
(2005) 05 PAT CK 0021

In the Patna High Court

Case No : Criminal Appeal (DB) No. 107 of 2001

Dinanath Pandit, Ramanand Pandit and Janak Deo Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 12-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120B, 395, 396, 397

Citation : (2005) 3 PLJR 540

Hon'ble Judges : Sadanand Mukherjee, J;M.L. Visa, J

Bench : Division Bench

**Advocate : Krishna Prasad Singh and Manindra Kishore Singh, for the Appellant;
Lala Kailash Bihari Prasad, for the Respondent**

Final Decision : Allowed

Judgement

Sadanand Mukherjee, J.—This criminal appeal is directed against the judgment and order of conviction dated 12/13.2.2001 by Sri Amresh Kumar Lal, 6th Additional Sessions Judge, Chapra in Sessions Trial No. 184 of 1997, whereby and whereunder, the appellants Dinanath Pandey, Ramanand Pandey and Janakdeo Singh were convicted under sections 396 as well as 120B of the I.P.C. and they were sentenced to undergo imprisonment for life as well as fine of Rs. 30,000/- and in default thereof to further undergo imprisonment for one year. They were also sentenced to undergo imprisonment for two years for an offence u/s 120B of the I.P.C. The sentences were to run concurrently. The case of the prosecution, in brief, is that the informant Sudarshan Pandit (PW. 10) lodged a fardbeyan on 21.11.1995 at 2.30 A.M. before the Officer Incharge of the Ekma P.S. alleging inter alia therein that in the night of 20/21.11.1995, while all the members of his house were sleeping, at about 11.20 P.M. the informant was awakened on the sound of breaking of the door. The informant came out from the room, which was on the first floor. His cousin brothers Surendra Pandit and Jagan Pandit also woke up. They found 8 to 9 miscreants standing in the courtyard and Varanda and 2 to 3 persons breaking open the door of the room of

Vijoy Kumar Pandit (deceased). The dacoits looted clothes and ornaments worth Rs. 50,000/-. The informant identified appellant No. 3 Janakdeo Singh by his voice. It is further alleged that they saw the culprits looting boxes containing ornaments, clothes etc. One of the culprits was armed with gun. Cousin brother of the informant, namely, Surendra Pandit jumped from the roof behind the house. He raised alarm to call the villagers. One of the miscreants told other accomplices that Jaggu Pandit, brother of the informant had earned a lot from Punjab. The aforesaid miscreant was identified by the informant and his brother Jaggu Pandit as accused Janak Singh. This accused snatched wrist watch from the hand of Jaggu Pandit. The informant and the aforesaid Jaggu Pandit (PW. 4) were restrained by the accused persons who were 20 to 22 in number. They committed dacoity and started looting the articles of the house for half an hour. In the occurrence, elder brother Vijoy Kumar Pandit, who was an army man, was assaulted by two dacoits with bhujali. The villagers raised alarm whereupon the dacoits ran away towards west of the village. The brother of the informant, namely, Vijoy Kumar Pandit (deceased) followed them. The miscreants fired shot at Vijoy Kumar Pandit (deceased) in the orchard. Vijoy Kumar Pandit was taken to Ekma Government Hospital by Surendra Pandit (PW. 2) who was his cousin. It is further alleged that accused Dinanath Pandit and Ramanand Pandit conspired together to commit dacoity by entering into conspiracy with other accused persons on account of land dispute with them. Earlier they were threatening the prosecution party that they would get the dacoity committed in their house.

2. The further case of the prosecution is that the aforesaid Vijoy Kumar Pandit (deceased) had told his brother in the orchard while being taken to hospital that he was assaulted by accused Ramanad Pandit and Dinanath Pandit with daw (sickle) and Janak Singh fired shot causing gun shot injury.

3. The case was instituted on the fardbeyan of the informant (PW. 10) being Ekma P.S. Case No. 128 of 1995 dated 21.11.1995 under sections 395/397 of the I.P.C, as well as 120B of the I.P.C. and later on, Section 396 I.P.C. was also added. The police after investigation submitted charge sheet against the accused persons. After cognizance taken, the case was committed to the court of Sessions for trial. The trial court after examining 11 witnesses on behalf of the prosecution convicted and sentenced the appellants as stated above.

4. The case of the defence is denial of the prosecution case, as will appear from the statement of the accused persons u/s 313 of the Cr.P.C. Apart from the denial the case of the defence is that the accused persons have been falsely implicated as there was land dispute between the parties. The case of accused Dinanath Pandit as well as Ramanand Pandit is that the deceased Vijoy Kumar Pandit was the cousin brother. The case of accused Janakdeo Singh as will appear from the statement u/s 313 of the Cr. P.C. is that he has been falsely implicated as he has intimacy with both Dinanath Pandit and Ramanand Pandit who were agnates of the informant.

5. As stated above, the prosecution has examined as many as 11 witnesses to

prove its case. PW. 1 is Sheonarain Pandit. In his evidence he has stated that Sudarshan (PW. 10) and Surendra Pandit (PW. 8) are his nephews. Accused Ramanand Pandit and Dinanath Pandit are the sons of his own brother. Sheo Pujan Pandit and Jaggu Pandit (PW. 4) are his sons. Vijoy Kumar Pandit (deceased) is his own nephew and Surendra Pandit (PW. 8) is son of Lakshman (PW. 2), his own brother. While discussing his evidence it seems necessary to indicate the aforesaid relationship as the interested nature of the witnesses of the prosecution has been high lighted by the defence to assail the prosecution case. In the night of occurrence at 11.30. P.M., this witness got up for attending the call of nature. It is stated by him that 5-6 miscreants caught him and took him in his room. He identified them in torch light. His evidence further is that he had identified accused Dinanath Pandit and Ramanand Pandit armed with daw and Janakdeo Singh armed with gun. This witness and his brother Lakshman (PW. 2) were confined in the same room where he has been forcibly taken and thereafter the miscreants had shut the door from outside. The dacoits broke open the door of the court yard and entered into the house. His evidence further is that female inmates of the house started crying, he was assaulted with butt of gun on his chest and he was asked not to raise alarm. Female inmates got them out from the room by opening the door. The dacoits were found running after committing dacoity and his brother Vijoy Kumar Pandit had followed them. His evidence further is that Vijoy Kumar Pandit had snatched the daw from a dacoit and assaulted a dacoit but another dacoit had assaulted him with daw. Vijoy Kumar Pandit received gun shot injury from one of the dacoits. This witness had accompanied Vijoy (deceased) to the hospital. In his evidence he has stated that his statement was not recorded by the police at the hospital. He has further stated that his statement was recorded by the police but the statement has not been written correctly. This witness has stated about the land dispute with the accused persons 15 days prior to the occurrence relating to homestead land. His evidence in cross-examination further is that he had not fallen down due to assault, but he was confined in the room by force and the dacoits committed dacoity for about 20-25 minutes. In his evidence he has stated that prior to arrival of police he had told other witnesses that he had identified Ramanand, Dinanath and Janak. He had also told it to his co-villagers Kailash Pandit, Mahesh Sah, Gautam Singh and others. It appears that when he came out from his house he found Vijoy lying in the orchard. He denies that he had not stated before the police that he identified all the accused persons out of whom Janak was armed with gun, Ramanand and Dinanath had been armed with Daw.

6. In this connection when the evidence of I.O. (PW. 11) is perused it appears that PW. 11 Sheo Ram, the Investigating Officer has stated that he had recorded the statement of Sheo Narain Pandit (PW. 1) on 22.11.1995. The aforesaid PW. 1 had not stated before him that Janak was armed with gun and accused Ramanand Pandit and Dinanath Pandit were armed with daw. It appears from perusal of the evidence of PW. 1 that there is clear statement about relationship and enmity between PW. 1 and the accused persons. It does not appear from the

evidence of this witness whether he had seen the occurrence of killing of the deceased by the accused persons. Before police he had also not stated about identification of the accused persons with the weapons. Since he was confined in a room he did not have the occasion to see the occurrence of killing of the deceased. The land dispute is admitted. The manner of occurrence as described by him and the eye witness account of the identification of the accused persons do not appear to be reliable under the facts and circumstances of the case as stated above. So far as identification of accused persons is concerned, PW. 1 in his cross-examination has clearly stated that accused Ramanand Pandit, Dinanath Pandit and Janakdeo Singh had concealed their faces by "Gamchha". The enmity among the agnates is clearly borne out in the evidence as a whole. It is settled law that in absence of cogent and reliable evidence, the evidence of interested witnesses has to be viewed with caution. Before police he had also not stated about the factum of identifying the accused persons with the weapons, which seems to create grave doubt with regard to identification of the accused persons. Since he was confined in a room he did not have the occasion to see the occurrence of killing the deceased. The land dispute is admitted. The role of the appellants in the occurrence as narrated does not inspire credence under the admitted background of enmity. Whereas the incident of dacoity and killing of the deceased by the dacoits stand supported in the version of this witness, the evidence regarding the involvement of the accused persons does not appear to be cogent and reliable.

7. PW. 2 is Lakshman Pandit. His evidence is that while he was sleeping in a room which was in front portion of his house he had found the accused persons, namely, Ramanand Pandit, Dinanath Pandit and Janakdeo Singh. He identified them in the light of torch. His evidence is that he was forced to be confined in a room with his brother Sheo Narayan Pandit (PW. 1) and dacoits had shut the door. His evidence further is that there was dacoity inside the house for about 20-25 minutes. Dacoits were 20-22 in number. The deceased Vijoy Kumar Pandit followed the accused persons and he was killed by gun shot and daw in the orchard of Ram Kumar Singh. This witness has stated that Vijoy Pandit (the deceased) had stated before him that he had identified Dinanath Pandit, Ramanand Pandit and Janakdeo Singh. His evidence further is that prior to the occurrence accused Dinanath Pandit and Ramanand Pandit had given threatening that they would cause dacoity to be committed which would result in blood bath. An information to that effect was given to the police by his son Khedan Pandit (PW. 3). His evidence further is that in that night itself the aforesaid occurrence took place. He further stated that he had given statement before the learned Magistrate. The police recorded his statement after two days of the occurrence. The evidence of this witness in cross-examination is that this witness had not told the police about the fact that he had identified three accused persons. If the version of this witness regarding identification is tested with reference to the initial version before the police, it appears that the Investigating Officer (PW. 11) has stated in his cross-examination that Lakshman Pandit (PW. 2) has stated

before him that Ramanand Pandit and Dinanath Pandit threatened his son Khedan Pandit that dacoity and murder would be committed by them. PW. 2 however, in his cross-examination has stated that he had not told the police regarding identification of three accused persons, as stated above. The evidence of P.W. 2 in cross-examination further indicates that he had not told any person of the village regarding identification of three accused persons among the dacoits. He has also stated that he had not told any of the family members regarding identification of the accused persons in the night of the occurrence. Hence, in the evidence of this witness the factum of identification of the accused persons becomes doubtful affecting the veracity of the prosecution case regarding the presence of the accused persons.

8. PW. 3 Khedan Pandit son of Lakshman Pandit (PW. 2) had identified Ramanand Pandit, Dinanath Pandit and Janakdeo Singh. P.W. 3 had seen the dacoits in the light of torch. His evidence is that the dacoits after breaking open the door of Vijoy Kumar Pandit entered inside the room and thereafter the dacoits also entered in other rooms of the house for commission of dacoity. His further evidence is that Ramanand and Dinanath Pandit were armed with daw and Janakdeo Singh was armed with gun. He has also stated that Sheonarain Pandit (PW. 1) had also been assaulted with butt of the gun by the dacoits. His evidence is that Vijoy Pandit, this witness and co-villagers followed the dacoits, Vijoy was assaulted with daw and he also received gun-shot injury. Vijoy was taken to Ekma Hospital and thereafter he was taken to Sadar Hospital, Chapra where he was in senses. His evidence further is that he had gone to hospital in the morning after death of Vijoy. Inquest report was prepared by police in his presence. This witness and Surendra Pandit are the witnesses on the inquest report and their signatures had been marked as Exts. 1 and 1/A. His evidence further shows that the police went to his house, took statement and seized the broken wooden lock of the door. The police also seized four empty cartridges in his presence. Seizure list had been marked as Ext. 2. His further evidence is that the police recorded the fardbeyan of Sudarshan Pandit (informant) (PW. 10) which was witnessed by him and Jaggu Pandit (PW. 4). He has further stated that at 10 A.M. i.e. early in the day he had given written information to the police which has been marked as Ext. 3. The aforesaid written information was registered as Sanha No. 346 dated 20.11.1995. This relates to threatening earlier given by the accused persons. This witness has further stated in his evidence in cross-examination that accused Dinanath Pandit and Ramanand Pandit are the sons of his own uncle. Thus, both the accused persons are agnates of this witness. He has admitted that there was land dispute between the prosecution party and the accused persons.

9. It may be worthwhile to point out that although PW. 3 has given evidence regarding the identification of the aforesaid accused persons in torch light, PW. 11 (I.O.) has stated that Khedan Pandit had not given statement before him that in the torch light he had identified Janakdeo Singh, Dinanath Pandit and Ramanand Pandit, nor witness Khedan Pandit (PW. 3) has stated before him that

Janakdeo Singh was armed with gun, Ramanand Pandit and Dinanath Pandit were armed with daw. The initial version of the witnesses on the point of identification is relevant and bears importance in the context of enmity between the parties as attention had already been drawn of this witness towards his previous statement before the police regarding identification of the accused persons. The evidence of this witness on the identification of the accused persons stands impeached on close scrutiny when his previous statement before police regarding identification is considered in the background of enmity between the parties.

10. PW. 4 is Jaggu Pandit. His evidence also goes to show that 20 to 25 dacoits entered into the house. The door of the room in which the deceased Vijoy Kumar Pandit was sleeping was broken. They took away huge number of articles. PW. 4 has further stated that the dacoits were talking among themselves that this witness had come from Punjab after earning huge amount. His evidence is that since he has torch with him, in the flash of torch light he had identified three accused persons, namely, Janakdeo Singh, Ramanand Pandit and Dinanath Pandit. His evidence further is that accused Janakdeo Singh was armed with gun and other accused persons, namely, Ramanand Pandit and Dinanath Pandit were armed with Bhujali (Daw). After the dacoits had left the place they were chased. His evidence further shows that the deceased Vijoy Kumar Pandit received gun shot injury in the orchard of Hari Narain Singh. At the time of taking Vijoy to hospital, Vijoy took the names of the accused persons stating that Janakdeo Singh had fired shot at him by his gun, Ramanand Pandit and Dinanath Pandit had assaulted him with daw. Fardbeyan of the informant Sudarshan Pandit was recorded in his presence and he was a witness to the aforesaid fardbeyan. He had identified his signature thereon as Ext. 4/A.

11. It may be stated here that the relationship of accused Dinanath Pandit and Ramanand Pandit with the witnesses is admitted. It is also worthwhile to note that although the co-villager, namely, Gautam Singh, Perma Sah, Kailash Pandit, Mahesh Sah and Jamuna Thakur had reached at the place of occurrence, but this witness had not stated about identification of the dacoits to them. He has stated in his evidence that the deceased Vijoy was not senseless after the injuries. Attention of this witness was drawn towards his statement before the police on the point of identification of three dacoits, namely, Janakdeo Singh armed with gun, Ramanand Pandit and Dinanath Pandit armed with daw. Attention of this witness was also drawn towards his statement before the police regarding the dying declaration of the deceased Vijoy before him that Vijoy had received gun shot injury by Janakdeo Singh and further Ramanand Pandit and Dinanath Pandit had assaulted him with daw. In this connection, the Investigating Officer (P. W. 11) while confronted with the statement of the aforesaid witness, namely, Jaggu Pandit stated that Jaggu Pandit (PW. 4) had not stated before him that in the light of torch Ramanand Pandit, Dinanath Pandit and Janakdeo Singh were identified by him. The Investigating Officer referred to his statement that the voice of one of the dacoits was identified as that of Janakdeo Singh. The

Investigating Officer has further stated that aforesaid Jaggu Pandit (PW. 4) had not stated before him that Janakdeo Singh was armed with gun and Dinanath Pandit and Ramanand Pandit were armed with daw nor PW. 4 had stated before him that Vijoy Pandit (deceased) had received injury by gun shot as well as daw. PW. 11 the Investigating Officer has further denied that Jaggu Pandit (P.W. 4) had stated before him that the deceased Vijoy had asked for water and further the deceased Vijoy had told him that Ramanand Pandit and Dinanath Pandit assaulted Vijoy the deceased with daw and Janakdeo Singh had fired shot by gun. The evidence of this witness on the point of identification of the accused persons becomes unreliable and the dying declaration purported to have been made by the deceased also turns out to be doubtful. There is vital omission and contradiction in the evidence of this witness vis-a-vis his statement before I.O. The evidence of this witness on identification and the dying declaration appears to be shrouded by vital contradictions which cast grave doubts on the prosecution case of the complicity of the appellants in the commission of offence as alleged.

12. PW. 5 Gita Devi, is wife of the deceased Vijoy Pandit. The evidence of this witness is that while she was in the room with her husband, three dacoits broke open the door and entered into the room. The lantern was lit in the room. She was able to identify three dacoits, namely, Janakdeo Singh armed with gun, Ramanand Pandit and Dinanath Pandit armed with daw. Her evidence is that the dacoits snatched ornaments from her nose, ear and chain from her neck. They also took away cash of Rs. 1200/- and other articles including clothes and utensils etc. They also took away her other ornaments. Husband of this witness, namely, Vijoy Pandit (deceased) followed the dacoits. They fired shot at her husband in stomach and also assaulted him with daw. Her husband was shot at the orchard of Hari Narain Singh. She had gone to the orchard to see her husband. Her husband asked for water and she had given him water. This witness had accompanied her husband to Ekma hospital. Her evidence is that on the way, her husband had named the accused persons, namely, Janakdeo Singh, Ramanand Pandit and Dinanath Pandit who were identified by the deceased to be the assailants. Her evidence is that her husband had told that Dinanath Pandit and Ramanand Pandit had assaulted him with daw and Janakdeo Singh had inflicted gun shot injury. Her father-in-law was also assaulted by butt of the gun. Her evidence in the cross-examination shows that Laldhari Pandit is her father-in-law. She stated about the agnatic relationship between the accused persons and the deceased. She reiterated that her husband had told her that he had identified Ramanand Pandit, Dinanath Pandit and Janakdeo Singh, the accused in this case. Her evidence further goes to show that her husband had told her at the room itself that the above named accused persons were the dacoits. Her evidence further in the sequence is that she had also followed her husband at the orchard. She has categorically stated that her husband was not senseless after he had received injury. She has stated that when her husband was in the orchard in injured condition some of the villagers, namely, Mahesh Sah, Kailash Pandit and

Gautam Singh also came. Her attention was also drawn towards statement before the police about identification of the accused persons by her and also about dying declaration of her husband who was said to have stated about three accused persons as named above being the main assailants among whom accused Janakdeo Singh had fired shot, whereas, accused Dinanath Pandit and Ramanand Pandit had assaulted her deceased husband with daw. She also told the informant Sudarshan Pandit about statement of her deceased husband naming the aforesaid accused persons from whose weapons the deceased has received injuries. The evidence of this witness with regard to involvement of the accused persons appears to be highly doubtful. The I.O. (PW. 11) has denied that this witness had told him that she had identified accused Ramanand Pandit, Dinanath Pandit and Janakdeo Singh at the time of occurrence. The I.O. has further denied that she had stated that accused Ramanand Pandit and Dinanath Pandit were armed with daw and Janakdeo Singh was armed with gun. This witness had also not told the I.O. (PW. 11) that her husband had told her the names of the accused persons as the assailants on the way to hospital, he had also not told that Dinanath and Ramanand assaulted the deceased with daw and Janakdeo Singh fired shot causing gun shot injury. Thus, evidence of PW. 5 wife of the deceased becomes doubtful on the point of identification of the accused persons as also on the point of statement of the deceased Vijoy Kumar Pandit before his death that the accused persons were involved in the incident. Although she appeared to have told the informant about the above names, the appellants have not been named in the F.I.R. their names thus do not figure at the initial stage of following the incident.

13. PW. 6 is the doctor who held post mortem examination of the deceased on 21.11.1995 at about 10.20 A.M. The evidence of PW. 6 the doctor who held postmortem examination clearly indicates that the following ante mortem injuries on the dead body:--

(i) (a) Head-left side parietal region-sharp cut 3"x1/2"x bone deep.

(b) 4" x1/2" x bone deep.

(ii) Chest-mark for pillet injury left side at three places between 4th to 6th rib and on the left side again mark of pillet at two places at 4th and 5th space with charred margin (inverted).

(iii) Abdomen-mark of pillet injury at 4 to 5 places between umbilicus to epigastrium with charred and marked margin (inverted).

On dissection A: He has found two pillets from thorax. Abdomen was punctured. The death caused due to haemorrhage and shock as a result of above injuries. Injury No. I was caused by sharp instrument and injury No. II and III by fire arm. In his cross-examination he has stated that he held post mortem examination at 10.20 A.M. and the time elapsed between post mortem and death was within six hours. He has stated that injury Nos. II and III were not sufficient to cause instant death.

The evidence of PW. 6 Dr. Madan Mohan Dubey clearly indicates that when the deceased came in the hospital he was in a position to speak and the deceased also talked with him about his complain in his body. The evidence of this witness does not indicate that the deceased had made any dying declaration before the doctor about the identification of the miscreants.

14. PW. 7 Dr. Rajeshwar Prasad Suman was posted at the State Dispensary Ekma on 21.11.1995. He has given his evidence to the effect that Vijoy Kumar Pandit (deceased) was brought by the local police and he gave suggestion to the police officer to treat the injury at any better place. PW. 7 Dr. Rajeshwar Prasad, however, examined Sheo Narain Pandit (P.W. 1) who received injury from the hands of the dacoits. Nature of the injury was described in the injury report (Ext. 6) which had been caused by the hard and blunt substance. His version confirms the prosecution case of dacoity in the house of the informant but at the same time the doubts by smearing dust around the truth of identification of the miscreants in the incident of dacoity is writ large in his evidence as a whole. The injuries on the person of P.W.1 seems to have been caused by butt portion of gun which is inconformity with the prosecution case confirming the veracity of the incident but not the factum of identification as made out in the prosecution case.

PW. 8 Surendra Nath Pandit also made statement supporting the prosecution case regarding dacoity as stated above. His evidence is that he jumped from the roof of the house out of fear, ran in the village and raised alarm. His evidence further goes to show that Vijoy Kumar Pandit followed the dacoits, Vijoy had received gun shot injury and also injury by daw. Vijoy fell down in the orchard and this witness alongwith others took Vijoy to Dr. Suman (PW. 7) at Ekma hospital. He was taken to Chapra hospital where he died at 5 A.M. Although this witness had not stated about the initial identification of the accused persons at the time of occurrence, he has stated in his evidence that Vijoy Kumar Pandit (deceased) on the way to Chapra hospital, had told that Dinanath Pandit, Ramanand Pandit and Janakdeo Singh had caused injury. His evidence further goes to show that there was altercation between Ramanand Pandit, Dinanath Pandit and also the members of the informant's family. He has identified his signature on the inquest report. His attention was drawn towards his statement before the police. His evidence is that he has stated before police that while Vijoy was being taken to hospital he had told on the way that Ramanand Pandit, Dinanath Pandit and Janakdeo Singh had caused injury to him. He further stated that statement of the deceased had not been recorded at any place. His evidence clearly shows that Ramanand Pandit and Dinanath Pandit are the sons of his own uncle. There was land dispute between this witness and the accused persons which become apparent from his evidence. Attention of this witness was drawn towards statement that he had given statement before police that dacoits had caused injury to Vijoy by daw and gun shot. His attention was also drawn towards statement before police but he stated that" he had told the police about the statement of the deceased regarding involvement of the accused persons in the killing of the deceased. The I.O. however, contradicted the same stating that

this witness had not told him regarding any statement of the deceased Vijoy Pandit on way to Chapra to the effect that Ramanand Pandit, Dinanath Pandit and Janakdeo Singh had caused injury to him. Thus, whereas on the point of identification there is no cogent evidence conforming role of the accused persons in the incident of dacoity, on the point of dying declaration, there seems to be contradictory statement of the I.O. and this witness regarding his initial version before the police on the point of involvement of the accused persons in the incident. There is enmity arising out of land dispute between this witness and the accused persons. His evidence does not support the prosecution case regarding the involvement of the appellants in the incident.

16. PW. 9 is the Havildar of police who had produced a letter from Ekma police station alongwith broken wooden part of the door, daw and four empty cartridges. The articles were not seized and he has no personal knowledge about the seized articles. His evidence is on the point of confirmation of the occurrence of dacoity but not on the point of involvement of the accused persons in the incident.

17. PW. 10 Sudarshan Pandit is the informant of this case. His evidence supports the prosecution case about dacoity in the house. His evidence is that at the time of occurrence he was sleeping in the first floor room. Other witnesses, namely, Surendra and Jaggu were also sleeping. 10 to 15 miscreants broke open the door. Witness Surendra got down from the roof behind the house, raised alarm to wake up the villagers. His evidence further is that the dacoits brought out the articles, boxes including ring and wrist watch of Jaggu who had come from Punjab after working. His evidence further shows that the dacoits had hidden their faces and he identified accused Janakdeo Singh by voice. The dacoits looted articles for half an hour. Vijoy Kumar Pandit, his brother who was in army had come to the house. The aforesaid Vijoy Kumar Pandit followed the dacoits and he assaulted one of the dacoits by Bhujali. His evidence further is that the dacoits caused injury to Vijoy Kumar Pandit (deceased) with gun shot and daw. His evidence further is that Vijoy Kumar Pandit stated before him that accused Janakdeo Singh had caused injury with gun shot and accused Ramanand Pandit and Dinanath Pandit had assaulted him with daw. His evidence further is that Vijoy Kumar Pandit was taken to Ekma Hospital at night about 2.30. A.M. The police officer took his fardbeyan at his house and signature on the fardbeyan has been proved as Ext. 4/ B. The signatures of Jaggu and Khedan Pandit on the fardbeyan are Exts. 4 and 4/ A. In his evidence he has also stated about a Sanha having been lodged in Ekma police station as both the accused Dinanath Pandit and Ramanand Pandit had threatened them. He has identified his signature and that of Khedan Pandit on the Sanha which has been marked as Exts. 4 and 4/ D. This witness seems to have vitally contradicted other witnesses, inasmuch as, he has not stated about the identification of Ramanand Pandit and Dinanath Pandit at the time of occurrence. He has stated that the dacoits had concealed their faces, whereas, some other witnesses have clearly stated about identification of both the aforesaid accused persons nor he had identified accused Janakdeo

Singh by face, rather accused Janakdeo Singh was identified by voice. His evidence in cross-examination clearly indicates existence of disputes over the property with accused Ramanand Pandit and Dinanath Pandit and the dispute is admitted. The informant struck discordant note vis-a-vis other witnesses on the point of identification of the accused persons. In the fardbeyan too there is conspicuous departure on the point of identification from other witnesses. The evidence of the informant, who is that most important witness, has not supported the prosecution case regarding identification. It is true that the deceased Vijoy Kumar Pandit had been shot dead and assaulted variously by gun shot and daw. PW. 11 the I.O. has consistently denied about any statement of any prosecution witnesses before the police regarding point of taking the name of the accused persons by the deceased Vijoy Kumar Pandit. The evidence of the I.O., S.I. Shiv Ram, PW. 11 is that the informant had not stated before him either in his fardbeyan or in his statement about Ramanand Pandit and Dinanath Pandit having assaulted the deceased by daw and Janakdeo Singh by gun shot, nor he had stated that Vijoy Kumar Pandit was in his full consciousness when he had made the above statement before the informant and other witnesses. In this way, under the background of admitted dispute over the property and the enmity with the appellants and the discrepancies which have occurred in his statement, also considering the initial prosecution case in fardbeyan, the evidence of the informant is not credit worthy, his credit has been impeached and his evidence in no way supports the prosecution case against the accused persons on the point of occurrence.

18. PW. 11 is Shiv Ram, the Investigating Officer in this case. It has already been pointed out that there is inconsistency on the point of identification of the appellants and the evidence of the witnesses regarding statement of the deceased Vijoy Kumar Pandit. This witness has denied that the witnesses have ever stated about the identification of the appellants by them and also the witnesses had not stated before him about the dying declaration of the deceased Vijoy Kumar Pandit naming the accused persons (appellants) who faced trial in this case. However, this witness visited the place of occurrence and although he found blood stains in the or-chard, broken door of the room confirming the incident of dacoity and murder, however, he had not found any mark of violence in any room and bed.

19. The prosecution seeks to establish the case by means of the following exhibits. Ext. 1 and 1/A relate to the signatures of the witnesses on the inquest report. Ext. 2 is the seizure list. Ext. 3 is the application of Khedan Pandit (PW. 3), which was registered as Sanha in station Diary, Exts. 4, 4/A, 4/B, 4/C and 4/D are the signatures of the witnesses as also the informant on the fardbeyan as well as on the seizure list. Ext. 5 is the post mortem report. Ext. 6 is injury report of Shiv Narain Pandit. Ext. 8 is the fardbeyan of Sudarshan Pandit. Ext. 9 is formal F.I.R. Ext. 11 is the inquest report. Ext. 12 is the requisition of the police officer on the point of injury relating to Shiv Narain Pandit. Ext. 13 is the case diary. Certain formal communication of the police regarding sending of

seized articles is Ext. 7. Material exhibits produced are broken latches, empty cartridges, blood stained soil, edge portion of daw.

20. It has already been narrated how the former statements of the witnesses before the I.O. are inconsistent with their present statements. It appears that the learned trial court failed to notice about inconsistency and contradictory evidence of the witnesses who have been cross-examined and contradicted with reference to their previous statements. All eye witnesses who have been produced are on inimical terms in view of the land dispute. In the fardbeyan though recorded at 2.30. A.M. it has not been mentioned as to whether accused persons were identified by the inmates of the house who are witnesses in this case and who have deposed about the identification of the appellants at the time of occurrence or whether Vijoy Kumar Pandit had given any dying declaration regarding identification of the accused persons. The voice identification by the informant has not been proved through any cogent and corroborative evidence. It is well settled that when the evidence of the witnesses who are closely related to the deceased and inimical to the accused persons is scrutinised, such evidence should be evaluated carefully. The enmity and dispute between the parties are admitted. The learned trial court has failed to appreciate such inconsistency in the evidence of the witnesses vis-a-vis their previous statements which vitally impeached the credit of the witnesses. The discrepancies are vital leaving no saving grace for the prosecution case.

21. The evidence of the prosecution should prove the case on its own and it is well settled that the court will be justified in separating the chaffs from the grains in the evidence, but in this case grains and chaffs are so inter mixed that it is difficult to separate the grains from the chaffs, inasmuch as, credit of the prosecution witnesses have been impeached beyond repair, discrediting the entire prosecution case.

22. On the aforesaid facts and circumstances of the case the prosecution has not been able to prove the case beyond reasonable doubts. The circumstance that a Sanha was lodged in view of threatening given by the appellants has been projected as a prelude to the occurrence. This alone is not enough to salvage the prosecution case. In view of inconsistent evidence, as stated above, and also considering the entire gamut of the evidence this circumstance cannot be said to be strong enough to lead to the only inevitable conclusion about the guilt of the accused-appellants. In fact, the testimony of the witnesses as a whole has been impeached and the prosecution case against the accused persons has been damaged to the extent that the case against the accused persons in the matter of their complicity in the offence becomes doubtful. Accordingly, conviction and sentence of the appellants, namely, Dinanath Pandit, Ramanand Pandit and Janakdeo Singh are set aside. The appellants Dinanath Pandit, Ramanand Pandit and Janakdeo Singh are in jail custody. Therefore, we direct that the appellants Dinanath Pandit, Ramanand Pandit and Janakdeo Singh be set at liberty forthwith unless they are not required in any other case.

This appeal is allowed accordingly.

Manohar Lal Visa, J.

I agree.