

**(1997) 04 MP CK 0060**

**In the Madhya Pradesh High Court**

**Case No : Criminal A. No. 613 of 1993 (J)**

Dhirendra Singh and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

**Date of Decision : 25-04-1997**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 148, 302, 307

**Citation : (1999) 1 MPJR 48**

**Hon'ble Judges : V.K. Agrawal, J;N.P. Singh, J**

**Bench : Division Bench**

**Advocate : S.C. Datt and Mr. P.P. Bhave, for the Appellant; Dilip Naik, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

V.K. Agrawal, J.

These appeals are directed against the Judgment dated 24.6.1993, in S.T. No. 140/84, by the Sessions Judge Satna. By the said judgment, the accused/appellants Dhirendra Singh, Prabhat Kumar, Anil Singh, Ravendra Singh, Mrigendra Singh, Jitendra Singh alias Baba & Buddhiman Singh, who have preferred Criminal Appeal Nos. 613/93, 623/93, 624/93, 628/93, 680/93, have been convicted for offence punishable under Sections 148 and 307 of I.P.C. read with Section 149 of I.P.C. and Section 302 read with Section 149 of I.P.C. and much of them have been sentenced to undergo R.I. for two years for offence punishable u/s 148 of I.P.C., life imprisonment for offence punishable u/s 307 read with Section 149 of I.P.C. while Criminal Appeal No. 366/94 is preferred by the State against acquittal of accused/respondents Brajendranath Singh, Rajendra Singh, Umesh Singh, Mangleshwar Singh and Shankar Dayal, by the aforementioned judgment.

The accused/appellants Ravendra Singh, Jitendra Singh alias Baba and Rajendra

Singh are brothers. They are sons of accused Rajendra Singh who however died during the pendency of the trial. The deceased Dal Pratap Singh and complainant/injured Akhand Pratap Singh (PW/15) were probationer Sub-inspectors and were posted at Sidhi, at the time of the incident.

The prosecution case stated in brief is that the complainant Akhand Pratap Singh (PW/15) on 18.2.1992 had apprehended accused Jitendra Singh alias Baba in connection with crime Sec. 284/82 u/s 204 and 506 of I.P.C. Accused Jitendra Singh alias Baba had threatened the sub-inspectors Akhand Pratap Singh (PW/15) and Dal Pratap Singh (deceased). Apprehending danger from accused Jitendra Singh alias Baba, Sub-inspector Akhand Pratap Singh (PW/15) had requested for being given revolver and cartridges. His prayer was allowed and he was given a revolver and cartridges for his personal safety.

On 24.10.1982 at about 7.30 p.m. while complainant Akhand Pratap Singh (PW/15) and deceased Dal Pratap Singh were going on duty for "Gasht" the accused persons numbering about 12 or 13 armed with hockey, sticks, iron rods, lathi etc. surrounded and assaulted them near Gandhi Chowk at Sidhi, Accused/appellant Brijendranath Singh has a "Katta" (country made pistol) with him and fired it twice towards the complainant Akhand Pratap Singh (PW/15) who saved himself by bending down and when accused Brijendra Singh was trying to fire at them again. Akhand Pratap Singh P.W.15 fired at accused Brijendra Nath Singh, due to which his hand was injured. Akhand Pratap Singh (P.W.15) thereafter fired several rounds in the air, upon which the accused persons ran away from spot. Dal Pratap Singh fell down and became unconscious, as a result of injuries sustained by him.

The complainant Akhand Pratap Singh (PW/15) lodged a report (Ex.P/23) at Police station City Kotwali Sidhi upon which crime no. 301/82 u/s 147, 148, 149, 332 and 397 of I.P.C. was registered. Injured complainant Akhand Pratap Singh (PW/15) and Dal Pratap Singh (deceased) were sent for medical examination as per requisition memos Ex.P/14-A and EX.P/15-A respectively by investigating officer -Town Inspector Dadulal Singh (PW/20). Blood stained clothes of Akhand Pratap Singh (PW/15) and Dal Pratap Singh (deceased) were seized as per seizure memos Ex.P/24 and Ex.P/37 respectively. The revolver and cartridges were seized from Akhand Pratap Singh (PW/15) as per seizure memo (Ex.P/25). A wrist watch of Akhand Pratap Singh (PW/15) and motorcycle including pas-cap of Akhand Pratap Singh (PW/15) and broken hockey sticks which were lying on the spot were seized as per seizure memo Ex.P/38 to Ex.P/41 respectively. Investigating officer Dadulal Singh also seized ordinary soil and blood stained soil, from the spot as per seizure memos Ex.P/43 and Ex.P/44 respectively. He prepared map of the spot Ex.P/45. Thereafter Patwari Laxmikant (PW/10) prepared spot map (Ex.P/20). After the death of Dal Pratap Singh inquest report (Ex.P/30) of the dead body was prepared and it was sent for post mortem examination.

Dr. M.L Mishra (PW/14) of District Hospital Sidhi had examined Akhand Pratap

Singh (PW/15) on 24.10.82 and found the following injuries on his person:

- (i) Lacerated wound 1 1/2" x 1 1/2" x 1/2" on the middle of scalp;
- (ii) Contusion with swelling in pink colour 4" x 2" on the right forearm in the upper part of forearm;
- (iii) Contusion with swelling pink in colour 2 1/2" x 1" on the upper part of the lateral surface of left arm;
- (iv) Abrasion linear 2" long on the front of left elbow.

All the injuries were caused by hard and blunt object. He had advised X-ray of skull and right forearm Ex.P/14 in the injury report of Dr. M.L. Mishra.

Dr. M.L. Mishra (PW/14) also examined the injuries of Dal Pratap Singh (deceased) and found the following injuries -

- (i) Lacerated wound 2" x 1" deep upto the visible one on the left frontal region of scalp Bleeding was present.
- (ii) Bruise with swelling, pink in colour 2" x 1" on the for side of face.
- (iii) Contusion with swelling 2 1/2" x 1" on the upper part of back of neck.
- (iv) Bruise with abrasion in area of 1" x 1/2" on the middle of front of left leg.
- (v) Irregular bruise pink in colour 5" x 4" on the (sic) extending upto abdomen. X-ray of scalp and neck was advised.

It was noted by Dr. M.L. Mishra that Dal Pratap Singh (deceased) was deeply unconscious. The general condition had started deteriorating and therefore, after showing him to civil surgeon, he was referred to Gandhi Memorial Hospital (Medical College) Rewa. The injury report of Dal Pratap Singh is Ex.P/15.

Dal Pratap Singh succumbed to his injuries and his body was sent for post-mortem. Dr. A.L. Dubey (PW/12) conducted post-mortem examination on the dead body of Dal Pratap Singh on 25.10.1982 at 9.30 a.m. and found as below-

- (i) There was hospital bandage on the head. Bleeding from the nose was present. There was lacerated wound on the leg below the knee joint;
- (ii) Lacerated wound on the left parietal bone of the skull. There was fracture and dislocation of 1st: cervical vertebra. The fibre of the spinal cord was torn and compressed. There was haematoma over the affected area.

Cause of death was reported to be respiratory failure and damage of the fibres of the opinal cord, due to dislocation and fracture of the first cervical vertebra. Post-mortem report is Ex.P/20.

Test identification parade was held wherein the accused/respondent Ravindra Singh alias Sanri and Umesh Singh were put for test identification, vi case Ex.P/29. After completing other usual formalities during the course of

investigation a charge sheet was filed against in all 12 accused persons including the accused/appellants who have preferred Criminal Appeal Nos. 613/93, 623/93, 624/93, 628/93, 680/93 namely Dharendra Singh, Prabhat Kumar Singh, Anil Singh, Ravendra Singh, Mrigendra Singh, Jitendra Singh alias Baba, Buddhiman Singh, as well as acquitted co-accused Brijendranath Singh, Rajendra Singh, Umesh Singh, Mangleshwar Singh and Shankar Dayal, regarding whom Criminal Appeal No. 366/94 has been filed by the State.

The general defence of accused/appellants was of denial and of false implication. The specific defence of the accused/appellant Brijendranath Singh was that while he was in his house, he was called by complainant/injured Akhand Pratap Singh (PW 15) and when accused/appellant Brijendranath Singh asked Akhand Pratap (sic) as to how he get injured, Akhand Pratap Singh (PW/15) abused (sic) tired at him due to which he sustained injuries on the palm of right hand, and that while he was proceeding to hospital, he was also assaulted by the police officials.

The learned trial Court on scrutiny and appreciation of evidence led during trial found that the charges are not proved against accused/Brijendranath Singh, Rajendra Singh alias Banti, Umesh Singh, Mangleshwar Singh and Shankardayal, respondents of Criminal Appeal No. 366/94; but convicted and sentenced the accused/appellants of Criminal Appeal Nos. 613/93, 623/93, 624/93, 628/93, 630/93 namely Dharendra Singh, Prabhat Kumar Singh, Anil Singh, Ravendra Singh, Mrigendra Singh, Jitendra Singh alias Baba, Buddhiman Singh as has been mentioned earlier.

The submissions of the learned counsels for the appellants in brief are that the First Information Report (Ex.P/23) lodged by complainant/injured Akhand Pratap Singh (PW/15) is anti-timed and anti dated and that it was lodged after due deliberation in order to rope-in the appellants. It has also been submitted that except for accused/appellant Baba alias Jitendra Singh, there was no enmity between the remaining accused and injured/complainant Akhand Pratap Singh (PW/15), therefore there was no reason for them to assault Dal Pratap Singh or Akhand Pratap Singh. It has also been contended that the eye witnesses of the (sic) Rasile (PW/3) and Sankat Mochan (PW/5) are chance witnesses and their testimony cannot be relied upon, while injured/complainant Akhand Pratap Singh (PW/15) has not given truthful version of the incident. Infact, initial version of the incident as given by him was that, he was shot at by unknown persons and therefore, his statement that he had identified the accused/appellants at the time of incident is doubtful. It has also been urged that though the incident took place at market place at Gandhi Chowk, Sidhi, still no independent witness have been examined by the prosecution to corroborate the statement of complainant Akhand Pratap Singh (PW/15). It has also been urged that the accused/appellant Brijendra Nath Singh sustained fire arm injuries and the location and nature of injuries sustained by him supports his defence and negatives the version of the incident, as given by Akhand Pratap Singh (PW/15). It has thus urged that the statements of eye witnesses cannot be believed and in view of several inherent

weakness and infirmities in the prosecution evidence, the prosecution story is rendered doubtful.

As against the above, the learned counsel for the State, has supported the judgment of the learned trial Court, as far as it relates to the conviction and sentence of the convicted accused/appellants of Criminal Appeal Nos. 613/93, 623/93, 624/93, 628/93 and 680/93. However, it has further been contended that the acquittal of co-accused/respondents of Criminal Appeal No. 366/94 was not proper, and charges against them also stand proved from the evidence and material on record.

Giving the back-drop of the incident, complainant/probationer sub-inspector Akhand Pratap Singh (PW/15), who was posted at City Kotwali Sidhi at the relevant time, has stated that on 11.10.82 a crime was registered against accused Jitendra Singh alias Baba on the report of Chhotelal and on the instructions of Investigating Officer of that case, Virendra Pandey Town Inspector; he along with Sub-Inspector Dal Pratap Singh (deceased), had apprehended accused/Jitendra Singh alias Baba on 18.10.82. He has further stated that as the accused/appellant Jitendra Singh alias Baba had threatened them, he had submitted an application (Ex.P/27) dt. 28.10.82 to Town Inspector Dadulal Singh (PW/22), on the basis of which a revolver and the cartridges were given to him for his personal safety.

Narrating the incident, Akhand Pratap Singh (PW/15) states that on 24.10.82 at about 7.00 p.m. he and the deceased Dal Pratap Singh were going on motorcycle for "Gasht" duty and that he (Akhand Pratap Singh) was driving the motorcycle while the deceased Dal Pratap Singh was pillion riding. When they reached Gandhi Chowk where the construction of the house of Maksoodan Singh was in progress, 12 or 13 persons armed with lathi, hockey, rod, wooden batons came and stopped them and started assaulting them. Akhand Pratap Singh (PW/15) has further stated that the accused/respondent Brajendra Singh fired twice with "Katta" (country made pistol) but he saved himself by bending down. His motorcycle fell down, due to which he as well as the deceased Dal Pratap Singh also fell down. The accused/respondent Brajendra Nath Singh wanted to fire the "Katta" for the third time at him; upon which Akhand Pratap Singh (PW/15) fired aiming at the right hand of Brajendranath Singh upon which he cried in pain, whereafter Akhand Pratap Singh fired five or six rounds in the air. The accused persons thereafter escaped. Some of them went towards the shop of accused/appellant Anil Singh and some others towards western side, while accused Brajendranath Singh went towards the "Sabji" Mandi (Vegetable market). Thereafter, Akhand Pratap Singh (PW/15) went to police-station city Kotwali and lodged report (Ex.P/23) recorded by Town Inspector Dadulal Singh (PW/20). The First Information Report (Ex.P/23) is purportedly recorded on 24.10.82 at 7.45 p.m. i.e. within 15 minutes of the incident which took place at 7.30 p.m. Offence No. 381/42 has been registered by City Kotwali, Sidhi on the basis thereof.

The learned counsels for the accused/appellants have urged that the First

Information Report (Ex.P/23) is ante-timed and ante-dated and was not infact recorded immediately after the incident as has been stated by Akhand Pratap Singh(PW/15).

In the above connection, it is noticed that the inquest report (Ex.P/30) dt. 25.10.82 proved by Bhupendra Singh (PW/17) does not contain the names of the assailants/accused. It has been urged that, had the First Information Report (Ex.P/23) lodged on the previous day i.e. on 24.10.82 in which assailants had been named, the gist of incident as also the name of the assailants would have been mentioned in inquest report (Ex.P/30). However, in the inquest report (Ex.P/30) in the column relating to cause of death only assault and head injury has been mentioned, without mentioning the names of the assailants and the summary of the incident. Further in this context, it is noticed that the requisition dated 25.10.82 for post-mortem (Ex.P/19) also does not contain the name of assailants. It has therefore, been urged by the learned counsels for accused/appellants that the above omissions give rise to an inference that till inquest report (Ex.P/30) and requisition for post mortem (Ex.P/30) were prepared, the names of assailants were not known to the Investigating Officer.

The learned counsel for the State has urged in this context that it was not necessary to mention in the inquest report the details as to how the deceased was assaulted or who assaulted him or under what circumstances, as it is foreign to the scope and ambit of the proceedings u/s 174 of Cr.P.C. It is urged that since it was not necessary for the police to mention the above details in the inquest report (Ex.P/30), no adverse inference in the matter can be drawn. Reliance in this connection has been placed by the learned counsel for the Pedda Narayana and Others Vs. State of Andhra Pradesh, .

However, it may be noticed in the above connection that in the seizure memo dt. 25.10.82 relating to seizure of dress and other apparels of the deceased which forms part of inquest report (Ex.P/30) in the record of the trial court, Crime number is mentioned in 0/82 which indicates that offence was not registered till the said seizure dt. 28.10.82 was written. Now, if the first information report was lodged on 24.10.82 and offence was registered then the crime number would certainly have been mentioned in the said seizure memo prepared in the next day i.e. dt. 25.10.82. Thus, non-mention of crime number on the said seizure memo dt. 25.10.82 raises a grave doubt and indicates that the first information report was not recorded on 24.10.82 and the crime was not registered till Ex.P/30 dt. 25.10.82 was written.

Again Investigating Officer Dadulal Singh (PW/20) has stated that he does not know as to whom the copy of first information report (Ex.P/23) was sent to the Magistrate. It was also pointed out in this connection that the record of the trial court indicates that the Magistrate received the copy of the First Information Report on 30.10.1982 i.e. after six days of the incident which took place on 24.10.1982 and on which date report (Ex.P/23) was ostensibly lodged. It has then urged on behalf of the appellants that it was the duty of the prosecution to

provide the compliance of Section 157 of Cr.P.C. and that the prosecution has failed to prove that the First Information Report was sent to the Magistrate immediately after the recording thereof as in the mandate of Section 157 of Cr.P.C.

In *Meharaj Singh (L/Nk.) Vs. State of U.P.*, , Apex Court has observed-

With a view to determine whether the F.I.R., was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the F.I.R. was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared u/s 174 Cr.P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings got reflected in the report. The absence of these details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR case to be recorded later on after the deliberations and consultations and was then ante-timed to give it the color of a promptly lodged FIR.

Reference in the above connection may also be made to *Devinder Vs. State of Haryana*, .

In view of the omissions and infirmities pointed out earlier, the submission of the learned counsels for accused/appellants appears to be well founded that the F.I.R. was ante-timed and ante-dated and was not recorded immediately after occurrence. The investigation therefore appears to be tainted.

Now, again coming back to statement of the complainant Akhand Pratap Singh (PW/15) it appears that he has named several of the accused persons in the first information report (Ex.P/23). However, in para 47 of his statement, he has admitted that prior to the incident, he had never met any of the other accused persons except accused/Jitendra alias Baba. If that was so, there was hardly any reason or possibility that he would have identified and named the accused persons in the First Information Report. He has stated in this connection in para 38 during cross-examination that he used to see the accused persons moving on the road and in the cinema, therefore, he has identified them. Now, if the complainant Akhand Pratap Singh (PW/15) had only seen the accused persons moving on the road or in the cinema as he has stated, normally it was not possible for him to have known the names of the accused persons without any special reason or introduction with them. He does not say that he was ever introduced to them or had any other reason for his coming to know the names of

the accused persons. Therefore, it is highly doubtful that the complainant Akhand Pratap Singh (PW/15) was knowing the names of the accused persons when he lodged the First Information Report (Ex.P/23).

Therefore, mention of, names of several accused persons in the FIR (Ex.P/23) without there being any reasonable explanation therefor, also lends support to the inference that it was ante-timed and ante-dated and was lodged after due deliberation.

In the above reference it may further be mentioned that Akhand Pratap Singh (PW/15) has stated that he had identified accused Mangleshwar Singh, Umesh Singh and Rajendra Singh alias Banti in the test identification parade. However, name of test identification parade (Ex.P/29) would indicate that only accused Umesh and Rajendra Singh were put for test identification and that accused Mangleshwar Singh was not put for identification. However, it is also evident from memo of test testimony (Ex.P/29) that Akhand Pratap Singh (PW/15) did not identify any of the accused in the test identification parade. Hence, above statement of Akhand Pratap Singh (PW/15) is clearly false and indicates that he has sought regard for truth.

It is important to note that Dr. M.L. Mishra (PW/14) who conducted the medical examination of Dal Pratap Singh (deceased) as also of Akhand Pratap Singh (PW/15) at District Hospital, Sidhi, has stated in para 35 of his statement that Akhand Pratap Singh (PW/15) giving him the history of his injuries had informed that some unknown persons had assaulted him, as was recorded by him in bed-head-ticket (Ex. P/14-A). However, it appears that subsequently the word "persons unknown written in the bed-head-ticket (Ex.P/14-A) have been scored out. Dr. M.L. Mishra (PW/14) has been re-examined on the point and in para 43 of his statement he had categorically stated that he did not (sic) out the above words "persons unknown".

Now the history given by Akhand Pratap Singh (PW/1) himself that he was assaulted by some unknown persons would clearly indicate that till the time of his admission in the hospital he did not know the names of assailants and did not identify them. Therefore, he could not have named them in the F.I.R. (Ex.P/23). Moreover, subsequent scoring out of the above words "unknown persons" also indicates that there has been deliberate attempt to obliterate a material fact from record, which casts serious doubt regarding impartiality of the investigation and indicates that it is tainted.

Thus, since the names of the appellants were not known to Akhand Pratap Singh (PW/15) at the time of assault on him, he could possibly not mention their names in the F.I.R. (Ex.P/23) which was purportedly recorded prior to his medical examination by Dr. M.L. Mishra (PW/14) and recording of history of his injuries as shown in bed-head-ticket (Ex.P/14-A). In view of above, the inference is again reinforced that the FIR was ante-timed and ante-dated and was recorded after due deliberations.



Learned counsel for the accused/appellants have also submitted that the statement of Akhand Pratap Singh (PW/15) regarding the incident do not deserve credence because the same is also not supported by other material circumstances of the case which shall be presently discussed.

In the above connection, it may be noticed that complainant Akhand Pratap Singh (PW/15), narrating the incident, has stated that while he and the deceased Dal Pratap Singh were going on motorcycle, they were surrounded by 12 or 13 persons who assaulted them and that the accused Brajendranath Singh fired at him twice with Katta" (country made pistol) but Akhand Pratap Singh (PW/15) saved himself by bending sideways. Then while the accused Brajendra Nath Singh was trying to fire at them for the third time; Akhand Pratap Singh aiming at the hand of Brajendra Nath Singh, fired with his revolver upon which latter raised an alarm saying that he was hit.

From the above statement of Akhand Pratap Singh (PW/15), it would appear that he had fired at accused Brijendranath Singh while latter was aiming at him with his "Katta" (country made pistol), which he was holding in his hand. In that case, since accused Brajendranath Singh was holding the "Katta" his fist, must have been in clenched position. However, this statement is belied by the statement of Dr. M.L. Mishra (PW/14), who has categorically stated that the injuries found on the palm and fingers of accused Brajendranath Singh could not have been possibly caused if he was holding a pistol in his hand. Dr. M.L. Mishra has further clarified that the above injuries could be caused only when palm and fingers of accused Brajendranath Singh were in open and stretched position. Thus, clearly Brajendranath Singh could not have received the injuries on his palm and hand while he was holding the pistol and aiming it towards complainant Akhand Pratap Singh (PW/15) on the latter has tried to state.

Clearly therefore, the above version of the incident given by Akhand Pratap Singh (PW/15) is totally negative and belied by the injuries sustained by accused Brajendranath Singh, and the above statement of Dr. M.L. Mishra (PW/14).

In the above context, it is pertinent to note that the defence of accused Brajendranath Singh is that he was not present on the spot and that Akhand Pratap Singh (PW/15) had come to his house and when accused Brajendranath Singh enquired from deceased Dal Pratap Singh, as to how he got injured, Akhand Pratap Singh (PW/15) abused him and had fired at him, on account of which he sustained injuries. He had also lodged the report of the above incident which is recorded as Sanha No. 1254. The above defence of accused Brajendranath Singh appears quite probable in view of injuries received by him and the above mentioned statement of Dr. M.L. Mishra (PW/14).

It would thus appear that accused Brajendranath was not injured during the incident and in the manner in which Akhand Pratap Singh (PW/15) has stated and it also appears that accused Brajendranath Singh was possibly injured in the manner as has been disclosed by him in his statement recorded u/s 313 of Cr.P.C.

It may also be noticed in this context that at the time of incident according to the statement of Akhand Pratap Singh (PW/15) several persons were present and had surrounded them. In the circumstances, had accused Brajendranath Singh fired twice at Akhand Pratap Singh (PW/15) at close range, he or some of the persons surrounding him and the deceased Dal Pratap Singh, would have been certainly hit. However, no empty cartridge, etc. allegedly fired with the "Katta" of accused Brajendranath Singh was recovered by the Investigating Officer from the spot. In view of the above, it is clear that the statement of Akhand Pratap Singh (PW/15) on the above vital aspect of the incident stands totally discredited. It may also be noticed that the learned Trial Court has also not believed the prosecution case in this regard and has acquitted accused Brajendranath Singh.

There is yet another important aspect of the matter which deserves consideration. The statement of Akhand Pratap Singh (PW/15) in para 4 is that accused Jitendra Singh alias Baba had assaulted the deceased Dal Pratap Singh on the back of his head by stick. In para 6 of his statement Akhand Pratap Singh (PW/15) has further stated that deceased Dal Pratap Singh after falling down had got up moved 15 to 20 paces and had again fallen down, while Akhand Pratap Singh (PW/15) ran to Police Station Kotwali and lodged First information Report (Ex. P/23) there.

Thus, according to the above statement of Akhand Pratap Singh (PW/15), Dal Pratap Singh fell down at a distance of about 15 to 20 paces, from where he was assaulted. However as per map of the spot (Ex.P/28) prepared by Patwari Laxmikant (PW/18) and his statement, the place where deceased Dal Pratap Singh was found laying was at a distance of about 400-500 ft. from the place where the assault took place. Similarly, Investigating Officer-Town Inspector Dadulal Singh (PW/10) in para 5 of his statement has also stated that, Dal Pratap Singh was lying at a distance of about a furlong from the place where he was assaulted. There is no explanation as to how Dal Pratap Singh reached a distance of about a furlong from the place where the incident of assault had taken place. It is important to notice in this context that Dr. M.L. Mishra (PW/14), who had first examined Dal Pratap Singh (deceased), has stated that in view of fracture on his vertebra, Dal Pratap Singh could have only walked 5-10 steps or till injury was caused to the spinal cord. It is also noticed that Dr. A.L. Dubey, who conducted post-mortem on the dead body of Dal Pratap Singh, has also stated that there was a fracture and dislocation of his cervical vertebra and the fibres of spinal cord were torn and compressed and there was haematoma over the affected area and he has opined that the injury as found on the person of Dal Pratap Singh would have enabled him to walk for only about 2 to 4 feet only.

In the above circumstances and in view of the nature and location of the injury on the vertebra of Dal Pratap Singh (deceased), it was hardly possible for him to have walked from the place of assault to a distance of a furlong or 400-500 feet where his body was lying. There is absolutely no explanation in the prosecution

evidence as to how after sustaining the above injuries, deceased Dal Pratap Singh could be found lying at a distance of 400-500 feet or a furlong from the place where he was assaulted. The learned Trial Court in this connection in paras 45, 60 & 61 of impugned judgment has mentioned that Dal Pratap Singh (deceased) and injured Akhand Pratap Singh (PW/15) on being assaulted must have run away in order to save themselves and assailants after chasing him for some distance may have assaulted Dal Pratap Singh (deceased).

However, this does not appear to be the prosecution case and noticed earlier there is no evidence led by the prosecution in this regard, and in fact, Akhand Pratap Singh (PW/15) as well as other eye witnesses Ram Resile (PW/3) and Sankat Mochan (PW/5) have specifically stated that the assault had taken place at the Gandhi Chowk only and that the assailants had run away thereafter.

Thus, the circumstances that the deceased Dal Pratap Singh was found lying at a distance of about a furlong from Gandhi Chowk, which is the alleged place of assault, negatives the eye-witness account as given by Akhand Pratap Singh (PW/15), Ram Rasile (PW/3) and Sankat Mochan (PW/5). It appears that the learned trial court has relied upon his own conjecture and surmises in this regard and has made out a new case as mentioned by him in paragraphs 45, 30 and 61 of the impugned judgment. In *Devi Lal and Another Vs. The State of Rajasthan*, . It has been observed that a

If the pivot of the prosecution case is not accepted a new prosecution case cannot be made to imperil defence.

In the instant case also in view of the specific evidence of the prosecution that the incident of assault on the deceased Dal Pratap Singh and Akhand Pratap Singh (PW/15) took place at Gandhi Chowk, the trial court was not justified in drawing an inference that the incident might have taken place somewhere else. Again if that inference of the trial court is accepted, then it might be that some other persons and not the accused, who might have assaulted the injured/deceased Dal Pratap Singh. In any case since a new case could not have been made out for the prosecution, it is obvious that the learned trial court fell into serious error in doing so.

Now coming to the statements of other eyewitnesses, it may be noticed [hat Sankat Mochan (PW/5) who is Head Constable of Police, claims to have witnessed the incident. Though he states that he had gone to purchase medicine at the time of incident, but no prescription or bills have been produced in support of his statement. Moreover, though he states that he went to the hospital where police officers were present but he did not inform them about the incident, nor did he lodge the report of the incident. This does not appear to be a natural conduct on his part.

Similarly Ram Rasile (PW/3) also claims to have seen the incident. But it is noticed that he is a resident of Mauganj which is at a distance of 125 kms from Sidhi. He states that he had come to Sidhi to meet Anil Singh at the time of

incident. He appears to be closely acquainted with complainant Akhand Pratap Singh (PW/15), so is borne out from his admission during his cross-examination. It is also noticed that his name also does not find place in the FIR (Ex.P/23). He also did not disclose the incident at the earliest.

Moreover both the eye witnesses namely Ramrasile (PW/3) and Sankat Mochan (PW/5) have stated that accused Brajendranath Singh had fired with "Katta" at Akhand Pratap Singh, which part of the incident stands discredited as has been discussed earlier. Moreover, even the trial court has not believed that part of the story. Thus, the statement of Ramrasile (PW/3) & Sankat Mochan (PW/5) not only suffer from material infirmities as above, but there are several omissions and contradictions in their statements given in the trial, with their case diary statements.

It would thus appear from the above that presence of Ram Rasile. (PW/3) and Sankat Mochan (PW/5) on the spot, at the time of occurrence, is doubtful and they appear to be chance witnesses. Though chance witness should not necessarily be treated as a false witness, yet greater care is required in the scrutiny of this testimony and in placing reliance thereon. In AIR 1941 11 (Privy Council) , it has been observed that though "chance-witness" is not necessarily a false witness, it is proverbially rash to rely upon such evidence. Similar proposition finds place in Som Prakash Vs. State of Delhi, .

In view of above, the statements of Ram Rasile (PW/3) and Sankat Mochan (Pw/5) are not worthy of credence and are of no use to the prosecution. In fact the learned trial court also did not place reliance on their statements, as would be clear from para 54 of the impugned judgment.

Therefore, now the question is as to whether the solitary statement of complainant Akhand Pratap Singh (PW/15) should be relied upon and whether conviction can be based thereon. It is true that he was also injured at the time of incident and therefore his testimony should normally have been given greater weight. However, as noticed and discussed earlier, his testimony suffers from material infirmities on vital aspects of the case, and he does not appear to be giving the truthful version of the incident and therefore his uncorroborated testimony cannot be relied upon. The learned trial court fell in error in doing so.

The statement of Akhand Pratap Singh (PW/15) cannot also be said to be corroborated by the statements of Ram Rasile (PW/3) and Sankat Mochan (PW/5) as their statements also are infirm and unreliable, as has been noticed earlier. An infirm witness cannot lend support to another infirm witness. Reference in this connection, may be made to observation in Muluwa and Others Vs. The State of Madhya Pradesh, wherein it has been observed that:

It is elementary that the evidence of an infirm witness does not become reliable merely because it has been corroborated by a number of witnesses of the same brand; for evidence has to be weighed and not counted.

Thus, the eye witness account of the incident, as given by the above witnesses cannot be relied upon.

To sum up, the following broad inexplicable factors are noticed in the instant case -

(a) Deceased Dal Pratap Singh was found lying in an injured state at a distance of about a furlong from Gandhi Chowk, where he and Akhand Pratap Singh (PW/15) were allegedly assaulted, whereas as per medical opinion he could not have walked more than 4-5 paces after sustaining injuries on his vertebra.

(b) Injured Akhand Pratap Singh (PW/15) while giving history of his injuries, had informed Dr. M.L. Mishra that he was assaulted by some unknown persons and the said words were then scored out from the medical report; giving rise to two inference i.e.

(i) The name of the assailants were not known to Akhand Pratap Singh when he lodged First Information Report.

(ii) That there was an attempt to improve the prosecution case, and investigation is tainted.

(c) The nature of injuries on the palm and fingers of accused Brajendranath Singh could not have been caused if he was holding and aiming the "Katta" towards Akhand Pratap Singh (PW/15) as the latter has tried to state;

(d) First Information Report is ante-time and ante-dated and the name of the accused/appellants were mentioned therein, while complainant Akhand Pratap Singh (PW/15) did not know the name of accused/appellants at the time of lodging of the report.

The question is whether the above vital lacuna in the prosecution evidence deserve to be ignored and inspite of the said glaring shortcomings, and infirmities of the prosecution case, evidence regarding the incident deserves to be accepted. In our considered opinion, since the prosecution version, stands improbabilised on material aspects as above, the answer will have to be in the negative.

Thus, though the case relates to an unfortunate incident which took place in the market place in which a young sub-inspector of police lost his life, while the other sub-inspector complainant Akhand Pratap Singh (PW/15) was seriously injured; but since the prosecution evidence does not withstand the test of scrutiny and the Independence and fairness of Investigation is not free from doubt, the accused/appellants cannot be held liable and guilty on the basis thereof; because the courts have to objectively access the evidence without being swayed by emotion or nature or gravity of the offence.

In the above circumstances, the prosecution in our opinion, has failed to bring home guilt against the convicted accused/appellants, and therefore, the accused/appellants, Dharendra Singh, Prabhat Kumar, Anil Singh, Ravendra Singh,

Mrigendra Singh, Jitendra Singh alias Baba and Buddhiman Singh are entitled to benefit of doubt, and their conviction and sentences imposed by the learned trial judge disserves to be set aside. Accordingly Criminal Appeal Nos. 613/93, 623/93, 624/93, 628/93 & 680/93 deserve to be allowed.

How, so far appeal No. 366/94 by the state is concerned, it is clear from above that the whole prosecution evidence and the prosecution case stands discredited. Therefore, there is no question of a different view being taken regarding the accused/respondents who for adequate and proper reasons, were acquitted by the trial court itself. However, the material and evidence regarding the acquitted accused/respondents is being briefly mentioned.

So far as accused/respondent Brajendranath Singh is concerned, the version of the incident given by complainant Akhand Pratap Singh (PW/15) as well as Ram Rasile (PW/3) and Sankat Mochan (PW/5) that he fired with "Katta" at Akhand Pratap Singh (PW/15) and thereafter the latter fired at him stands totally discredited by the nature of his injuries and in view of the fact that no empty cartridges etc. were found and recovered from the spot. The circumstances and material on record in this regard has been discussed in detail earlier in this judgment, and there is no need for repetition thereof.

Therefore, the learned trial court was right in recording a finding that the presence of accused/Brajendranath Singh on the spot was highly doubtful and he accordingly deserves to be given benefit of doubt.

It is also noticed that the names of accused/respondents Rajendra Singh alias Banti, Shanker Dayal, Mangleshwar Singh and Umesh Singh are not mentioned in the First Information Report (Ex.P/23). Akhand Pratap Singh (PW/15) failed to identify accused/Rajendra Bahadur Singh and Umesh Singh in the test identification parade held as per identification case (Ex.P/29). Therefore, they cannot be held guilty as has been held by the learned trial Judge.

For the foregoing reasons, the acquittal of the accused/respondents appears to be based on proper appreciation of evidence and there does not appear to be any illegality much less perversity in the finding regarding them, recorded by the learned trial Judge. Therefore Criminal Appeal No. 366/94 by the State has no merit and deserves to be dismissed.

Accordingly, Criminal Appeal Nos. 613/93, 623/93, 624/93, 628/93 and 680/93 are allowed and the conviction and sentence of accused/appellants Dharendra Singh, Prabhat Kumar, Anil Singh, Ravendra Singh, Mrigendra Singh, Jitendra Singh alias Baba and Buddhiman Singh, imposed by learned trial Judge are set aside and they are acquitted of all the charges. Accused Jitendra is in custody and he be set at liberty, if not required in any other case; while the accused/appellants namely Dharendra Singh, Prabhat Kumar, Anil Singh, Ravendra Singh, Mrigendra Singh and Buddhiman Singh are on bail whose bail bonds shall stand cancelled.

Criminal Appeal No. 366/94 of State stands dismissed.