven years. He regained sense at Ara Hospital after two or three days of occurrence. Para-4 of his cross-examination happens to be over his status regarding staying at the P.O. village as well as litigation with

Shiv Kumar Choubey relating to land left by Chulhan Choudhary. At para-6 there happens to be description with regard to land jointly possesses by Shividhayani Choudhary and Chulhan Choudhary near the house of Rajbali. At para-7 happens to be the status of accused disclosing Chandra Keshwar Choudhary, Jagdish Choudhary and Subhash Choudhary are full brothers while Bijendra Choudhary is son of Chandra Keshwar and Surendra is son of Jagdish Choudhary. Then had disclosed that neither he nor Tipan had any sort of animosity/litigation with the accused persons since before the occurrence.

25. Para-8 deals with the location of the land wherein occurrence has taken place. In para-9 had said that he accompanied others to purchase bed-sheet, Dhoti and Kurta. In para-11 of his cross-examination had disclosed that all of them were going when they saw accused persons. They could not escape there from as they could not get an opportunity for the same. At the time of firing they were near the hut of Sabha Choudhary. All the three accused had fired simultaneously. Then had given description of his apparel. He fell down at the same place where he sustained injury which happens to be southern flank of lane. As he became unconscious so he cannot say whether blood had fallen down on earth or not. First of all, Ramraj had sustained injury then he sustained. He was just 2-3 steps behind when Ramraj sustained injury. Tipan and Jagropan were 2-3 steps behind him. He cannot say whether there was presence of sign of pillet over his apparel. He could not get information with regard to Rs.100/- which he was carrying. At para-12, he had disclosed that save and except before the I.O. he has not made statement before any other authority. At para-13 had said that as he became unconscious soon after sustaining injury, therefore he cannot say the exact location of the injury. Then had said that after regaining sense 2-3 days after the occurrence, he had made statement before the police. Then had denied the suggestion over manner of occurrence as disclosed under counter case.

26. PW-2 happens to be Tipan Choudhary. Another injured as well as informant of this case. He had deposed that on 25.01.1980 at about 3:00 P.M., he along with Jagropan, Ramraj, Lalmohar was going to purchase cloth. When they reached near the hut of Sabha Choudhary, he saw Chandra Keshwar, Subhash, Jagdish, Surendra and Vijendra standing near the house of Lakan Kahar. Chandra Keshwar and Subhash were armed with Bhala while remaining three were armed with guns. As soon as Chandra Keshwar saw them, he ordered to kill over which Surendra fired causing injury over the forehead of Ramraj who fell down and died instantaneously. Then, thereafter they again fired 5 to 6 rounds causing injury over the person of Lalmohar at his neck, both legs and hand as a result of which Lalmohar became unconscious. He sustained injury over his stomach. Then, had disclosed that theme of mortgage of land having in favour of Shubhdayal Choudhary by accused Chandra Keshwar Choudahry and that Chandra Keshwar Choudhary was insisting for its return on account of lapse of time. Then thereafter they have also made firing in Dhura of Lakan Kahar. Lakan Kahar happens to be own man of Chandra Keshwar Choudhary. On hearing alarm,

Chhatu Choudhary, Kameshwar Choudhary, Nagina Choudhary, Jagdish Yadav and Abmika Sah both Choukidar came. They remained there till arrival of Darogaji. After arrival of police, he had given his Fardbeyan over which he put his signature in presence of witnesses. Also disclosed the name of witnesses who have gone to the camp of accused. At para-3 had disclosed that FIR attesting witnesses, Ranglal Choudhary happens to be his brother while Laldhari Choudhary happens to be brother of Lalmohar Choubey. Then had narrated the event of mortgage under para-10 of his cross-examination had disclosed that accused persons have threatened but the mortgagee succeeded in harvesting of the crop. No information was given to any officials on that very score. Further had denied that there happens to be partisan in the family of accused and the land under mortgage was allotted to Ramsundar Choudhary. At para-12 had said that they have not proceeded in pre-plan manner to purchase cloth. He had not shown the cash to the police. At para-13 he had given topography of the lane. Then had disclosed that he remained at the place of occurrence till arrival of the police. He had not seen any partition of the house of Lakhan Kahar under fire. Then had said that he had shown the place of occurrence. Then had said that till arrival of police two Choukidars and Jagropan Choudhary remained there. He had not sent any body to P.S. First of all, Shubhdayal came. At the time of arrival of police save and except Shubhdayal the other family members of Ramraj had returned back. In para-13 had said that Lalmohar Choubey fell down 1 or 2 steps east to Ramraj. His brother and female folk have come. He along with Lalmohar Choubey was taken to the hospital. Then at para-14 had said that at the time when they sustained injury, Ramraj was proceeding ahead followed by Lalmohar and then he along with Jagropan. At para-15 had said that they could not manage to escape. They had said that altogether 5 or 6 rounds of firing was made. He is not remembering the apparel of Ramraj as well as Lalmohar. Pillat had pierced putting sign over apparel which was shown to the police. Blood had oozed out on account of which apparel became blood stained as well as had also fallen over the earth. At para-18 their attention over development whatever made in consonance with the fardbeyan. Then had denied with regard to injury sustained by Jagdish Chaudhary. Though admitted presence of counter case but denied the manner of occurrence was suggested in pursuance of counter case.

27. PW-9 happens to be Doctor who had not only done autopsy over the dead body of Ramraj Choudhary rather had also examined both the injured that means to say Lalmohar Choubey as well as Tipan Choudhary.

28. On 26.01.1980 while he was posted Civil Assistant Surgeon at Ara Sadar Hospital, at about 10:25 A.M. examined Lalmohar Choubey and found the following injuries:-

1. One pellet injury 1/4" diameter on left side of neck.
2. One pellet injury on the right side of lower arm medial aspect
3. Three pellet in number on the right index finger 1/4" diameter medial side

4. One pellet 1/4" diameter on the medial aspect of right knee joint.
5. One pellet injury 1/4" diameter on the lower 3rd of the right lower leg.
6. One pellet injury on the left lower 3rd of the finger. Age of the injury within 24 hours caused by fire-arm. Nature Simple.

Injury over the person of Tipan Choudhary who was examined at same day and time:-

1. One pellet injury 1/4" diameter on the medial side of the right thigh.
2. One pellet injury 1/4" diameter on the left side of the abdomen, age of injury within 24 hours caused by fire arm. Simple in nature.

On the same day at about 11:00 A.M. conducted postmortem over the dead body Ramraj Choudhary and found the following external injuries over the dead body.

1. Lacerated wound on the right side of forehead 1/4" diameter with inverted margin going into the frontal lobe of the brain 1/4" diameter on the left side of the forehead with inverted margin.
2. Punctured wound on the left shoulder from which one metallic substance was recovered.
3. Lacerated wound on the left side of the abdomen 1/4" diameter into muscle deep.
4. Fractured wound on the back of chest at the 5th, 6th, 9th, and 11th ribs all being 1/4" diameter.

On dissection :- On opening skull, laceration of the frontal lobe of the brain corresponding to aforesaid injury no.1 with blood and blood clots were found. Both the wound were communicating with each other.

Injuries were caused by fire-arm and were ante-mortem in nature. Time elapsed since death 24 hours.

Injury No. 1 was sufficient in ordinary course of nature to cause death.

29. During cross-examination he had disclosed that margin of injury caused by fire-arm happens to be lacerated and irregular. Further disclosed that he had not mentioned the same with regard to injuries caused to injured Lalmohar Choubey and Tipan Chaudhary. He has not mentioned the facts whether there was blackening, charred or deposits of gun powder around the injuries of hand of the injured.

30. Further he disclosed that he had not mentioned whether any pellet was extracted from the body of both the injured and were handed over to the police. In likewise manner, he has not mentioned the fact regarding the deceased. Further, disclosed that injuries were caused from distance.

31. PW-8 happens to be the investigating authority. During his examination-in-chief he had disclosed that on 25.01.1980 at about 7:30 P.M. Ramji Pandey of Village- Sakhua came and submitted an application over which there was signature of Chandra Keshwar Choudhary and so Udwanthnagar P.S. Case No.12(1)/80 was instituted thereupon. After entering station diary entry no.365 dated 25.01.1980 he proceeded to Belaur for investigation and reached there at 9:00 P.M. He had seen Ramraj Choudhary dead while Tipan and Lalmohar in injured condition. He recorded Fardbeyan of Tipan and Ramlal Choudhary and Ramdhari Choudhary over which Tipan also put his signature. The aforesaid Fardbeyan was sent to the police station for registration of the case. He took up investigation, prepared inquest report, sent the dead body of deceased Ramraj Choudhary for postmortem. He took further statement of informant Tipan, witnesses Ranglal Choudhary, Janeshwar Choudhary, Kameshwar Choudhary, Deokumar Choudhary and Jagropan Choudhary. On 26.01.1980 at about 13 hours he inspected the place of occurrence which happens to be lane at village-Belaur which passes through East to West near the land of Sabha Choudhary. Ramraj Choudhary was found dead at this place. He found copious blood. Thereafter, he kept waiting of sunrise and then thoroughly inspected the place of occurrence. He found the blood in the area of 4 feet x 2 feet. He had found house of Abhi Singh, Suraj Choudhary. West to Sabha Choudhary house lies house of Deoraj Kahar. He had found spot of pellet at northern, western wall of Abhi Singh. Also found sign of breakage of bricks. The distance in between the house of Abhi Singh as well as place of occurrence happens to be 24" 9". The house of Lakhan Kahar lies at the distance of 100" 7" west to the place of occurrence. One barren land lies south to the house of Lakhan Kahar. The lane bifurcated East to the house of Lakhan Kahar where on account of accumulation of water, there happens to be presence of mud. 2 Cell of 12 bore was found in the mud which was seized in the presence of seizure list. Also extracted pellet from the Abhi Singh and was seized. Also inspected the house of Lakhan Kahar three feet away from the house of Lakhan Kahar he had found some straw burn. He had seized the blood stained earth from the place of occurrence. He had also prepared sketch map of the P.O. Recorded statement of witnesses of Krishnadeo Choudhary, Ramayan Choudhary, Chhatu Chaudhary. Raided the house of accused but could not trace. On 28.01.1980 he had gone to Sadar Hospital where he found Lalmohar was admitted who was not in a position to speak. He looked for Jagdish but he was not present there. He recorded statement of Lalmohar Choubey on 02.02.1980. He had handed over investigation to his successor on account of his transfer. During cross-examination at para-13 had said that he had registered Udwanthnagar P.S. Case No.12(1)/80 against Ramraj Choudhary and others for an offence punishable u/s 147, 148, 307, 302/34 of the IPC, 27 of the Arms Act and had accepted the same. In paragraph-14 had said that he had sent the blood stained earth for chemical analysis. Then had said that he had seen the injury sustained by Tipan by means of pellet while he had not mentioned the fact regarding injury sustained by Lalmohar Choubey cause by means of gun. He had not seen any pellet lying near the wall of Abhi

Singh. He had not mentioned the fact whether the cell so seized were smelling like gun powder. Then at para-16 had said that he had found sign of burn of the creeper as well as at the roof of house of Lakhan Kahar. Also found some portion of straw burn beneath the same. At para-17 had said that on 29.01.1980 he had received Fardbeyan of Jagdish Choudhary. He was also investigating officer of Udwanatnagar P.S. Case No. 12/1980. He had sustained Jagdish on 02.02.1980 and the Sadar Hospital at Ara. He had recorded statement of Jagdish Choudhary, Birendra Choudhary and Bijendra Choudhary, Manki Devi wife of Lakhan Kahar. He had not recorded statement of Jagdish Choudhary, Chandra Keshwar Choudhary as witnesses of Udwanat Nagar P.S. Case 12/80. He had not mentioned the fact that in case diary whether he had tried to procure injury report of Jagdish. He had not mentioned the fact that he had seized cloth worn by Lalmohar and Tipan. He had not found cauliflower, brinjal etc planted in the field of Rajballi. He had not found blood at other places than where Ramraj Choudhary was lying. From para-22 to 24 there happens to be contradiction of witnesses. So from the aforesaid evidence, it is evident that deceased Ramraj Choudhary had died on account of fire-arm injury and in likewise manner there happens to be presence of fire-arm injury over the person of two injured Lalmohar Choubey as well as Tipan Choudhary. By way of cross-examination, the aforesaid theme could not be found controverted.

32. Before dealing with the legal proposition so advanced on behalf of the appellant-convict, one should bear in ones mind that it is a settled principle of law that the prosecution has to stand on its own leg without taking into account deficiencies, weakness, infirmities persisting in the defence case. However, as the defence had exhibited FIR of the counter case, injury report of Jagdish Choudhary and further apart from formal witness examined by way of DW-1 and 2, 3 also examined DW-4 on material point in support of counter case.

33. The first point so raised on behalf of the appellant-convict is with regard to propriety of the present FIR on the plea that the aforesaid FIR is hit by Section 162 of the Cr.P.C. in the background of the fact that the I.O. had recorded statement of Tipan during course of investigation of counter case bearing Udwanat Nagar P.S. Case No. 12/80. which was registered for the same occurrence.

34. So far legal position is concerned, for the same cause/occurrence two FIRs are not at all permissible subject to condition that in both the FIRs there happens to be similarity in narration, the accused are same, informant is the same and in that event, the subsequent FIR certainly appears to be barred taking into account the conditions imposed u/s 162 of the Cr.P.C. However, contrary to it when there happens to be two different version regarding manner of occurrence, names of accused, status of informant, the same happens to be permissible in the eye of law as the same can be treated as a cross case or counter case. The aforesaid legal point has elaborately been dealt with by the Hon'ble Apex Court in a decision reported in Shiv Shankar Singh Vs. State of Bihar and Another, wherein at para-10, it has been held:-

We do not find any force in the submission made on behalf of respondents that as in respect of same incident i.e. dacoity and murder of Gopal Singh, the appellant himself along with others is facing criminal trial, proceedings cannot be initiated against Respondent 2 at his behest as registration of two FIRs in respect of the same incident is not permissible in law, for the simple reason that law does not prohibit registration and investigation of two FIRs in respect of the same incident in case the versions are different. The test of sameness has to be applied otherwise there would not be cross-cases and counter-cases. Thus, filing another FIR in respect of the same incident having a different version of event is permissible (As per Ram Lal Narang Vs. State (Delhi Administration), 6 Sudhir v. State of M.P., T.T. Antony Vs. State of Kerala and Others, , Upkar Singh Vs. Ved Prakash and Others, h, Babubhai Vs. State of Gujarat and Others,)

As such presence of counter case by way of Udwant Nagar P.S. Case No. 13/80 cannot be held to be barred.

35. The next point raised on behalf of appellant-convict putting a question mark over the authenticity of the document i.e. the FIR and further raising its genuineness in light of non compliance of Section 157 of the Cr.P.C. in its strict adherence, same appears to be conclusively answered by the Hon'ble Apex Court in a decision reported in 2011 Cr.LJ 4387 wherein at para 18 has observed:-

18. There is in our view no merit even in this submission of the learned counsel. A report regarding the commission of a cognizable offence, lodged within an hour of the incident cannot be said to be so inordinately delayed as to give rise to a suspicion that the delay- if at all the time lag can be described to be constituting delay, was caused because the complainant, resorted to deliberations and consultations with a view to presenting a distorted, inaccurate or exaggerated version of the actual incident. No suggestion was made to PW 1 the first informant that he delayed the lodging of the report because he held any consultation in order to present a false or distorted picture of the incident. A promptly lodged report may also at times be inaccurate or distorted just as a delayed report may despite the delay remain a faithful version of what had actually happened. It is the totality of the circumstances that would determine whether the delay long or short has in any way affected the truthfulness of the report lodged in a given case. The credibility of a report cannot be judged only by reference to the days, hours or minutes it has taken to reach the police station concerned. Viewed thus the credibility of the report was not affected on account of the so called delay of one hour in lodging of the complaint. So also, the receipt of the report by the magistrate at 1.05 a.m. was not so inordinately delayed as to render suspect the entire prosecution case especially when no question regarding the cause of delay was put to the Investigating Officer. If delay in the despatch of the First Information Report to the Magistrate was material the attention of the Investigating Officer ought to have been drawn to that aspect to give him an opportunity to offer an explanation for the same. How

far was the explanation acceptable would then be a matter for the court to consider.

36. The aforesaid principle is fully applicable in the facts and circumstances of the present case because of the fact that neither the informant PW-2 has been cross-examined on this score nor PW-8 the I.O. Therefore, the appellant on account of aforesaid omission having on their part cannot take liberty to challenge the authenticity of the document when at the material time it did not chose to strike upon the same.

37. Another plea has been raised on behalf of appellant in the background of the fact that Udwanthnagar P.S. Case No.12/80 was earlier registered on the written report of one of the accused Chandkeshwar Choudhary wherein the defence had already explained the death of Ramraj Choudhary. Side by side there has also been plea that prosecution had not been able to explain the injury sustained by accused Jagdish Choudhary and so certainly true picturisation of occurrence has purposely been withheld.

38. Now coming to the aforesaid factual as well as legal aspect, the presence of DW-1 who is an Advocate and in whose pen the written report of counter case happens to be makes the situation suspicious that too when none of the members of the accused side dared to tender on the other hand it was placed by a third person before Officer incharge. While PW-8 during course of evidence had disclosed specifically under para-11 that he had gone to Sadar hospital on 28.01.80 but he had not found Jagdish in the hospital, no cross-examination on behalf of accused on this score was ever made in order to challenge the disclosure.

39. As per Ext-E, the injury report which has been exhibited through the formal evidence by examining DW-3, speaks presence of One punctured wound at right forearm of the size 1/4" diameter with swelling around. One pellet was removed from the wound. Simple in nature. Caused by fire-arm. The aforesaid injured was examined on 29.01.80 that means to say after four days of alleged occurrence and the injury report does not divulge the duration within which those injuries might have been caused. In the aforesaid background the plea of appellant has got no recency.

40. Be that as it may, in a decision reported in 2011 Cr.L.J. 4827 at para-26, it has been held:-

26. Ordinarily, the prosecution is not obliged to explain each injury on an accused even though the injuries might have been caused in the course of occurrence, if the injuries are minor in nature, however, if the prosecution fails to explain a grievous on one of the accused persons which is established to have been caused in the course of the same occurrence then certainly the court looks at the prosecution case with a little suspicion on the ground that the prosecution has suppressed the true version of the incident. However, if the evidence is clear, cogent and creditworthy then non-explanation of certain injuries sustained by the

deceased or injury on the accused ipso facto cannot be the basis to discard the entire prosecution case.

41. Thus, taking into account the factual aspect persisting on the record in consonance with the principle so laid down by the Hon'ble Apex Court as referred above, it is evident that the injuries whatever been alleged to have been received by one of the accused Jagdish Choudhary not only appears to be doubtful rather nature of injuries and manner do suggest that in the facts and circumstances of the case the prosecution was not at all found to be burdened for explaining the same.

42. Now coming to the question of delay in lodging of FIR, it has been submitted that alleged occurrence happens to be dated 25.01.80 at about 3:00 P.M. while the FIR was lodged in 25.01.80 at about 9:00 P.M. and there has been no explanation at the hands of prosecution. Tipan Choudhary in Fardbeyan at specifically disclosed that they have not gone to P.S. out of fear that accused persons will indulge in another offence. In para-4 of his examination in chief P.W.2(informant) had deposed that they remained at place of occurrence till arrival of police.

43. Similar situation was confronted by the Hon'ble Apex Court as has been reported in Bhagaloo Lodh and Another Vs. State of U.P., wherein it has been held in paras 10, 11, 12:-

10. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. In absence of such an explanation, the delay may give presumption that allegations/accusations were false and had been given after thought or had given a coloured version of events. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Vide Sahib Singh v. State of Haryana; Gorige Pentaiah v. State of A.P. and Kishan Singh v. Gurpal Singh.)

11. So far as the delay in lodging the FIR is concerned, it has been explained by Rejesh Singh (PW 1) as under:

I had not gone to lodge the report in Police Station Tandiyawan due to fear. We looked the corpse at night. I and Hanif went to Tandiyawan Police Station by motorcycle in next morning.

12. The incident occurred at 9.00 p.m. on 25.10.1999 and the FIR was lodged on 26.10.1999 at 6.10 a.m. at the police station at a distance of 18 km from the place of incident. Rajesh Singh (PW 1) has mentioned that on account of fear of the accused persons, he could not go to the police station to lodge the FIR at night. This explanation has been found by both the courts below to be perfectly convincing, and after considering all the facts and circumstances of the case, the

courts below have drawn an inference that the explanation furnished was quite satisfactory. We do not see any cogent reason to take a view contrary to the view taken by the courts below.

44. Therefore the delay in lodging of FIR appears to be already explained by way of acceptable reason and could not be found to be controverted.

45. Now, coming to the status of the witness, it has rightly been submitted that except PW-1 and 2, none of the witnesses are eyewitness to occurrence. With regard to PW-1 and 2, it has been submitted that their testimony are not at all reliable, acceptable, trustworthy in the background of the fact that they along with other PWs happens to be an accused in counter case.

46. Be that as it may, how the evidence of injured is to be dealt with the same has been explained by the Hon"ble Apex Court as reported in Bhajan Singh @ Harbhajan Singh and Others Vs. State of Haryana, :-

36. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide Abdul Sayeed v. State of M.P.²¹; Kailas v. State of Maharashtra²²; Durbal v. State of U.P.²³ and State of U.P. v. Naresh²⁴.)

47. As such evidence of PW-1 and 2 cannot be brushed aside simply on the reason that they happens to be an accused in the counter case. Apart from having their presence confirmed by way of being an accused at the place of occurrence, the injuries sustained by them as per their narration gives a clear picture that they had sustained injury at the place of occurrence in a manner so suggested by them.

48. The deficiencies during course of investigation in absence of recovery of pellets from the scene of occurrence or from the body of the injured and further having absence of Forensic Science Laboratory report over the blood stained soil sent for examination, non seizure of cloth. How far these are going to adversely affect upon the case of the prosecution for that reference may have State of Rajasthan Vs. Arjun Singh and Others etc., wherein at para-10 it has been explained in following manner:-

10. Learned senior counsel for the accused persons contended that in the absence of recovery of pellets from the scene of occurrence or from the body of the injured persons, it is highly doubtful as to the scene of occurrence and whether such incident did take place in the manner suggested by the prosecution. Learned counsel appearing for the complainant pointed out that though there was an entry In Malkhana Register(Ex.P31A) wherein it was stated that a sealed packet containing pellets was deposited but prosecution failed to lead any evidence on this point. It was also pointed out that though a report was received from the Forensic Science Laboratory, no evidence regarding recovery of the pellets was produced. As rightly pointed out by the learned Additional Advocate General appearing for the State that mere non recovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, blood stained clothes etc. cannot be taken or construed as no such occurrence had taken place. As a matter of fact, we have already pointed out that the gun shot injuries tallied with medical evidence. It is also seen that Raghuraj Singh and Himmat Raj Singh, who had died, received 8 and 7 gun shot wounds respectively while Raj Singh (P W 2) also received 8 gun shots scattered in from of left thigh. All these injuries have been noted by the Doctor (PW-1) in his reports Exs. P1-P4.

49. To what extent the evidence of PW-1 and 2 should be considered while analyzing the case of the prosecution taking into account their status having closeness with the deceased and for that a reference may have AIR 2011 SC 478, para 6:-

6. It is not possible for us to accept the submissions of learned counsel for the appellant. It is true that PWs-2,3 and 4 who were examined as eye-witnesses have turned hostile. But having carefully perused the evidence of PW-1, we feel that it can be safely relied upon so far as prosecution case against the appellant is concerned. It is true that being the brother of the deceased, PW-1 is an interested witness. However, on that ground his evidence cannot be discarded. As stated by this Court in Sarwan Singh & Ors. v. State of Punjab and Sucha Singh & Anr. V. State of Punjab, it is not the law that the evidence of an interested witness should be equated with that of a tainted witness or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinized with a little care. Once that approach is made and the court is satisfied that the evidence of the interested witness has a ring of truth such evidence could be relied upon even without corroboration. This submission of the learned counsel is, therefore, rejected.

50. The law as guided by Section 134 of the Evidence Act prescribes quality of the evidence and not quantity. The case is found to be proven even by way of examination of single PW if the evidence is found credible, trustworthy and

inspire a ring of truth. In the aforesaid background now the evidence has to be analyzed.

51. Admittedly, the prosecution evidence is segmented in two parts. The first happens to be evidence of two injured witnesses PW-1 and 2 while at the other hearsay evidence as well as evidence of search and seizure. There was no occasion for PW-1 and 2 to falsely implicate the accused persons/appellant as no direct confrontation was persisting with the accused rather it was with Ramraj Choudhary, the deceased. So far merit of the case is concerned, from the evidence more particularly from the cross-examination which has been led thoroughly, they are not at all found to be demolished so far genesis of manner of occurrence is concerned. More so P.O. is admitted, death is admitted, presence of PW-1 and 2 is admitted having silence over their injury at the hands of accused. Whatever inconsistencies or exaggeration is visible in the evidence of PW-1 and 2, they are minor and not going to affect upon the root of the prosecution case. Presence of gun shot injury by PW-1 and 2 apart from deceased had fully been proved from the evidence of PW-9, the Doctor and its supportive theme has been found through the objective finding of PW-8, the I.O.. The evidence of other PWs appears to be corroborated in nature and this part also proves the pious conduct of the prosecution that they have deposed to that extent only what they have perceived or heard otherwise, they should have also claimed themselves to be an eyewitness to occurrence more particularly taking into account their relationship as father of deceased, brother of one of the injured. There happens to be some sort of fault in not examining the Chaukidars and other independent witnesses regarding whom there happens to be explanation from the evidence by PW-2, para-6 as well as regarding death of one of FIR named witness namely, Jagropan Choudhary, PW-3, Para-1.

52. At the present moment, it looks desirable to see the evidence of DW-4, Manki Devi wife of Lakhan Kahar who has been examined on behalf of defence on material point. In chiefs, he had admitted that she had sent her daughter to call her master and on whose arrival, the accused persons began to fire causing injury to Jagdish Choudhary as well as deceased, Ramraj Choudhary. She had not disclosed anything regarding injury sustained by PW-1 and 2. Apart from having exaggeration in her statement for which her attention was drawn up, she had given a different version of the occurrence as is evident from para-11 of her cross-examination. From para-11, it is evident that the miscreants gone towards East to her house while some gone to west after arrival of her master but no sooner than there was firing from both sides. Then thereafter they all left. After firing, her master returned back to their house while she also gone inside her house. In para-12 had said that she had not seen Lalmohar Choubey and Tipan Choudhary in injured condition. She had not seen Lalmohar lying near the dead body of Ramraj Choudhary. At para-14 had supported the objective finding of the I.O.

53. From the L.C. record it transpires that the learned lower court failed to frame

charge for an offence punishable u/s 27 of the Arms Act although there happens to be specific allegation with regard to firing by which death was caused as well as injuries to injured. However, the appellants have not be able to show that they have been prejudiced in any manner by way of absence of charge u/s 27 of the Arms Act.

54. During course of argument, ambit and scope of Section 313 of the Cr.P.C. has also been highlighted in low tone but has failed to convince us whether their interest have adversely affected or found to be prejudiced.

55. Thus, after analyzing and crystallizing the evidence available on the record, it is evident that prosecution had succeeded in proving its case beyond all reasonable doubt against the accused persons. Consequent thereupon, these two appeals are found to be devoid of merit and are accordingly dismissed. Sentences are also found to be properly inflicted. All the appellants are on bail, hence their bail bonds are cancelled and are directed to surrender before the learned lower court to serve out the sentences otherwise learned court below will take all possible legal recourse to obtain their presence to serve out remaining sentence.